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Environment
Manatū Mō Te Taiao

21 DEFINITIONS STANDARD

Recommendations on Submissions Report for the first set of
National Planning Standards

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Context to this document

This document forms part of the suite of recommendations on submissions reports prepared for the National Planning Standards. It should be read in conjunction with the Overall Introduction and is likely to reference other recommendations on submissions reports listed below. The recommendations on submissions reports are organised as follows:

1. **Overall introduction**
 - Explanation of all of the recommendations on submissions reports
 - High-level submissions analysis

Detailed recommendation reports

- 2A. **Regional Policy Statement Structure Standard report**
- 2B. **Regional Plan Structure Standard report**
- 2C. **District Plan Structure Standard**
- 2D. **Combined Plan Structure Standard**
- 2E. **Chapter Standards report** including
 - Introduction and General Provisions Standard
 - National Direction
 - Tangata Whenua Structure Standard
 - Strategic Direction Structure Standard
 - District-wide Matters Standard
 - Designations Standard
 - Schedules, Appendices and Maps Standard
- 2F. **Format Standard** including
 - Chapter Form Standard
 - Status of Rules and Other Text and Numbering Form Standard
- 2G. **Zone Framework Standard**
- 2H. **Spatial Layers Standards** including
 - Regional Spatial Layers Standard
 - District Spatial Layers Standard
- 2I. **Definitions Standard**
- 2J. **Noise and Vibration Metrics Standard**
- 2K. **Electronic Accessibility and Functionality Standard** including
 - Baseline electronic accessibility
 - Online interactive plans
- 2L. **Mapping Standard**
- 2M. **Implementation of the Standards**

1 Overview

This overview section provides relevant background detail on the approach to identifying the terms to be included in the draft set of definitions along with the drafting principles applied in developing each definition.

Section 2 addresses general submissions on the draft Definitions Standard along with submissions made on the mandatory directions for the standard.

Section 3 sets out the summary of submissions on individual terms along with the analysis and recommendations for these. It is presented in alphabetical order, but we note that some terms were closely linked. Where this occurred, we have analysed submissions and prepared recommendations in a holistic manner. Accordingly, some terms are grouped together for this purpose. Each term is still included in its appropriate alphabetical order but with a cross-reference to where the analysis is located.

Some new terms are recommended for inclusion in this set of planning standards to complement terms that were proposed (and they may also have been requested in submissions on those terms). Where these are recommended for inclusion, the words ‘new recommended term’ are included in brackets in the heading.

We received requests for other additional terms which we have not included. These are listed together with an explanation of our approach to them in section 3.119 below.

Section 4 considers feedback provided on guidance material that would be useful to support the implementation of the definitions.

1.1 Background – drafting approach applied

Section 58G(2) of the Resource Management Act 1991 (RMA) requires the first set of National Planning Standards to include definitions. The definitions included in the draft Definitions Standard were selected through a process involving research to identify common terms used in regional and district plans, the development of selection criteria and drafting principles, feedback provided through workshops, consultation, and input and advice from practitioners, iwi, industry groups and pilot councils. Selection criteria were formulated and refined following consultation on the *Definitions* discussion paper.¹ In addition, some changes were made to the selection criteria to align with other parts of these standards – for example, noise terms were included to assist with the draft Noise and Vibration Metrics Standard.

The selection criteria used to identify the 109 terms included in the draft National Planning Standards are:

Inclusion criteria

- highly used
- common to both district and regional plans
- high-level land use categories

¹ Ministry for the Environment. 2017. *National Planning Standards: Definitions – Discussion paper G*. Wellington: Ministry for the Environment. Retrieved from <http://www.mfe.govt.nz/sites/default/files/media/RMA/Discussion%20Paper%20G%20-%20Definitions%20%281%29.pdf>

- dependencies or linkages with other definitions

Exclusion criteria

- the term has an existing, ordinary understood meaning
- the term is in te reo Māori²
- reality check about the ‘on the ground’ application of the term; for example, if a term is likely to become obsolete through imminent technical or societal changes, requires a number of different ongoing and permanent local variations, or is better addressed through other national direction, regulation or the RMA itself.

The following drafting principles were also applied to reach the final form of the definitions included in the draft standards:

- any definition already contained within the RMA, a National Policy Statement, National Environmental Standard or regulation under the RMA should be applied in the National Planning Standard where it is fit for purpose
- where a term is also defined in a statute, regulation or New Zealand Standard (NZS) outside of the RMA, the proposed definition should copy verbatim the text of the statutory, regulatory, or NZS definition where it is fit for purpose; this will effectively set the definition in time and avoid any unforeseen consequences that future amendments may have on plan provisions
- definitions should avoid containing (or becoming) de facto rules
- definitions should avoid using subjective language, such as “high quality”, “appropriate” or “approximate”
- where possible, the definitions should be drafted in a clear and concise manner. For example:
 - the language used should be clear, straightforward and provide the plan user with certainty as to the scope of the definition
 - sentences should be short and avoid unnecessary words and jargon
- where a definition contains the word “includes” and is followed by a list, the list shall be non-exhaustive; conversely, if a definition “excludes” a list of matters, this shall be treated as exhaustive
- definitions should not give interpretation rights exclusively to one person or organisation (eg, “which in the opinion of council is...”).

² Apart from those terms in te reo Māori that were included because they meet other selection criteria and are RMA terms.

2 Overarching comments and mandatory directions

A large number of submissions provided general comments on the draft definitions. Some submitters expressed these more wide-ranging views while not requesting related changes but then focused on requesting changes to specific definitions later in their submissions. Other general comments were specifically linked to relief sought. This report considers all these comments to ensure that submitters' concerns are addressed where appropriate.

An overview of these submissions reveals that the highest proportion of those that provided general comments supported the concept of standardisation of definitions but also expressed concerns and/or sought changes. Many other submissions sought changes without clearly stating their overall support or opposition. Fewer submissions opposed the inclusion of the definitions absolutely and a still smaller number supported the definitions without reservation. One submitter was neutral.

The submission points raised can be broadly divided into the following themes:

- implementation impact (timeframes and process)
- selection criteria and drafting principles (RMA definitions included the standards, definitions from other legislation and New Zealand standards, RMA definitions in policy statements and plans but not included in the standards ie, mandatory direction 3(f))
- mandatory directions (mandatory nature of direction, detailed comments on mandatory directions 3(b), (c) and (d) – synonyms, narrower applications and locally defined terms and on mandatory directions 3(e),(g) and (h) – format, diagrams and linking guidance tools or nesting).

2.1 Implementation impact: timeframes

2.1.1 Submissions

A significant number of submissions – mostly from councils but also from industry and business – raised concerns about the implications of implementing the definitions in plans.

The concerns included:

- the standard definitions are too broad and lack detail and accuracy
- definitions are specific to the application of rules and standardising them will result in:
 - changes to the meaning and application of rules, and cause unintended consequences such as rendering activities no longer compliant with rules or zones
 - significant redrafting of rules to retain the original intent
 - repetition as rules are rewritten to include exceptions within the rules
 - creation of multiple subcategories of terms
 - gaps and inconsistencies through redrafting of rules
 - associated time and cost, which will also impede progress on other important council work
 - uncertainty and risk of litigation because the definitions and related changes to rules are untested

- more complicated and less user-friendly plans requiring more council time to explain to users.

Some councils and businesses (Northland Regional Council, Tauranga City Council and Greenwood Roche) sought more time to implement the definitions so the changes could be synchronised with a plan review. This would enable the definitions and any changes to rules be considered in context and reduce time and cost. Conversely, Thames Environmental Consultancy thought the timeframes were too long and requested the definitions be implemented immediately on gazettal of the standards to ensure that the benefits for users of consistent definitions across plans are achieved sooner. Some submitters (the oil companies,³ Dunedin City Council, Canterbury Mayoral Forum, Bay of Plenty Regional Council) sought more testing and review, or a transitional period, before implementation to refine the definitions or iron out unintended consequences and effects on plans.

2.1.2 Analysis

We acknowledge that many of the definitions are broadly framed but this is because they apply at a national level. The mandatory directions provide councils with the ability to develop more specific definitions of terms where subcategories or narrower applications are useful, provided these remain consistent with the higher-order definition.

We recognise that it will be initially difficult to apply the definitions to policy statements and plans. We do not underestimate the time and resources required to scrutinise planning instruments and implement the required changes to rules. The implementation report recognises this and recommends providing councils additional time to implement the definitions.

We acknowledge that redrafting of rules will be required to achieve the same outcome as the current operative plans. However, the changes will result in benefits for users because they will be able to locate and understand rules more easily without the need to refer to detailed exclusions and inclusions that were previously incorporated into definitions. Once implemented, the set of standard definitions will also provide certainty for councils and users.

Standardisation will result in reduced time, cost and litigation on these defined terms in the future and will go some way towards offsetting the time and resource costs expended on changes now. Even where the meaning of a definition is litigated in the future, the outcome of the litigation will be applicable across the country, resulting in further efficiencies.

In considering submissions and making recommendations, we have sought to make every effort to clarify the scope of consequential amendments within the standards.

We consider that further testing is not required. The draft definitions were initially thoroughly tested through a series of workshops, discussion documents, iwi and industry group feedback, practitioner's advice and pilot councils as outlined in Part 2C – Definitions of the *Proposed National Planning Standards evaluation report 2018*⁴ (the section 32 report), which addresses definitions. Following the submissions phase, submissions on the specific definitions have been considered and peer reviewed from a legal perspective. Where necessary, we have sought specific comment from a submitter group that is particularly impacted by a definition. This included many definitions being tested again with the pilot councils and an additional small group of regional councils, which made

³ Mobil Oil New Zealand Limited, Z Energy Limited, BP Oil Limited.

⁴ Ministry for the Environment. 2018. *Proposed National Planning Standards evaluation report 2018: Part 2C – Definitions*.

themselves available to work with the Ministry for the Environment during the final stages of preparing these recommendations.

This final process of testing revealed again that it is not possible to craft a national-level definition that suits all plans. It is clear that some plans, depending on the way they approach the drafting of their definitions, will have to make significant changes to their rules as well to ensure the impact of the planning standards definitions remains neutral. It is for this reason that we recommend that, as much as possible, the councils implement these definitions as part of a broader review of their plans. As noted above, the implementation report recommends giving more time for this purpose.

2.2 Implementation impact: Schedule 1 process or consequential changes

2.2.1 Submissions

Many councils assumed that changes to rules required as a result of the definitions would be outside the scope of consequential amendments and would need to be undertaken using the Schedule 1 process. They expressed concern about the prospect of opening up their plans to further litigation and associated risk and cost.

Some councils (Auckland Council, Northland Regional Council, Gisborne District Council) sought confirmation that changes to rules required as a result of changes to definitions could be completed as consequential amendments without using the Schedule 1 process. Northland Regional Council sought a longer timeframe (10 years) within which to implement the definitions. Whangarei District Council and Auckland Council sought clarification as to the scope of consequential amendments and the type of changes needed to be completed using the Schedule 1 process.

The New Zealand Planning Institute (NZPI) suggested a more streamlined process should be available to councils to implement changes so the full Schedule 1 process is avoided.

Some submitters (Transpower and Forest and Bird) were concerned about changes to rules being made as consequential amendments and the lack of a process for submitters or councils to correct unexpected changes – whether as a result of a change to rule intent that is left uncorrected by councils, or changes to the rules triggered by the definitions. Transpower made a number of suggestions for processes to enable submitter input to correct minor defects and related council corrections. Housing New Zealand requested a public hearing process for substantive provisions such as the definitions so that decision-makers are informed and errors identified and corrected before becoming operative. Radio New Zealand suggested that further submissions be allowed once definitions are incorporated into plans because the implications will not be clear until then.

2.2.2 Analysis and recommendations

The RMA states that a local authority must amend its policy statement or plan to include the definitions and any consequential amendments necessary to avoid duplication or conflict with those definitions without using the processes set out in Schedule 1.⁵

We recognise that it will be challenging for councils to identify the changes that can be made under the umbrella of consequential amendments compared with those that must be made using the

⁵ RMA section 58I(2) and (3).

Schedule 1 process. However, we consider the scope of changes that can and should be made as consequential amendments is more extensive than councils contemplate in their submissions.

The intention of section 58I is to enable the changes to occur quickly and simply without re-litigating the issues. In light of our recommendations to extend the timeframes for implementing the definitions, we expect that many councils will choose to include the definitions in a plan review. This will enable any changes to be considered with the initial drafting of the plan and the process of notification, submissions and hearings. We expect this will ensure a more effective approach to drafting new planning provisions. It also reinforces the expectation that plan review processes take a considered approach to all plan provisions and not simply roll over so-called 'tried and true' provisions.

There is no intent for the standards to change the meaning or application of rules. Therefore, where changes to plan rules are required to maintain the original meaning and application of the rules once the definitions are included, those changes are likely to be considered to be consequential. Such changes can be completed without using the Schedule 1 process quickly and simply, avoiding the potential for re-litigation of previously settled issues.

The recommended Foundation Standard includes a purpose statement applicable to all standards. This purpose statement outlines that the planning standards do not alter the effect of policy statement or plan provisions or outcomes. We consider that having such a purpose statement will make it clear that the standard does not alter the policy intent of policy statements and plans and therefore will help to clarify the scope of consequential changes.

We do not necessarily agree that a more streamlined Schedule 1 process is required in light of our recommendations elsewhere to amend the implementation timeframes. However, we acknowledge that one purpose of the streamlined planning process (RMA Schedule 1, part 5) is to assist with the implementation of national direction. If there are any amendments that a council wants to make that go beyond consequential amendments or the correction of minor errors that is enabled under Schedule 1 clause 20A, and if it is making such changes outside of a broader plan review process, then the council could consider applying to use the streamlined planning process.

Lastly, we have considered the submissions from Transpower and Forest and Bird about the ability to consider and provide feedback on the implications of definitions in their broader plan context. In this regard, we expect to provide guidance that councils release a draft plan or exposure draft with the amendments for stakeholders to comment on.

2.3 Selection criteria and drafting principles

2.3.1 Inclusion of RMA definitions

Submissions: inclusions or exclusions

Submissions indicated a level of concern about the RMA definitions included in the Definitions Standard. A number of submitters (business and councils) asked for removal of the RMA terms on the grounds that including RMA definitions constituted unnecessary duplication. Selwyn District Council considered that including only some but not all RMA terms created additional confusion. A number of other submitters accepted the inclusion of RMA definitions and focused their submissions on other aspects of those definitions. Bay of Plenty Regional Council supported the inclusion of terms from the RMA, other legislation or New Zealand Standards to improve consistency. This council and another submitter requested that all the other definitions be removed or specified as

non-mandatory because they will be more difficult to apply to plans that have their specific versions of these.

Analysis and recommendations

There were 39 RMA terms included in the draft Definitions Standard. In each case, the Definitions Standard specifies that the term has the same meaning as in the RMA and sets out that RMA definition in full. Following our consideration of submissions, there is now only one term defined in the RMA ('residential activity') that is recommended to have a different definition in the standards; however, rather than being defined in section 2 of the RMA, it is defined in section 95A(6) for a specific purpose only.

The RMA definitions have been included in accordance with the drafting principle that "any definition already contained within the RMA, a National Policy Statement, National Environmental Standard or regulation under the RMA should be applied in the National Planning Standard where it is fit for purpose".

It is appropriate to include the RMA definitions in the standards because they, like the other definitions in the standards, are considered fit for purpose and meet one or more of the criteria for inclusion.

We note here that each term and associated definition is considered on its merits in section 3 of this report. For a number of the individual terms, only one or two submitters provided unqualified support for their inclusion. Where this is the case, we simply acknowledge this and recommend its inclusion in the planning standards. Other RMA terms raised particular issues for submitters. The analysis sets these out along with our views and a recommendation outlined as to whether the term should be retained or deleted from the final set of definitions.

Submissions: linking or repeating the full definition

Some submitters (business, practitioners and councils) considered it was unnecessary to repeat the full RMA definition verbatim. Instead, they thought that a cross-reference or link through to the RMA itself would suffice together with a direction that all terms have the same meaning as in the RMA. This would avoid repetition and the need to change the standard each time the RMA definition is changed.

Analysis and recommendations

Including RMA definitions in the standards, where those RMA definitions have met the overall criteria for inclusion, improves consistency and certainty. Submissions that refer to unnecessary repetition of the RMA assume that all plans currently use RMA definitions without variation. Our research and submissions from councils on the specific RMA terms included in the standards reveal, however, that plans do have variations from the RMA definitions. For many terms this variation is minor but some terms have greater variation.

We do not agree that all RMA terms should be included. While this achieves consistency, it would result in the inclusion of a large number of RMA defined terms that are not applicable to policy statements and plans, or do not meet the criteria for inclusion.

Cross-referencing or linking the terms to the definitions set out in the RMA would result in automatic and immediate application of any changes to RMA definitions to policy statements and plans, with related unintended consequences for plan rules. Further, it may create confusion about which version of a definition is applicable to specific RMA processes. In addition, it is less certain and less clear for the user because the actual words of a definition cannot be seen on the face of the

plan. While technically it may be possible to link from the plan to the RMA legislation, we are concerned how this would impact on the requirement for electronic plans (ePlans) to be able to 'roll back' to an earlier version for interpretation purposes. We expect this will create challenges if some of the definitions rely on external links. We consider that it is easier and more accurate therefore, in terms of both useability and maintenance of the ePlan, to include the full text of definitions in the ePlan along with a source reference and version.

For plans in general, we consider it is preferable to set out the wording of the RMA definitions entirely. This achieves user-friendly clarity and removes the risk of changes to definitions occurring through RMA amendments without notice.

Submissions: variations from RMA definitions

Some submitters noted that RMA definitions in the standards should not vary from the RMA wording, otherwise they will cause confusion. Conversely, some submitters requested flexibility to apply some variation to the RMA definitions but this often related to the ability to use subcategories, narrower applications or locally defined terms.

Some councils (Otago Regional Council and Joint Southland Councils) requested the ability to vary from the RMA terms in te reo Māori that are included in the standards if requested by iwi, in particular to align with iwi management plans. Ngāi Te Rangi expressed concern about standardisation and recommended that this be done only by Māori experts using care and appropriate processes. Te Rūnanga o Ngāi Tahu also requested the ability to vary these definitions to accommodate local variation or understanding of these concepts. It also pointed out that hapū and iwi should be able to use their own dialect in plans rather than the RMA terms but this would not be possible under the standards as it would be considered a synonym.

The Resource Management Law Association and Forest and Bird pointed out that there needs to be flexibility to provide for the situation where terms carry different meanings. They suggested that the Definitions Standard ensure the RMA meaning applies "unless the context otherwise requires".

Analysis and recommendations

Only two terms included in the standards as notified varied from their RMA definitions and we were keen to hear submitters' feedback on them. These terms were 'structure' and 'residential activity'. The specific analysis on those terms is considered in section 3 of this report but, in summary, we agree that where a term has a defined meaning in the RMA and is included in the standards, the Standards definition should not vary from its RMA definition. To do otherwise would lead to confusion.

As a result, the recommendation on the term 'structure' is that it should retain its RMA definition. For 'residential activity', the definition in section 95A(6) of the RMA is specific to section 95A(5) only and for a particular purpose related to the notification process. The definition does not have general application to the wider RMA. It is very clear that the term 'residential activity' is applied quite differently in plans and requires its own definition in the planning standards.

However, we agree that a term can carry more than one meaning. The standards should allow an alternative meaning to apply where it is clear from the context that the definition provided is not applicable. We consider that the revised drafting of the mandatory directions clarifies this where they state: "... and the term is used in the same context as the definition".

We also acknowledge that it is appropriate that tangata whenua have the ability to vary the relevant terms and definitions according to local concepts and dialect. We consider the best way to facilitate this is to remove the RMA terms that are in te reo Māori from the Definitions Standard.

We have considered submissions on the specific definitions of RMA terms below and have addressed submitters' concerns, which in some cases can be addressed by the use of subcategories or narrow applications.

2.3.2 Definitions from other legislation and New Zealand Standards, RMA definitions in policy statements and plans but not included in the Definitions Standard (ie, mandatory direction 3(f))

Submissions

Ravensdown Limited and Housing New Zealand Corporation supported the drafting principle of using verbatim the definitions from other legislation where they are included. Housing New Zealand Corporation requested additional definitions from other legislation be included.

However, some submitters (Survey and Spatial New Zealand, Heritage New Zealand) preferred cross-referencing to avoid the time and process required to update definitions from other legislation. Their view is that cross-referencing to the definitions in other legislation would be more efficient and allow for change to flow through to plans more easily. Beca Limited sought clarification in the mandatory directions about the process required to update such definitions. Beca Limited and Joint Southland Councils sought consistency so that wherever a definition refers to a definition in another instrument, such as other legislation or other standards, these should be repeated in full also. Tauranga City Council supported mandatory direction 3(f), which applies that drafting principle to all definitions in policy statements and plans. This mandatory direction required that if a definition included in a policy statement or plan uses a definition from relevant New Zealand legislation, the Definitions table must include reference to the legislation and the definition.

Analysis and recommendations

The drafting principle applied was that:

where a term is also defined in a statute, regulation or New Zealand Standard (NZS), outside of the RMA, the proposed definition should copy verbatim the text of the statutory, regulatory, or NZS definition where it is fit for purpose; this will effectively set the definition in time and avoid any unforeseen consequences that future amendments may have on plan provisions.

Repeating definitions drawn from other legislation in full ensures that any amendments to those definitions will not apply to policy statements and plans until those changes have been considered fit for purpose, included in a National Planning Standard and applied to planning instruments. This avoids any amendments to those statutory definitions having inadvertent consequences on policy statements and plans. Setting out the wording in full is also clearer and avoids any potential confusion about different definition versions. We anticipate that changes to the standard or new standards will occur regularly and will provide a vehicle to include any relevant changed definitions that need to be addressed.

However, in some situations, doing this would introduce unnecessary complexity into the definitions for little benefit, in particular for definitions related to the acoustical New Zealand Standards. These are very technical and often comprise lengthy formulas. Therefore including them in full would add little to an ordinary plan user's understanding of the terms.

Mandatory direction 3(f) applied this drafting principle to policy statements and plans for any definition from relevant New Zealand legislation but not for definitions from other sources such as New Zealand Standards. It reads as follows:

If a definition included in a plan or policy statement uses a definition from relevant New Zealand legislation, reference to the legislation and the definition must be included in the Definitions table.

Consistent with our approach that RMA terms should be set out in full in plans, we consider that where a plan definitions list uses another term from the RMA, or any other legislation, the definition should also be set out in full.

We recommend that plan definitions lists should follow the same approach as set out in the Definitions Standard. That is, they should copy the definition from the other legislative source and include the source reference and the date the definition was applied (as a version control management technique).

2.3.3 Other submissions on selection criteria

Submissions

NZPI questioned whether some of the definitions warrant inclusion at a national level. It considered that some definitions need to reflect local issues and should not be standardised. However, it supported the inclusion of technical terms such as those pertaining to noise measurements, definitions from legislation, height, boundary and setback, and requested that the standard is restricted to these types of definitions.

Powerco Limited and Wellington Electricity Lines Limited acknowledged and supported the approach taken to exclude a number of infrastructure-related definitions to avoid the potential for a conflict in case the work on a set of model utility provisions is advanced for consideration as a future planning standard. Canterbury District Health Board supported the fact that healthcare definitions are not included as this allows for “local definitions that reflect local service provisions”. We note these submissions.

Heritage New Zealand Pouhere Taonga and Christchurch City Council questioned why some terms used within a definition are not themselves defined, pointing out that failure to standardise reliant definitions may reduce the benefits of standardisation of the primary definitions. Christchurch City Council sought clarification about whether the standards preclude policy statements and plans from retaining or introducing definitions of terms included within the definitions prescribed by the standards.

Analysis and recommendations

Our view is that, subject to recommendations being made on individual standards following consideration of the submissions, the definitions recommended for inclusion in the standard are fit for purpose and meet the criteria and drafting principles as set out in the Part 2C – Definitions of the *Proposed National Planning Standards Evaluation Report*. The definitions are broadly crafted but councils have the ability to reflect local issues by addressing exclusions and inclusions within plan rules. It is difficult to discern from the detail provided in the submission the extent of the definitions that the NZPI refers to as “technical”. We consider it would therefore be difficult to apply this criterion.

We recognise that any definitions developed by councils for terms used within the definitions set out in the standards, but not defined in the standards, may affect the primary definition. However that effect will be limited as the primary definitions must remain unchanged and any other definition must be consistent with the high-order definitions. Policy statements and plans may define terms within definitions as appropriate and this allows for local content.

2.3.4 Other submissions on drafting principles

Submissions

Christchurch City Council supported the drafting principles but requested that the definitions be reviewed for consistency with them, particularly the following:

- the use of “includes” and “excludes”
- standard punctuation
- underlining of reliant definitions where applicable.

Some submitters (Hutt City Council and Tauranga City Council) sought the removal of the word “primarily” from the definitions because it is ambiguous.

Analysis and recommendations

The drafting principles refer to the meanings of “includes” and “excludes” and explain whether the list following each of these terms is exhaustive or not. They do not require the standardisation of these terms. However, noting the submission on this subject, we agree that a review for consistency is useful and have completed this. We agree that underlining or marking of reliant definitions would be useful for the user. This point has been addressed further below.

The definitions for the following terms used the phrase “primarily for”: community facility, green infrastructure, net site area, and visitor accommodation. We agree that the use of the phrase “primarily for” renders those definitions ambiguous and uncertain. Using the phrase does not accord with the drafting principle that definitions should avoid using subjective language. We agree that removing the phrase would have little effect on meaning but would increase certainty. We do acknowledge however, that our recommendation for one definition (‘intensive primary production/intensive indoor primary production’) includes the word ‘principally’, as the concept of indoor intensive farming could not be described in an absolute manner.

2.4 Mandatory directions

2.4.1 Mandatory nature of directions

Submissions: discretionary, not mandatory

Some business and industry submissions⁶ requested that the definitions be discretionary rather than mandatory. They were concerned about the difficulties they predicted to arise from applying the definitions to plans, including changes to the meaning of rules, elimination of locally applicable and agreed rule and definition solutions, and the rewriting of many rules. Christchurch City Council also

⁶ One submission represented six submitters: CDL Land NZ Limited, Kiwi Property Group Limited, The National Trading Company of New Zealand Limited, Ngāti Whātua Ōrākei Whai Rawa Limited, Tramco Group Limited and The Waitakere Ranges Protection Society Incorporated.

queried why the definitions were mandatory but other provisions were discretionary and requested that the definitions be discretionary.

Analysis and recommendations

The standards must include definitions because this is required by section 58G(2) of the RMA, which sets out the minimum requirements for the first set of standards. We consider that the submitter is requesting that all of the definitions should be discretionary so councils are free to choose whether to include them or not. However, there is no ability for the definitions to be wholly discretionary. The RMA only enables a planning standard to provide a discretion by setting out alternative options from which a local authority must choose one.

One submitter queried why other standards are discretionary but the definitions are not. The only standard that is discretionary is the Zone Framework Standard and it provides options from which local authorities must choose at least one. We consider that the best way to have consistent definitions applying across the country is to make them mandatory. The provision of options for which definition to use will reduce consistency across the country. We do recommend that the directions make it clearer that a plan only needs to include definitions used in the plan (not all terms and definitions) as there appears to be some confusion around this with the draft version.

Submissions: application of mandatory definitions to both regional and district councils?

Some regional councils (Bay of Plenty Regional Council, Wellington Regional Council and Environment Canterbury) requested that the definitions be non-mandatory for regional policy statements and plans. Their reasons for this request include that:

- the RMA definitions included are too broad and need refinement
- the definitions are district plan focused and inappropriate for use in regional plans (Local Government New Zealand reiterated this point)
- the definitions are overly prescriptive and inconsistent with the submitter's plan.

Federated Farmers of New Zealand Limited and NZ Pork also considered that the definitions are too urban focused.

Conversely, some councils (Christchurch City Council and Matamata Piako District Council) sought clarification that the definitions are mandatory for both district and regional plans. They pointed out that the location of the word "regional" as an adjective before policy statement and plan in mandatory direction 3 implies that "regional" describes both these documents so that district plans are not referred to at all. Christchurch City Council suggested reordering these words so that they read "plan or regional policy statement". It also requested that the definitions that are mandatory for district plans and those that are mandatory for regional plans be differentiated.

Analysis and recommendations

We do not agree that the definitions should not apply to regional policy statements and regional plans. Regional definitions were included in the standards in response to stakeholders' feedback on the discussion papers that standardisation would also be beneficial for regional documents and that the previous approach of focusing on only district plan and urban related definitions was too restrictive. In addition, standardising both regional and district definitions is appropriate for unitary and combined plans that include both.

It is also important to ensure that the RMA plan hierarchy is reflected. Regional and district plans must give effect to regional policy statements. District plans must also not be inconsistent with a regional plan. It is important that the definitions apply to regional policy statements and regional plans as well as district plans to maintain consistency and avoid contradictions between these documents.

We acknowledge that the order of the words “regional policy statement and plan” could lead to confusion about whether the directions apply to district plans because the word “regional” appears to describe both policy statements and plans. Mandatory direction 3 stated, “Any definitions for terms used in the regional policy statement or plan must be included ...”. RMA section 43AA defines plan as a regional plan or a district plan and so it is intended that, wherever the word “plan” is used, it carries both these meanings. We do recognise that the standards do not specify clearly that the RMA definition of plan specifically applies. This word order does follow the usual RMA hierarchy that applies to these documents. However, we note that this order has not been consistently applied either way within the standards.

We recognise that changing the order would improve certainty for the general user but we consider a better solution is to delete the word “regional” so the direction refers to policy statements and plans. This is consistent with other use in the standards and also consistent with usual planning convention and RMA hierarchy. We note that the RMA defines ‘policy statement’ as “regional policy statement” so it is an appropriate term to use. The fact that the direction applies to regional policy statements, regional plans, combined plans and district plans will also be confirmed in guidance material. We note that mandatory directions 3(b) and 3(f) also need amendments for consistency.

As a broad principle, we do not agree that differentiating the district or regional definitions by marking should be completed for all terms, unless a term is clearly intended to only apply to a given type of policy statement or plan. We note here, for example, our recommendation later to restrict the application of the term ‘site’ to district plans. We understand that it would be easier for the user if all definitions were clearly marked as to whether they are mandatory for districts or for regions. However, because of the extent of the overlap between definitions used in regional and district contexts, it is preferable to leave this flexible. In considering the submissions on each term, we have carefully considered the appropriateness of any overlap. Where this is not appropriate, we have signalled a term is only applicable in certain circumstances. In addition, the definitions have been broadly crafted and subcategories or narrower applications can be developed if needed to apply within a regional or district context.

Submissions: are all the definitions mandatory?

Some councils (Christchurch City Council, Auckland Council and Waimakariri District Council) sought clarification about whether all 109 definitions must be adopted or whether there is an ability to choose those definitions that are used in the plan or relevant to its functions. Auckland Council also asked about terms used in the plan but not specifically defined in the plan. It suggested using the terminology used elsewhere in the standards to make it clear that councils only have to include those definitions that are defined terms in its plan as follows: “If the following definitions are included in the Plan then the following definitions must be used”.

Analysis and recommendations

Mandatory direction 3 specified that “Any definitions for terms used in the regional policy statement or plan must be included as a single list in the definitions section of the policy statement or plan as follows”. Because the direction refers to “terms *used* in the policy statements and plans” (emphasis added), it makes clear that the directions that follow only apply those terms actually contained in a

policy statement or plan. We consider that this makes it sufficiently clear that councils are not required to include definitions for terms that do not appear in their documents; for example, a regional council does not have to include the definition of 'net site area' in its definitions list if that term is not used in its plan. We recommend reframing the mandatory directions so they are simpler and clearer. But our recommended changes still refer to the situation where, if the term defined by the standards is "used" in a policy statement or plan, it must be included in that policy statement or plan's definitions list. This point can be confirmed in guidance to assist councils, if required.

Mandatory direction 3(b), as worded, requires a definition in the definition standard to apply if the term is defined in the definition standard. This wording allowed sufficient flexibility to cover the situation where a term bears more than one meaning and the definition in the standard may not be appropriate for every use of the term. But because consistency is required, it is preferable that the definition be applied wherever the term is used. Therefore we recommend modifying the directions to make it clear that a definition in the definition standard applies *wherever* the relevant term is used in a policy statement or plan – not just if the term is defined in the policy statement or plan. However, we recognise that councils must have the ability to only apply a definition when the defined term actually carries the defined meaning. We therefore recommend that the flexibility to do this is provided by adding the words "and the term is used in the same context as the definition" to the direction to ensure that a definition only applies where it is appropriate.

Submissions: a definition should not be mandatory in all circumstances

Christchurch City Council pointed out that, in some cases, automatic application of a definition to a defined term could result in an incorrect meaning as terms have different meanings depending on context; for example, different meanings as a verb and as a noun. It requested relevant changes to mandatory direction 3(b) to enable a provision to indicate when a definition applies by highlighting or hyperlinking as follows:

- b. The definitions appearing in the Definitions table apply wherever a provision indicates that the term (or a synonym or derivation of a term) is defined in a regional policy statement or plan.

Christchurch City Council also requested that defined terms that are included within a primary definition also be marked clearly. Isovist, an ePlan provider, also notes that local authorities themselves will not be able to edit standard definitions in an ePlan. The terms, even in plural form, will link automatically to the definitions so the Ministry for the Environment will need to provide Isovist with information about where alternative meanings and exceptions apply.

Analysis and recommendations

We agree that there could be instances where a term does not bear the defined meaning because of context. But we consider that the addition of the words "... and the term is used in the same context as the definition" will ensure that the specified meaning does not apply if the context shows that the term bears a different meaning. The context may show, for instance, that the term is used as a verb rather than a noun. The context is to be ascertained by considering, first, the provision in isolation and then the surrounding headings and provisions. A similar interpretive approach is used in the interpretation section of the RMA (section 2) where it states "unless the context requires otherwise".

We agree that it would make these documents easier to use if, wherever a defined term is used in policy statements and plans, it is clearly marked. However, this should only occur when the context

means that the definition actually applies to the term. In ePlans, the defined term is marked and a pop-up displays the definition.

We sought further clarification from ePlan providers about the ability for councils to control whether a definition is linked or disconnected from a term to cater for specific contexts. These providers have since confirmed that the functionality can exist to decouple a definition from a term where required. Therefore it is expected that terms are marked as defined terms where the context applies. We consider that this is a useful direction to include in the standards for traditional plans, and for ePlans to ensure that this functionality is provided. To ensure consistency, this should also apply to defined terms within definitions themselves.

We recommend including an additional direction to require a term to be clearly marked when a definition applies to a term – whether or not that term is defined in the standard. For consistency, we agree that this should also apply when a defined term is used within a definition itself. We recommend locating this direction in the Format Standard.

Submissions: are the directions that use the word “may” mandatory or discretionary?

Christchurch City Council sought clarification about the relationship between the mandatory nature of some directions and those directions that include a discretion by using the term “may”. It pointed out that mandatory directions 3(c), (d) and (h) allow a council to choose a subcategory and narrower definition, locally defined terms, and to include guidance such as nesting and Venn diagrams. The council requested clarity about whether the definitions or diagrams and guidance included in plans following these directions must be included according to section 58I(3) without using the Schedule 1 process, or whether such definitions and any consequential amendments must be made using the Schedule 1 process. It pointed out that it is important to be clear so that submitters know which definitions can be submitted on and which cannot.

Analysis and recommendations

We agree that the use of the word “may” in the mandatory directions could cause confusion about whether the directions are mandatory or discretionary. As a result of using this word, it is unclear which definitions are to be included using a Schedule 1 process.

Part C of the draft Definitions Standard refers to these directions as mandatory. It specifies how the definitions are to be recognised in policy statements and plans as follows:

- (3) The table (or cells) in part D contains mandatory directions. The amendments made to any plan to give effect to these mandatory directions must be in accordance with section 58I (2) and (3) of the RMA.
- (4) Consequential amendments to any plan that are needed to avoid duplication or conflict with amendments as required by paragraph 3 must also be made without using an RMA Schedule 1 process. If consequential amendments go beyond the scope of amendments authorised by section 58I (3)(d) of the RMA, a RMA Schedule 1 process will need to be used.

The directions are set out in part D of the draft Definitions Standard, which is headed “Mandatory directions”. Direction 3 required that “Any definitions for terms used in the regional policy statement or plan must be included as a single list in the definitions section of the policy statement or plan”. But after that, directions 3(c), (d), (g) and (h) are not imperative, but rather enabling or authorising. They provide as follows:

- c. Policy statements and plans **may** include definitions that only apply to a subcategory or narrower application of a term defined in the Definitions table.

- d. Policy statements and plans **may** include locally defined terms that are not synonyms of a term in the Definitions table.
- g. Any definition **may** include diagrams to aid in the interpretation of the definition.
- h. Guidance on how definitions relate to one another **may** be included. This **may** be, but is not limited to, the use of nesting tables or Venn diagrams. (emphasis added).

In respect of the mandatory or discretionary pathways set out in the RMA for these more enabling provisions, the policy intention is that these are mandatory directions. This is because they do not set out specific alternative options from which councils may choose, which is the basic premise of section 58I(4) of the RMA, which deals with discretionary directions.

These enabling directions largely have the function of clarifying the scope and the extent of the mandatory directions and could arguably have been left out entirely, instead being provided as guidance. That is, the standards would remain silent on these “may” statements. In light of the feedback on all of the standards generally, however, we recommend that, if the standards are to be clear and drafted so that they do not rely on external guidance material, the standards themselves should provide this clarity by retaining the use of these “may” statements. Drafting these provisions has proved challenging in light of the implications of the mandatory and discretionary pathways that the RMA provides for but, following legal drafting input, we have taken the approach of nesting any “may” statements within the context of a “must” statement. This approach ensures that the directions remain mandatory directions for the purposes of section 58I(3).

We have sought to further clarify the distinction between mandatory and discretionary provisions by using headings in the revised, recommended standard, such as with the headings “Mandatory directions” and “Discretionary directions”.

Submissions: additional mandatory directions sought

Auckland Council suggested including the principles that underpin the drafting of the definitions in the Definitions Standard as mandatory directions so they apply to all council definitions. This approach would ensure that any locally defined term is defined in a consistent way.

Tauranga City Council suggested that additional material taken from the section 32 report should have been included in a mandatory direction for each specific definition. For example, relevant material might be where the section 32 report notes some clear guidance about what a definition does and does not include, or where councils could provide subcategories.

Analysis and recommendations

The drafting principles applied to the development of the planning standards definitions are well settled and robust. They were informed by the principles used in legislative drafting, as well as those used by the respective independent hearings panels for the Auckland Unitary Plan and the Christchurch Replacement District Plan.

We acknowledge Auckland Council’s suggestion to embed these principles formally in the standards as mandatory directions; however, we continue to believe they are better suited to guidance. They are called ‘principles’ for the reason that some of these are not sufficiently certain to allow councils to clearly demonstrate compliance with each principle. Further, requiring this would impose a significant burden on councils.

We do not agree that the additional material in the section 32 report should be included as mandatory directions. The section 32 report provides background to the drafting of each definition, including about what a definition includes and excludes and information about whether councils are

likely to develop subcategories for some definitions. For example, in relation to ‘commercial activity’ the report states, “if a council wants to manage (permit or control) specific commercial activities, it can provide definitions that are a subset of the activities captured by this definition and/or through rules and performance standards”. While this is useful information, it is explanatory rather than directive and is more appropriately located in the section 32 report and guidance. In addition, we consider that the general mandatory directions are sufficient to ensure that councils know they can develop subcategories and narrower applications. To include this information in directions specific to each definition would amount to duplication.

2.4.2 Detailed comments on mandatory directions 3(b), (c) and (d) – synonyms, narrower applications and locally defined terms

Submissions: mandatory direction 3(b), (c) and (d) changes to main definition or synonyms, subcategory or narrower application, locally defined

Some councils (Wellington City Council, Christchurch City Council and Waimakariri District Council) sought an ability to adopt the standard definition but modify it for new or local circumstances, application to specific provisions or narrower applications. They saw such modifications as more efficient than creating a number of other terms with new meanings, and more consistent through the use of the same term and main elements of each standard definition with only some local additions or exceptions. Waimakariri District Council commented that being able to adapt a main definition would avoid any challenge about whether an apparent synonym is a synonym or not.

Christchurch City Council also pointed out that it needs to be clear when a definition applies and therefore a definition should not apply to synonyms. It sought an additional direction requiring that where a term is used in the text of the policy statement or plan, the definition should only apply to the defined term itself or a direct derivation.

Auckland Council supported the principle that no synonyms of a defined term should be included in its regional policy statement or plan but noted some difficulty in determining whether some terms used in its planning documents would be considered synonyms or “locally defined terms”. It commented that the meaning of the term “locally defined terms” in mandatory direction 3(d) is unclear and could relate to either local geography or local plan context. It sought clarification in the direction itself rather than guidance. Waimakariri District Council also sought changes to mandatory direction 3(b) to clarify the extent of the meaning of “synonym” to make it clear whether locally defined or more detailed definitions can be used. Auckland Council and Horticulture New Zealand supported the ability to provide subcategories and narrower applications because that approach:

- enables a “wider suite of definitions” and maintains Auckland Council’s “cascade definition framework”
- ensures rules do not apply to wider concepts than intended.

Tauranga City Council supported mandatory directions 3(b), (c) and (d). Conversely, Marlborough District Council was concerned that the ability to have locally defined terms would undermine the consistency achieved by standardisation.

Analysis and recommendations

Submissions expressed concern about the requirement for definitions to apply to synonyms. We recognise that there may be some difficulty in determining whether a term is a synonym or not but this should become clear through a consideration of the context of the policy statement or plan. Without application to synonyms, little consistency would be achieved. As the preliminary research

shows, there is extensive variation in the choice of terms used in plans that have the same or similar meaning applied. One outcome of the standards is to standardise the term as well as the definition. However, we recognise the concern about the use of the word “synonym”. To assist, in the final drafting of the Definitions Standard, we do not recommend using the word “synonym”. Instead, we recommend reframing the direction so that it restricts policy statements and plans from defining terms that have the “same or equivalent meaning” as a term defined in the standard Definitions table.

We recognise that the definitions are crafted at a high level and that narrower applications and subcategories will be needed. We do not agree that allowing exceptions and modifications to the main definition is efficient. To the contrary, it would create many different definitions for the same term and lead to confusion and inconsistency. In addition, adding exceptions to the main definitions contradicts the drafting principle that definitions should not be de facto rules. It is preferable that rules are crafted appropriately rather than being incorporated in definitions and that new definitions are created if truly local circumstances or different but narrower applications apply.

We agree that the phrase “locally defined terms” is uncertain. We therefore recommend removing the term from the directions. Mandatory direction (d), which addresses the requirement that policy statements and plans may include locally defined terms, was originally included to clarify that policy statements and plans could include other definitions additional to those prescribed by the standards as long as they were not synonyms. The standards only prescribe definitions that must be included in policy statements and plans but do not restrict councils from defining other terms (unless these are synonyms of the standard definitions. We consider that without the reference to “locally defined terms”, this is still clear.

The definitions chapter of any policy statement or plan will comprise definitions created by the council as needed for its plan and definitions sourced from the planning standard Definitions table. This is signalled in the directions for the Introduction and General Provisions Standard, which sets out broadly what definitions chapters in policy statements and plans are expected to include. This is also signalled in the recommended mandatory directions for the Definitions Standard, which relate to the application of the planning standard definitions in the context of a definitions chapter in policy statements or plans.

2.4.3 Mandatory directions 3(e), (g) and (h) – format, diagrams and linking guidance tools or nesting tables

Submissions: mandatory direction 3(e) – format

Auckland Council supported the format directions set out in mandatory direction 3(e). It sought an additional direction that letter headers (A–Z) be included as part of the formatting specifications to make the definitions easier to navigate.

Analysis and recommendations

We looked at many different plans in terms of how they format their definitions and concluded the main formatting requirement that was useful to impose at the national level was that these be in numerical/alphabetical order. While we agree that letter headers are useful, we consider this is a formatting feature that councils could add if they so desire. Accordingly, we recommend not making letter headers a formal requirement of the standards.

Submissions: mandatory direction 3(g) – diagrams

Hutt City Council sought standardised diagrams to ensure consistency. It pointed out some specific definitions that would benefit from standardised diagrams. Tauranga City Council supported mandatory direction 3(g).

Joint Southland Councils' submission sought clarification in guidance about whether diagrams can be used for any definition in a document or only for those listed in the Definitions table. Auckland Council stated diagrams were included in its plans to explain definitions and were often used to illustrate the relationship between associated definitions. It sought an ability to cross-refer a definition to a comprehensive diagram or to other definitions.

Analysis and recommendations

A consideration of diagrams used in planning documents shows that in most cases diagrams include some metrics and key components of rules. For this reason, we did not look to include diagrams in the planning standards. In light of the feedback, we accept that for the most common definitions, diagrams that provide 'placeholders' for metrics but that do not actually include the metrics would be a useful component of plans to standardise. This component was not included as part of the notified provisions, however, and we consider it difficult to introduce at this late stage without sufficient review of the diagrams. This is, however, something that could be considered in a future set of standards or at the very least as guidance – able to be used 'off the shelf' for less resourced councils.

The intention is to enable diagrams that illustrate and explain definitions. We recommend that the directions make it clear that diagrams are allowed for the standard definitions. We agree that it would be useful for guidance to confirm that diagrams can be used in any definition in a policy statement or plan. We agree that a cross-reference to a diagram that illustrates a number of related definitions would be useful and have sought to provide for such cross-referencing in the revised directions.

Submissions: mandatory direction 3(h) – guidance such as nesting tables and Venn diagrams

Tauranga City Council supported mandatory direction 3(h). Christchurch City Council supported the use of nesting tables and Venn diagrams but wanted clarification about whether the Schedule 1 process would need to be used to include them.

Auckland Council supported enabling the use of nesting tables but noted that the application of the definitions in the standards will require a change to many of the nesting tables in its plan. The Environment Court highlighted some difficulties with using nesting tables and warned that care needs to be taken when using these because their application in documents often leads to definitions extending further than the document actually anticipated or intended. One submission (Harrison Grierson) opposed the use of nesting tables, considering that nesting tables were difficult to view on mobile devices.

Analysis and recommendations

Mandatory direction 3 (h) states, "Guidance on how definitions relate to one another may be included. This may be but is not limited to the use of nesting tables or Venn diagrams."

The problem highlighted by Tauranga City Council's submission stems from the use of the word "may" and the lack of clarity about whether this is a mandatory direction or not. We previously consider the issue of "may" statements as a mandatory direction. We recommend retaining this

drafting approach to provide for enabling and clear intent in the standards with respect to the use of setting out the relationship of terms to each other.

In relation to the retention of nesting tables, we consider that nesting tables are a useful tool to show connections between defined terms. Guidance can address the need for care and thorough consideration of the implications throughout a document of including a term within a nesting table. We recognise that nesting tables may be a little difficult to view on mobile devices but this is not the only or predominant way that planning provisions are viewed and this is not a sufficient reason to discard the use of a helpful tool. We recommend retaining the ability to use guidance such as nesting tables and Venn diagrams. We consider that mandatory direction 3(h), which enabled “guidance on how definitions relate to one another” to be included, is clear in its intent. We recommend this intent remains in the revised drafting.

2.4.4 Functionality, hyperlinks and alphabetical order

Submissions

Isovist, which is a provider of ePlan software, made a number of submission points identifying where it considered additional hyperlinks should be provided and where the terms were not in alphabetical order. Christchurch City Council also identified that some hyperlinks were missing from the draft standard.

Analysis and recommendations

We agree that some terms were not in the correct alphabetical order and this should be corrected. We also agree that not all of the hyperlinks between terms were included or correctly formatted in the draft standard and should be corrected to show the relationship between the different terms.

While these issues were often raised against the individual terms, this report does not identify them further.

We have also considered ePlan functionality to provide the definitions in a table as required by direction 3(a) and the Definitions table of the draft Definitions Standard (table 29). We consider that sufficient clarity and certainty for users will still be provided if definitions are set out in an alphabetical list rather than using a table format. Therefore we consider that direction 3(a) should be deleted and associated changes should be made to relevant directions to delete the word “table” and where appropriate replace it with the word “list”.

2.4.5 Additional Terms

New Recommended Terms

The following new terms were recommended for inclusion to complement terms already proposed, as addressed within Section 3 of this report.

- Cleanfill material
- Cultivation
- Industrial and trade waste
- Operational need
- Quarrying activities

New Requested Terms

The following are requested terms that are entirely new, these have also been addressed in Section 3 of this report.

- Community corrections activity
- Temporary military training activity

2.5 Summary of recommendations

The mandatory directions have been revised to such an extent that including a track changes version here would not assist the reader to understand the changes made. A summary of the recommended changes is set out below:

- that councils implement these definitions as part of a broader review of their plan. The Implementation Report recommends more time is given for this purpose
- it is recommended the wording of the RMA definitions are set out in full
- where a term has a defined meaning in the RMA and is included in the standard, its definition should not be varied from
- remove the RMA te reo Maori terms from the standard
- plan definitions lists should follow the same approach as set out in the Definitions Standard, which is to copy the definition from the other legislative source and include the source reference and date the definition was introduced (as a version control management technique)
- the directions make it clearer that a plan only needs to apply definitions from the list where these are used in the plan (ie, not all terms and definitions)
- to include an additional direction to require a term to be clearly marked when a definition applies to a term – whether or not that term is defined in the standards. For consistency we agree that this should also apply when a defined term is used within a definition itself. We recommend that this direction is located in the Format Standard
- retain the use of ‘may’ statements to provide clarity within the standards
- reframe the mandatory directions so that it restricts policy statements and plans from defining terms that have the “same or equivalent meaning” as a term defined in the Standards Definitions list
- remove the phrase “locally defined terms” from the directions to reduce uncertainty
- letter headers are not made a formal requirement of the standards, but are not prevented either
- the directions make it clear that diagrams are allowed for the Standards definitions
- retain the ability to use guidance such as nesting tables and Venn diagrams.
- we consider that direction 3(h) which enabled “guidance on how definitions relate to one another” to be included, is clear in its intent. We recommend this intent remain in the revised drafting.

3 Individual definitions

3.1 Abrasive blasting, Dry abrasive blasting and Wet abrasive Blasting

3.1.1 Proposed definitions

Abrasive blasting means the cleaning, smoothing, roughening, cutting or removal of part of the surface of any article by the use, as an abrasive, of a jet of sand, metal, shot or grit or other material propelled by a blast of compressed air or steam or water or by a wheel.

Dry abrasive blasting means abrasive blasting using materials to which no water has been added.

Wet abrasive blasting means abrasive blasting to which water has been added.

3.1.2 Submissions

Seven submissions were received on the definitions of ‘abrasive blasting’, ‘dry abrasive blasting’ and ‘wet abrasive blasting’. The oil companies, New Zealand Transport Agency (NZTA), Powerco, Christchurch City Council and Auckland Council supported their inclusion. Greater Wellington Regional Council queried whether the term ‘abrasive blasting’ needed to be included because there is little confusion over the term. For ‘wet abrasive blasting’, Greater Wellington Regional Council pointed out that the definition did not specify that it included any material and so it might comprise only water. It considered that the difference between these terms may be better specified in a rule.

Isovist (ePlan provider) and Christchurch City Council pointed out minor highlighting and linking issues.

3.1.3 Analysis and recommendations

These three terms were supported by the submitters that commented on them. They relate to the maintenance of infrastructure, which is a nationwide issue and we consider they would therefore benefit from standardisation.

Therefore we recommend retaining the three definitions of ‘abrasive blasting’, ‘dry abrasive blasting’ and ‘wet abrasive blasting’ in the Definitions Standard. We agree with the Greater Wellington Regional Council that the definition of ‘wet abrasive blasting’ does not make clear that it includes material as well as water. We therefore recommend adding the words “using material” to the ‘wet abrasive blasting’ definition.

Abrasive blasting means the cleaning, smoothing, roughening, cutting or removal of part of the surface of any article by the use, as an abrasive, of a jet of sand, metal, shot or grit or other material propelled by a blast of compressed air or steam or water or by a wheel.

Dry abrasive blasting means abrasive blasting using materials to which no water has been added.

Wet abrasive blasting means abrasive blasting using material to which water has been added.

3.2 Access strip

3.2.1 Proposed definition

Access strip has the same meaning as in section 2 of the RMA (as set out in box below)

means a strip of land created by the registration of an easement in accordance with section 237B for the purpose of allowing public access to or along any river, or lake, or the coast, or to any esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown (but excluding all land held for a public work except land held, administered, or managed under the Conservation Act 1987 and the Acts named in Schedule 1 of that Act)

3.2.2 Submissions

Three submissions were received on the definition of ‘access strip’.

One submission from Isovist addressed a grammatical error, which we recommend be amended.

Auckland Council supported the inclusion of the definition.

Wellington City Council requested that the word “public” precede the term ‘access strip’ to differentiate this defined term from the use of the term in its plan, which refers to access to private property.

3.2.3 Analysis and recommendations

We agree with Wellington City Council that the term ‘access strip’ is often used by district councils in relation to access ways and entrance ways into private property, rather than the meaning given by the RMA, which relates to public access to waterways and the coast. On principle, we do not recommend changes to RMA definitions so we do not recommend making the suggested change. However, we agree that including this definition in the standards may be problematic for some councils so we recommend removing the term ‘access strip’ from the Definitions Standard.

3.3 Accessory building

3.3.1 Proposed definition

Accessory building means a detached building, the use of which is ancillary to the use of the principal building, buildings or activity on the same site, but does not include any minor residential unit

3.3.2 Submissions

Eighteen submissions were received on the definition of ‘accessory building’. Five submissions supported the definition. Other submissions sought amendments.

Two submissions (Western Bay of Plenty District Council, Auckland Council) were concerned about the use of the word “principal” in the definition. Western Bay of Plenty District Council queried

whether on a multi building site, only one or each (and all) of the buildings would be considered a principal building. It provided an example of an orchard that could comprise a dwelling, seasonal workers' accommodation, and storage sheds. It requested that the reference to principal buildings be removed and the definition link accessory buildings only to activities on the site. Auckland Council pointed out that an accessory building could be ancillary to an ancillary use on the site; for example, a storage unit for a home business.

The RMLA submission also referred to the word "building" in the defined term and requested that it be changed to "structure" because there could be accessory structures that are ancillary to primary structures.

Western Bay of Plenty District Council also sought amendments to the definition so that it was clear that the activity on the site (to which the accessory building was ancillary) was a permitted activity.

Upper Hutt City Council, Porirua City Council and Auckland Council requested that the definition provide for an accessory building on a vacant site because often accessory buildings like garages are built before the main building to provide storage.

New Plymouth District Council sought the removal of the requirement for an accessory building to be detached because it considered there is no need to differentiate as the same set of rules would apply to attached and detached accessory buildings.

The Western Bay of Plenty District Council was of the view that the definition should not specifically exclude minor residential units. It considered that the exclusion implied that other defined facilities that are not listed may come within the meaning of the definition and that specific exclusion was unnecessary because minor residential units are unlikely to be confused with accessory buildings.

A number of submissions (NZPI, Far North District Council, Waitomo District Council) sought clarification about what is included within the definition, referring to buildings such as sleep-outs, carports and garages, which are often listed as accessory buildings in plans. Powerco sought clarification of how the definitions of building and accessory building apply to infrastructure such as network utility cabinets.

3.3.3 Analysis and recommendations

Use of the word "principal"

Western Bay of Plenty District Council thought it would be difficult to determine what buildings were "principal" on a multi-building site and sought the removal of the reference to "principal building, buildings" entirely. The definition refers to principal "building or buildings" on the site, which does make it clear that an accessory building could be ancillary to any of those, not just one. The section 32 report notes the importance of referring to buildings in the plural specifically to avoid only one building on a multi-building site being considered the principal building and the others being rendered accessory. However, to ensure this point is clear, we recommend replacing the word "the" with "any" and removing the word "principal" so the phrase reads "ancillary to the use of any building, buildings or activities on the same site". This means that the definition is clearer about the fact that an accessory building can be ancillary to any of the buildings on site.

We consider that it is not necessary to remove the word "buildings" from the definition entirely. It is useful to retain the reference to buildings in the definition because this is the most common circumstance that users would be interested in.

We note Auckland Council raised the issue of accessory buildings that are ancillary to ancillary activities on the site, not just to principal activities or buildings. We accept this and recommend that the word 'principal' is removed and the definition refers instead to a use that is ancillary to any building, buildings or activity.

In relation to the meaning of ancillary in this definition, it bears its ordinary meaning of "providing support to" and is not linked specifically to a primary activity as it is when used in the definition of ancillary activity.

Accessory building or structure

We do not agree with RMLA that the term should be amended to 'accessory structure' and we recommend retaining the term 'accessory building'. We consider that an accessory building is a different concept from an accessory structure and these may be regulated differently. The recommended change to the definition of 'building' removes the link with structures so that buildings are not the same as structures fixed to land; they may be moveable. This enables items such as containers and relocatable homes to be considered within the definition of 'building'.

We consider it would be unhelpful for plans to have an amalgamated definition of 'accessory structure' because they would then need to develop separate subcategory definitions to enable rules to differentiate.

Further, the definition of 'building' requires it to have a roof. We recognise that plans often address fixed structures such as solar panels and swimming pools within the definition of 'accessory building', which will now need to be addressed separately by rules but we consider that the separate definitions for 'structure' and 'building' provided in the standard more accurately reflect the common understanding of these two concepts and so will be clearer for the user. Maintaining this distinction between accessory building and accessory structure by retaining the 'accessory building' definition will enable plans to provide separately for accessory structures.

Provision for accessory buildings on vacant sites

We agree with the submission that the definition should enable provision for accessory buildings on vacant sites. Plan rules often address accessory buildings on both vacant and occupied sites together. We therefore recommend that the definition encompasses accessory buildings on both occupied sites and sites where an activity has not yet commenced or a building has not yet been constructed. If plan rules wish to address these differently, they may use a narrower concept or subcategory definition to do so or have rules that address vacant sites and sites where the activity has commenced separately. As explained below, we recommend a change to refer to "any building, buildings or activity that is or could be lawfully established on the same site". This will cover those that already exist or have commenced, and those that could be carried out in the future on a vacant site if they have resource consent, are permitted by plan rules, are within existing use rights or otherwise authorised. We consider that the words "is or could be" require a consideration of what is authorised at the current time of the consideration (but may be commenced in the future) and should not be read to apply to any speculative activity that could be permitted in the future.

The Western Bay of Plenty District Council sought amendments so it is clear that the activity on the site is a permitted activity. We consider it is not appropriate to refer to "permitted activities" as some activities may be existing uses or hold resource consent. However, we recommend removing the reference to "principal" and replacing it with the words "any building, buildings or activity that is or could be lawfully established on the same site". For vacant sites, this sets the parameters of what an accessory building may be accessory to (i.e. only an authorised building or activity). Plan rules will

still be able to set different requirements for accessory building on sites where activities have commenced and buildings exist, from accessory buildings on vacant sites, if required.

Minor residential unit exclusion

We consider that it is useful to retain the exclusion for a minor residential unit because this is the most common cause of confusion between a sleep-out, which is an accessory building, and a minor residential unit. The definitions of 'minor residential unit' and 'accessory building' are interlinked and we consider it useful to retain the exclusion to avoid confusion.

Detached or not

We do not agree that the requirement for an accessory building to be detached should be removed. We consider that the concept of an accessory building is more certain and enforceable if it is defined clearly as a separate building. We confirm our view that if a building such as a garage is connected to a dwelling, it can be regulated as part of the dwelling. We note New Plymouth District Council's request that if the requirement for separation is retained, then the definition of 'building' needs to clarify that it encompasses garages that are integral to the design of the building. However, the broadness of the definition of 'building' would clearly encompass such a connected garage. This can also be clarified in guidance.

Requests for clarification

The definition of 'accessory building' has a number of components

- building
- detached
- ancillary use to the use of any building, buildings or activity that is or could be lawfully carried out
- on the same site.

We consider that this definition is sufficiently clear to enable an assessment of whether carports or garages come within the definition without listing all matters that could be included. For example it is more likely that what will determine whether a carport or garage falls within this definition is whether or not it is connected to the main building. Likewise, if a network utility cabinet comes within this definition, it also would be included. These matters can also be clarified in guidance.

Accordingly, we recommend amending the definition of 'accessory building' in the Definitions Standard as follows:

Accessory building means a detached [building](#), the use of which is ancillary to the use of ~~the~~ any principal [building](#), buildings or activity that is or could be lawfully established on the same [site](#), but does not include any [minor residential unit](#).

3.4 Addition

3.4.1 Proposed definition

Addition means any works undertaken to an existing [building](#) which has the effect of increasing the [gross floor area](#) of that [building](#)

3.4.2 Submissions

Thirteen submissions were received on the definition of ‘addition’. Four submissions supported the definition. Of these, Christchurch City Council gave the reason that the definition addresses the key effects of additions, which are increased natural hazards and reverse sensitivity effects.

Three submissions (Heritage New Zealand Pouhere Taonga, Queenstown-Lakes District Council, Dunedin City Council) raised concerns about the implications of the definition for heritage buildings. Queenstown-Lakes District Council pointed out that additions that do not increase the gross floor area would not qualify as additions and so would not trigger requirements for resource consent and this would affect heritage buildings, for example, a dormer window. Two other submissions (Forest and Bird, Kāpiti Coast District Council) were concerned that the definition did not address height increases.

Western Bay of Plenty District Council’s view was that a net floor area approach was not correct because additions may involve both removal and addition with a net effect but still may need to be managed by rules. It questioned the need for this definition, seeking either clarification of its purpose or deletion of the definition.

A number of submissions (Federated Farmers, Mercury Energy, Forest and Bird) pointed out that the definition is only relevant to buildings and so it should be clear that it only relates to building additions, not to any others. Greater Wellington Regional Council made the same point that the definition is not applicable to regional plan use of the term, which often relates to structures like fords, seawalls and culverts.

3.4.3 Analysis and recommendations

We agree the definition is not suitable to be applied to heritage buildings. The reference in the definition to an increase in gross floor area would capture height increases that involve the addition of a new floor but would not capture changes such as a dormer window or a change in roof height. Nor would it capture internal changes or changes to heritage features of heritage buildings.

Most plans have specific rules for heritage buildings and we considered that we could make the application of the definition clearer by excluding heritage buildings. Alternatively councils could provide a subcategory defined term for ‘heritage building alteration’ and link heritage rules to that. However, the definition includes a scale (an addition increases the gross floor area) and this appears on consideration to be very close to a de facto rule. We consider that the scale of any addition that may have effects that need to be managed may vary depending on location and circumstances. It may vary depending on the type of building (heritage, commercial, industrial, residential) or the zone (eg, what constitutes an addition may be different in a residential zone from a commercial zone). It may vary depending on the specific zone rules (eg, in a special character zone or a zone that has view shaft or height rules). We consider there could be a number of different effects that are addressed in different circumstances where additions may occur – not only natural hazards and reverse sensitivity. We therefore consider that the extent of what constitutes an addition is better left to plan rules.

The term ‘addition’ is not defined very often in plans and the definition is not common to regional and district plans. We agree with the submissions that it is only relevant for buildings so it is not applicable to regional council applications. On balance, we therefore recommend removing the definition of ‘addition’ from the Definitions Standard.

3.5 Allotment

3.5.1 Proposed definition

Allotment has the same meaning as in section 218 of the RMA (as set out in the box below)

means—

- (a) any parcel of land under the Land Transfer Act 1952 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not—
 - (i) the subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or
 - (ii) a subdivision consent for the subdivision shown on the survey plan has been granted under this Act; or
- (b) any parcel of land or building or part of a building that is shown or identified separately—
 - (i) on a survey plan; or
 - (ii) on a licence within the meaning of Part 7A of the Land Transfer Act 1952; or
- (c) any unit on a unit plan; or
- (d) any parcel of land not subject to the Land Transfer Act 1952

3.5.2 Submissions

Four submissions were received on the definition of ‘allotment’. All submissions were in support of the standardisation of the term and definition.

Auckland Council requested that, to remove any doubt, the guidance includes clarification that the term ‘lot’ has the same meaning as ‘allotment’.

3.5.3 Analysis and recommendation

Given the support for the proposed definition of ‘allotment’, we recommend retaining it in the Definitions Standard without amendment. We agree that we can address the relationship of the term “lot” to ‘allotment’ in guidance.

3.6 Amenity values

3.6.1 Proposed definition

Amenity values has the same meaning as in section 2 of the RMA (as set out in the box below)

means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes

3.6.2 Submissions

We received two submissions regarding the definition of ‘amenity values’, one from Clarke Group Management Limited and the other from Auckland Council. Both supported the use of the definition as it ensures consistency between the RMA and regional and district plans.

3.6.3 Analysis and recommendation

Given the support for the proposed definition of ‘amenity values’, we recommend retaining it in the Definitions Standard without amendment.

3.7 Ancillary activity

3.7.1 Proposed definition

Ancillary activity means an activity that either provides support to, or is incidental and subsidiary to, the primary activity on the same site.

3.7.2 Submissions

Twelve submissions were received on this definition. Two were opposed or partially opposed and the remainder supported the definition or supported it with changes.

On the same site

Atlas Concrete Ltd and Genesis Ltd supported this definition but were concerned about the application of the definition of ‘site’ within this definition. This is related to the definition of ‘site’ in the draft planning standards where submissions raised concerns that the definition of ‘site’ does not recognise that some activities do not follow legal property boundaries.

Environment Canterbury also requested that the phrase “on the same site” be removed because this is not appropriate where the term ‘ancillary activity’ is used in a regional plan. For regional plans, activities that are incidental and subsidiary to the primary activity often occur across more than one site.

Horticulture New Zealand sought the deletion of the phrase “on the same site” to recognise rural enterprises where ancillary activities such as post-harvest and storage facilities are not on the same site but are ancillary to the activity of growing the crops – that is, they may be some distance removed. Forest and Bird also requested that the phrase “on the same site” be removed.

Incidental and/or subsidiary and/or provides support to

Forest and Bird recommended removing the words “incidental and” from the definition and substituting a requirement for the activity to provide “necessary” support to a primary activity. This was because the word “incidental” carries the connotation of unanticipated impacts that are more like effects than activities.

Christchurch City Council noted that an ancillary activity should be both subsidiary and provide support to a primary activity because if it only has to be “subsidiary” that might cover a range of unrelated activities such as home businesses.

On the same point, Western Bay of Plenty District Council was concerned about the requirement for an ancillary activity to either provide support, or be incidental and subsidiary to the primary activity.

Their view was that it could result in confusion given that some activities may be ancillary activities but also activities in their own right. For example, activities such as home businesses would be incidental and subsidiary – even though they do not provide support to the main residential activity. They see home businesses as activities in their own right, rather than ancillary to residential activities. They requested that there be only a requirement for the provision of support.

Auckland Council raised the issue that the word “subsidiary” was not in the definition of accessory building and the two definitions should be consistent, given that “subsidiary “ can be read to mean smaller in size.

One or many primary activities

Forest and Bird also requested that the definition allow for more than one primary activity and that the phrase be changed from “the” to “a” primary activity. Western Bay of Plenty District Council likewise raised the point that one site may have more than one primary activity, or it may even have an ancillary activity that is ancillary to an ancillary activity on the same site. The council sought the removal of the word “primary” and its replacement with a requirement for the first activity on the site to be “permitted”.

Remove the word ‘activity’

Christchurch City Council requested that the word “activity” be deleted. In its view, the word “activity” is cumbersome and it is sufficient if the definition is for only ‘ancillary’ as an adjective.

3.7.3 Analysis and recommendations

On the same site

Three submitters requested that the phrase “on the same site” is removed. This is related to the definition of ‘site’ in the draft planning standards where submitters raised concerns that the definition of ‘site’ does not recognise that some activities do not follow legal property boundaries. We agree this is an issue and recommend the removal of the phrase “on the same site”.

If councils want to restrict ancillary activities to only be considered if they are on the same site, this information can be included within the rule for the activity.

One or many primary activities

Western Bay of Plenty District Council raised the issue that there is not always clearly one primary activity on a site. We agree that in some situations there is no clear single primary use of a site and we recommend that the definition recognises this by referring to “a primary activity” rather than “the primary activity”.

Incidental and/or subsidiary and/or provides support to

Forest and Bird recommended removing the words “incidental and” from the definition as part of its requested changes. We agree that it is not necessary to include the whole phrase “incidental and subsidiary to” in the final definition and that it is sufficient to rely on the term “subsidiary to”. We recognise that regional councils use the word “ancillary” to mean “incidental” as in “ancillary discharges” but that is a specific context and we do not expect the definition of “ancillary activity” to apply to those.

Remove the word ‘activity’

Both Christchurch City Council and Auckland Council requested that either “activity” be removed from the term or that we review the linkage with the ‘accessory building’ and ‘minor residential unit’ definitions. We originally agreed that the concept of being ancillary extends beyond only activities that are ancillary to another activity. However, pilot councils considered an updated version of the definition with the term changed to simply be ‘ancillary’. The feedback on this term was that by removing “activity”, it changes the defined term from being a noun to an adjective, but the definition still defines a noun. The confusion could result in unintended consequences. ‘Ancillary’ alone has a much broader application and is already appropriately defined in the dictionary. Therefore we recommend keeping the word “activity” in the defined term.

Minor amendments

We have also recommended other minor changes to make the definition more readable.

Accordingly, we recommend retaining the definition of ‘ancillary activity’ in the Definitions Standard but amending it as follows:

Ancillary activity means an activity, that either provides supports to, or and is incidental and subsidiary to, the a primary activity on the same site.

3.8 Aquifer

3.8.1 Proposed definition

Aquifer means a permeable geological formation, group of formations, or part of a formation capable of receiving, storing, transmitting and yielding water

3.8.2 Submissions

Nine submissions were received on the definition of ‘aquifer’. Nelson Marlborough Health, NZTA and Auckland Council supported the definition without amendment. Nelson Marlborough Health’s reasoning was that it generally aligns with the definition in the Drinking Water Standard for New Zealand 2005. Auckland Council supported it because is broad enough to recognise the range of purposes and values (including ecological and cultural) associated with aquifers.

The remaining seven submissions supported the definition in part, seeking particular amendments.

Environment Canterbury and Federated Farmers sought amendments to the definition to include the phrase “beneath the ground surface” (or variations thereof) to distinguish aquifers from other types of water bodies.

Contact Energy and Mercury New Zealand Ltd requested the inclusion of the phrase “geothermal water” to recognise aquifers as a source of geothermal water.

Petroleum Exploration and Production Association of New Zealand (PEPANZ) and the New Zealand Law Society queried the appropriateness of including the phrase “capable of” within the definition. PEPANZ stated the phrase may be overly broad and may potentially result in any water body that is ‘capable of’ receiving water being considered an aquifer (irrespective of the volume stored). In contrast, the New Zealand Law Society considered the phrase to be overly limiting, potentially excluding aquifers that receive, store or transmit water only intermittently.

3.8.3 Analysis and recommendations

The submissions by Environment Canterbury, Federated Farmers, Contact Energy and Mercury New Zealand Ltd raised valid points that the definition of ‘aquifer’ needs to accurately describe all component parts of the resource.

While the term ‘aquifer’ is not defined in section 2 of the RMA, it is included in the definition of ‘water body’ in section 2 of the RMA:

Water body means any fresh water or geothermal water in a river, lake, stream, pond or wetland, or aquifer or any part thereof, that is not located within the coastal marine area

The term ‘water body’ is used throughout the RMA as a collective term to describe natural water bodies that have a freshwater or geothermal source. Regional councils have explicit functions⁷ with respect to the management of the quality and quantity of water within water bodies, which must be exercised to achieve the purpose⁸ of the RMA. That purpose requires regional councils to promote the sustainable management of natural and physical resources, and this is achieved in part through provisions in policy statements and plans. To assist with the exercise of those functions, local authorities will often include definitions that distinguish between different types of water bodies (eg, lakes, rivers, aquifers). From there, outcomes and management responses that recognise and provide for the different purposes and values of those water bodies are developed.

The paragraph above highlights the need for the definition of ‘aquifer’ to be fit for purpose to enable local authorities to effectively discharge their duties. The concept of an ‘aquifer’ being a resource that is ‘beneath the ground surface’ is a critical component of the definition, which distinguishes this resource from other water bodies (eg, lakes and river), and for this reason we recommend amendments accordingly.

We acknowledge the requests to include specific reference to “geothermal water” within the definition but consider the more general term “water” to be appropriate, noting the definition of ‘water’ in section 2 of the RMA includes “fresh water, coastal water and geothermal water”.

We have also considered the submissions by PEPANZ and the New Zealand Law Society, which raised concerns about the inclusion of the phrase “capable of” within the definition. We consider it appropriate to retain the phrase “capable of” within the definition as it conveys the concept that not all aquifers are water-bearing at all times. Some aquifers may receive, store and yield water only intermittently and retaining this phrase in the definition will ensure provisions promulgated to protect the values of these intermittent aquifers continue to apply.

We recommend amending the definition of ‘aquifer’ in the Definitions Standard as follows:

means a permeable geological formation, group of formations, or part of a formation, beneath the ground, capable of receiving, storing, transmitting and yielding water

3.9 Bed

3.9.1 Proposed definition

Bed has the same meaning as in section 2 of the RMA (as set out in the box below)

⁷ Sections 30(1)(c)(ii), 30(1)(c)(iii), 30(e), 30(f), 30(g).

⁸ As set out in section 5 of the RMA.

means—

- (a) in relation to any river—
 - (i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks:
 - (ii) in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and
- (b) in relation to any lake, except a lake controlled by artificial means,—
 - (i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the lake cover at its annual highest level without exceeding its margin:
 - (ii) in all other cases, the space of land which the waters of the lake cover at its highest level without exceeding its margin; and
- (c) in relation to any lake controlled by artificial means, the space of land which the waters of the lake cover at its maximum permitted operating level; and
- (d) in relation to the sea, the submarine areas covered by the internal waters and the territorial sea

3.9.2 Submissions

Four submissions were received on the definition of ‘bed’.

Auckland Council supported the definition without amendment. Te Rūnanga o Ngāi Tahu requested the definition be removed from the standard. Environment Canterbury requested that either the definition be removed from the standard or, if it is to be kept, that it be amended to address practical limitations in applying the term to real-world scenarios. Horticulture New Zealand also requested the definition be amended to address practical limitations.

These submissions all expressed concern over the proposed inclusion of the RMA definition of ‘bed’, stating it was unworkable, or did not contain sufficient specificity to define the edge of the ‘bed’ of a river.

Environment Canterbury and Te Rūnanga o Ngāi Tahu gave examples of the difficulties in applying the definition of ‘bed’ to real-world scenarios. Te Rūnanga o Ngāi Tahu stated these challenges had been overcome in some planning documents by including subcategory definitions for ‘bed’ or by including rules that redefine the ‘bed’ in particular circumstances. However, it also stated it would be inappropriate to attempt to modify the definition of ‘bed’ through the planning standards, as any changes would likely fail to recognise the particular characteristics and features of individual rivers.

Environment Canterbury also commented on the challenges of applying the RMA definition of ‘bed’ to braided rivers in Canterbury. It noted in particular the criterion in clause (a)(ii) of the definition, which defines the ‘bed’ as the “space of land which the waters of the river cover at its fullest flow without overtopping its banks”. Environment Canterbury considered this challenging when applied to Canterbury’s braided rivers, which are typified by their multiple divergent channels, variable flows and ill-defined banks. It stated a significant work programme had been initiated in the past 12 months to define the extent of Canterbury’s braided rivers, with the intent of incorporating this information into a plan change to the regional plan in mid-2019. For these reasons, the submitter

requested a change to the definition of ‘bed’ to enable local authorities to define the ‘bed’ as the area shown or defined in a regional plan. The specific amendment Environment Canterbury sought is set out below:

Bed means –

in relation to any river,

...

- (ii) in all other cases, the area defined as ‘bed’ in a relevant regional plan; and in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and

...

Horticulture New Zealand suggested including ‘sub-definitions’ for parts of the bed (eg, active bed, active channel) as a potential solution to recognise the limitations of the RMA definition of ‘bed’. It stated this approach had successfully been applied in the Horizons Regional Council One Plan, and requested changes to the Definitions Standard to enable local solutions to be developed.

3.9.3 Analysis and recommendations

The submissions by Environment Canterbury and Te Rūnanga o Ngāi Tahu demonstrate the practical difficulties in applying the RMA definition of ‘bed’ to real-world scenarios.

Determining the extent of the bed of a river is a necessary step for any resource user wishing to undertake an activity within, or adjacent to, a riverbed. The need to establish the extent of the bed arises because of the different presumptions in sections 9(2) and 13(1) of the RMA with respect to land located outside of, and within, the bed of a river.

While section 9(2) of the RMA is permissive, generally allowing land uses except where the use contravenes a rule in a regional plan, section 13(1) is restrictive, with activities in the bed of a river prevented except where *expressly allowed* by a rule in a regional plan or a resource consent. As a consequence, resource users and local authorities must first establish the extent of the bed, before consideration can be given to the application of plan provisions. This task is particularly challenging where beds are ill-defined as demonstrated in the submission by the Environment Canterbury.

While we acknowledge the practical limitations above, we consider retaining the RMA definition of ‘bed’ is appropriate given the extensive use of the term throughout the RMA, instruments and planning documents.

We have considered Environment Canterbury’s request to allow the ‘bed’ to be redefined in a regional plan, but we consider this approach would itself create challenges. For example, it could lead to inconsistent definitions of ‘bed’ between the regional policy statement and the plan. At the level of a regional policy statement, this could lead to further administrative challenges, particularly when trying to reconcile different definitions with the exercise of territorial and regional council functions.

Instead, we consider the problem Environment Canterbury identified is best resolved by allowing local authorities to use subcategories of definitions (eg, active channel, active bed, braided riverbed) to ensure plan outcomes are preserved and provisions remain fit for purpose.

We have not recommended changes to the Definitions Standard to specify subcategories of definitions, as we agree with Te Rūnanga o Ngāi Tahu that any subcategories of definitions would need to be developed having regard to the local context, and the values sought to be preserved.

We recommend retaining the definition of ‘bed’ as proposed in the draft Definitions Standard.

3.10 Best practicable option

3.10.1 Proposed definition

Best practicable option has the same meaning as in section 2 of the RMA (as set out in the box below)

in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—

- (a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
- (b) the financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) the current state of technical knowledge and the likelihood that the option can be successfully applied

3.10.2 Submissions

Auckland Council, Western Bay of Plenty District Council and Forest and Bird made submissions in relation to the definition of ‘best practicable option’.

They all agreed it is a commonly used term in plans and were all in support of the standardisation of this definition.

Western Bay of Plenty District Council requested clarification on whether or not councils can only use this term in relation to contaminants and noise or if they can use it elsewhere too.

3.10.3 Analysis and recommendation

Given the support for the proposed definition of ‘best practicable option’, we recommend retaining it without amendment.

In regard to the Western Bay of Plenty District Council’s submission, we note our analysis and recommendation earlier in this report that recognises some terms can be applied in different contexts. We acknowledge the scope of the RMA definition is specifically limited to managing noise emissions and discharges of contaminants. If the council wishes to use the concept of best practicable option in another context, it can do so, but would need to follow the recommended mandatory direction to distinguish it from the definition set out in the planning standards.

3.11 Bore

3.11.1 Proposed definition

Bore

- (a) means any hole constructed into the ground that is used to—
- (i) investigate or monitor conditions below the ground surface; or
 - (ii) abstract liquid substances from the ground; or
 - (iii) discharge liquid substances into the ground; but
- (b) it does not include test pits and soak holes.

3.11.2 Submissions

Sixteen submissions were received on the definition of 'bore'.

Atlas Concrete Ltd, Nelson Marlborough Health, Powerco Ltd and NZTA supported the proposed definition without amendment.

All other submissions supported the definition in part, requesting particular amendments be made to the definition.

A number of submitters requested the addition of words or phrases to the definition. Five submissions requested the word "drilled" be added to, or inserted in place of, the word "hole", on the basis that this term more accurately reflected the method of installation. The term "hole" was considered by Auckland Council to be too generic, and it requested a change to the definition to qualify the term by reference to engineering standards.

Contact Energy and Mercury New Zealand Ltd also requested changes to clauses (a)(i) to (iii) to recognise substances in forms other than liquid (ie, substances in a gaseous form).

Furthermore, some submitters requested changes to clause (b) to ensure the exclusion of particular activities. Submissions stated that the nature of these activities and the extent and significance of their effects warranted differentiation and exclusion from the definition of 'bore'. Activities sought to be excluded were:

- offal pits (Federated Farmers)
- tank pits and wastewater disposal trenches (Auckland Council, the oil companies)
- temporary activities associated with construction and maintenance activities (holes excavated for dewatering, well-pointing devices and lysimeters (Auckland Council, Environment Canterbury)).

3.11.3 Analysis and recommendations

The definition of 'bore' proposed in the draft Definitions Standard uses a general statement in combination with a list of inclusions and exclusions to define the term. The definition first describes at a conceptual level that a bore is "any hole constructed in the ground". The definition is then qualified, to state that the 'hole' must be for one of the specified purposes in clauses (a)(i) to (iii), and that particular activities (listed in clause (b)) are excluded from the definition.

While we acknowledge Auckland Council's concerns that the phrase "any hole" is general, we consider the reference appropriate. Qualifying the term by including references to engineering standards could result in the exclusion of hand-dug bores from the definition. This in turn would have consequences for the application of plan provisions, with policies and rules relating to the use of a bore no longer applying to hand-dug bores. We also note that the New Zealand Standard

(Environmental standard for drilling of soil and rock) NZS 4411 includes the phrase “any hole” when defining a bore:

‘bore’ means any hole regardless of the method of formation that has been constructed to provided permanent access to the ground (for example for the monitoring of ground or groundwater conditions, extraction of groundwater or disposal of wastes).

With respect to those submitters who requested the addition of the word “drilled” to the definition, we agree that this is appropriate. The term “constructed” may be somewhat artificial when describing installation methods for bores. Including the term “drilled” expands these installation methods and reflects the usual form of installation.

We also agree with submitters that it is inappropriate to constrain the definition of bore to materials abstracted, monitored or discharged in *liquid* form (emphasis added). We note some bores are used to monitor, abstract or discharge matter in gaseous form and amendments to the definition are appropriate to recognise this. We consider the term “gaseous” to be more appropriate than the term “steam”, as the latter describes a particular type of gaseous material, while the form describes a state of matter.

We note a number of submitters sought exclusions from clause (b) of the definition, and these included both temporary and permanent activities. We agree with submitters that the effects arising from test pits, soakage pits and trenches are different from those associated with bore installation, and on that basis it is appropriate to exclude them. While we acknowledge some temporary activities associated with construction and maintenance activities may still be captured by the definition (eg, well-pointing devices), we consider these matters can be addressed through exemptions in rules.

Finally, we consider minor improvements to the layout of the definition would clarify the relationship between the inclusions in clause (a) and the exclusions in clause (b). The term “but” was included on the last line of (a)(iii); however, it is more appropriate to locate the term on the following line, next to the list of excluded activities. This would make it clear to the reader that the exclusions listed in (b) apply to the full range of activities in (a), not solely to those listed in (a)(iii).

We recommend amending the definition of ‘bore’ in the Definitions Standard as follows:

Bore

- (a) means any hole drilled or constructed into the ground that is used to—
 - (i) investigate or monitor conditions below the ground surface; or
 - (ii) abstract gaseous or liquid substances from the ground; or
 - (iii) discharge gaseous or liquid substances into the ground; ~~but~~
- ~~(b) —but it does not include~~ excludes test pits, trenches, ~~and~~ soak holes and soakage pits.

3.12 Boundary

3.12.1 Proposed definition

Boundary means the legal perimeter of a site.

3.12.2 Submissions

Seven submissions were received on the definition of 'boundary'. Fonterra, NZTA and Auckland Council supported the definition without changes. The Western Bay of Plenty District Council opposed the definition of 'boundary'.

Christchurch City Council, Tauranga City Council and Greater Wellington Regional Council supported the definition in part, seeking amendment to address particular concerns.

Christchurch City Council supported the inclusion of a definition but was concerned about the definition of 'site' that is imported into the definition of 'boundary'. Its view was that the definition of 'site' is too narrow because clause (e) requires land areas to be contiguous and this does not cover large campuses, which may include multiple areas of land that are not contiguous. From the council's point of view, if this problem with the definition of 'site' were resolved, it would support the definition of 'boundary'.

Tauranga City Council sought amendments on the basis that the term 'boundary' is used in relation to many other things, not just 'sites' as defined in the standards – for example, zones, precincts, property and activity.

Greater Wellington Regional Council had a similar concern. It sought clarification in the definition that it does not include the boundary of the coastal marine area.

3.12.3 Analysis and recommendations

In the draft Definitions Standard, 'boundary' is defined as "the legal perimeter of a site". We agree with the concerns expressed that the proposed definition does not cater well for other uses of the term such as zone, precinct or designation boundary. The definition restricts the use of the term to sites and 'site' has a limited definition focused on identifying a cohesive area often held within one ownership or management (where different kinds of ownership structures are identified or where an activity takes place).

We agree with submitters that boundary is used in plans and in the RMA in relation to many different entities, not just sites, as they are defined by the standards: for example, local authority boundaries, boundary of a heritage order, designation or esplanade strip, zone, precinct, property or activity or freshwater management boundary. Further analysis shows that regional plans and district plans differ in their use of the term. Regional plans often use the term 'boundary' but do not define it. District plans are less likely to use the term but, when they do, it is for different identified boundaries such as the boundary of the coastal marine area or freshwater management unit boundary. The definition of 'boundary' in the draft standard is focused on a district plan use of the term where it is necessary to clearly identify a boundary in situations where there may be uncertainty stemming from interrelated ownership structures such as cross-leases or unit titles.

We recognise that the term 'boundary' is not a stand-alone term but is instead closely interconnected with the entity that it is associated with. We consider that the term 'boundary' has too many diverse applications to restrict its meaning to one. Any definition of 'boundary' that is broad enough to encompass all these diverse applications would be too broad to be useful.

We recognise that it is very important for policy statements and plans to be able to identify any particular boundary in any particular circumstances. Tying the term to land area and ownership structures would unduly restrict the use of the term.

For these reasons, we recommend deleting the definition of 'boundary' from the Definitions Standard.

3.13 Boundary adjustment

3.13.1 Proposed definition

Boundary adjustment means a **subdivision** that alters the existing **boundary** between adjoining **sites**, without altering the number of **sites**.

3.13.2 Submissions

Seven submissions were received on the definition of ‘boundary adjustment’.

NZTA, Christchurch City Council and Auckland Council supported the definition without amendment. Christchurch City Council identified its reason for supporting it was that it clarifies that a boundary adjustment is a subdivision, which some users are confused about.

The remaining four submissions supported the definition in part, seeking amendments to address particular concerns as set out below.

Hamilton City Council was concerned about the application of the definition to allotments in a subdivision in that it might preclude boundaries between lots from being adjusted. It sought the replacement of “site” with “allotment”.

The Kāpiti Coast District Council was concerned that there would be unintended consequences for subdivisions where the number of allotments is not changing but the boundaries are changing dramatically. Similarly Nelson City Council sought the addition of a limit on the change of size between the lots.

Western Bay of Plenty District Council highlighted a grammatical error, requesting that the definition refer to “boundaries” not “boundary”.

3.13.3 Analysis and recommendations

We note the concerns of Kāpiti Coast District Council, but we consider that the scenarios they referred to should be considered as a boundary adjustment.

In relation to Nelson City Council’s request for a cap on the extent of change in size between lots to be set out in the definition, we consider further refinement of the concept of a boundary adjustment in this definition (for example adding in a percentage change to the size of the existing allotments that is considered to be a boundary adjustment as opposed to an ordinary subdivision) is not in line with our drafting principles that definitions should not constitute de facto rules. The most appropriate place for local authorities to restrict the size of the lots or what can be considered as a boundary adjustment is within the rules or standards of the plan.

We agree with the request to change the word “site” to “allotment” because the definition of subdivision refers to allotments rather than sites. The use of the term site could also cause confusion when boundaries are adjusted within unit titles within the same site.

We also considered whether the definition needed to specify that an allotment was on an **approved** survey plan, but as the definition refers to a subdivision, this is not required.

We also considered whether retaining this definition would create any confusion with the use of the term in the RMA. The term is not defined in the RMA, but is used in section 405A (refers to minor boundary adjustments not requiring an esplanade reserve or strip to be taken) and in section 81 (refers to the adjustment of boundaries between local authorities). However, we do not consider that these references present any reason to remove the definition from the standards. The

definition is consistent with the use of the term in section 405A and section 81 doesn't use the term but uses the phrase "adjustment of boundaries" and clearly addresses this in a different context from the definition of the term "boundary adjustment".

Accordingly we recommend the definition of Boundary adjustment is amended as follows:

Boundary adjustment means a [subdivision](#) that alters the existing ~~boundary~~ [boundaries](#) between adjoining ~~sites~~-[allotments](#), without altering the number of ~~sites~~-[allotments](#).

3.14 Building and Structure

3.14.1 Proposed definition

Building means any [structure](#), whether temporary or permanent, moveable or fixed, that is enclosed, with 2 or more walls and a roof, or any [structure](#) that is similarly enclosed

Structure means any building, equipment, device or other facility made by people and which is fixed to or located on land; and includes any raft, but excludes motorised vehicles that can be moved under their own power

3.14.2 Submissions

Building

Fifty submissions were received on the definition of building.

Eleven submissions opposed the definition. Eight submissions supported in definition. Thirty one submissions supported the definition in part, subject to amendment or further definition.

Reasons given by the eight submissions that supported the definition were:

- it does not discriminate against prefabricated construction methods (Cottages NZ, Sunshine Homes & Cabins Ltd, and Kennerley Consulting Ltd)
- it cannot be used to indirectly control poultry activities (Poultry Industry Association of NZ)
- covering temporary and moveable structures which are enclosed (Allison Tindale)
- reasonable, as some types of buildings are just structures eg, haybarns, covered yard (Federated Farmers of New Zealand Inc)
- no reason given (WEL Networks and New Zealand Transport Agency)

The remaining submitters either supported or opposed the definition seeking amendments and raising the following issues.

Relationship between the definitions of structure and building

Taupō District Council, New Plymouth District Council and Forest and Bird identified that when combined with the structure definition, the definitions are cyclical.

What constitutes a wall or a roof – permeable or similarly enclosed

Horticulture New Zealand identified permeable materials should be excluded from consideration. Christchurch City Council identified that additional definitions will be required for 'wall'.

Waimakariri District Council, Western Bay of Plenty District Council, and Auckland Council raised concerns that “partially roofed and enclosed” will cause issues.

Six submissions identified that “similar” is subjective and should be removed. Christchurch City Council supported the definition but also queried the certainty of the term “similarly enclosed”.

Relationship with Building Act 2004 definition of building

Wellington Electricity Lines Ltd, Housing New Zealand Corporation, Taupō District Council, the Far North District Council and the New Zealand Planning Institute requested that the Building Act 2004 definition should be used instead or the Standards definition should align with the Building Act definition. However, Auckland Council identified that the Building Act definition is not suitable.

Relationship with definitions in other Acts

Environment Southland queried which definition would prevail if the definition conflicts with definitions in other legislation eg, Heritage NZ Pouhere Taonga Act.

Breadth of the definition and inclusions and exclusions or size exemptions required

Some submissions requested the definition be amended to include a height and/or size exemption.

A number identified concerns regarding the unintended consequences including integration issues within plans that already have bespoke definitions for items such as artificial crop protection and crop support structures, caravans, tents, children play houses.

Several other submitters requested clarification about how carports, gazebos or tents, dog kennels, playhouses, sheds from the hardware store, house buses, house trucks, motorhomes, caravans, crop protection structures, pergolas, shade sails, partially covered decks, spaces under a first floor decks, storage containers, boat sheds in CMA would fit within the definition.

RMLA and Powerco identified that clarification would be required around infrastructure, and another five submitters identified further clarification would be required around hydro dams, dams, wind turbines, tunnels, and pipelines.

Kāpiti Coast District Council and Christchurch City Council identified the proposed definition was overly simplistic and open to interpretation.

Christchurch City Council was concerned that:

- a limit on the size of the facility that constituted a building would be required;
- that the term moveable could refer to all vehicles, which may not be the intent,
- that decks are not included which can have significant effects,
- that “similarly enclosed” is interpretive.

Angela Crang requested clarification that the definition applied to buildings above the ground.

Implications for plans of changes

The Pork Industry Board, New Zealand Planning Institute, and Christchurch City Council identified the proposed definition would require exclusions to be assessed and listed in rules, which may increase complexity and create additional time and cost implications. Greenwood Roche and Harrison Grierson Ltd identified that the proposed definition would require consequential amendment to other rules in plans for instance changes to the Auckland Unitary Plan AUP rules would be needed because it currently includes structures within the definition of building

Taupō District Council and Western Bay of Plenty District Council both queried the value of a national definition if plan rules must address multiple exclusions.

Additional definitions required

Some submissions identified that additional definitions will be required for equipment, device, facility, because these are included in the definition of structure.

Structure

Twenty-six submissions were received on the definition of structure with 17 submissions opposed to the definition. Two submissions supported the definition, and seven submissions supported the definition in part, often subject to amendment or further definition.

The Oil Companies and J Swap Contractors Ltd supported the proposed definition of structure. Neither provided reasons for their support.

Seven submissions supported the definition of structure in part raising the following key issues:

- May result in perverse outcomes (Housing New Zealand)
- Need clarification how it will apply to:
 - fences, drains, culverts, bridges, mobile irrigators, storage ponds, underground water pipes, troughs etc (Federated Farmers of New Zealand Inc)
 - port structures in a port context (Lyttelton Power Company Ltd)
 - motor vehicles – should be included if used as places of business or residence (Christchurch City Council)
- Support on land as well as fixed to it (Christchurch City Council)
- Will require consequential amendment to other rules (Auckland Council)
- Amend the definition:
 - to include and exclude specific structures eg, seawall and wharf structure (Lyttelton Power Company Ltd), Housing New Zealand
 - remove reference to building (Horowhenua District Council)
 - trailers, fences, low level retaining walls, boats and caravans (Upper Hutt City Council)

Seventeen submissions opposed definition of structure. One submission simply requested the definition be deleted (PSBIC/CPPIB, Waiheke Inc. AMP Capital Shopping Centres Ltd, and Stride Property Limited). The remaining 16 submission raised the following key issues:

- Why deviate from the RMA definition (10 submissions)
- May result in unintended consequences:
 - temporary structures (Retirement Villages Association of New Zealand),
 - artificial crop protection and crop support structures (Horticulture New Zealand)
 - would capture every small garden shed or dog kennel (Queenstown Lakes District Council)
 - kayacks and rowing boats (Bay of Plenty Regional Council)
- If keeping the definition, amend:

- to include dams (Mercury NZ Ltd)
- include a size or height exemption (Queenstown Lakes District Council)
- to exclude building (Dunedin City Council)
- Further definitions will be required such as “enclosed”, “wall”, “equipment”, “device”, “facility” (Western Bay of Plenty District Council)
- Provide a single definition of building and structure (Western Bay of Plenty District Council)
- The “enclosed” determination should be removed (Western Bay of Plenty District Council).

3.14.3 Analysis and recommendations

Relationship between the definitions of structure and building

The original definition of structure in the draft planning standards was included to capture structures that are located on land but not fixed to land on the basis that it is becoming more common for relocatable structures to be used that are not fixed to land. Shipping containers have been difficult to manage under the RMA as it is their own weight that holds them down (they are not fixed to land) and small mobile/relocatable buildings have become more common over recent times.

The majority of submitters were opposed the definition of structure and requested that the RMA version from section 2 of the Act should apply. We accept that there could be unintended consequences and difficulties with the draft version of the structure definition. We therefore recommend that the RMA version be included instead. For ease of reference the RMA definition of structure is as follows:

“structure means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft”.

As a result of the adoption of the RMA definition of structure in the Standards it is considered necessary to remove the link to structure in the definition of building, to enable moveable or relocatable ‘buildings’ that do not need to be fixed to land to be captured by the definition. Instead, we recommend the definition include a requirement to be “fixed to or located on or in land”. This will enable both shipping containers and relocateable homes to be included – but still retains a land based requirement. By land, we confirm this has the meaning in the RMA (and in the Standards) which includes land covered by water. Therefore where the definition of building refers to being fixed to or located on land, this also applies to any buildings fixed to land covered by water.

Contrary to those submissions that requested only one combined definition of structure and building, we consider it is useful to have separate definitions. This gives councils the ability to address either or both as required. In addition, regional councils are more likely to need to address structures separately from buildings and so the separate definitions allow for this. Feedback from a regional council pilot council requested that the definition of structure remain so that structures in the coastal marine area could be addressed.

In addition, as a result of removal of the reference to structure in the building definition many of the exclusions that are often included in council plan definitions of buildings⁹ (such as retaining walls less than 1.5m high) do not need to be excluded in the recommended building definition; they are not captured by the term.

⁹ see the excluded definition of building example in appendix 2 of the section 32 report

Submitters identified that the two terms are circular in that each refers to the other as 'building' was part of the structure definition and 'structure' was part of the building definition. We agree that this is poor drafting and the removal of the interdependency has resolved this issue.

We recommend replacing the word 'structure' in the 'building' definition with the words 'physical construction'. The two definitions work together now so that any building that is fixed to land would be captured by the term structure but not all buildings may be structures through the recommended use of the term 'physical construction' rather than 'structure' in the definition of 'building'.

We considered other terms which could be applied instead of 'physical construction'. We tested the word 'facility' with our pilot councils and they queried the meaning and certainty of that word. They sought clarity about whether some items such as shipping containers, caravans, motorhomes or house trucks would come within the meaning of the term. We consider that part of the uncertainty about that word relates to the fact that 'facility' may bear the meaning of a larger building or complex often used for a public or community purpose (eg, educational facility or community facility). We consider that the term 'physical construction' carries the meaning of a structure that is manmade and tangible, but it does not need to be fixed to land. While this is a new term, we consider that it is broad enough to cover all types of buildings without setting any parameters other than that there must have been some form of manmade construction. It will not be taken to exclude some items because they don't qualify; as the word 'facility' may have been.

As referred to above, the removal of the word "structure" from the definition of building, decouples a building from the requirement to be fixed to land which is specified in the RMA definition of "structure". This would result in vehicles being captured by the definition if no additional changes were recommended. The submission from Christchurch City Council raised this as an issue. We do not consider that in the common use of the term "building", vehicles would be considered to be included. We consider that vehicles (or other transport modes like railway carriages or boats) that come and go and are used for transportation should not be covered by this definition. We note that the Building Act 2004 includes in its definition only those vehicles that are "immovable" and "occupied by people on a permanent or long-term basis".

RMA plans seek to manage effects from buildings in the main where those effects are more long term than from, for example, a car parked on a section and used every day. However, where those vehicles no longer move (likely no longer used for transportation but for activities such as business, storage or accommodation) we consider they would have similar effects as buildings and should be captured by the definition. We therefore recommend excluding motorised vehicles or any other mode of transport that could be moved under its own power. We considered the alternative to exclude vehicles where they are used for business, storage or residential activity – but given the fact that the definition applies to facilities that are located on land – the definition would then have encompassed any business vehicles or even trucks when located or parked on land. We consider it is more certain to only exclude those vehicles that can be moved under their own power.

We acknowledge that there are other items that are moveable and have a roof and so could meet the recommended definition of a building. In particular, tents, caravans, and marquees would be included. We acknowledge that the definition of building is broadly crafted and councils will need to use subcategories or narrower application definitions and rules to manage or permit these items where required.

Certainty – and what constitutes a wall or a roof or similarly enclosed?

Submitters identified that in some buildings (for example aircraft hangers and Nissen huts) walls are not clearly identifiable and their identification can be debated. Circular buildings may only have one 'wall' and with a dome roof this may not even be clear such as in the example below:



Source: <http://www.cosyhomes.net.nz/product/dome-house/>

To avoid the problem of having to clearly identify the walls in the type of dome house example above the phrase "or similarly enclosed" was included in the draft standard. This phrase was opposed by submitters on the basis that it does not provide enough certainty. As a result the recommended definition has included the phrase "is partially or fully roofed". Consideration was given to excluding any permeable roof on the basis that this then would exclude crop protection structures from the definition. However, it was considered that any exclusion for a permeable roof could result in a loophole in the definition. Is a roof that leaks a permeable roof? How impermeable would it need to be to qualify? This could make it difficult for compliance and enforcement purposes. We consider that it would be better for the plan provisions (rather than the building definition) to clearly enable crop protection structures or other similar structures if this is the desired outcome.

Relationship with the Building Act 2004 definition of building

Some submissions suggested using the definition of building from the Building Act 2004. This was considered in the draft standard but discounted on the basis that the definition in the Building Act serves a different purpose to any RMA definition of building. We agree with this. We did consider including the phrase from the Building Act definition of building "*intended for occupation by people, animals, machinery, or chattels*". However, we discounted this because from an RMA effects point of view what a building is used for or whether it is empty or occupied is not relevant. Therefore we do not recommend the inclusion of such a reference.

Relationship with definitions in other acts

Environment Southland queried the relationship with the definition of building in the Heritage New Zealand Pouhere Taonga Act 2014. That definition applies to heritage buildings within that Act and the definition in the planning standards applies to RMA plans. Where RMA plans address heritage buildings they may use a subcategory definition where required.

Breadth of the definition and inclusions and exclusions or size exemptions required

A number of submitters sought the exclusions of buildings up to a certain size (and not always the same size). This can be addressed though rules that permit small buildings (eg, any building that does not exceed 10m² in area or 2m in height can be permitted). We consider that this approach will make plans easier to understand and use. Any related bulk and location rules could also be drafted to exempt small buildings from having to comply with things like setback requirements or building coverage calculations.

Other submissions sought clarification about what is included within the definition and many items were referred to. We consider that these can be addressed in rules where required. We acknowledge that will require many rules but we consider that the broadness of the definition is inherent in the meaning of building and where councils need to address specific types of buildings or even parts of buildings such as decks, it is clearer for users if this is located in rules rather than hidden in a definition. On the issue of decks, if free standing and without a roof, they may be addressed within the definition of “structure”.

Implications for plans of changes

In relation to amendments to rules that may be required, we acknowledge the extent of these and in consideration of that issue we have provided extended timeframes for implementation to allow councils to implement changes within plan reviews, if desired.

Additional points

In relation to the issue of whether a building is above or below ground, we recommend adding the phrase “fixed to or located on or in land” and this ensures that the definition does not differentiate between the two. Some buildings may be below ground and if councils wish to address these they may do so within their rules.

In summary, we recommend the definition of structure is replaced with the definition of structure from section 2 of the RMA. We also recommend the definition of building is replaced with the following definition:

Building means any a temporary or permanent movable or immovable physical construction that is-

- (a) partially or fully roofed, and
- (b) is fixed to or located on or in land, but
- (c) excludes any motorised vehicle or other mode of transport that could be moved under its own power.

3.15 Building coverage

3.15.1 Proposed definition

Coverage means the percentage of the **net site area** covered by the **footprint** of **structures** as identified in the relevant rule

3.15.2 Submissions

Eighteen submissions were received on the definition of ‘coverage’.

Auckland Council supported the definition.

One of the main points raised in submissions was whether the definition should apply to structures or buildings or both. Some submissions (Housing New Zealand, Western Bay of Plenty District Council, Christchurch City Council, Horticulture New Zealand, A Crang) were concerned about the term “structures”. Their view was that, if coverage related to structures (rather than buildings), some inappropriate items would be included such as trailers, crop protection structures, decks,

children’s play huts, outdoor playground picnic tables and swimming pools. Western Bay of Plenty District Council and Christchurch City Council were concerned about the difficulty involved in measuring structures. Christchurch City Council also stated that it would be inefficient, confusing and less user-friendly if plans were required to include rules addressing all the structures that needed to be exempted from the coverage calculation. Of the submissions on this issue, Christchurch City Council, Housing New Zealand and Western Bay of Plenty District Council sought the replacement of “structure” with “buildings”. Christchurch City Council also sought a related expansion of the definition of building to capture structures that would be relevant to a definition of coverage. Horticulture New Zealand sought amendments to the definition of “structure”. Horowhenua District Council requested that both “building” and “structure” be included in the definition because they have different definitions. A Crang did not seek a specific relief.

Other submissions (CivilPlan Consultants Ltd, the oil companies, NZTA) pointed out the need to differentiate this definition from other uses of the term coverage such as impervious area coverage, landscape coverage and vegetation coverage. The oil companies sought the deletion of the definition because it is not specific enough to differentiate it from the use of the term in other contexts, councils will need to change their rules to avoid using the term in other contexts and also because council rules will have to address items that are not addressed in the definition such as eaves, fences, bay windows and decks.

Other submissions (Horowhenua District Council, Hastings District Council, Christchurch City Council) also raised the issue of exclusions. They sought exclusions from the definition of coverage or footprint for small-scale building elements such as eaves and decks and other items not considered relevant to coverage. Central Hawke’s Bay District Council also queried the exclusion or inclusion of decks. Both the Hastings District Council and Whanganui District Council suggested definitions with a number of specified exclusions.

Kāpiti Coast District Council queried the application of the phrase “net site area” within the definition of coverage. It was its view that the definition of “net site area” included access legs and rights of way and so this would result in increased site coverage and related adverse effects if applied in its plan.

CivilPlan Consultants Ltd pointed out the limitations of the term because it refers to net site area. It could not be used in rules limiting the footprint of structures over gross site areas, yards or parts of a site subject to a certain zone.

Western Bay of Plenty District Council’s submission on the linked definitions of “footprint”, “net site area” and “site”, queried how the definition would work applied to one building or activity that spans many adjacent “sites” but may cover some sites much more than others.

The New Zealand Law Society pointed out problems with the use of the wording “identified in the relevant rule”. It noted the words may not be appropriate to use in policies and objectives, nor if the term “coverage” applies to actual coverage already on the ground rather than what might be provided for in the relevant rule. NZTA pointed out a small grammatical error in this wording.

The Selwyn District Council requested that the definition set out a measurement method similar to the method set out in the ‘gross floor area’ definition, which specifies that measurements are to be taken from the exterior faces of the exterior walls.

Tauranga District Council requested that the definition be accompanied by a standard diagram.

Hamilton City Council sought clarification about whether this definition would preclude councils from having their own definitions for buildings or site coverage.

3.15.3 Analysis and recommendation

A number of submissions sought the replacement of the term “structures” with “building”, or else that the definition refer to both “building” and “structure”. The concerns mostly related to structures that would be captured by the definition such as crop protection structures, stairs, decks, children’s play huts and outdoor playground tables.

Councils raised the technical difficulty of working out the “footprint” of structures that do not have floors – and having to exempt many structures in the rules if the word “structure” is retained. We agree with these concerns and recommend amending the definition so it applies to buildings rather than structures. This also aligns more closely with the definition of ‘footprint’, which requires a measurement of total area at ground floor level. Total area at ground floor level may be more challenging to ascertain for many structures.

We consider that coverage is, in the main, a concept that relates to buildings rather than structures. Many district plans currently specify a number of exclusions for structures that would not fall within the new definition of ‘building’ recommended in this standard, such as swimming pools and solar panels, - and such items will no longer need to be addressed if the definition of ‘coverage’ refers to buildings rather than structures. While there are some structures that councils may wish to address in relation to coverage that will not come within the definition of a building (eg, unroofed car decks) we consider that these can be separately addressed in council rules. We therefore recommend making changes to the definition of ‘coverage’ so it applies to buildings, not structures. In addition, if councils wish to address coverage for both buildings and structures they could develop a combined definition for a concept such as site or property coverage, and/or address this in their rules.

Submissions were concerned that the draft definition of ‘coverage’ would cause confusion with other uses of the term such as vegetation coverage, road coverage or impervious surface coverage. We agree and recommend adding the word “building” before the word “coverage” in this definition. We also recommend adding the word “building” before the word “footprint” in that term defined in the standards. This will clarify that both definitions refer only to buildings and differentiate the term ‘building coverage’ from the other uses of the word.

We do not agree with the submissions that sought specific exclusions to be set out in the definition. We do note that many plans list exclusions, often for eaves and decks of specified sizes. But we consider that the rules can be crafted to address these if required. Horowhenua District Council was concerned that because the definition of ‘coverage’ is based on the definition of ‘footprint’, it would not cover eaves and decks. It requested that these be specifically excluded from the definition of ‘coverage’ up to a specified size, so that larger ones would be included. We consider that eaves and decks are within the definition of footprint and that plan rules can be crafted to permit these up to a certain size, if required. Therefore it is not necessary to exclude eaves and decks from the definition of ‘coverage’.

We do not agree with Kāpiti Coast District Council’s comments that the definition of ‘net site area’ includes access legs and rights of way so that the ‘coverage’ definition would therefore result in increased site coverage and related adverse effects if applied in the council’s plan. The recommended definition of ‘net site area’ excludes “any part of the site that provides legal access to another site” and therefore legal rights of way are excluded from a net site area calculation. The recommended definition also excludes “any part of a rear site that provides legal access to that site” so therefore access legs are excluded as well. In addition, it is the intention that these standards not to alter the effect of plan rules, and consequential changes to rules may need to be made to ensure that this is the case. We therefore do not recommend any changes be made to the definition of ‘coverage’ in relation to this submission.

We note CivilPlan Consultants' submission that the reference to "net site area" in the definition of 'coverage' restricts the use of the term in provisions for coverage relating to other spatial areas such as gross floor area, yards or zones. However, we consider that the main use of the term is linked to net site area and councils may make other provision for those other concepts. This definition will only apply where this concept is relevant. We considered broadening the definition to encompass these other spatial concepts but this would render the definition too broad to be useful.

We do not recommend any changes to the definition in relation to Western Bay of Plenty District Council's query about how coverage will be considered where a building or activity spans a number of sites. The definition of 'coverage' does not determine what plan rules allow or manage. The submission addressed that part of the site definition in clause (e) that applied to two or more adjacent records of title where an activity is occurring or proposed. We consider that this concept is different from the more confined definition of "site" set out in clauses (a) to (d) of that definition and is more closely aligned with term "property". In the analysis of submissions on the definition of site we recommend the removal of sub clause (e) so that the wider concept of a property which comprises a number of records of title where an activity takes place can be addressed separately in plan rules. This resolves the issue raised by the Western Bay of Plenty District Council. If councils wish to address the issue of coverage requirements for an activity that spans many titles they may do so separately.

We agree with the New Zealand Law Society's submission that the wording "as identified in the relevant rule" is problematic, particularly where the term may be used in regional policy statements. We therefore recommend deleting this wording. The wording was intended to mean that the percentage of coverage would be specified in a plan rule but no meaning is lost by removing it.

In relation to Selwyn District Council's submission that a measurement method be specified in the definition similar to the method specified in the definition of 'gross floor area', we consider that a measurement method linked to floor area will not work. Our reason is that the definition of footprint incorporates parts of buildings that may not have floors – that is, any section of a building that "extends out beyond the ground floor level limits of the building and overhangs the ground". We consider that plan rules may specify a measurement method if required.

In relation to Tauranga District Council's request that the definition be accompanied by a diagram, while we consider that this would be helpful we do not recommend this set of standards includes diagrams. More work needs to be done to align different council styles and to provide useful diagrams while leaving it open to councils to prescribe metrics. This is something that can be considered for future standards or guidance.

Hamilton City Council's query about whether additional definitions for building or site coverage can be used is answered by reference to the mandatory directions that require these definitions to apply wherever the term or a synonym of the term is used in the plan – unless the context around the term shows that the word does not carry the defined meaning. Other related definitions may be included in policy statements and plans if they are subcategories or narrower applications of the defined term. Other additional terms may be defined in policy statements or plans as long as they are not synonyms of the term defined in the standards.

We recommend amending the definition of 'coverage' in the Definitions Standard as follows:

building coverage means the percentage of the net site area covered by the building footprint of ~~structures as identified in the relevant rule~~

We recommend amending the definition of 'footprint' in the Definitions Standard as follows:

Building footprint means, in relation to building coverage, the total area of buildings ~~structures~~ at ground floor level together with ~~and~~ the area of any section of any of those buildings

structures that extends out beyond the ground floor level limits of the building and overhangs the ground protrudes directly above the ground.

3.16 Building damage from vibration and Peak particle velocity

3.16.1 Proposed definitions

Building damage from vibration means any permanent effect of vibration that reduces the serviceability of a structure or one of its components.

Peak particle velocity means the measure of the vibration amplitude, zero to maximum that is used for building structural damage assessment.

The definitions included in this section all support the noise metrics in draft Noise and Vibration Metrics Standard. They were included in the planning standard based on the RMA definition of noise which is “includes vibration”.

3.16.2 Submissions

Building damage from vibration

Five submissions were received in response to the definition of ‘building damage from vibration’. Of these submissions, only one was in support while the remaining four were opposed to its inclusion.

The view of the Housing New Zealand was that the definition was too narrow to be considered necessary or appropriate.

NZTA had the opposite view, suggesting the definition could be tighter. It recommended the word “serviceability” could be replaced with something less subjective.

Christchurch City Council questioned the need for a definition of the term. They stated that the definition wasn’t much longer than the title only adding the word “permanent”.

Environmental Noise Analysis and Advice Service also suggested that the term “serviceability” was too ambiguous. It noted that the phrase “serviceability of a structure” tends to exclude cosmetic damage and that this focus on structural damage could lead to harmful or amenity effects on people being excluded as these occur at lower vibration levels.

Peak particle velocity

Four submissions were received on the definition of ‘peak particle velocity’. Three supported the definition in its present form, while Environmental Noise Analysis and Advice Service opposed it.

NZTA, Christchurch City Council and Auckland Council supported the use of the definition in its current form without amendment.

Environmental Noise Analysis and Advice Service noted that the description is incorrect as “vibration amplitude” needs to specify “velocity”, otherwise it could mean “displacement” or “acceleration”. It recommended changing the definition to “the instantaneous maximum velocity reached by a vibrating surface as it oscillates about its normal position”.

Requests for change

Christchurch City Council asked for the definition to be changed as follows:

peak particle velocity “means the measure of the vibration amplitude, zero to maximum, that is used for ~~building structural damage assessment~~ the assessment of the structural damage to a building.”

Environmental Noise Analysis and Advice Service stated:

“peak particle velocity” – the description is incorrect as “vibration amplitude” needs to specify “velocity” as otherwise it could mean “displacement” or “acceleration”. The definition should be changed to “the instantaneous maximum velocity reached by a vibrating surface as it oscillates about its normal position”. The end of the draft definition relating to structural damage needs to be expanded as ppv is also used for human response to construction vibration and building cosmetic damage

3.16.3 Analysis and recommendations

Submitters either generally opposed the term ‘building damage from vibration’ on the basis that “serviceability” is subjective or ambiguous, or the term is not necessary. Auckland Council’s support for the term was only on the basis that it did not use anything like it so the term would not affect the Auckland Unitary Plan. We originally included the term to support the Noise and Vibration Metrics Standard on the basis that the RMA definition of noise is simply “includes vibration”.

We agree that the term is too subjective and narrow with the reference to the vibration effects affecting the serviceability of a building. This point is included in the Environmental Noise Analysis and Advice Service submission, which stated:

The majority of vibration effects on buildings relate to cosmetic damage rather than structural damage that might affect the engineering functionality of the structure. The reference to “serviceability of a structure” by ordinary meaning would tend to exclude consideration of cosmetic damage. As noted below with respect to CM-2, the focus on structural damage from vibration may result in harmful or amenity effects on people being excluded, which occur at lower vibration levels. This definition should either be deleted or changed to include cosmetic damage and vibration effects on people

Given the opposition to the term, we consider that this term is unlikely to be included in plans and nothing is likely to be gained by proceeding with the definition. We therefore recommend deleting the term from the planning standard and relying on the ‘peak particle velocity’ term to enable the management of vibration effects.

Environmental Noise Analysis and Advice Service’s submission identified that the ‘peak particle velocity’ definition is technically incorrect and suggested an amendment to correct the inconsistency. We support its proposed wording to the extent that the term needs to be technically correct. The issue with the proposed wording is that it provides a technical definition that we considered is not easy to understand. We believe that the technical definition proposed could be combined with Christchurch City Council’s suggestion to provide a definition that is easier to understand while being technically correct, as set out below.

We recommend removing the term ‘building damage from vibration’ from the Definitions Standard.

We recommend replacing the ‘peak particle velocity’ definition with the definition below:

Peak particle velocity means, to the extent used for the assessment of the risk of structural damage to a fixed structure, the instantaneous maximum velocity reached by a vibrating surface as it oscillates about its normal position

3.17 Building footprint

3.17.1 Proposed definition

Footprint means the total area of structures at ground floor level and the area of any section of any of those structures that protrudes directly above the ground

3.17.2 Submissions

Twenty-one submissions were received on the definition of ‘footprint’.

Fonterra supported the definition but considered the definition would be difficult to retrofit into policy statements and plans.

Submissions on this definition were similar to those on the definition of ‘coverage’, particularly on the use of the words “structures” or “buildings”. Horticulture New Zealand sought the deletion of the definition because it may capture crop protection structures. Some submissions (Housing New Zealand, CivilPlan Consultants Ltd, Christchurch City Council, Western Bay of Plenty District Council) requested that the definition refer to buildings not structures, mainly on the basis that structures would be less likely to have ground floors. Tauranga City Council requested the definition refer to both buildings and structures, to be consistent with other definitions.

A number of submissions were concerned about phrase “at ground floor level”. Beca Ltd submitted that the definition is unclear about whether underground parts of a building are to be included. Auckland Council noted the definition is unclear about whether it covers entrances between ground level and an underground basement.

Genesis Energy Ltd and Mercury New Zealand Ltd requested that the phrase “ground floor level” be changed to “ground level” for consistency with other defined terms. The oil companies were also concerned about the phrase “ground floor level” because structures such as a car wash, service station canopy or a rubbish enclosure would not have a ground floor. They sought the deletion of the definition and instead supported either the use of the ordinary meaning of the definition of ‘footprint’ as the outline from above, or a change from the phrase “ground floor level” to “ground surface”.

Hutt City Council and Western Bay of Plenty District Council asked for a definition to be provided for the footprint of a single building and for multiple buildings on a site.

Western Bay of Plenty District Council and Tauranga City Council submitted that “total area” is not measurable and should be changed to “gross floor area”. Selwyn District Council requested that the definition include a standard way of measuring a footprint; for instance, the measurement method used in the ‘gross floor area’ definition. It suggested the following: “Coverage shall be measured from the exterior faces of exterior walls, and in the absence of a wall on any side, measured to the exterior edge of the floor.” The New Zealand Law Society submitted that the word “and” in the first line of the definition might be better worded as “together with” to clarify that it refers to the total area of all the listed matters.

Tauranga City Council asked for a diagram to be provided to illustrate cantilevered parts of a building.

A number of submissions referred to the words “protrudes directly above the ground”. Wellington City Council suggested instead using the words “occupies airspace directly above the ground”. The New Zealand Law Society recommended amending the definition to read “... and any section of those structures that extends horizontally beyond the structure limits at ground level (eg, any cantilevered section of a building)” to ensure it covers cantilevered buildings. Central Hawke’s Bay District Council was also concerned about whether the words would cover mushroom-type buildings that have a small ground floor but increase in size in the upper floors. Auckland Council noted that it is not clear what “directly” above the ground means.

Beca Ltd submitted that the definition is unclear about whether eaves and decks are included. Porirua City Council and Upper Hutt City Council were concerned that the definition included eaves when many district plans would exclude eaves up to a certain size from coverage rules.

Horticulture New Zealand pointed out that the term ‘footprint’ is also used in the phrase “environmental footprint”.

Greater Wellington Regional Council requested that the definition be amended to also cover the footprint of an activity so it is more useful for regional councils.

3.17.3 Analysis and recommendations

We agree with those submissions that sought a change from “structures” to “buildings” because buildings are more likely to have ground floor levels to measure and because this aligns with a similar change made to the definition of ‘coverage’. We recommend replacing the word “structures” with “buildings”.

We consider that this change may also address some of the concerns raised about the phrase “ground floor level”, particularly about structures that do not have floors. We do not agree with Genesis Energy Ltd and Mercury New Zealand Ltd that the phrase should be changed to “ground level” because the definition of that term is not appropriate in this context. We do not agree with the oil companies’ submission that the “outline from above” could be used instead as this would be difficult to measure on the ground. In relation to those submissions about the underground parts of a building, we consider that the definition specifies “at ground floor level” and that those parts of a building discernible at ground floor level will be included. Using the term “ground surface” or a similar term that would be undefined would result in new uncertainties. We therefore do not recommend any changes related to these submissions.

In relation to those submissions that sought a definition of a footprint of a single building as well as for multiple buildings, we acknowledge that this may be useful but we recommend retaining the plural reference in this definition to align with the definition of ‘coverage’, which addresses the coverage of all buildings within a net site area. We recommend adding the phrase “in relation to building coverage” to make this clear and to differentiate it from a single building footprint. Councils can provide a definition of a single building footprint if required. This also differentiates the term ‘footprint’ from ‘environmental footprint’ – a concern raised by Horticulture New Zealand.

We do not agree with the submission that noted that “total area” is not measurable and should be changed to “gross floor area”. Gross floor area is a different concept used for a different purpose. We agree with the New Zealand Law Society’s submission that the word “and” in the first line of the definition might be better worded as “together with” to clarify that it refers to the total area of all the listed matters and we recommend this change.

In relation to the submitter’s request for the definition to include a standard way of measurement, such as the method set out in the ‘gross floor area’ definition, we consider it more appropriate for councils to apply their own measurement method and do not recommend this be included. The measurement method specified in the ‘gross floor area’ definition is not applicable as it relates to floor area rather than any other parts of the building that extend outwards and overhang the ground. We do not recommend specifying a measurement method without it being notified for comments.

We do not recommend adding a diagram to illustrate the cantilevered parts of a building, as Tauranga City Council requested. While we consider that this would be helpful, we have not recommended this set of standards includes diagrams. More work needs to be done to align different council styles and to provide useful diagrams while leaving it open to councils to prescribe metrics. This is a matter that can be considered for future standards or guidance. In addition, councils may include diagrams to illustrate definitions if they wish to.

In relation to the issue of the words “protrudes directly above the ground”, we agree that it may be unclear what “directly above the ground” means and that it is intended to cover cantilevered and mushroom-shaped buildings. We note the New Zealand Law Society’s suggestion to amend the words to read “... and any section of those structures that extends horizontally beyond the structure limits at ground level (eg, any cantilevered section of a building)”.

We do not agree that the word “horizontally” needs to be included as the definition may also cover some parts of buildings that are not horizontal. But we do recommend that the words be amended to read “extends out beyond the ground floor level limits of the building and overhangs the ground” so that the definition applies to all parts of buildings that may extend out; such as eaves, decks, mushroom-shaped houses and cantilevered houses. We have changed the word order from that suggested by the New Zealand Law Society so that it now reads “extends out beyond the ground floor level limits” rather than “extends beyond the building limits at ground level”. In this way, the phrase “at ground level” applies to the limits of the building, not the extension – that is, it is clear that the extension is not “at ground level”.

For submissions that sought specific exclusion for eaves up to a certain size, we consider that these can be excluded or managed through the relevant rules.

We do not agree with Greater Wellington Regional Council’s submission to broaden the definition to include the footprint of an activity. While this would align the definition with a regional plan use of the term, we consider that the footprint of an activity is a different concept from the footprint of a building. We recommend, therefore, adding the word “building” before the word “footprint” to clarify that this definition applies only to the footprint of a building and not to an activity. This will also differentiate it from an environmental footprint, as Horticulture New Zealand raised in its submission.

We recommend amending the definition of ‘footprint’ in the Definitions Standard as follows:

building footprint means, in relation to building coverage, the total area of buildings structures at ground floor level together with and the area of any section of any of those buildings structures that extends out beyond the ground floor level limits of the building and overhangs the ground. protrudes directly above the ground

3.18 Cleanfill and Cleanfill material (new recommended term)

3.18.1 Proposed definition

Cleanfill means an area used for the disposal of exclusively inert, non-decomposing material.

3.18.2 Submissions

Twenty submissions were received on the definition of 'cleanfill'. J Swap Contractors supported the definition without amendment, but the majority of other submitters sought some changes. Most supported the inclusion of a proposed definition for 'cleanfill' that defines the term as a location where waste of a particular type or standard is disposed. However, many submitters questioned the utility of including the definition, without also including a companion definition of 'cleanfill material'.

Below we first summarise submission points that relate to the term 'cleanfill' in the context of a location, before summarising submission points that relate to the term 'cleanfill' in the context of a material.

'Cleanfill' as a location

Some submitters sought minor amendments to clarify that the term 'cleanfill' refers to a location – for example, by renaming the term as 'cleanfill site' (Genesis Energy) or 'cleanfill disposal area' (Ravensdown). Other submitters sought more substantial amendments.

Brookby Quarries opposed the definition, stating the words “an area used for the disposal of exclusively inert non-decomposing material” established a high bar that most cleanfill sites would fail to meet. It further submitted that “virtually all cleanfill will contain some material that is not inert” and provided examples of both natural (eg, volcanic rock) and manufactured (eg, concrete) materials that are to some extent chemically reactive. The proposed wording was also opposed by Selwyn District Council, West Coast Regional Council and WasteMINZ, which sought amendments to define a cleanfill as an area that accepts cleanfill material.

Winstone Aggregates submitted the part of the definition that refers to inert, non-decomposing material was too permissive and would result in sites that accept fibreglass, plastic and asbestos being defined as 'cleanfills'. It submitted this would be inconsistent with the definition of 'cleanfill' in the Ministry for the Environment's *Guide to the Management of Cleanfills*¹⁰, which precludes “cleanfill sites” from accepting materials that have adverse effects on the environment. A more appropriate definition, this submitter stated, would be to define a 'cleanfill' as “an area used for the disposal of material that when discharged to the environment will have no adverse effect on people or the environment”. Amendments to exclude sites that accept asbestos and concrete and substances harmful to human health were also sought by Hamilton City Council.

'Cleanfill' as a material

As noted above, some submitters considered the absence of a definition of 'cleanfill material' created ambiguity as to the type and standard of material able to be accepted at a 'cleanfill' location. Western Bay of Plenty District Council stated that without a definition of 'cleanfill material',

¹⁰ Ministry for the Environment. 2002. *A Guide to the Management of Cleanfills*. Prepared for the Ministry for the Environment by Beca Carter Hollings & Ferner Ltd. Wellington: Ministry for the Environment

council staff and customers would be required to make case-by-case assessments as to whether particular materials met the standard of “exclusively inert”.

Submitters requested different forms of relief to address the issue. Three submitters requested the ability to retain local definitions of ‘cleanfill material’ (Auckland Council, Bay of Plenty Regional Council, Christchurch City Council). Eight submitters requested the inclusion of a national definition of ‘cleanfill material’ in the planning standards.

Submitters requesting a national definition of ‘cleanfill material’ often included detailed descriptions of materials they considered to constitute ‘cleanfill material’. Suggested definitions were often derived from definitions contained in other technical or planning documents, including the following.

- *Technical Guidelines for Disposal to Land*¹¹

Virgin excavated natural materials (VENM) such as clay, soil and rock that are free of:

- combustible, putrescible, degradable or leachable components;
- hazardous substances or materials (such as municipal solid waste) likely to create leachate by means of biological breakdown;
- products or materials derived from hazardous waste treatment, stabilisation or disposal practices;
- materials such as medical and veterinary waste, asbestos, or radioactive substances that may present a risk to human health if excavated;
- contaminated soil and other contaminated materials; and
- liquid waste.

When discharged to the environment, clean fill material will not have a detectable effect relative to the background.

- *A Guide to the Management of Cleanfills* (Ministry for the Environment)¹² includes a description of general types of waste that are unacceptable in a cleanfill:

Leachable waste, degradable waste, putrescible waste, combustible waste, unsafe if excavated waste, hazardous substances, liquid wastes, contaminated soils (being soils with contaminant concentrations greater than natural background levels at the cleanfill site)

- The Auckland Unitary Plan definition of ‘cleanfill material’, or derivatives of this definition:¹³

Cleanfill material means natural material such as clay, gravel, sand, soil and rock which has been excavated or quarried from areas that are not contaminated with manufactured chemicals or chemical residues as a result of industrial, commercial, mining or agrichemical activities. Excludes:

- hazardous substances and material (such as municipal solid waste) likely to create leachate by means of biological breakdown;
- product and materials derived from hazardous waste treatment, stabilisation and disposal practices;
- materials such as medical and veterinary waste, asbestos, and radioactive substances;

¹¹ WasteMinz. 2018. *Technical Guidelines for Disposal to Land*. Auckland. WasteMinz

¹² Requested by Selwyn District Council, West Coast Regional Council and Winstone Aggregates.

¹³ Requested by Brookby Quarries, Genesis Energy, NZPI and Trustpower Ltd.

- soil and fill material which contain any trace element specified in Table E30.6.1.4.2 at a concentration greater than the background concentration in Auckland soils specified;¹⁴
- sulfidic ores and soils;
- combustible components;
- more than 5% by volume of inert manufactured materials (eg, concrete, brick, tiles) and
- more than 2% by volume of attached biodegradable material (eg, vegetation)."

3.18.3 Analysis and recommendation

Several submitters expressed concern with the term 'cleanfill'. They stated that it was not clear that the term is defined in the context of a location rather than a material.

We note that a key drafting principle for provisions is that they should be drafted in a manner that is clear and concise. This principle enables effective and efficient navigation of plan provisions, and is consistent with section 18A(b)(ii) of the RMA, which requires all persons exercising powers and functions under the Act to take all practicable steps to "ensure that all policy statements are worded in a way that is clear and concise". For these reasons, we consider the term 'cleanfill' should be renamed to convey the spatial aspects of the term.

We have considered the two suggestions put forward by submitters: renaming the term as 'cleanfill site' and renaming the term as 'cleanfill disposal area'. We note the term 'site' is defined in the Definitions Standard and, having considered the particular meaning proposed for that term, we consider it is not appropriate in this context. However, we agree with Ravensdown that renaming the term as 'cleanfill area' is appropriate, on the basis that the word "area" clearly conveys that the term is used in the context of a location.

We also agree with submitters that it is unhelpful to conflate the two concepts of 'location' and 'material' in one definition. For this reason, we recommend omitting any references in the proposed definition to the quality or standard of materials, and limiting the definition to the description of an area "used exclusively for the disposal of cleanfill material".

We note a consequence of this recommendation is that consideration must be given as to whether a separate definition of 'cleanfill material' is required. We consider submissions on this point in the paragraphs below.

Definitions of 'cleanfill material' have been included as local definitions by some local authorities. These definitions generally describe the standard, quality or characteristics of materials considered to be 'cleanfill' and are generally referred to in provisions that regulate the use of land and the discharge of contaminants.

While we note each local authority has defined the term 'cleanfill material' slightly differently, there is a high degree of consistency on common elements. This consistency, combined with the fact the term is not defined in the dictionary (owing to the fact it is a blend of the words 'clean' and 'fill'), gives greater weight to the case for defining the term at a national level via the Definitions Standard. For these reasons, we recommend including a definition of 'cleanfill material' in the Definitions Standard.

¹⁴ Brookby Quarries recommended substituting this wording with "soil and fill material which contain any trace element at a concentration greater than the background concentration of the soils within the [insert district or region]".

Having established the need for a new definition, we have considered how the term should be defined. As a starting point, we have the proposed definition for 'cleanfill', which described the materials as "exclusively inert and non-decomposing".

We note that Brookby Quarries opposed this definition on the basis that some natural materials are chemically reactive and will fail to meet the test of "inert" (eg, volcanic rock). We agree that this is a likely outcome if the phrase is retained. We also agree that the phrase "exclusively inert and non-decomposing" creates an absolute standard that would be difficult to comply with (particularly where the waste stream contains small amounts of vegetative material). However, there will also be instances, as Western Bay of Plenty District Council pointed out in its submission, where the phrase is not restrictive, resulting in materials that produce leachate under certain conditions (eg, plastic) being considered 'cleanfill'.

Both submissions demonstrate the phrase "exclusively inert and non-decomposing" is an inappropriate description of 'cleanfill material'. For that reason, we recommend it is not included in the definition of 'cleanfill material' and have instead considered alternative definitions put forward by submitters.

In general, most suggestions described the material as including soil-based components (eg, clay, sand) uncontaminated by human activities; and excluding materials that are combustible and hazardous or contain leachable components. These descriptions are generally consistent with the definition of 'cleanfill material' in the WasteMINZ *Technical Guidelines for Disposal to Land*. On that basis, we consider the definition of cleanfill from these guidelines is an appropriate base definition, with some amendments. In particular, we consider the statement "when discharged to the environment, clean fill material will not have a detectable effect relative to the background" should be omitted, on the basis that it requires an assessment to be carried out to determine whether the definition is met. This is inconsistent with key drafting principles, which require that terms should be clear and, where possible, avoid subjectivity or third-party assessments.

We also note that the Technical Guidelines for Disposal to Land definition has a high degree of compatibility with the definition of 'cleanfill material' in the Auckland Unitary Plan. The Auckland Unitary Plan differs from the Technical Guidelines for Disposal to Land definition in that it:

- does not include references to putrescible and leachable components
- includes limits on trace element concentrations in soils
- makes an allowance for small amounts of inert manufactured material and biodegradable material
- excludes sulfidic ores and soils.

The Auckland Unitary Plan definition is a more exhaustive definition that has been promulgated to deal with issues and effects specific to the Auckland region. We consider this level of specificity is not appropriate for a national definition and for this reason we have recommended a definition which is more consistent with that proposed by WasteMINZ.

Furthermore, where local authorities need to exclude or include specified materials (eg, sulfidic soils), this can be accommodated by making consequential amendments to plans to include or exclude additional controls within the provisions of a plans where appropriate to preserve plan outcomes.

We recommend amending the definition of 'cleanfill' in the Definitions Standard as follows:

Cleanfill area means an area used exclusively for the disposal of cleanfill material ~~exclusively inert, non-decomposing material~~

We also recommend including a new definition in the Definitions Standard as follows:

Cleanfill material means:

Virgin excavated natural materials such as clay, gravel, sand, soil and rock that are free of:

- a) combustible, putrescible, degradable or leachable components;
- b) hazardous substances and materials;
- c) products and materials derived from hazardous waste treatment, stabilisation or disposal practices;
- d) medical and veterinary wastes, asbestos, and radioactive substances;
- e) contaminated soil and other contaminated materials; and
- f) liquid wastes

3.19 Cleanfill material (new recommended term)

Refer to section 3.18 “Cleanfill and Cleanfill material (new recommended term)” for submissions, analysis and recommendations on the definition for ‘cleanfill material’.

3.20 Coastal marine area

3.20.1 Proposed definition

Coastal marine area has the same meaning as in section 2 of the RMA (as set out in the box below)

means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea;
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
 - (i) 1 kilometre upstream from the mouth of the river; or
 - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5

3.20.2 Submissions

Five submissions were received on the definition of ‘coastal marine area’. All the submissions requested that a definition for the term ‘mouth’ also be provided as the two relate to one another and that without the definition of ‘mouth’, the definition of ‘coastal marine area’ could not be correctly applied.

Auckland Council noted that in its plans, it uses maps to dictate what is defined as a coastal marine area and that a standardised definition would compromise this method.

Gisborne District Council submitted that the definition has the potential to significantly alter the application of objectives, policies, rules and methods within plans.

3.20.3 Analysis and recommendation

Having considered the submissions, and the application of this term in a planning context, we agree that the definition of 'coastal marine area' would also need the definition of the term 'mouth'. We also agree that the inclusion of this definition for 'coastal marine area' may be problematic for some councils, given the approaches some are taking to specifically identify (through mapping or other means) the extent of the coastal marine areas in their plans.

On balance, we recommend deleting the definition of 'coastal marine area' from the Definitions Standard.

3.21 Coastal water

3.21.1 Proposed definition

Coastal water has the same meaning as in section 2 of the RMA (as set out in the box below)

means seawater within the outer limits of the territorial sea and includes—

- (a) seawater with a substantial fresh water component; and
- (b) seawater in estuaries, fiords, inlets, harbours, or embayments

3.21.2 Submissions

Three submissions were received on the definition of 'coastal water', from Auckland Council, Christchurch City Council and Isovist.

All three submissions supported the definition without amendment. The submission from Isovist requested the relocation of the definition to sit above the definition of 'commercial activity' to reflect the correct alphabetical order.

3.21.3 Analysis and recommendation

Given the unqualified support for the proposed definition, we consider it should be retained without amendment. We recommend placing the term in the correct alphabetical order (ie, above the definition of 'cleanfill area').

3.22 Commercial activity

3.22.1 Proposed definition

Commercial activity means an activity with the primary purpose of trading in goods, equipment or services.

3.22.2 Submissions

Sixteen submissions were received on the definition of 'commercial activity'. Two submitters supported the definition (Bunnings Ltd, NZTA). The NZTA submission did not provide reasons for the

support, while Bunnings Ltd identified that the definition supported the operational nature of Bunnings Warehouses. Six submitters supported the definition in part, requesting amendments. Eight submitters opposed the definition.

Nine submitters identified that the definition is uncertain as it does not precisely set out what is to be included or excluded from the activity.

Four submitters raised concerns that the definition is very broad, and will trigger the need for subcategories such as to enable different activity statuses.

New Zealand Airports Association Ltd, Christchurch International Airport Ltd and Woolworths New Zealand Ltd requested an approach similar to the Auckland Unitary Plan.

Six submitters requested that offices be specifically included in the definition.

Concerns were raised regarding retail:

- Central Hawke’s Bay District Council sought clarification as to whether retail is to be included in the definition
- four submitters requested retail be included in the definition
- Upper Hutt City Council and Porirua City Council requested retail be excluded from the definition.

Central Hawke’s Bay District Council sought clarification as to whether manufacturing of goods is to be included in the definition.

Federated Farmers requested “equipment” be removed from the definition as it is not useful, while goods and services are defined in tax law.

Four submitters raised concerns with the use of “primary purposes”, including whether this means that secondary purposes get subsumed into the commercial activity attaining the one activity status.

Western Bay of Plenty District Council identified that there may be other activities with the same purpose that should not be caught within the definition – for example, community-provided financial advice or counselling. Its view was that the definition needed a reference to profit-making purposes.

3.22.3 Analysis and recommendations

Like all activity based definitions proposed for the planning standards, this definition purposefully provides a broad construct for commercial activities. This creates a frame against which individual councils will need to identify whether there are specific activities they wish to include or exclude from this activity through either subcategories of the definition, or rules.

We agree that definitions of ‘primary’ and ‘secondary’ purposes can be problematic. As the intent is to enable ancillary activities, that should be specifically identified within the definition. As raised in submissions, offices are part of the ancillary activities associated with trading of goods, equipment or services. Therefore we recommend the addition of the words “ancillary activity” so that “offices” ancillary to the commercial activity are clearly included in the definition.

Federated Farmers identified that what constitutes goods and services is well defined through other legislation in New Zealand, and the word “equipment” is unnecessary in the definition. While it is true that goods and services are well defined legally, we consider the differentiation of “equipment” within this definition clarifies that trading or hiring of equipment that is not used to produce

particular goods (eg, paint scaffolding) is a commercial activity. The inclusion of this term removes any ambiguity.

Western Bay of Plenty District Council identified that “profit-making” needs to be included in the definition in order to separate out other activities, such as community-based financial services, that should not be included. We consider “profit-making” may be problematic for monitoring and compliance, and is not strictly a resource management purpose. The Oxford English dictionary definition of ‘trading’ as a noun is: “The action or activity of buying or selling goods and services”. We consider this is sufficient for the purpose of differentiating between activities. However, any additional exclusions specifically required by individual local authorities can be developed by defining subcategory definitions or rules.

Whether a council chooses to enable retail activities (which clearly fall within the definition of ‘commercial activity’), or to exclude specific industrial activities, high-technology industrial activities, heavy industrial activities or manufacturing activities (industrial activity by definition) in their commercial areas or in a particular area, can be achieved through rules. Those inclusions or exclusions should not be set at a national level, as the existing development mix and consequential planning needs of each local community are different.

On balance, after considering the matters raised in opposition and submitters’ suggested amendments to the notified definition, we consider that, subject to the amendments recommended in the above analysis, a definition of commercial activity should be included in the National Planning Standards.

We recommend amending the definition of ‘commercial activity’ in the Definitions Standard as follows:

Commercial activity means ~~an any activity with the primary purpose of trading in goods, equipment or services. It includes any ancillary activity (for example, administrative or head offices).~~ any activity with the primary purpose of trading in goods, equipment or services. It includes any ancillary activity (for example, administrative or head offices).

3.23 Community corrections activity (new requested term)

3.23.1 Submissions

A definition for ‘community corrections activity’ was not provided in the draft version of the standards available for public submissions. Instead, the Department of Corrections requested this definition in its submission.

Community corrections activities include service centres that provide for probation, rehabilitation and reintegration services and general office administration such as compiling reports. They also include community work facilities, where offenders report to and then travel onwards from to supervised work, and community corrections sites that support offenders living in a community.

The Department of Corrections’ submission requested this definition because it covers the non-custodial activities usually not undertaken using designations in the way that custodial facilities are. It raised the point that it makes submissions on most plans on a one-by-one basis requesting provision for this definition. However, it would make sense to address this at a national level because the types of activities the definition covers have similar effects and there are a limited number of them in each community but they are located nationwide. The Department of Corrections noted that including this definition in the standards would allow it some certainty in

seeking to provide for increasing offender numbers, bearing in mind the long timeframes needed to obtain planning consent for these types of activities.

We sought feedback from our pilot councils on the definition of 'community corrections activity'. Most of the feedback was in favour of including the definition or saw no problems with including it. One feedback point questioned whether there was a need to include this definition because the activity may be similar to other office activities. One council referred to the link between this definition and whether plan rules should authorise these activities in industrial or commercial zones.

3.23.2 Analysis and recommendations

We have recommended very few additional definitions be included in the standards. However, we have done so for this definition because we agree with the Department of Corrections that it is a definition suitable for national standardisation on the basis that the range of activities that come within the definition have similar effects and there are a limited number of them in each community but they are located nationwide. Including this definition will help the Department to manage forward planning.

In addition, we have consulted with our pilot councils on this term and feedback from them is largely favourable with very few issues raised.

In relation to whether the definition is needed given the effects of the activities are similar to office activities, we consider that these are not office activities that come within the definition of 'commercial activity'. This is because the 'commercial activity' definition requires the activity to be trading in goods, equipment or services.

For the issue raised in feedback about which zones are appropriate for these activities, whether commercial or industrial, we consider that the provision of the definition does not pre-empt any particular rules or any particular zoning. The decision about how to manage these activities through rules lies with councils. Councils may also provide subcategories of this definition if required.

Accordingly, we recommend including a definition of 'community corrections activity' in the Definitions Standard as follows:

Community corrections activity means the use of land and buildings for non-custodial services for safety, welfare and community purposes, including probation, rehabilitation and reintegration services, assessments, reporting, workshops and programmes, administration, and a meeting point for community works groups.

3.24 Community facility

3.24.1 Proposed definition

Community facility means a non-profit facility primarily for recreational, sporting, cultural safety and welfare, religious or similar community purposes.

3.24.2 Submissions

Twenty-two submissions were received on the definition of 'community facility'. Two submitters (NZTA, Fonterra Ltd) supported the definition, neither providing reasons for the support. Thirteen submitters supported the definition in part; requesting amendments or raising concern with parts of the definition. Seven submitters opposed the definition.

Five submitters identified that the definition is unclear, noting that it does not precisely set out what is to be included or excluded from the activity. They considered that this creates unreasonable uncertainty.

Western Bay of Plenty District Council, Hutt City Council and Queenstown-Lakes District Council suggested the term “primarily” creates a need for discretion and should be removed.

Housing New Zealand, Christchurch City Council and Auckland Council sought clarification about whether particular activities were to be included or excluded from the definition. They considered the proposed definition creates unreasonable uncertainty for these activities and will be problematic when using the definition.

Activities raised included police stations; women’s refuges; parks, sports fields; non-profit private motocross; private recreation or sports facilities available to the public; libraries; learning, education, evening classes in facilities and community educational facilities; entertainment activities; spiritual activities; small-scale health care facilities like clinics and pharmacies unless they are welfare facilities; movie theatres; and hospitals and health centres.

Eleven submitters raised concerns with the “non-profit” part of the definition. They queried its RMA purpose, identified the focus should be on the facility rather than its ownership structure and raised consequential difficulties with compliance and monitoring. PSPIB/CCPIB Waiheke Inc, AMP Capital Shopping Centres Pty Ltd and Stride Property Limited sought the following amendment to the definition: “means a generally non-profit ...”.

The following practical considerations were raised:

- Many organisations fundraise by charging for the use of facilities.
- Swimming pools and museums operate on a commercial basis (council-owned enterprises) but are heavily subsidised for community use.
- If a facility is not profit driven, but could conceptually make a profit, does this then remove it from the definition of community facility?

The New Zealand Law Society asked if “non-profit” is sufficiently clear to cover occasional hire as is the intent of the definition.

Hutt City Council supported use of the term “not-for-profit” but suggested amending the definition to “a non-profit facility for recreation, sporting, cultural, safety and welfare, religious or similar community purposes”.

The Department of Corrections supported the definition, with its ability to envisage co-location of government services on a single site (eg, Police, Corrections and Ministry of Social Development).

Fire and Emergency New Zealand asked for emergency services to be excluded from this definition, and that a separate emergency services definition be added. It identified that emergency services create different environmental effects to other community activities and should be considered separately.

Fire and Emergency New Zealand suggested that using terms “safety and welfare” may have unintended planning consequences.

Canterbury District Health Board identified the definition may have adverse implications for the delivery of healthcare and care facilities within Christchurch City due to the non-profit criterion. It suggested incorporating “health and well-being” into the definition to enable healthcare services, care facilities, and community support groups around specific well-being issues.

Federated Farmers and Christchurch City Council suggested “similar community purposes” is too vague, especially for an activities-based plan.

Additional definitions sought by Christchurch City Council, Upper Hutt City Council and Porirua City Council include:

- cultural, recreation, education, entertainment and spiritual activities
- profit-generating community activities.

3.24.3 Analysis and recommendations

Primary use and “generally”

We agree that working out what is “primary” and “secondary” purposes can be problematic and that the word “primarily” should be removed. In the same vein, we consider the suggestion that the term “generally” be incorporated into the definition requires a judgement call, which raises the same problems and should not be included in the definition.

We recommend removing the phrase “primarily for” and instead referring to “ancillary activities that assist with the operation of the community facility”. This will encompass activities like administrative offices, fundraising, charging for library books, and any other activities that are necessary for the successful operation of the community facility.

Similar community purposes

We agree that the term “similar community purposes” is too vague. If it is removed, this general definition creates the frame against which individual councils can identify whether there are additional specific activities they wish to include or exclude from the definition through either subcategories or rules.

Not-for-profit

There is a need for a community facility to be a “community” asset. The requisite community-based nature of the facility necessarily implies that it must be able to be used and accessed by the community or general public. This access may be with or without charges (eg, libraries, swimming pools), or may be with or without membership fees (eg, local rugby clubs). We therefore recommend that the concept of non-profit be replaced by the concept of public access through the explicit requirement that land and buildings are used by members of the community.

The addition of the need for the facility to be able to be used by members of the community and the removal of “similar community purposes” provide more direction within the definition. However, councils may choose to prepare additional sub-definitions or rules to define whether activities such as private recreation facilities (eg, commercial gyms) should be excluded from consideration as a community facility.

The converse to this argument is that there may be community activities that, depending on other definitions or parameters of use, may or may not be a community facility. For example, buildings housing a women’s refuge could be a community facility or could be a residential activity. The buildings used by volunteer-staffed fire and emergency facilities are not readily accessible by general members of the community and are not a community facility.

Fire and emergency services

Fire and Emergency New Zealand requested that emergency services be excluded from this definition, and that a separate emergency services definition be added. As identified above, the proposed change to the definition that requires a community facility to be used by the community for identified purposes, effectively removes emergency services from this definition because of their exclusivity of use. This will enable councils to develop definitions of emergency services to suit their communities' purposes.

Ancillary activities

The intent is to enable ancillary activities, including fundraising, educational activities and administrative offices, that are either fundamentally part of the community activity using the community facility or are necessary to provide the funds or to keep the community activity operating. These should be specifically enabled by the definition.

Co-location of government services

The Department of Corrections supported the proposed definition, with its ability to envisage co-location of government office and administration services on a single site (eg, Police, Corrections and Ministry of Social Development). This is quite different from other concepts of community facilities, which reflect facilities like community swimming pools, community theatres, and churches. The amendments proposed place some additional limits on what may be considered a community facility. Removing the not-for-profit assessment, and instead requiring facilities to be used by members of the community, may affect how the different activities under the Department of Corrections fit under this amended definition, depending on how it designs its activities and facilities. Councils may choose to provide separate definitions or sub-definitions to address this matter.

Religious purposes

We also recommend amending the term "religious purposes" to "worship purposes" to be more encompassing of spiritual purposes.

Health and well-being

Canterbury District Health Board requested the definition incorporate health and well-being to enable healthcare services, care facilities and community support groups around specific well-being issues. We agree that while some of these activities and facilities should fit under the umbrella of activities that can occur within a community facility, others may not. We agree that some publicly accessible health activities should be envisaged within community facilities. However, "well-being" is a wide term – with a broader meaning than "welfare" – and involves a judgement. We consider its inclusion in this definition may lead to unintended consequences.

Additional definitions

Some submissions requested that additional definitions be provided for cultural, recreation, education, entertainment and spiritual activities, and for profit-generating community activities.

Given the commonly understood meaning for some of these terms, the ability for councils to prepare sub-definitions, existing definitions in plans, the ability to place additional management regimes through rules, and the removal of the non-profit aspect of this definition, we consider

additional definitions are not required at the national level. Councils can choose if they need more specific definitions to reflect their communities' needs.

Summary

On balance, after considering the matters raised in opposition, questions on activities to consider, and suggested amendments to the notified definition posed in submissions, we consider that, subject to the amendments recommended in the above analysis, a definition of community activity should be included in the National Planning Standards.

We recommend amending the definition of 'community facility' in the Definitions Standard as follows:

community facility means land and buildings used by members of the community as a non-profit facility primarily for recreational, sporting, cultural, safety, health, and welfare, or worship purposes religious or similar community purposes. It includes provision for any ancillary activity that assists with the operation of the community facility

3.25 Contaminant

3.25.1 Proposed definition

Contaminant has the same meaning as in section 2 of the RMA (as set out in the box below)

includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy or heat—

when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or

when discharged onto or into land or air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged

3.25.2 Submissions

Auckland Council was the only submitter on the definition of 'contaminant'. It supported the inclusion of this definition.

3.25.3 Analysis and recommendation

Given the support, we recommend retaining the definition of 'contamination' in the Definitions Standard without amendment.

3.26 Contaminated land

3.26.1 Proposed definition

Contaminated land has the same meaning as in section 2 of the RMA (as set out in the box below)

means land that has a hazardous substance in or on it that–

- (a) has regionally significant adverse effects on the environment; or
- (b) is reasonably likely to have significant adverse effects on the environment

3.26.2 Submissions

Auckland Council was the only submitter on the definition of ‘contaminated land’. It supported the inclusion of this definition.

3.26.3 Analysis and recommendation

Given the support, we recommend retaining the definition of ‘contaminated land’ in the Definitions Standard without amendment.

3.27 Coverage

Refer to section 3.15 “Building Coverage” for submissions, analysis and recommendations on the definition for ‘coverage’.

3.28 Cultivation (new recommended term)

Refer to section 3.34 “Earthworks, Land disturbance and Cultivation (new recommended term)” for submissions, analysis and recommendations on the definition for ‘cultivation’.

3.29 Discharge

3.29.1 Proposed definition

Discharge has the same meaning as in section 2 of the RMA (as set out in the box below)

includes emit, deposit, and allow to escape

3.29.2 Submissions

Two submissions were received, from Auckland Council and the New Zealand Law Society, on the definition of ‘discharge’. Both submitters supported the use of the RMA definition.

3.29.3 Analysis and recommendation

Given the support for the proposed definition, we recommend retaining the definition for ‘discharge’ in the Definitions Standard without amendment.

3.30 Drain

3.30.1 Proposed definition

Drain means any artificial watercourse, open or piped, that is designed and constructed, or used, for the purpose of the drainage of surface or subsurface water.

3.30.2 Submissions

A total of 19 submissions was received on the definition of ‘drain’.

One submitter supported the definition without amendment (NZTA) but did not provide reasons for the support. The remainder of submissions either opposed or sought amendments to the definition.

Many submitters¹⁵ requested amendments to the proposed definition of ‘drain’ to clearly distinguish it from other “artificial watercourses” referred to in the definition of ‘river’ in section 2 of the RMA:

river means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)

Submitters observed that the definition of ‘river’ in section 2 of the RMA uses the words “artificial watercourse” as a collective term to describe a range of artificial watercourses with different functions and values. They therefore sought a clear distinction between a ‘drain’ and other artificial watercourse.

Some submitters¹⁶ stated this distinction could be achieved by amending the definition of ‘drain’ to explicitly exclude irrigation canals, water supply races and canals for the supply of water for electricity power generation. An alternative suggestion was to insert the word “land” before the word “drainage” to distinguish drains from other infrastructure used to convey (or ‘drain’) water from one location to another.

A related issue that submitters¹⁷ frequently commented on was the difficulty in distinguishing natural watercourses that have been modified over time from artificial watercourses. Submitters observed the terms “modified watercourse” and “artificial watercourse” are referred to in the RMA definition of ‘river’, but are not themselves defined in the RMA. A suggestion from one submitter (Waikato Regional Council) was to include a new definition of ‘artificial watercourse’, defined as “a watercourse with no natural headwaters”. In addition, the submitters suggested renaming the term as a ‘farm drainage canal’ to align with the terminology used in the RMA definition of ‘river’.

¹⁵ Auckland Council, Christchurch City Council, Federated Farmers, Genesis Energy, Greater Wellington Regional Council, Horticulture New Zealand, New Zealand Law Society, NZPI, RMLA, Survey and Spatial New Zealand, Te Rūnanga o Ngāi Tahu, Trustpower Ltd, Waikato Regional Council.

¹⁶ Genesis Energy, NZPI, RMLA, Trustpower Ltd.

¹⁷ Auckland Council, New Zealand Law Society, Horizons Regional Council, Nelson City Council, Survey and Spatial New Zealand, Waikato Regional Council.

Submitters also stated that while it was necessary to distinguish between artificial and modified watercourses, there was often a poor correlation between the naturalness of a waterway and the values or functions it provides (Wellington Regional Council, Te Rūnanga o Ngāi Tahu). Te Rūnanga o Ngāi Tahu submitted that many historical drains in the South Island have become naturalised over time and now provide habitat for taonga, including tuna (eels). Conversely, it noted that many natural waterways have been straightened and their functions reduced to primarily drainage. These comments were also reflected in Greater Wellington Regional Council's submission, which stated that many artificial watercourses in the region provide ecosystem services and habitat that require recognition through plan provisions.

Housing New Zealand and West Coast Regional Council sought the omission of the words "piped watercourses". West Coast Regional Council stated drains are defined in its regional plan as only "open watercourses", with rules requiring setback to these watercourses in order to mitigate the risks to water quality. However, in the context of a piped watercourse, these setbacks would be inappropriate as the risk of contamination would be negligible.

3.30.3 Analysis and recommendation

A definition of 'drain' was proposed for inclusion in the Definitions Standard to distinguish artificial watercourses constructed to drain excess water from the land from artificial watercourses constructed and used for other purposes.

We agree with submitters that an unqualified reference to 'artificial watercourses' may create confusion given this phrase is commonly used to describe a collection of watercourses with different purposes. However, we consider it is necessary to retain this phrase to enable a distinction between watercourses that have been artificially constructed and watercourses that are natural or that have been modified over time. We consider an amendment to the definition to explicitly exclude irrigation canals, water supply races and canals for electricity power generation will avoid this confusion. An added benefit of this approach is that the explicit exemption of these watercourses from the definition of 'drain' will also address concerns raised by submitters that the phrase 'drainage of water' could include conveyance of water through a canal.

With respect to Waikato Regional Council's request to rename the term as 'farm drainage canal', we consider this is not appropriate. The proposed definition of 'drain' in the Definitions Standard is intended to include a broader range of drainage systems than those found solely in farm or rural environments. We note that, in some urban catchments, drains are constructed and installed below the ground surface to permanently lower the water table. For this reason, we consider retaining the general term 'drain', rather than replacing it with 'farm drainage canal', to be appropriate.

We also acknowledge and accept the submissions by Te Rūnanga o Ngāi Tahu and Greater Wellington Regional Council that over time (and largely as a consequence of human activities) the values and functions of natural and artificial watercourses have changed. Some artificial drains have been naturalised and these now provide cultural, social, ecological and economic benefits. Conversely, some natural waterbodies have degraded to the point where they no longer provide the ecosystem, cultural or social services they once did.

The matters raised in these submissions touch on matters of policy, rather than definition. We consider these matters are best considered and addressed during plan development processes (eg, limit-setting processes under the National Policy Statement Freshwater Management) to ensure objectives, policies and methods remain appropriate for the values of the waterway.

Finally, in response to those submissions that seek to constrain the definition to only ‘open’ watercourses, we consider this is not appropriate given plans take different approaches to defining ‘drain’. Instead, we consider the definition should be general as this provides flexibility to local authorities to narrow the term as appropriate. For example, the word ‘open’ could be inserted in addition to ‘drain’ where there is a need to limit the application of a policy or rule to only open drains. Leaving the term general provides this flexibility.

We recommend amending the definition of ‘drain’ in the Definitions Standard as follows:

Drain means any artificial watercourse, ~~open or piped, that is designed, and constructed, or used, for the purpose of the drainage of surface or subsurface water, but excludes artificial watercourse used for the conveyance of water for electricity generation, irrigation, or water supply purposes,~~

3.31 Drinking water

3.31.1 Proposed definition

Drinking water means water intended to be used for human consumption; and includes water intended to be used for food preparation, utensil washing, and oral or other personal hygiene.

3.31.2 Submissions

Twelve submissions were made on the definition of ‘drinking water’.

Two submissions (Auckland Council, NZTA) supported the definition of ‘drinking water’ as proposed by the draft standard. The remaining 10 submitters sought amendments to the definition.

Seven submitters requested the omission of the words “intended to be” from the definition, stating these words introduced an element of subjectivity that was inconsistent with core drafting principles.¹⁸ Submitters suggested various options, including replacing the words “intended to be used for” with “authorised to be used for” (Genesis Energy, Trustpower Ltd), and omitting them entirely (Canterbury District Health Board, Nelson Marlborough Health). Canterbury District Health Board and Nelson Marlborough Health stated omission of the phrase would also result in better alignment with the definition of ‘drinking water’ in the Health Act 1956. In contrast, Ravensdown supported the inclusion of the words “intended to be”, stating they aligned with the definition in the New Zealand Drinking Water Standards.

Greater Wellington Regional Council opposed including the words “water intended for human consumption” on the basis that it inappropriately narrowed the definition and excluded water consumed by animals. As a consequence, it submitted, changes would be required to its regional plan to explicitly refer to “drinking water for animals” to ensure the continued application of plan provisions.

Horticulture New Zealand requested a new definition for the term ‘essential drinking water and sanitation’ to differentiate water used for these purposes from water used for other end uses.

¹⁸ Canterbury District Health Board, Genesis Energy, Meridian Energy, Nelson Marlborough Health, NZPI, RMLA, Trustpower Ltd.

3.31.3 Analysis and recommendations

We acknowledge the views expressed by submitters regarding the suggested wording changes, particularly the phrase 'intended to be' which arguably introduces a level of subjectivity into the definition.

We initially explored options for altering the definition to reflect this feedback, but in the end, our ability to amend the definition is restricted by the legislative requirement for the planning standards to be consistent with any national environmental standard (s58C(1)(b)(i) RMA).

The section 32 report notes that the definition was specifically drafted to be consistent with both the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 and the Drinking Water Standards for New Zealand 2005 (revised 2008) published by the Ministry of Health. The latter standard was revised again in 2018 and we note it continues to be consistent with the draft definition notified for consultation.

The NES-Sources of Human Drinking Water notes the definition as being:

drinking water—

- (a) means water intended to be used for human consumption; and
- (b) includes water intended to be used for food preparation, utensil washing, and oral or other personal hygiene

Ministry of Health Drinking Water Standards for New Zealand 2005 (revised 2018)

Drinking water- water intended to be used for human consumption, food preparation, utensil washing, oral hygiene or personal hygiene.

The draft planning standards definition was intended to apply in the same circumstances in plans as the NES definition applies, and as a result, must continue to be consistent with that NES definition. However, our research showed there are still synonyms of 'drinking water' being used in plans. Standardising this definition in the planning standards would reduce this inconsistency.

For these reasons, we are not able to make the changes suggested by submitters as this would change the definition to a degree that results in it not being consistent with the NES definition.

We also note here for clarity that this term/definition is not similar to other examples in the planning standards where we do recommend alternative definitions for terms used in a national environmental standard eg, earthworks and its associated definition in the NES-Telecommunication Facilities. In that example, the term and its definition is clearly restricted in scope to the activities being carried out under that national environment standard. Consequently, for terms like earthworks that have a broader applications in plans, there is still a need to standardise the term and the definition for all those other contexts.

We note the central government review currently underway of the NES-Sources for Human Drinking Water. We sought feedback from the Ministry of Health and our colleagues within the Ministry for the Environment on the likelihood of this definition being amended as part of that review. They were not in a position to confirm this at this stage.

On balance, we consider that it is better to include the definition now regardless of the final outcome of that review to remove inconsistencies currently in plans. We also note that, if necessary, any revised policy position on the drinking water definition in the NES would be required to go through a public consultation process. That process could also be used to signal the requirement to

make any consequential changes deemed necessary to the planning standards definition (and seek feedback on that as well).

We also acknowledge the concern raised by Greater Wellington Regional Council regarding the narrow scope of the definition. However, in light of the above position, we accept there is little choice but for councils to separately define livestock drinking water and have provisions relating to those.

Therefore, we recommend retaining the definition in the Definitions Standard without amendment.

3.32 Dry abrasive blasting

Refer to section 3.1 “Abrasive blasting, Dry abrasive blasting and Wet abrasive blasting” for submissions, analysis and recommendations on the definition for ‘dry abrasive blasting’.

3.33 Dust

3.33.1 Proposed definition

Dust means all non-combusted particulate matter that is suspended in the air, or has settled after being airborne. Dust may be derived from materials including sand, cement, fertiliser, coal, soil, paint, ash, animal products or wood

3.33.2 Submissions

Eight submissions were received on the definition of ‘dust’. Of these, four supported the definition in its current form while the other four submissions sought amendments.

Atlas Concrete Limited, J Swap Contractors Limited, NZTA and Auckland Council all supported the inclusion of the definition without amendment.

Genesis Energy Limited requested the omission of the word “non-combusted” to avoid a contradiction with the latter part of the definition, which refers to “ash”, as ash is a by-product of combustion.

Horticulture New Zealand’s submission noted that the current definition captures sprays and vapours and suggested including the word “solid” as shown:

means all non-combusted solid particulate matter.

NZPI and Waitomo District Council both requested that the term “rock” be added to the list.

3.33.3 Analysis and recommendation

We agree with submitters that the words “ash” and “non-combusted” create an internal conflict within the definition and that this should be addressed.

We note policy statements and plans often distinguish between “ash” and “sediment/wood based” dust, and employ different management strategies to address adverse effects. For example, windblown dust (eg, construction sites) is often managed through the application of water to exposed surfaces. However, this approach would be inappropriate for combustion-based activities; instead, source control or emission-reducing technologies may be employed to manage effects.

Given the above points, we consider the most appropriate solution is to omit the word “ash” from the definition. This approach will ensure that where policy statements and plans include different provisions to manage “ash” and “dust”, these independent provisions continue to operate as originally intended.

We also agree it is appropriate to include “rock” as an additional material listed in the definition and recommend amendments accordingly. With respect to the request to insert the word “solid” before the words “particulate matter”, we also agree this is appropriate to distinguish dust from sprays and vapours.

We recommend amending the definition of ‘dust’ in the Definitions Standard as follows:

Dust means all non-combusted solid particulate matter that is suspended in the air, or has settled after being airborne. Dust may be derived from materials including rock, sand, cement, fertiliser, coal, soil, paint, ~~ash~~, animal products ~~or~~ and wood

3.34 Earthworks, Land disturbance and Cultivation (new recommended term)

3.34.1 Proposed definitions

Earthworks means any land disturbance that changes the existing ground contour or ground level

Land disturbance means the alteration to land, including by moving, cutting, placing, filling or excavation of soil, cleanfill, earth or substrate land

3.34.2 Submissions

A combined total of 60 submissions was received on the definitions of ‘earthworks’ and ‘land disturbance’ (35 and 25 submissions respectively). In general, submissions discussing the definition of ‘land disturbance’ often cross-referred to or repeated matters they raised in discussing the definition of ‘earthworks’. Given this overlap, and to enable a comprehensive assessment of the issues raised, we have grouped and summarised the submissions relating to these two definitions together.

Four submitters¹⁹ stated standardisation of both definitions was appropriate and requested their retention without amendment.

The implications of standardisation for district and regional plan outcomes was frequently expressed as a concern by submitters, particularly local authorities. Submissions on this point frequently requested amendments to either expand or narrow the range of activities covered by each definition. Some submitters considered the proposed definition of ‘earthworks’ to be too narrow, potentially excluding common ‘earthworks’ activities. In contrast, 14 submitters stated the proposed definition was too expansive, including activities commonly excluded from the definition of ‘earthworks’ in regional and district plans. These submitters requested a range of amendments to the definition to exclude the following activities: construction, alteration and repair of bores,²⁰ cultivation and harvesting;²¹ fencing;²² forestry;²³ gardening and landscaping;²⁴ grave-digging;²⁵

¹⁹ Atlas Concrete, J Swap Contractors, Vector, Wel Network.

²⁰ Northland Regional Council.

²¹ Horticulture New Zealand, Federated Farmers.

²² Te Rūnanga o Ngāi Tahu.

mining and quarrying;²⁶ maintenance of walking tracks;²⁷ placement of cleanfill;²⁸ and temporary activities.²⁹ In contrast, one submitter sought the inclusion of specified activities including boring, ripping, thrusting and drilling activities.³⁰

Overlap between the definitions was also raised as a concern by submitters. Four submitters³¹ requested amendments to distinguish the types of activities covered by each definition. In contrast, eight submitters requested the two definitions be amalgamated into a single definition of ‘earthworks’.

A lack of descriptive content in the definition of ‘earthworks’, and use of cross-referencing between definitions, was considered confusing by some submitters.³² They saw a potential outcome as being plans that would be difficult to navigate.

Some submitters also considered the proposed ‘earthworks’ definition to be too “urban-focused”³³ and requested reconsideration of the definition, having regard to its application to rural activities. Additionally, some submitters³⁴ references to “existing ground or ground contour levels” were indicative of a definition drafted with height to boundary controls and district plan provisions in mind.

Submitters were polarised in their support for or opposition to the inclusion of the phrase “existing ground contours and ground levels”. Some submitters³⁵ requested the removal of the phrase, stating these matters were best addressed in rules. In contrast, some submitters supported the retention of the phrase on the basis that it exempted below-ground works from the definition and distinguished the term from ‘land disturbance’ (Powerco, NZPI). These submissions requested the word “permanently” be inserted before the phrase “existing ground or contour levels” to ensure activities that result in temporary changes to ground surfaces continue to be excluded.

The potential for misalignment of the proposed definition of ‘earthworks’ with definitions in National Environmental Standards (NES) was raised in four submissions.³⁶

Transpower Ltd submitted that the words “land disturbance that changes ground or contour levels” inappropriately narrowed the definition, creating an inconsistency with the much broader definition of ‘earthworks’ contained in the NES for Electricity Transmission (NES-ET). A consequence of this narrow definition, it submitted, was that activities with the potential to destabilise the National Grid would be exempt from rules in district plans.

The issue of misalignment with the NES for Plantation Forestry (NES-PF) was also raised as a concern by submitters (Forest and Bird, Forestry Owners Association, RMLA). Forest Owners Association requested amendments to align the proposed definition with the definition contained in the NES-PF,

²³ Forest Owners Association.

²⁴ Housing New Zealand, Horticulture New Zealand, Te Rūnanga o Ngāi Tahu, Tauranga District Council.

²⁵ New Plymouth District Council.

²⁶ Bathurst Resources, Straterra.

²⁷ Northland Regional Council.

²⁸ Northland Regional Council.

²⁹ Powerco.

³⁰ Auckland Council.

³¹ Auckland Council, Bathurst Resources, Thames Environmental Consultancy, Straterra.

³² Synlait Milk, Western Bay of Plenty District Council.

³³ Horticulture New Zealand, Federated Farmers.

³⁴ Auckland Council, Bay of Plenty Regional Council.

³⁵ Hamilton City Council, New Plymouth District Council.

³⁶ Forest and Bird, Forestry Owners Association, RMLA, Transpower Ltd.

to ensure consistency between the two documents. Forest and Bird and RMLA both submitted that the implications of incompatible definitions needed to be considered and addressed. RMLA stated incompatible definitions would create challenges for plans that have aligned their provisions with those in the NES-PF.

Finally, submitters expressed concern about references to “cleanfill” in the proposed definition of ‘land disturbance’. Submitters³⁷ stated this was reference was inappropriate, given the proposed definition for ‘cleanfill’ was that it is an area used for the deposition of inert material, rather than an inert material. On this basis, they requested its omission from the definition.

3.34.3 Analysis and recommendation

The terms ‘earthworks’ and ‘land disturbance’ accounted for 30 per cent of submissions, reflecting a high degree of interest and engagement from stakeholders. The number of submissions received on these two terms is also indicative of the extensive use of these terms in a range of planning documents and within various contexts.

Within district plans, the term ‘earthworks’ is often referred to in provisions that regulate land use activities to manage adverse effects on amenity, natural character, and risks to human health associated with the use and development of contaminated land. Within regional plans, the term is referred to in land use controls used to manage effects on water quality and ecosystems.

Furthermore, land use controls to avoid or mitigate natural hazards or manage adverse effects on indigenous biodiversity often include restrictions on earthworks. These may be located in either district plans or regional plans, depending on the division of responsibility.³⁸

We consider the extensive use of the term ‘earthworks’ throughout regulations, policy statements and plans illustrates the need for a definition that caters to the different contexts within which it may be applied. The term ‘earthworks’ is commonly referred to in regional policy statement provisions,³⁹ particularly when describing potential issues, outcomes and anticipated environmental results. For this reason, we agree with submitters⁴⁰ that a reasonably broad definition is appropriate, so as to recognise the breadth of circumstances within which it may be used. A definition that is narrow, or that anticipates a particular end use (eg, application in only district plans or within urban environments), could have significant implications for the application of the term at a regional or district plan level.

We also agree with submitters that due consideration should be given to the alignment of the proposed definition of ‘earthworks’ with that in NES-ET and NES-PF.⁴¹ While we note these regulations only regulated activities associated with electricity transmission and forestry, we also consider compatibility between the definitions is desirable, given local authorities are required⁴² to

³⁷ NZTA, Tauranga City Council, the oil companies.

³⁸ As determined by the relevant Regional Policy Statement.

³⁹ A review indicates the term ‘earthworks’ is used throughout the following Regional Policy Statements: Auckland Council, Bay of Plenty Regional Council, Environment Canterbury, Gisborne District Council, Greater Wellington Regional Council, Hawke’s Bay Regional Council, Nelson City Council, Northland Regional Council, Otago Regional Council, Southland Regional Council, Taranaki Regional Council, Tasman District Council, Waikato Regional Council, West Coast Regional Council,

⁴⁰ Christchurch City Council, Synlait Milk, Transpower

⁴¹ Forest and Bird, Forestry Owners Association, Resource Management Law Association, Transpower Ltd

⁴² Section 44A of the RMA.

amend rules in regional and district plans that duplicate or conflict with NES requirements. For this reason, we have considered in further detail how these definitions may be aligned.

The NES-ET and NES-PF definitions of 'earthworks' include two important components: a description of the material (as clay, soil, sand, rock or earth) and a description of the actions associated with disturbance of the material (including blading, boring, ripping, stockpiling, placement, cutting, filling and excavation of material). We consider these to be essential elements of an 'earthworks' definition and recommend changes accordingly.

We note these changes will accommodate concerns from submitters that the definition was too 'urban-focused', and will also ensure better alignment with definitions in regional and district plans,⁴³ with an additional benefit that fewer consequential amendments to plans will be required. We also agree with submitters that the definition of 'earthworks' should not be constrained to works that alter existing ground contours or ground level,⁴⁴ given our comments above about the wide contexts within which the definition may be used. For this reason, we have recommended omitting this part of the definition.

We have also considered concerns from submitters that the definition is too expansive and will capture activities currently exempt from rules in regional and district plans. While we note section 58I(3) of the RMA allows local authorities to make consequential amendments to plans to preserve plan intent,⁴⁵ we consider an extensive use of exemptions could result in repetitive plans that are difficult to navigate. We consider a more efficient approach is to exclude minor activities and activities not generally considered 'earthworks' from the definition as this will reduce the number of 'exceptions' required in policies and rules.

Activities we consider meet the 'minor category', and therefore should be excluded, include gardening and the installation of fence posts. Where there is a need to regulate the effect of these activities, local authorities may include provisions that reference these activities by name.

We also consider the definition should exclude 'cultivation and harvesting', as these activities are not commonly understood to be 'earthworks'. However, we recognise the effects of cultivation and harvesting often require management,⁴⁶ and for this reason we recommend including a new definition of 'cultivation' in the standard.

We do not recommend excluding 'landscaping', 'mining' and 'quarrying' from the definition, as these activities often involve the movement of large amounts of 'earth', with effects that require a regulatory response. For similar reasons, we do not recommend excluding subsurface activities (eg, trenching and laying of pipes) from the definition. Controls and limits on these activities are sometimes required to mitigate effects on water quality or natural hazard risks and therefore it is appropriate these activities are included within the definition of earthworks.

However, we also agree it is appropriate to distinguish between activities that permanently change ground level and those that do not. We consider this is best achieved by retaining a definition of 'land disturbance', but redefining the term as an activity that does not result in a permanent change to profile, contour or height of the land. This, we note, will enable the broad definition of earthworks to be retained where appropriate, while allowing local authorities to include specific controls or exemptions for land disturbance where appropriate.

⁴³ Auckland Council, Western Bay of Plenty Regional Council, West Coast Regional Council.

⁴⁴ A Tindale, NZPI, Transpower Ltd.

⁴⁵ Including amendments to exclude activities from rules where appropriate.

⁴⁶ Eg, for water quality purposes.

Finally, we also agree with submitters that reference to cleanfill in the definition of 'land disturbance' is inappropriate given the context of the proposed definition. For this reason we do not recommend its inclusion in our revised definition of 'earthworks'.

We recommend amending the definitions of 'earthworks' and 'land disturbance' in the Definitions Standard as follows:

Earthworks means alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling, or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts. any land disturbance that changes the existing ground contour or ground level

Land disturbance means ~~the alteration or disturbance of the~~ alteration or disturbance of the land (or any matter constituting the land including soil, clay, sand and rock), that does not permanently alter the profile, contour or height of the land. including by moving, cutting, placing, filling or excavation of soil, cleanfill, earth or substrate land

We also recommend including a new definition of 'cultivation' in the Definitions Standard as follows:

Cultivation means the alteration or disturbance of the land (or any matter constituting the land including soil, clay, sand and rock) for the purpose of sowing, growing or harvesting of pasture or crops

3.35 Educational facility

3.35.1 Proposed definition

Educational facility

- (a) means the use of land or buildings for the primary purpose of regular teaching or training in accordance with a pre-set syllabus by suitably qualified or experienced instructors; but
- (b) does not include any industrial activity.

3.35.2 Submissions

Seventeen submissions were received on the definition of 'education facility'.

Four submitters identified concerns that the definition will have unintended consequences on tertiary education facilities such as universities, because education and research are interlinked, and the definition of 'industrial activity' includes laboratories, research and development. Western Bay of Plenty District Council requested that the definition lists the specific industrial activities it is seeking to exempt.

Horowhenua District Council requested the preclusion of industrial activity be removed. Its reasons were that the scale of some industrial-based education facilities can be compatible with non-industrial activities; education based industrial activities may not be best located on industrial land; and they are often provided with non-industrial based education.

Four submitters questioned whether the definition captures kindergartens, early childhood centres, preschools and childcare centres. Most of these submitters intimated that it should include them.

Four submitters raised concerns with the limit to "pre-set syllabus", noting it will be difficult to administer, monitor and enforce, and does not add to the understanding of teaching or training.

Taupō District Council raised concerns this part of the definition will exclude after-school care and holiday programmes.

Christchurch City Council and Central Hawke’s Bay District Council raised concerns with the limitation of “suitable qualified or experienced instructors”. They noted it will be difficult to administer, monitor and enforce, and does not add to the understanding of teaching or training.

Hutt City Council requested the definition be amended to address facilities where teaching and training are not the primary purpose.

Hutt City Council identified that a definition of a facility should not define the use of the location.

Christchurch City Council identified that associated definitions should be hyperlinked.

Central Hawke’s Bay District Council asked what the frequency of “regular teaching” is.

NZPI identified the definition does not allow local communities to exempt various aspects of this activity as they see fit.

Dunedin City Council identified that different education activities have different effects and also different ancillary activities – for example, universities often have shops. It requested that the education facility definition be split into different levels and managed differently in different zones.

The following are other amendments to the definition that submitters sought.

- Hutt City Council sought the definition be amended to “Land or building(s) used for the regular teaching or training in accordance with a pre-set syllabus by suitable qualified or experienced instructors, excluding any industrial activity.”
- Selwyn District Council suggested:
 - removing the reference to research laboratories from the ‘industrial activities’ definition, or
 - amending the reference to “industrial activities” in the ‘educational facility’ definition.
- Additional definitions that Selwyn District Council and Auckland Council sought include definitions of:
 - research activity – meaning the use of land and buildings for the purpose of scientific research, inquiry or investigation, product development and testing, and consultancy and marketing of research information, and including laboratories, quarantines, pilot plan facilities, workshops and ancillary administrative, commercial, conferences, accommodation and retail facilities
 - tertiary education facilities, care centre, student accommodation, community use of education and tertiary facility, and secondary education facilities.

3.35.3 Analysis and recommendation

Exclusion of industrial activities

Several submissions raised a concern with the exclusion of industrial activities, on the basis of universities undertaking education and research. The previously notified definition of ‘industrial activity’ specifically included “research laboratories used for scientific, industrial or medical research”. We have recommended elsewhere that this reference be removed from the definition of ‘industrial activity’ and that the definition be amended, to read “means an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials

(including raw, processed, or partly processed materials) or goods. It includes any activity that is ancillary to the industrial activity.”

Horowhenua District Council identified that industrial-based education has different effects from other industrial activities, and is often co-located with other non-industrial education. We agree with that premise. On the basis that the ‘industrial activity’ definition no longer references research laboratories, and that industrial education can be accommodated and co-located with non-industrial education, we see no need to specifically exclude industrial activities from the definition of ‘educational facilities’.

Early childhood education typologies and pre-set syllabus

Several submissions questioned whether the definition captures different early childhood education typologies. Others raised difficulties with the pre-set syllabus, its implications for some educational activities, and compliance, monitoring and enforcement. Considering the different types of education providers, at the different education levels or typologies, it is evident that some providers work to a syllabus and some to a curriculum, while some early learning centres just focus on play with no curriculum, and universities do not have a set curriculum. On this basis, we consider the focus on a pre-set syllabus excludes a significant number of educational activities and is not appropriate for this definition.

The intent of the definition is to enable the differentiation of facilities that are exclusively used for teaching and training activities and any ancillary activities. Listing the different typologies of education activities is problematic. Only some educational establishments are state funded and registered; some are private schools and are just registered to the New Zealand Qualifications Authority. Any conceptual requirement for registration with any particular body to delineate educational activities is equally problematic. Ministry of Education groups educational activities into early learning, school and further education.

We consider that grouping of educational activities/sectors is appropriate, but the terms used are not appropriate to adopt in plans because plans use more commonly understood terms. The zone framework has also been prepared to reflect these commonly understood terms. For example, we prefer the term “tertiary education” rather than “further education”, and prefer the term “child care services” rather than “early learning services”. We believe the variety of childcare centres, as well as schools, and other tertiary or further education facilities should be able to meet this definition.

Requirements for qualified instructors

We also consider the concern raised by Christchurch City Council and Central Hawke’s Bay District Council about the requirement for suitably qualified or experienced instructors is equally valid. Some early childhood education activities particularly provide for teaching by parents (eg, Playcentres). In addition, even if education centres include staff qualified in early childhood education, they are unlikely to have all staff fully qualified. Many have a mix of unqualified staff, those studying for qualifications and qualified staff.

Primary purpose and frequency of teaching

Hutt City Council requested that the definition be amended to address facilities where teaching and training are not the primary purpose, and identified that a definition of a facility should not define the use of the location. Central Hawke’s Bay District Council asked “how often is regular teaching”.

We agree that it is not its regularity of use that is important; it is that the facility is used for those teaching and training purposes by the education sector.

The purpose of the definition is to provide for those specialist facilities used by the education sectors for teaching and/or training. As such, the use of those places is tied to the definition of the facility. It is the educational purposes that separate educational facilities from other types of facilities. We acknowledge that teaching or training type activities can occur in other types of buildings and facilities, such as ESOL teaching in office buildings and training held in community facilities. What separates those activities from how the educational facility definition should be applied is that the teaching or training activity is ancillary to the main activity occurring on the site ie, it is not the primary purpose.

Scale of effects associated with different facilities, and ancillary activities

It is evident from some plans that some councils currently use additional definitions of research activities, tertiary education facility, student accommodation, community use of education and tertiary facilities, and secondary education facilities. We do not consider that those matters need to be defined at a national level, nor are they relevant to all resource management plans. If a council considers that it needs separate provisions to reflect different educational facility types that either occur or may occur in its community, it can achieve this either through locally derived subcategories of the definition or through associated rules.

We also agree with Dunedin City Council comment that different types of education facilities have different effects and different ancillary activities eg, universities have shops. We believe that including reference to ancillary activities will enable shops, banks, student travel, Cafeteria's, administrative offices, and those other activities that can form an integral part of an education facility, as long as they are supporting the activity and not a separate commercial activity not used by the particular educational activity's students.

We recommend amending the definition of 'education facility' in the Definitions Standard as follows:

educational facility

~~(a) means the use of land or buildings used for teaching or training by child care services, schools, and tertiary education services, including any ancillary activities for the primary purpose of regular teaching or training in accordance with a pre-set syllabus by suitably qualified or experienced instructors; but~~

~~(b) does not include any industrial activity.~~

3.36 Effect

3.36.1 Proposed definition

Effect has the same meaning as in section 3 of the RMA (as set out in the box below)

includes—

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and

- (d) any cumulative effect which arises over time or in combination with other effects— regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact

3.36.2 Submissions

Auckland Council was the only submitter on the definition of ‘effect’. It supported the inclusion of this definition.

3.36.3 Analysis

Given the support, we recommend retaining the definition of ‘effect’ in the Definitions Standard without amendment.

3.37 Environment

3.37.1 Proposed definition

Environment has the same meaning as in section 2 of the RMA (as set out in the box below)

- includes—
- (a) ecosystems and their constituent parts, including people and communities; and
 - (b) all natural and physical resources; and
 - (c) amenity values; and
 - (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters

3.37.2 Submissions

Auckland Council was the only submitter on the definition of ‘environment’. It supported the inclusion of this definition.

3.37.3 Analysis

Given the support, we recommend retaining the definition of ‘environment’ in the Definitions Standard without amendment.

3.38 Esplanade reserve

3.38.1 Proposed definition

Esplanade reserve has the same meaning as in section 2 of the RMA (as set out in the box below)

means a reserve within the meaning of the Reserves Act 1977—

- (a) which is either—
 - (i) a local purpose reserve within the meaning of section 23 of that Act, if vested in the territorial authority under section 239; or
 - (ii) a reserve vested in the Crown or a regional council under section 237D; and
- (b) which is vested in the territorial authority, regional council, or the Crown for a purpose or purposes set out in section 229

3.38.2 Submissions

Auckland Council was the only submitter on the definition of ‘esplanade reserve’. It supported the inclusion of this definition.

3.38.3 Analysis

Given the support, we recommend retaining the definition of ‘esplanade reserve’ in the Definitions Standard without amendment.

3.39 Esplanade strip

3.39.1 Proposed definition

Esplanade strip has the same meaning as in section 2 of the RMA (as set out in the box below)

means a strip of land created by the registration of an instrument in accordance with section 232 for a purpose or purposes set out in section 229

3.39.2 Submissions

Auckland Council was the only submitter on the definition of ‘esplanade strip’. It supported the inclusion of this definition.

3.39.3 Analysis

Given the support, we recommend retaining the definition of ‘esplanade strip’ in the Definitions Standard without amendment.

3.40 Fertiliser

3.40.1 Proposed definition

Fertiliser

- (a) means any substance or biological compound that is—

- (i) applied to plants or soils, whether in solid or liquid form; and
 - (ii) supports or sustains the growth, productivity or quality of soils, plants or, indirectly, animals; but
- (b) does not include livestock and human effluent, or pathogens

3.40.2 Submissions

Thirteen submissions were received on the definition of ‘fertiliser’. Of these submissions, two supported the definition in its current form and eight sought amendments. Three submissions strongly opposed the current definition and sought its removal.

The definition of ‘fertiliser’ was supported without amendment by Atlas Concrete and NZTA. Other submitters sought specific inclusions or exclusions as detailed below.

Auckland Council, Federated Farmers and Tegel Foods requested a change to include “livestock effluent”, stating this substance was commonly used as a fertiliser.

Fertiliser Association of New Zealand, Otago Regional Council and Ravensdown opposed the inclusion of the words “any substance that is applied to plants or soils ... and that supports or sustains plant growth”. They stated the wording was too broad and included substances that aid plant growth but that are not traditional fertilisers (eg, pure water, weed mat).

Federated Farmers requested an amendment to exclude “lime” from the definition of fertiliser, on the basis that lime is generally understood to be a soil conditioner, rather than a fertiliser.

Environment Canterbury requested an amendment to include “chemical compounds” within the definition of fertiliser, stating that not all fertilisers are derived from biological sources.

In addition to these submissions, a group of submitters opposed the definition outright. They requested the definition of ‘fertiliser’ in section 3 of the Agricultural Compounds and Veterinary Medicines (Exceptions and Prohibited Substances) Regulation 2011⁴⁷ (ACVM) be substituted in its place. All four submitters stated alignment of the definitions would ensure consistency and accord with key drafting principles. The definition of ‘fertiliser’ in the ACVM is set out below:

fertiliser—

- (a) means a substance or biological compound or mix of substances or biological compounds that is described as, or held out to be suitable for, sustaining or increasing the growth, productivity, or quality of plants or, indirectly, animals through the application to plants or soil of—
 - (i) nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chlorine, and sodium as major nutrients; or
 - (ii) manganese, iron, zinc, copper, boron, cobalt, molybdenum, iodine, and selenium as minor nutrients; or
 - (iii) fertiliser additives; and
- (b) includes non-nutrient attributes of the materials used in fertiliser; but
- (c) does not include substances that are plant growth regulators that modify the physiological functions of plants

⁴⁷ Ballance Agri-Nutrients, Gisborne District Council, Fertiliser Association of New Zealand, Ravensdown.

Gisborne District Council also supported alignment with the definition of fertiliser in the ACVM, stating a more prescriptive definition that includes a list of major and minor nutrients provides greater certainty to plan users. The submitter included definitions of 'fertiliser', taken from its air quality and freshwater plans, stating that both of these definitions exhibited a high degree of compatibility with the ACVM definition.

Also in support of the ACVM definition, the Fertiliser Association of New Zealand stated the definition was narrower, and therefore more accurate than the proposed definition. In the standard definition, it singled out the wording of "any biological compound ... that supports plant growth" as being too broad and open to "technical manipulation". For example, the submitter stated biological compounds could include compounds that indirectly support plant growth (eg, growth regulators, biological fungicides, insecticides and herbicides) but that are not generally considered to be fertilisers.

3.40.3 Analysis and recommendations

Divergent views were expressed as to the appropriateness of the proposed definition of 'fertiliser'. Some submitters considered the definition to be generally appropriate, subject to minor amendments, while others considered substantive changes were necessary.

We have analysed and evaluated submissions that requested the ACVM definition, before considering submissions that sought minor changes to the definition.

We considered the definition of 'fertiliser' in section 3 of the ACVM during the development of the Definitions Standard. The section 32 report⁴⁸ states that in general the rural sector preferred the ACVM definition but it was rejected on the basis that the ACVM was 'under review' and therefore potentially subject to change.

While it is generally preferable to wait until the outcome of a legislative review before attempting alignment, we consider that issue in itself is not cause to reject the ACVM definition outright. We note from discussions with Ministry for Primary Industries staff that the changes being considered to the definition of 'fertiliser' in the ACVM are not substantive, and do not materially change the definition. We have therefore considered the existing definition of 'fertiliser' in the ACVM and evaluated the appropriateness of the definition for inclusion in the Definitions Standard.

Support for the ACVM definition was generally provided on the basis that the definition was more specific. In particular, submitters considered the ACVM definition distinguished 'fertilisers' as compounds derived for the explicit purpose of supporting or sustaining plant growth.

We have compared the draft definition with the ACVM definition, and agree the ACVM definition is less ambiguous and more specific. The ACVM definition includes the words "*that is described as, or held out to be suitable for, sustaining or increasing the growth*" (emphasis added). This wording helps to distinguish fertilisers from other substances that assist plant growth, but that are not *held out* for that explicit purpose (eg, water, biosolids, weedmat). In contrast, the draft definition is broad, referring to "*any substance or biological compound that is applied to plants or soils ... and supports or sustains growth*" (emphasis added).

We agree with submitters⁴⁹ that the above point illustrates the need for a definition that is narrowly and appropriately constrained, so as to avoid technical manipulation. We note case law has established that definitions should describe the exact meaning of a word, or an exact statement of

⁴⁸ Page 91.

⁴⁹ Fertiliser Association of New Zealand.

the description of the nature, scope or meaning of something.⁵⁰ Guiding principles⁵¹ have also established that words should be given their “plain ordinary meaning”, with the test being, “What would an ordinary reasonable member of the public examining the plan have taken from the planning document?”

Applying the test above, we consider there is a wide range of substances that could, inappropriately, fit within the draft definition of ‘fertiliser’. In contrast, the words “that is held out for”, as contained in the ACVM definition, helpfully narrow the definition, and the list of eight major and nine minor nutrients further narrows the term. We consider these aspects of the ACVM definition should be incorporated into a revised definition of ‘fertiliser’ and have recommended amendments accordingly. We consider an added benefit of alignment with the ACVM definition is increased efficiency and easier administration of these separate documents.

However, we also consider the ACVM definition is not fit for purpose in one respect. The definition includes “fertiliser additives”, but does not qualify the term, resulting in an unhelpful and circular reference. We note from Gisborne District Council’s submission that this issue has been addressed in its air quality plan by amending the phrase to state “fertiliser additives that facilitate the uptake and use of nutrients”. We consider this an appropriate solution that should be included in the revised definition.

Having carried out the above analysis, we consider it is appropriate to include a definition of ‘fertiliser’ that is compatible with that in the ACVM. While we note the existing ACVM definition may change as a result of its review, it is important to note we are not seeking to replicate the definition in the ACVM. Rather, we are attempting to produce a definition that is clear, concise and appropriate for use in a planning document, and one that is compatible with terms in other legislation. In this regard, the definition we have proposed meets the test.

Furthermore, while we note there is the option of omitting the definition of ‘fertiliser’ from the Definitions Standard and introducing it later, following the conclusion of the ACVM review, we consider there are limited benefits in a delay. There is no guarantee that a revised ‘ACVM’ definition of fertiliser would be fit for purpose for inclusion in a planning document. Subsequent changes may be needed to the term to make it appropriate. Given there is an opportunity to produce a term that is appropriate and generally compatible, we consider it appropriate to proceed with the definition.

Having considered the existing ACVM definition to be generally fit for purpose, we have considered the remainder of requests from submitters.

The request to include “livestock effluent” was generally made on the basis that livestock effluent is a common fertiliser. However, we note livestock effluent contains other contaminants not typically present in commercial fertilisers (eg, pathogens). These contaminants present different environmental risks (eg, potential adverse effects on human health) and often require different management responses. For this reason, we consider it is appropriate to exclude “livestock effluent” from the definition of ‘fertiliser’.

We note this exclusion will present a challenge for local authorities that include “livestock effluent” within their definition of ‘fertiliser’. However, we consider these challenges can be overcome through making consequential amendments to planning documents to preserve plan outcomes. For example, provisions that regulate “fertiliser use” could be amended to also refer to “livestock effluent”.

⁵⁰ Oxford English Dictionary.

⁵¹ *Powell & Others v Dunedin City Council & Anor* [2004] 3 NZLR 721.

With respect to the request by Federated Farmers to exclude “lime” from the definition of ‘fertiliser’, we consider there are no compelling reasons to do so. The active component of lime is calcium carbonate, an alkaline substance that raises pH and can alter water chemistry. Controls on lime application are sometimes regulated (through provisions that regulate fertiliser use) to avoid adverse effects on water chemistry and aquatic ecosystems. For this reason, we consider it is appropriate that “lime” continues to be included within the definition of ‘fertiliser’.

Finally, we have considered Environment Canterbury’s request to broaden the definition to include “chemical compounds”. We consider our earlier recommendations to adopt the ACVM definition of ‘fertiliser’ generally accommodate this submitter’s concern. Amendments to the definition to explicitly list the major and nine minor nutrients that comprise fertiliser compounds acknowledges Environment Canterbury’s point that not all fertilisers are biological in origin.

We recommend amending the definition of ‘fertiliser’ in the Definitions Standard as follows:

Fertiliser

~~(a)~~ means ~~any~~ substance or biological compound or mix of substances or biological compounds in solid or liquid form, that is described as, or held out to be suitable for, sustaining or increasing the growth, productivity or quality of soils, plants or, indirectly, animals through the application to plants or soil of any of the following:

~~(i) — applied to plants or soils, whether in solid or liquid form; and~~

~~(ii) — supports or sustains the growth, productivity or quality of soils, plants or, indirectly, animals; but~~

(a) nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chlorine, and sodium as major nutrients; or

(b) manganese, iron, zinc, copper, boron, cobalt, molybdenum, iodine, and selenium as minor nutrients; or

(c) fertiliser additives to facilitate the uptake and use of nutrients;

(d) non-nutrient attributes of the materials used in fertiliser.

It does not include livestock effluent, and human effluent, or substances containing pathogens, or substances that are plant growth regulators that modify the physiological functions of plants.

3.41 Footprint

Refer to section 3.17 “Building footprint” for submissions, analysis and recommendations on the definition for ‘footprint’.

3.42 Fresh water

3.42.1 Proposed definition

Fresh water has the same meaning as in section 2 of the RMA (as set out in the box below)

means all water except coastal water and geothermal water

3.42.2 Submissions

One submission was received on the definition of ‘fresh water’. The submission from Auckland Council supported retention of the definition and sought it be retained without amendment.

3.42.3 Analysis and recommendation

Given the unqualified support for the proposed definition, we recommend retaining the definition of ‘fresh water’ in the Definitions Standard without amendment.

3.43 Functional need and Operational need (new recommended term)

3.43.1 Proposed definition

Functional need means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

3.43.2 Submissions

Thirty submissions were received on the definition of ‘functional need’. Of these, nine supported it without further amendments and six suggested some amendments, while 13 submissions were opposed or partially opposed to the proposed definition. The majority of submissions, both supporting and opposed, suggested an additional supporting definition of operational need.

Most of the submissions expressed concern that the proposed definition could be overly restrictive as it could potentially exclude supporting operational facilities from being located in the same environment.

Operational need

Twelve of the 30 submissions recommended that, if this definition is adopted, an additional definition of ‘operational need’ is also included to counter the restrictiveness of ‘functional need’.

Contact Energy also argued that more recent statutory planning documents include policies that refer to both functional needs and operational needs, establishing the need for both definitions.

Most submissions reference the Auckland Unitary Plan for how to define ‘operational need’.

3.43.3 Analysis and recommendation

‘Functional need’ and ‘operational need’ are terms that can be used to justify why activities must occur in particular locations and would benefit from standardisation.

Much of the opposition to the ‘functional need’ term was around the limitation that an activity can only occur in that location. For example, the oil companies raised this point in their submission:

The Oil Companies have concerns that the requirement that activities ‘...can only occur in...’ a particular environment may be too absolute and unduly onerous in certain situations. For example, it is uncertain whether activities such as the fuel pipelines (including wharflines and bunkerlines) used by the Oil Companies to convey fuel between ships at a Port and adjoining

land based bulk storage terminals would be considered to have a 'functional need' to locate in the coastal marine area (CMA) as, technically, they also occur in alternative environments.

In the recent Auckland Unitary Plan process, the term 'operational need' was included in addition to the functional need definition. Genesis Energy Limited provides an explanation of the difference between the two terms while explaining its partial opposition to the 'functional need' definition as:

While the definition of 'Functional Need' is not opposed by Genesis, there are both functional (can only occur in that location) and operational (technical requirements arising because of that location) needs for infrastructure that should be recognised. Genesis' opposition in part to the definition is primarily in relation to a definition being not proposed in the Draft National Planning Standards for 'Operational Need'. The definition does not account for the operational needs of activities that may impact on where they can be located.

Functional need is often a key consideration when an activity can only locate within the coastal marine area (such as a port) and we consider it appropriate to retain the strict requirement that the activity can only locate within that environment. However, we recognise that there can be good reasons why an activity should be enabled to occur in a location even when the activity can occur elsewhere or the activity must locate there for technical reasons. For example, this is often applicable to linear infrastructure that often has to traverse identified earthquake fault lines or flood hazard areas or has a valid reason to locate in the coastal marine area as in the oil companies' example above.

Mercury New Zealand Limited highlighted how the draft approach relates to the NPS for Renewable Electricity Generation (NPS-REG):

The Ministry for the Environment Evaluation Report (Part 2C – Definitions, page 93) notes that the concept in 'functional need' is recognised in Policy C of the NPS-REG, but it does not acknowledge that logistical or technical practicalities and constraints (being the concepts in 'operational need') are also recognised by Policy C of the NPS-REG. Logistical or technical factors are those that would make it very difficult to construct a structure or carry out an activity in any other way.

We consider that the term 'operational need' can be used to cover situations where there are valid reasons why an activity should be enabled to occur in a particular location. We recommend including the term 'operational need' in the Definitions Standard for those provisions where this is the desired approach.

Many of the requests for the inclusion of 'operational need' sought the inclusion of the Auckland Unitary Plan definition of 'operational need'. Two submitters requested a slight variation to the Auckland Unitary Plan, which includes acknowledging logistical factors in the definition. We consider that, due to the level of consistency between the requests for the definition of 'operational need', it is appropriate to include the term as outlined in the recommendation below. We understand that many of the electricity generators were not involved in the Auckland Unitary Plan process due to the low level of generation activity and potential in the area. We consider that the addition of "logistical" to the Auckland Unitary Plan definition will better align the definition with the NPS for Renewable Electricity Generation while not significantly changing the term from the Auckland Unitary Plan definition.

We recommend retaining the definition of 'functional need' and including a definition of 'operational need' in the Definitions Standard as follows:

Operational need means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints'

3.44 Green infrastructure

3.44.1 Proposed definition

Green infrastructure means natural ecosystems and built products, technologies, and practices that primarily use natural elements, or engineered systems that mimic natural processes, to provide utility services. This includes built infrastructure, such as rain gardens, natural elements in modified environments, and natural waterbodies.

3.44.2 Submissions

Eight submissions were received on the definition of 'green infrastructure'. Further input was also received during the consultation period within the context of collaborative policy workshops for the Urban Water Working Group hosted by Ministry for the Environment.

Horticulture New Zealand and Bathurst Resources Ltd both queried why this definition was included when 'green infrastructure' is not a term commonly used in plans.

Horticulture New Zealand was opposed to the definition because it is an urban definition that will have unintended consequences in a rural zone. It requested that if the definition is not deleted, it be replaced with a definition of 'water sensitive urban design' to allow the term to be used in district plans.

Urban Engineers Ltd supported the definition because it normalises the term but suggested deleting the last sentence of the definition to simplify it and align it more closely with international definitions.

Auckland Council supported the definition because the inclusion of the term supports the use of green infrastructure and its potential to integrate into the environment and community differently from traditional infrastructure. However, it was concerned about the broadness of the definition. It requested that the definition be amended to clarify whether some specific wastewater systems that rely on natural processes such as oxidation ponds, work-based systems and bacteria based systems would be included.

Federated Farmers suggested that the definition could include specific reference to a managed aquifer recharge system as an example of green infrastructure.

Some submissions queried the meaning of specific terms.

- "Utility services" should be defined or replaced by "infrastructure services" because the difference is not clear (Christchurch City Council), or should be defined because it is unclear whether a farm dairy irrigator comes within the term "utility service" (Federated Farmers).
- "Natural water bodies" would be confusing to implement (Horticulture New Zealand).
- "Mimic" was questioned because not all green infrastructure mimics natural processes. Refer to "augment" as well as "mimic" (NZTA).
- "Natural ecosystems" and "natural elements" are ambiguous. Although they are intended to refer to these systems within green infrastructure, they could be confused with other

applications of these words in plan provision. However, the submitter supported the intent of the definition (Greater Wellington Regional Council).

- “Modified” has been a difficult word to use in a submitter’s plan (Greater Wellington Regional Council)

Christchurch City Council suggested highlighting reliant definitions within the definition, if appropriate, as follows: infrastructure, environments and water bodies.

3.44.3 Analysis and recommendation

This definition provides for a wider concept of infrastructure than the common understanding of the meaning of ‘infrastructure’. ‘Green infrastructure’ includes many new types of devices and assets – many using plants and other natural features – that are increasingly being adopted to provide public services in a range of contexts. These ‘green infrastructure’ assets provide many of the same benefits that traditional ‘built’ or ‘grey’ infrastructure has in the past; however, they also create additional environmental and social co-benefits, such as improved habitat (biodiversity) and amenity/liveability. Having a unique term to differentiate between this specific approach to infrastructure provision and more traditional designs is useful, as it will allow councils and others to clearly and consistently classify the ‘green’ assets they manage and normalise the uptake of some of these emerging best practices.

While it is true that few plans formally define ‘green infrastructure’ at present, councils are increasingly starting to use the term in planning and asset management contexts. Ensuring that there is a consistent definition across the country could therefore help avoid future misunderstanding. Such consistency will also support the contractors (eg, architects, engineers) who work on projects in multiple locations around the country.

Submissions on this definition included mixed views. However, nearly all of the submissions supported the inclusion of the term pending further clarification. Only one submission sought to remove the term entirely as the submitter perceived that the definition consulted on would create further ambiguity in the planning process and would not be appropriately applied in rural contexts.

We consider that the definition is useful in both urban and rural contexts because, in each case, a council or individual may invest in a natural area, feature or process and manage it to provide specific community and environmental benefits. While the types of ‘green infrastructure’ may be quite different in rural and urban contexts, the types of ecosystem services that they provide are often related and thus allow them to share the same category. For example, a farmer may reserve and manage part of their land as a biodiversity corridor, much like a city council might reserve and manage urban greenspace for this purpose. In this example, the farm itself would not be considered green infrastructure (given it is not managed to primarily provide for ecosystem health) but the biodiversity corridor could be considered as a green infrastructure asset.

We do not agree with Horticulture New Zealand’s suggestion to replace the definition of ‘green infrastructure’ with the term ‘water sensitive urban design’ as this term is more narrowly defined and would not capture the range of infrastructure options that sit under green infrastructure (eg, biodiversity corridors or plantings to manage noise pollution or heat island effects). We note also our recommendation elsewhere to delete the term ‘water sensitive design’ from this set of planning standard definitions.

In response to the request about alignment with international definitions, we canvassed a wide range of international definitions, including the ones promoted by this submission. The definition

was edited to reflect the common themes of these definitions: a clear requirement to provide both environmental and community benefits.

In regard to the requests for specific inclusions to aid in interpretation (eg, oxidation ponds, aquifer recharge systems), we consider that, as the definition already comprises both broader concepts and some examples to help interpretation, it provides a good level of certainty. We consider that these more specific examples should not be included.

In relation to oxidation ponds, we further clarified the definition to require that 'green infrastructure' comprises a "natural or semi-natural area, feature or process". While oxidation as a process may naturally occur in the environment, the bulk treatment of sewage in a completely artificial environment, such as a concrete tank at a treatment plant, would not meet the test of a "semi-natural" process.

In regard to the request to clarify or remove the term "utility service", we have replaced this term with a broader description of the types of community services that can be provided by green infrastructure.

We considered whether to use the word "augment", as suggested by NZTA. However, we consider that reframing the definition as "a natural or semi-natural area, feature or process, *including* engineered systems that mimic natural processes" (emphasis added) will ensure that the option to "augment" is not excluded.

In relation to the concerns about the use of terms such as "natural water bodies", "natural ecosystems and natural elements" and "modified", we have recommended removing these terms and making additional wording and structure changes as described below to streamline the definition.

We have included a number of small changes in wording to clarify the definition. The intent behind these changes is discussed here.

"Natural or semi-natural"

The term "natural" is not defined under the RMA. In its use here, "natural" refers to the various qualities of environmental systems that exist in the absence of human development. "Natural" does not in this case refer to basic laws of physics (eg, gravity or thermodynamics) or simple chemical reactions (oxidation). While these may commonly be considered "natural processes", they do not reflect the more complex dynamics of natural processes, natural elements and natural patterns that are intended in this use. Policy 13(2) of the New Zealand Coastal Policy Statement 2010 provides further clarification of this term that could support interpretation.

"Area, feature or process"

An "area" could include infrastructure such as urban greenbelts, biodiversity corridors and constructed wetlands. These would typically be represented by a polygon in a geographical information system.

A "feature" refers to aspects such as street trees, green walls and small filtration devices. These would commonly be mapped as a point, rather than a polygon, on geographical information systems.

Natural "processes" include the action of rivers, infiltration of surface water into groundwater, the growth and respiration of plants, as well as the movement of animals and the natural succession of plant species.

Requiring “aspects of” ecosystem health

“Ecosystem health” refers to the general well-being of natural systems and their ability to sustain a diverse range of life-forms. This relates closely to the concepts of mana and mauri within te ao Māori.

This definition requires green infrastructure to provide for aspects of ecosystem health because requiring it to simply provide for ecosystem health comprehensively would be an unrealistically high expectation to place on a single piece of infrastructure. It may contribute, however, by strengthening certain natural processes, elements and patterns (eg, improved fish migration).

Requiring both aspects of ecosystem health *and* services to communities

We have used the conjunction “and” between clauses (a) and (b) to indicate that a piece of green infrastructure must meet *both* of these criteria. This provides the primary distinction between typical infrastructure, which is defined solely in terms of its relationship to providing benefits for human communities, and green infrastructure, which necessarily provides a range of environmental co-benefits.

We recommend amending the definition of ‘green infrastructure’ in the Definitions Standard as follows:

~~**Green infrastructure** means natural ecosystems and built products, technologies, and practices that primarily use natural elements, or engineered systems that mimic natural processes, to provide utility services. This includes built infrastructure, such as rain gardens, natural elements in modified environments, and natural waterbodies.~~

Green infrastructure means a natural or semi-natural area, feature or process, including engineered systems that mimic natural processes, which are planned or managed to:

- (a) provide for aspects of ecosystem health or resilience, such as maintaining or improving the quality of water, air or soil, and habitats to promote biodiversity; and
- (b) provide services to people and communities, such as stormwater or flood management or climate change adaptation.

3.45 Greywater

3.45.1 Proposed definition

Greywater means untreated liquid waste from sources such as household sinks, basins, baths, showers and similar appliances but does not include any sewage

3.45.2 Submissions

Eleven submissions were made on the definition of ‘greywater’:

Three submitters supported the proposed definition without amendment (Auckland Council, Nelson Marlborough Health, NZTA). One submitter requested the deletion of the definition, stating ‘greywater’ can inadvertently include sewage and can have adverse effects on the environment similar to toilet water (Winstone Aggregates).

The remainder of submitters sought changes to improve clarity, or to constrain or expand the type of substances referred to in the definition.

Environment Canterbury, Federated Farmers and Te Rūnanga o Ngāi Tahu requested the explicit exclusion of industrial and trade waste, on the basis that these types of wastes contain contaminants not anticipated by the definition. In addition, sewage (Environment Canterbury) and farm dairy effluent and rural production water (Federated Farmers) were requested to be excluded for similar reasons.

Te Rūnanga o Ngāi Tahu expressed a concern that the definition focused too heavily on the source of the waste (eg, sinks, basins), rather than the contents or contaminants within it. In addition, two submitters considered the reference to households to be inappropriate, on the basis that other institutions, businesses and commercial locations may also discharge greywater (Environment Canterbury, Horizons Regional Council). In contrast, one submitter considered the addition of the word “domestic” would be appropriate to preclude liquid wastes from other sources.

Finally, Environment Canterbury requested the word “appliances” be replaced with “fixtures”, stating the latter word more accurately describes the sanitary fittings referred to in the definition.

3.45.3 Analysis and recommendation

Regional councils have a general function⁵² to control discharges of contaminants to land and water. This function is often exercised through rules that regulate and include specific controls for different types of discharges (eg, sewage, greywater). For this reason, we consider it appropriate to retain separate definitions of ‘greywater’ and ‘sewage’, noting the contaminants present within these discharges may require different management responses.

We agree with submitters that the definition could be improved by the addition of other ‘exclusions’. We note the draft definition would include industrial or trade wastes that are discharged into greywater systems (through sinks and basins). We consider this to be inappropriate and recommend these wastes are explicitly excluded from the definition.

However, we consider an explicit exclusion for “dairy effluent” is not necessary. We consider it would be unlikely for these contaminants to enter a greywater system through the entry points described in the definition (eg, sinks, basins, baths), and in any event these substances are generally regulated through specific definitions and rules.

With respect to the request to exclude “rural production wastewater”, we consider the phrase is somewhat ambiguous. For that reason, we do not recommend any change to exclude this waste from the definition.

However, we agree with submitters that there will be other institutions (eg, residential care facilities, educational facilities) and businesses that carry out activities that are ‘domestic’ in nature, but that would not meet the definition of a ‘household’. To ensure the definition applies to these discharges, we recommend the term “household” is omitted from the definition. We consider the more general phrase “domestic sources” should be inserted in its place to limit the nature and type of the discharge, while still providing flexibility to allow greywater from institutions such as educational and residential care facilities. We consider these changes, in addition to the exclusions above, should address Greater Wellington Regional Council’s concern that the draft definition could inadvertently allow for ‘non-domestic’ wastes to be included in the definition.

Finally, we also agree that a number of minor improvements could be made to the definition. We agree the term “fixtures” is more appropriate than “appliances” when describing the sanitary fittings referenced in the definition. We also consider the word “untreated” should be omitted so that

⁵² Section 30(1)(g) of the RMA.

“treated” greywater is not unintentionally excluded from the definition. We consider the totality of these changes will address the concerns raised by Te Rūnanga o Ngāi Tahu that the definition was too narrowly focused on the source rather than the contents of the waste.

We recommend amending the definition of ‘greywater’ in the Definitions Standard as follows:

Greywater means ~~untreated~~ liquid waste from domestic sources such as household including sinks, basins, baths, showers and similar fixtures, appliances but does not include ~~any~~ sewage, or industrial and trade waste

3.46 Gross floor area

3.46.1 Proposed definition

Gross floor area means the sum of the total area of all floors of all buildings on the site (including any void area in those floors, such as service shafts or lift or stairwells), measured from the exterior faces of exterior walls or from the centre lines of walls separating 2 buildings and, in the absence of a wall on any side it shall be measured to the exterior edge of the floor.

3.46.2 Submissions

Thirteen submissions were received on the definition of ‘gross floor area’.

Fonterra supported the definition without requesting any changes but considered it may be difficult to apply in existing policy statements and plans.

Submissions requested that the definition provide lists of exclusions. Housing New Zealand requested this so that any calculation of gross floor area used to set carparking does not result in increased requirements. Woolworths New Zealand Ltd also requested a number of exclusions to avoid greater areas being included. Gisborne District Council requested that internal carparking be excluded, for the purposes of calculating carparking spaces.

In relation to the inclusion of void areas, Auckland Council and Taupō District Council requested that void areas be excluded. Taupō District Council considered that otherwise mezzanine floors would be counted as a whole floor. The Western Bay of Plenty District Council suggested that the definition does not need to specifically include void areas because they are within the exterior faces of exterior walls and it should be obvious that they are therefore included. For the measurement of void areas, Thames Environmental Consultancy requested that the definition clarify whether stairwells and service shafts are counted as one area for all levels or are counted for each floor.

The Wellington City Council supported the addition to the definition that deals with the measurement method for mezzanine floors, which states “... in the absence of a wall on any side it shall be measured to the exterior edge of the floor”. However, it suggested adding “for example, a mezzanine floor” to this statement to make the intention clear.

Tauranga City Council queried the scope and intention of the definition and considered that the definition should not be limited to commercial developments only.

In addition, Tauranga City Council requested that the definition should also cater for the gross floor area of a single building, not just the gross floor area of all buildings on a site. It was also concerned that this definition would not preclude the use of the term “gross leasable floor area” used in commercial zones.

Auckland Council requested that the definition specify whether basements are included because the definition refers to buildings “on” the site, which implies that only those parts of a building above ground are included.

The Western Bay of Plenty District Council queried the reference to the “centrelines of walls between two buildings” because the presence of wall between two buildings may mean there is only one building, not two. It queried whether that phrase was intended to address two tenancies rather than two buildings.

The Western Bay of Plenty District Council also queried the reliance on exterior edges of floors as a basis of measurement when some buildings, such as a carport over gravel or a pergola over a deck, do not have floors with clear edges.

The Western Bay of Plenty District Council suggested that the definition should be expanded to allow the measuring of gross floor area for separate activities such as a home business within a residential unit.

Auckland Council also suggested that the word “lift” be pluralised to be consistent with “service shafts” and “stairwells”.

Christchurch City Council pointed out a minor highlighting omission for the word “buildings”.

3.46.3 Analysis and recommendations

We do not agree with the submissions requesting itemised exclusions because it is intended that the term ‘net floor area’ be used where the concept of a pared-down floor area excluding parts of buildings is required. Councils will be able to choose whether to use ‘net floor area’ or ‘gross floor area’ in any plan provision. Instead of excluding carparking specifically from the definition, it can be addressed in the rules; for example, “xx number of car parks shall be provided for zz m² of gross floor area. Any floor space being provided for carparking and vehicular access on the site shall be excluded from the carparking calculation.”

Some submissions requested that void areas be excluded. Auckland Council did not provide a reason for this request. Taupō District Council considered that otherwise mezzanine floors would be counted as a whole floor. Western Bay of Plenty District Council pointed out that there was no need to specifically include void areas as they are obviously included. On the basis of this mixture of views, we prefer to retain the specific inclusion for void areas. As to whether or not void areas are measured as part of each floor, or once only, it is intended that void areas are measured as part of each floor. We recommend adding the words “each of” to the phrase to clarify that the void areas are to be measured with each floor, as follows: “... (including any void area in each of those floors, ...)”.

It is apparent from the submission from Taupō District Council that the definition is unclear about whether void areas could relate to the balance of a mezzanine floor. In fact, it is intended that the words “in the absence of a wall on any side, measured to the exterior edge of the floor” apply to mezzanine floors so that they are not measured as a whole floor but rather only to the edge of the mezzanine floor. To clarify this point, we agree with the submission from Wellington City Council that a specific reference to mezzanine floors should be included in the definition and we recommend this addition.

The intention is that this definition and the definition of ‘net floor area’ are suitable for both residential and commercial application, although we acknowledge that gross floor area is often used as a basis for setting carparking requirements in a commercial context. We have recommended

changes to the definition of 'net floor area' in particular to ensure that it covers both applications. But we consider that the definition of 'gross floor area' is sufficiently broadly crafted to cover both and we do not recommend any changes from Tauranga City Council's submission on this point.

We agree with Tauranga City Council's submission that the definition should also cater for the gross floor area of a single building and recommend making changes to the definition to specify that it applies to both a building and buildings. A consideration of plan definitions shows that there is mixture of approaches to this. Some plans only refer to "all buildings" and others cover both single and combined building gross floor area. We consider it would be helpful to include both and, as a result, rules will need to specify whether they are applying the gross floor area of a single building or of all buildings on a site. This also works better with the concept of two buildings joined by a single party wall measured from the centre line of the wall – where a calculation is required of the gross floor area of a single building.

In relation to Auckland Council's request that the definition clarify whether basements are included, we consider that the definition specifies that it applies to the sum of all floors and this would clearly apply to basements. However, to remove the possibility that the phrase "on the site" could be read to mean only above the surface of a site, we recommend deleting the phrase "on the site". Plan rules will therefore need to specify whether the definition applies to a site – or other geographical areas.

This change also helps resolve the Western Bay of Plenty District Council's concern about a shared wall. We recommend retaining the reference to the phrase "centrelines of walls between two buildings". We consider that a shared wall between two buildings does not necessarily mean there is only one building. A town house may be a clearly separate building from its neighbour but share a wall, although in this circumstance the two town houses are likely to sit within one 'site', as defined by the standards, because they are likely to be held in a cross-lease or unit title. The deletion of the phrase "on the site" means that the definition can be applied to a town house that has a shared wall but that also might share a 'site' as defined in the standards.

The submissions highlight the difficulty of setting out a standard measurement method for the gross floor area of buildings, given the multitude of forms that buildings may take.

We consider it is useful to specify that where there are exterior walls, measurement should be taken from the exterior faces of walls, given that litigation has occurred on this issue where this was not clear. It is also useful to clarify that mezzanine floors or buildings that may lack a wall must be measured from the edge of the floor. We acknowledge Western Bay of Plenty District Council's submission that there may be buildings that do not have discernible floors, such as a car port over the ground, but the definition cannot specify a measurement method for all potential configurations of walls and floors. We consider that measurement of these buildings must be completed on a case-by-case basis. We recommend amendments to the layout and wording of the definition to clarify that the measurements methods apply to only those circumstances set out in the definition – that is, where there are exterior walls, where there are shared walls between buildings and where there is no wall or walls (eg, for a mezzanine floor or any building that does not have an exterior wall) but only where the edge of the floor is discernible. This leaves it open for other measurement methods to be used if required to meet other circumstances.

We also consider that the word "exterior" in the description "in the absence of a wall on any side, measured to the exterior edge of the floor" may cause confusion because it may be taken to mean exterior edge of a mezzanine floor when in fact the intention is that it refers to the edge of a mezzanine floor inside a building. The wording is intended to cover both where a mezzanine floor does not meet an exterior wall and where an exterior wall is missing from other buildings, given that the definition of building in the standards does not require any wall. We therefore recommend

removing the word “exterior” from that description to cover both situations. We have also changed the phrase “in the absence of a wall on any side” in case it was taken to mean where there were no walls at all.

We do not agree with the submission from the Western Bay of Plenty District Council that the definition should be expanded to enable the measurement of the gross floor area of activities within a building, such as a home business within a residential unit. We consider that this is a different concept that may be covered by plan rules or a different definition if required.

We note Auckland Council’s suggestion that the word “lift” be pluralised to be consistent with “service shafts” and “stairwells”. In fact, the word “lift” was linked to the following word “stairwells” and so was intended to mean “liftwells”. We recommend changing the word to “liftwells” and deleting the word “or” to improve clarity.

We note Christchurch City Council’s submission about highlighting reliant definitions and recommend this be done.

We recommend amending the definition of ‘gross floor area’ in the Definitions Standard as follows:

Gross floor area means the sum of the total area of all floors of a building or all buildings on the site (including any void area in each of those floors, such as service shafts, ~~or~~ liftwells or stairwells),

- (i) where there are exterior walls, measured from the exterior faces of those exterior walls
- (ii) where there are walls separating two buildings, measured ~~or~~ from the centre lines of the walls separating the two ~~2~~ buildings
- (iii) where a wall or walls are lacking (for example, a mezzanine floor) and the edge of the floor is discernible in the absence of a wall on any side, measured from ~~to~~ the exterior edge of the floor.

3.47 Ground level

3.47.1 Proposed definition

Ground level means—

- (a) the actual finished surface level of the ground after the most recent subdivision that created at least one additional **allotment** was completed (at the issue of the section 224c Certificate or the previous legislative equivalent), but excludes any excavation or filling associated with the construction or alteration of a **building**;
- (b) if the ground level cannot be identified under paragraph (a), the existing surface level of the ground, excluding areas of cut or fill associated with the construction or alteration of a **building**;
- (c) if, in any case under paragraph (a) or (b), a retaining wall or retaining **structure** is located on the **boundary**, the level on the outer surface of the retaining wall or retaining **structure** where it intersects the **boundary**

3.47.2 Submissions

Twenty-five submissions were received on the definition of ‘ground level’.

Two submissions supported the proposed definition. Powerco Limited identified it relates to the definition for 'earthworks' and is required for consistent application of rules. Hamilton City Council requested a minor correction of a typographical error.

Five submissions opposed the proposed definition.

- Greater Wellington Regional Council identified it would constrain the common-sense use of the term by excluding earthworks to create new buildings. It requested the presumption be reversed so existing ground level is the initial premise.
- Christchurch City Council raised a concern that the definition excludes boundary adjustment that may reconfigure land to create additional developable sites, but not additional allotments.
- Kāpiti Coast District Council considered the proposed definition too simplistic, creating difficulties with compliance, on the premise that as long as ground level is changed before a building is proposed, you can make the ground level whatever is desired.
- Housing New Zealand considered the proposed definition will result in perverse outcomes, especially clause (c) in regard to effects on height in relation to boundary if a neighbouring site was modified to the level of the boundary where the retaining wall or structure intersected it.
- RMLA identified the proposed definition does not work well with old sites with retaining walls on multiple boundaries with in-fill housing.

The remaining 18 submissions supported the definition in part. Some supported the definition in principle, but requested a substantial redraft; others simply sought clarification.

Wellington City Council sought clarification on what "on the boundary" means.

Greater Wellington Regional Council identified the definition needed to be more neutral to address regional council purposes such as a small dam.

Beca Ltd sought clarification as to whether alteration or construction of a building relates to an existing building, an under-construction building or a future building.

Western Bay of Plenty District Council identified the definition exemptions should apply to buildings and structures. It also identified that the references to "excavation or filling" and "cut or fill" increases the complexity when the definition of 'earthworks' encompasses all these typologies.

Wellington City Council raised concerns over the limit to 224 Certification, as some subdivisions only required 223 Certification. A suggestion was made for a better link to refer to Computer Freehold Title.

Wellington City Council questioned the exemptions for alteration of a building and questioned whether it was applicable to driveways or just buildings. Upper Hutt City Council, Porirua City Council and Greater Wellington Regional Council requested "but excludes any excavation or filling associated with the construction or alteration of a building" be removed, as this will make height and recession plane simpler to ascertain. Taupō District Council asked how building platforms established at time of subdivision but not built on for years would be dealt with.

Upper Hutt City Council and Porirua City Council identified that clause (a) complicates matters, especially when dealing with flood hazard areas. They identified that if land use and subdivision are required, the ground level is affected by whichever comes first, which may result in unintended non-compliances and complications. The New Zealand Law Society suggested clause (a) should reflect the actual finished surface level complying with terms of both the most recent subdivision and any separate resource consent for earthworks.

Auckland Council and the New Zealand Law Society questioned whether clause (b) needs an additional qualifier to reflect “lawful earthworks” to stop unlawful earthworks being undertaken to establish ground level. NZTA and Angela Crang suggested amending clause (b) to ensure existing surface level relates to an existing date, such as existing at date of the plan, as revised land contours could be established through building additions. The New Zealand Law Society suggested this clause should refer to existing ground level unless it has been altered unlawfully within some nominal period (eg, five years). Angela Craig suggested setting a date.

Horticulture New Zealand identified the inclusion of structures in clause (b) will create some unintended consequences in the Rural Zone.

Horowhenua District Council, Central Hawke’s Bay District Council, Western Bay of Plenty District Council, Gisborne District Council, NZTA and Taupō District Council sought clarification of clause (c) as to where the front of the wall is, what the outer surface is and that a diagram accompany the definition. Wellington City Council raised concerns and sought clarification for the scenario of ground level where the retaining wall support fill is on a boundary. Western Bay of Plenty District Council queried what happens when a retaining wall is along a boundary but does not intersect it. Further, they asked what happens where a retaining wall intersects multiple boundaries. Gisborne District Council sought clarification of how this clause relates to “height in relation to boundary”.

Dunedin City Council suggested that, for retaining walls on boundaries associated with either assessed earthworks or an approved building consent, ground level should be the highest point of fill supported by a retaining wall above, or immediately adjacent to, the site boundary.

Auckland Council requested a definition be provided to address ground level for tree girth measurements.

The following amendment to clause (c) was proposed:

- Amend (c) to “if, in any case under paragraph (a) or (b), a retaining wall or retaining structure is located on the boundary, the level on front the surface of the retaining wall or retaining structure where it intersects the boundary. In most cases the ground level will be on top of the retaining wall/structure, or on the front face of an included retaining wall/structure. When the boundary is on or very close to the front face of a vertical retaining wall/structure, the ground level would be at the bottom of the wall.”

The following alternative definitions were proposed:

- “Ground level means the natural ground level or, where the land has been subdivided, the level of the ground existing when works associated with any prior subdivision of the land were completed, but before filling or excavation for new buildings on the land has commenced.” (Christchurch City Council)
- “**Original Ground Level** means the level, measured above sea level of land on any site prior to modification by earthworks in relation to the proposed activity. Note: For the avoidance of doubt, original ground level may have been lawfully established via a land use consent for earthworks.” (Kāpiti Coast District Council)
- Ground level means:
 - (a) The actual finished surface level of the ground after the most recent subdivision was completed that create at least one additional allotment (at the issue of the s.224(c) Certification, or section 223 Certificate where no section 224(c) Certification will be issued, or the previous legislative equivalents), but excludes any excavation or filling associations with the construction or alteration of a building.

- (b) If the ground level cannot be identified under paragraph (a), the existing surface level of the ground, excluding areas of cut or fill associated with the construction or alteration of a building;
 - (c) If, in any case under paragraph (a) or (b), a retaining wall or retaining structure is located on the boundary, the level on the exterior surface of the retaining wall or retaining structure where the exterior surface intersects the boundary. Where this would include a parapet of any height, the existing surface level of the ground immediately behind the wall or structure. Where the front surface of the wall or structure is up to but not over the boundary, the existing surface level of the ground at the base (toe). (Wellington City Council)
- Ground level means:
 - (a) existing ground level
 - (b) excluding cut and fill associated with buildings or structure
 - (c) the actual finished surface level of the ground after the most recent subdivision that created at least one additional allotment was completed (when the record of title is created)
 - (d) if the ground level cannot be identified under paragraph (a), the existing surface level of the ground:
 - (e) if, in any case under paragraph (a) or (b), a retaining wall or retaining structure is located on the boundary, the level on the exterior surface of the retaining wall or retaining structure where it intersects the boundary. (Greater Wellington Regional Council)

3.47.3 Analysis and recommendations

The proposed definition was framed to establish that existing ground level is the level once a subdivision has been completed but before any further earthworks for buildings are undertaken. We consider that a purchaser of a vacant site in a subdivision should be able to base future building and development on the ground level at the time of purchase. Clause (a) is intended to cover this situation. Clause (b) is intended to cover the situation where any subdivision that created the site was a long time ago and therefore it is not possible to establish the ground level at that time. In this situation, the ground level at the time the definition and associated rule are being considered applies.

We recommend a change from the reference to section 224(c) of the RMA to when title is issued. With electronic lodging, the difference in time between issuing the section 224(c) certificate and issuing titles is minimal. We consider that amending the reference in the definition to when the title is issued better reflects subdivisions that were completed under legislation in force prior to the RMA.

Submissions included requests to remove the words “but excludes any excavation or filling associated with the construction or alteration of a building”. They stated that there was no environmental difference if the ground level was altered for the building with or after the completion of the subdivision. Both Upper Hutt City Council and Porirua City Council stated that:

In terms of the first test, it is common for the ground level of the site to be determined by the level of the ground at the time of subdivision. However, the first test takes this further and excludes any excavation or filling associated with the construction of dwellings. This component of the test overly complicates the definition, especially in relation to flood hazard areas. If a party was to apply for a subdivision and land use together, then ground level would be determined by what activity was undertaken first. For example, if the applicant was to undertake

a subdivision first, and was to fill the site to ensure the ground level was above the flood level, then the ground level at the time of the title would be the filled level. However, if the applicant constructed a dwelling on a filled platform, and then subdivided the site, the fill level would not represent ground level (even though the outcome is the same and is related to the timing of the subdivision). This creates a difficulty with the definition and could result in unintended internal non-compliances and complications when trying to determine the ground level of a site.

The main concept the definition applied was that, at the completion of the subdivision when somebody is likely to purchase the property, this should be the ground level on which any initial development should be based. In large-scale urban developments, earthworks are often undertaken to provide useable areas for the future intended use of the site and completed with the subdivision so that there are marketable properties for sale. We consider that this is still achieved with the deletion of the words “but excludes any excavation or filling associated with the construction or alteration of a **building**” from the definition. We recognise that some plans manage earthworks under future buildings differently from other forms of earthworks (eg, through rule exemptions when within 1 m of a building’s footprint) and the recommended definitions will still enable this type of approach.

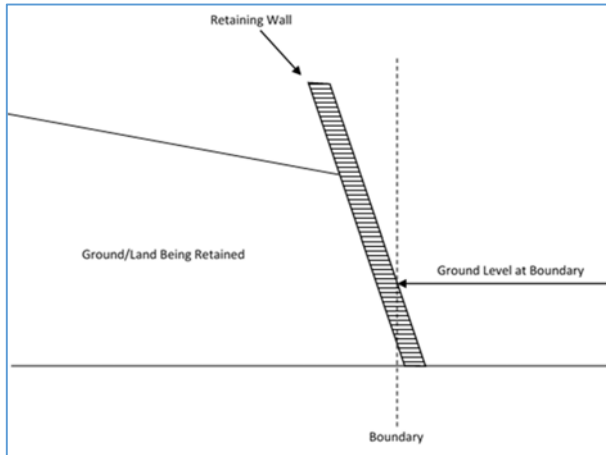
While the recommended definition acknowledges earthworks undertaken prior to the completion of a subdivision, it would apply to situations where no earthworks are undertaken and the ground level is not altered.

Submitters questioned what “on front of the retaining wall” means on the basis that this is important in terms of the meaning of the height in relation to boundary rules and whether it means the top or bottom of the retaining wall. After the Wellington roadshow to explain the draft planning standards, we received advice that this part of the definition would be clearer if it was amended to “the outer surface of the retaining wall”. In its submission, Wellington City Council suggested that “exterior surface” should be used. We agree that this is clearer wording and we have included it in the recommendation below. With the recommended wording, ‘ground level’ is not necessarily the top or bottom of the retaining wall but is the point where the retaining wall intersects the boundary. This reflects that retaining walls generally should not be vertical and can cross the legal boundary, such as in the recent *Roseneath* case in Wellington⁵³.

The diagram below identifies where the ground level is when a retaining wall crosses over legal boundary, which is what clause (c) is addressing. If the retaining wall does not cross the boundary, then that part of the definition will not apply.

We received further comments from the pilot councils reviewing these definitions. These councils pointed out that this definition is focused on defining ground level for subdivision but that regional councils use the term “ground level” in relation to dams. They suggested that the exclusion be expanded to cover not only excavation and filling associated with buildings but also structures. We do not recommend adding this because “structures” may cover retaining walls and works undertaken as part of the subdivision. We do agree that the definition is focused on establishing ground level for land use activities and is not suited to regional council use of the term. Regional councils are more likely to use ‘ground level’ in relation to a measuring point for air or water discharge – that is, levels or concentrations at ground level. Therefore we recommend that this definition be confined to district plans and the combined plan component of district plans and that this be specified in the definition.

⁵³ *Aitchison v Wellington City Council* [2015] NZENVC 163.



Some submitters requested that a diagram be included in the definition to explain clause (c). We have not included diagrams in these standards. More work needs to be done to align different council styles and to provide useful diagrams while leaving it open to councils to prescribe metrics. This is something that can be considered for future standards or guidance. Councils may also include diagrams to illustrate definitions if they wish to.

We recommend amending the definition of ‘ground level’ in the Definitions Standard as follows:

Ground Level (for the purposes of district plans and the district plan component of combined plans) means—

- (a) the actual finished surface level of the ground after the most recent subdivision that created at least one additional allotment was completed (when the record of title is created) ~~at the issue of the section 224c Certificate or the previous legislative equivalent~~, but excludes any excavation or filling associated with the construction or alteration of a ~~building~~ **building**;
- (b) if the ground level cannot be identified under paragraph (a), the existing surface level of the ground, ~~excluding areas of cut or fill associated with the construction or alteration of a building~~ **building**;
- (c) if, in any case under paragraph (a) or (b), a retaining wall or retaining **structure** is located on the **boundary**, the level on ~~front the exterior outer surface~~ **the exterior outer surface** of the retaining wall or retaining **structure** where it intersects the **boundary**.

3.48 Groundwater

3.48.1 Proposed definition

Groundwater means water occupying openings, cavities, or spaces in soils or rocks under the surface of the land

3.48.2 Submissions

Seven submissions were made on the definition of ‘groundwater’.

NZTA and Nelson Marlborough Health supported the definition without amendment. Nelson Marlborough Health stated the definition was broadly consistent with the definition of groundwater in the New Zealand Drinking Water Standards 2005 (revised 2008).

The remaining submissions requested amendments to constrain or qualify the term. Federated Farmers asked for the addition of the phrase “including water in an aquifer” to reflect the relationship between this definition and the definition of ‘aquifer’. Environment Canterbury asked for the addition of the phrase “within the saturated zone” to enable a distinction between water periodically present in the ground after rainfall and irrigation events, and water continually present as a consequence of a high-water table or aquifer.

Otago Regional Council requested the addition of the words “and moving” next to the word “occupying” to recognise the dynamic nature of groundwater.

Auckland Council requested an amendment to either expressly include, or exclude, geothermal water, stating the term “water” was too ambiguous. Finally, the addition of the words “groundwater exposed to air through human activities” was requested by one submitter to enable a distinction between groundwater and surface water.

3.48.3 Analysis and recommendation

The definition of ‘groundwater’ as proposed by the standard is deliberately broad and unqualified, recognising that the concept of ‘groundwater’ varies between policy statements and planning documents.

Some local authorities consider and define ‘groundwater’ as any form of water beneath the ground surface, while others limit the concept to water that is contained within aquifers or that is capable of abstraction from the ground. We consider these differences in concept should be recognised and accommodated, and the definition should constrain itself to only defining essential aspects – namely that it is ‘water’ (as defined in section 2 of the RMA) located beneath or within the ground.

Where necessary, we consider qualifying words or phrases can be used to constrain the term. For example, to address Environment Canterbury’s concerns regarding the breadth of the definition, consequential amendments could be made to plan provisions to insert the phrase “within the saturated zone” wherever the term ‘groundwater’ is used. We consider this could be a satisfactory approach to preserve plan outcomes and intent.

We also consider some of the additions requested do not improve the definition in a meaningful way. As noted above, ‘water’ is defined in section 2 of the RMA and includes water “in all its physical forms”, including “geothermal water”. For this reason, we consider that the explicit phrase “including within aquifers” or a specific reference to “geothermal water” is not necessary. Similarly, the RMA definition of water includes the phrase “whether flowing or not” and therefore the words “and moving” are redundant and not recommended for inclusion.

We consider the addition of the words “and includes such water which is exposed to air through human activities”, as sought by one submitter, is likely to create a conflict with the definition of ‘surface water’. For that reason, we do not recommend their inclusion.

However, we recommend minor amendments to remove the ambiguity introduced into the definition through inclusion of the term “land”. “Land” has a particular meaning in the RMA, which defines it in section 2 as follows:

land—

- (a) includes land covered by water and the airspace above land; and
- (b) in a national environmental standard dealing with a regional council function under section 30 or a regional rule, does not include the bed of a lake or river; and

- (c) in a national environmental standard dealing with a territorial authority function under section 31 or a district rule, includes the surface of water in a lake or river

As clause (a) indicates, “land” includes land covered by water, which would include water within lakes and rivers. Clearly this is not the intent of the definition, and for that reason we recommend replacing the word “land” with the term “ground”.

We recommend amending the definition of ‘groundwater’ in the Definitions Standard as follows:

Groundwater means water occupying openings, cavities, or spaces in soils or rocks ~~under~~ beneath the surface of the ~~land~~ ground

3.49 Habitable room

3.49.1 Proposed definition

Habitable room means any room in a residential unit, visitor accommodation, educational facility, commercial activity or healthcare facility used for the purposes of teaching or respite care or used as a living room, dining room, sitting room, bedroom or similarly occupied room

3.49.2 Submissions

Fourteen submissions were received on the definition of ‘habitable room’. Five submissions supported the definition. One submission (Christchurch City Council) sought its removal from the planning standards. Other submissions sought amendments.

Two submissions (NZTA, Christchurch City Council) only supported the inclusion of the definition if the planning standards also include a definition of ‘noise sensitive activity’ or ‘sensitive activity’.

Two submissions (Housing New Zealand, Environmental Noise Analysis and Advice Service) requested that the definition be amended to reflect the definition of ‘habitable space’ in the Auckland Unitary Plan and New Zealand Building Code. That is, it should exclude “any bathroom, laundry, water-closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes-drying room, or other space of a specialised nature occupied neither frequently nor for extended periods”.

Three submissions (Fonterra, Auckland Council, Horowhenua District Council) requested that the list of activities be expanded to include activities such as papakāinga housing, sporting activities such as clubrooms, staffrooms within industrial activities, and boarding houses.

Christchurch City Council requested that, if the term was retained, “commercial activity” be deleted from the definition, while Housing New Zealand and Christchurch City Council requested that the healthcare activities be refined to include only those that have overnight accommodation facilities. Western Bay of Plenty District Council requested that all of the activities listed should be removed from the definition as some activities and accommodation types may not quite fit in with these broad activity types, such as community centres, marae, churches and sleep-outs.

In relation to the reference to rooms, Christchurch City Council requested that the words “or similarly occupied room” be removed from the definition as it considers that these words do not provide any certainty. Central Hawke’s Bay District Council requested that “offices” be included in the list of rooms, and Western Bay of Plenty District Council requested that “kitchen” be included.

3.49.3 Analysis and recommendation

Related definition

We have considered the matter raised in the submissions from NZTA and Environmental Noise Analysis and Advice Service: that providing a definition of ‘noise sensitive activity’ in the standards is complementary to this term. Our conclusion is that the definition has significant planning implications and requires a wider range of consultation and further input from stakeholders, community and councils. We have therefore decided not to include the definition of ‘noise sensitive activity’ in the standards at this time.

Amendment to list of primary activities containing habitable rooms

We also agree with the submitters that having a list of primary activities that are likely to contain habitable rooms (ie, residential unit, visitor accommodation, educational facility, commercial activity or healthcare facility) within the definition could potentially exclude any habitable rooms that may be within other activities that are not included on the list (eg, marae or community centres). We therefore agree with the submission by Western Bay of Plenty District Council that the list of primary activities within the definition should be removed, as we consider that whether a room is a ‘habitable room’ is not necessarily contingent on what the primary use of the building is.

We note that many district plans include rules in relation to habitable rooms within particular zones, and therefore the room will be related to any activity that is permitted (or consented) within that zone.

Amendment to specific rooms that are considered habitable

Two submissions requested that additions be made to the list of habitable rooms (ie, office and kitchen). The proposed definition has been drafted so that the list is non-exhaustive, meaning that councils could add rooms that are “similarly occupied” within their rule structure.

Other submissions requested that the definition better reflect the definition of ‘habitable space’ in the New Zealand Building Code, which is:

a space used for activities normally associated with domestic living, but excludes any bathroom, laundry, water-closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes-drying room, or other space of a specialised nature occupied neither frequently nor for extended periods.

We consider that the proposed definition is not inconsistent with the New Zealand Building Code as suggested by the Environmental Noise Analysis and Advice Service submission, given that the intent of the definition of ‘habitable space’ in the Building Code differs from what an RMA plan uses the definition of ‘habitable room’ for. In particular, the Building Code seeks to safeguard people against illness or injury or amenity in relation to the building that the person is inhabiting, considering aspects such as internal moisture levels and internal temperature. In addition, it seeks to ensure construction methods reduce noise emitted between household units (eg, in apartment buildings) and that these spaces have enough light and windows.

In contrast, the effects of a ‘habitable room’ that are being managed in RMA plans primarily in relation to reverse sensitivity (eg, noise from neighbouring land uses, or setback from buildings on neighbouring sites). Those effects could also relate to the height of floor levels within floodable areas (as noted in the Western Bay of Plenty District Council submission). In this case, it is more likely that councils will refer to ‘habitable buildings’ than to ‘habitable rooms’, and could define these in terms of the number of habitable rooms within the building.

The section 32 report noted that, as a result of earlier feedback, it was decided that the definition should specify what the principal activity of the room should be for the room to be considered as habitable, instead of using a list of excluded room or space types (which is how the New Zealand Building Code defines ‘habitable space’).

We do not consider that “kitchen” should necessarily fall within the definition of ‘habitable room’, as we consider it is not a room that occupants are likely to frequent for extended periods of time or otherwise seek solace in. The list of habitable rooms is non-exhaustive, and therefore if councils consider that a kitchen is a habitable room (or is within an open kitchen, living and dining area), then they may do so within their rule structure.

We agree with Central Hawke’s Bay District Council that a room used for the purpose of an office needs to be included as a ‘habitable room’. The rationale is that it is a room that occupants are likely to occupy for extended periods of time in and/or, in the case of residential units, offices can often be converted to bedrooms and used as such.

Christchurch City Council in its submission requested the removal of the reference to “similarly occupied room” as it considers that it does not provide sufficient certainty. Although we agree with this argument, we consider that, in the context of the term ‘habitable room’, this phrase is required to allow councils to consider rooms that are not specifically listed within the definition. To ensure certainty in interpretation, we propose that if a council needs to consider any other particular room as a ‘habitable room’ to address the particular environmental characteristics in its area, it will need to specify any other similarly occupied room as a ‘habitable room’ within its rules or other parts of the plan.

We recommend amending the definition of ‘habitable room’ in the Definitions Standard as follows:

Habitable Room means any room ~~in a residential unit, visitor accommodation, educational facility, commercial activity, or healthcare facility~~ used for the purposes of teaching, or ~~respite care~~ used as a living room, dining room, sitting room, bedroom, office or other room specified in the Plan to be a similarly occupied room.

3.50 Hazardous substance

3.50.1 Proposed definition

Hazardous substance has the same meaning as in section 2 of the RMA (as set out in the box below)

includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance

3.50.2 Submissions

We received five submissions on the definition of ‘hazardous substances’. The main point shared by all submitters was that the definition should include the definition in the Hazardous Substances and New Organisms Act 1996, as the current RMA definition simply refers to this.

Hutt City Council and Auckland Council recommended that we include both a box for the RMA definition and a box underneath for the Hazardous Substances and New Organisms Act definition.

Hamilton City Council requested that the definition be amended to include substances with radioactive properties and/or high biological oxygen demand as it believes these are bit covered by the Hazardous Substances and New Organisms Act.

3.50.3 Analysis and recommendations

We agree there is value in also including the definition of ‘hazardous substances’ from the Hazardous Substances and New Organisms Act 1996. We recommend that this change occurs for this definition (and any other instance where this occurs). It will make it easier for plan readers to have this information contained in one place.

In considering Hutt City Council’s submission, we note that the RMA definition does anticipate that there might be other forms of hazardous substances not specifically defined in the Hazardous Substances and New Organisms Act 1996 and that these are also included. We understand that substances with radioactive properties and/or high biological oxygen demand are likely to usually have one or more of the qualities articulated in the definition of hazardous substance, but agree this need not always be the case. If a council wished to be very clear about their inclusion in its plan, we envisage that these terms could be listed in the definitions chapter as being a hazardous substance for the purpose of that plan.

We recommend amending the definition to also include the relevant reference from the Hazardous Substances and New Organisms Act 1996 as set out below:

Hazardous substance has the same meaning as in section 2 of the RMA (as set out in the box below)

includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance. The Hazardous Substances and New Organisms Act 1996 defines hazardous substances as meaning, unless expressly provided otherwise by regulations or an EPA notice, any substance—

- (a) with 1 or more of the following intrinsic properties:
 - (i) explosiveness:
 - (ii) flammability:
 - (iii) a capacity to oxidise:
 - (iv) corrosiveness:
 - (v) toxicity (including chronic toxicity):
 - (vi) ecotoxicity, with or without bioaccumulation; or
- (b) which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any 1 or more of the properties specified in paragraph (a).

3.51 Height

3.51.1 Proposed definition

height [in relation to a district plan]

means the vertical distance between **ground level** at any point and the highest part of the **structure** immediately above that point

height [in relation to a regional plan or regional policy statement or a combined plan that includes a regional plan or regional policy statement]

means is the vertical distance between the highest part of a **structure** and a reference point. The reference point outside the **coastal marine area** is **ground level** unless otherwise stated in a rule. The reference point inside the **coastal marine area** is mean sea level

3.51.2 Submissions

Twenty-nine submissions were received on the definition of ‘height’.

NZTA and Powerco supported both definitions as drafted.

Standard method of measurement requested

Housing New Zealand requested that the definition provide a standard method of measurement (rolling height and/or average ground level) because that would be more efficient and remove the need to address this individually and potentially inconsistently.

Land Information New Zealand (LINZ) pointed out that the two definitions of height only vary with the identification of a reference point.

LINZ believed the reference point should be determined in terms of New Zealand Vertical Datum (NZVD2016).

Single definition for regional and district plans

Environment Canterbury sought a single definition for both regional and district plans to ensure consistency between these documents. It considered that the definition should not refer to structures seeking a broader framing and proposed the following: “Height Means the vertical distance measured between two reference points”.

Ravensdown Ltd considered that both definitions of height are confusing. It requested that the definition be removed unless one definition of height is developed. Forest and Bird also sought one definition if possible. Woolworths New Zealand Ltd likewise sought one definition and, if this is not possible, the removal of the definition.

Allow for other methods of measurement

Auckland Council supported the definition but requested amendments to allow for the average height method as well as the rolling method, which is more suited to the Auckland situation.

Measurement method application to beds of rivers and lakes

Genesis Energy Limited, RMLA and Mercury New Zealand Ltd submitted that the proposed definition in relation to district councils is problematic for structures in or on the beds of lakes and rivers (especially if they span both land and water) and have suggested amendments. Genesis Energy Ltd proposed amendments to allow district plans to specify a separate reference point when measuring height for certain purposes. It suggested amending the definitions to state:

Height: means the vertical distance between ~~ground level at any point and~~ the highest part of ~~the a structure immediately above that point~~ and a reference point. The reference point is ground level, unless otherwise stated in a rule.

RMLA requested that the definition apply to both regional and district plans to achieve consistency. Therefore it also requested the addition of the following: “The reference point inside the coastal marine area is mean sea level”. RMLA also pointed out that guidance on this definition would be useful.

Similarly, Beca Ltd had the view that the definitions should differentiate between a method for land and a method for the coastal marine area – rather than referring to a method for district plans and a method for regional plans. It sought an amendment to the definitions of ‘height’ as follows:

- “Height in relation to ~~a district plan~~ land means the vertical distance between ground level at any point and the highest part of the structure immediately above that point”
- “Height in relation to the coastal marine area ~~a regional plan or regional policy statement or a combined plan that includes a regional plan or regional policy statement~~ means is the vertical distance between the highest part of a structure and ~~a reference point. The reference point outside the coastal marine area is ground level unless otherwise stated in a rule. The reference point inside the coastal marine area is mean sea level”~~

Regional council application

Horizons Regional Council was concerned about the application of this definition to other contexts used by regional councils, such as the height of trees to define indigenous biodiversity habitats. It requested the definition be broadened beyond the application to structures by using the common dictionary meaning of the term.

Unless otherwise stated in a rule

The New Zealand Law Society pointed out that the reference point for height outside the coastal marine area could be stated in a policy or another definition so the phrase should not refer to a rule but instead refer to “unless otherwise stated in a plan”.

Contrary to the method set out in other national instruments

2degrees, Vodafone New Zealand and New Zealand Telecommunications Forum Inc were concerned that the definition of ‘height’ is confusing and open to interpretation and may result in many changes to plan rules. They pointed out that the definition concerning the method by which height is measured is in conflict with regulation 7(6) of the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 (NES-TF). They requested that this conflict should be recognised and resolved by incorporating the NES-TF height measurement regulations into the definition.

Exclusions required and other measurement methods

Woolworths New Zealand Ltd opposed the definition because it is too simplistic, does not provide for the common exclusions such as building services and lift columns and only specifies one measurement method. It requested that the definition of ‘height’ be removed from the standards or that the definition is amended to provide alternative measures for assessing height and to provide for appropriate exclusions. Taupō District Council, Hastings District Council, Christchurch City Council and Horowhenua District Council also requested exclusions for small-scale features or structures like chimneys, masts and antennae so that they are not included in an overall calculation of height because these do not add much to adverse effects like shading, privacy, loss of outlook and visual dominance.

Meaning of the word “structure”

Horticulture New Zealand was concerned about the application of the term “structure” in this definition because it would capture crop protection structures. Its view was that this definition does not provide for application in the rural context.

Structure and building

Western Bay of Plenty District Council, Tauranga City Council and Horowhenua District Council requested that the definition be applied to both structures and buildings.

Rule changes

Gisborne District Council pointed out that the changes in this definition would have significant impacts and significant Schedule 1 changes would be required.

Relationship to ground level

A Crang was concerned about how height was measured from ground level, noting that retaining walls or fences might need to be measured from above or below ground level.

Forest and Bird was also concerned about ground level on sloping ground. It noted that height can be an issue for outstanding natural features and landscapes where a building is only measured on the lower side of a sloping site. It sought a measurement method that provided for a measurement on all sides.

3.51.3 Analysis and recommendations

Submitters raised the concern that ground level is not always the most appropriate reference point for height, especially for structures within riverbeds (land includes land covered by water in the RMA). This concern is being accommodated by the definition referring to a specified reference point. We consider that over land the specified reference point will normally be ground level. Within the coastal marine area, the common approach is for the reference point to be mean sea level. These are not included in the definition but can be specified within the individual rules such as “a building may not exceed 10 m in height measured from ground level”. Under this example, the specified reference point would be ground level.

Submitters also wanted a single definition of height that could be applied across both regional and district levels. With the definition referring to a reference point rather than ground level or mean sea level, we consider that the recommended definition can apply across all levels of plans and policy statements.

Another point raised around the draft definitions was that the definitions would be in conflict with the height measurement definitions in the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016. The requirement for any provisions to specify a reference point will better align with the height definition with the NES-TF. The NES-TF specifies where the height of different structures should be measured from, which is similar to the requirement for a specified reference point in the recommended definition.

Some of the regional council submissions identified that they have provisions related to the height of vegetation and that this would not be possible with the draft height definitions because they are only related to structures (which includes buildings). Submitters also wanted both buildings and structure included in the definition. As a result of changes to the ‘building’ and ‘structure’ definitions in the standard, the recommendation is now to include both building and structure. The changes to

the 'structure' definition mean that this term no longer captures all buildings so both need to be included. 'Feature' is also being added to the definition on the basis that this would then enable the term to be applied to vegetation. 'Feature' has been included over 'vegetation' as this may enable a wider application of the term in case there is something else that has been missed.

Auckland Council raised the point that it has two different methods for determining height and both of these are contained within the definition in the proposed Auckland Unitary Plan. The recommended definition is defining the term 'height' but it is not specifying how it must be used. It could be used for provisions that set either absolute maximum height limits or average maximum height limits, as in the Auckland example. None of the definitions in the standard is determining how the term should be applied.

Some submitters raised the point that the use of local datums would lead to variation across the country in how mean sea level is determined. Submitters requested the mean sea level should be determined in accordance with the LINZ New Zealand Vertical Datum 2016 (NZVD2016). The electronic requirements of the planning standards are that any new plan information using a vertical datum is compliant with NZVD2016. It is expected that the electronic requirements will be enough to standardise the methodology of determining mean sea level.

Some submitters requested that common exclusions to the height limit be included in the definition. We are not proposing to do this on the basis that any exclusion can still be specified in the plan provisions and it would involve the definition affecting local context considerations by specifying what can breach any height limit requirements. Local councils would still be able to include rules or a term and definition within their plan that defined what structures or exclusions would be exempt from the height requirements.

We considered adding a separate leg to address the situation where the reference points are not specified in the plan but this raises the same difficulties of specifying a measurement point appropriate for all situations. Instead, the definition relies on plans specifying the appropriate reference points.

We recommend replacing the two definitions of 'height' with a single definition in the Definitions Standard as follows:

Height means the vertical distance between a specified reference point and the highest part of any feature, [structure](#) or [building](#) above that point.

3.52 Height in relation to boundary

3.52.1 Proposed definition

Height in relation to boundary means the maximum [height](#) of a [structure](#) relative to its distance from the boundary of a [site](#) or other specified location

3.52.2 Submissions

There were 16 submissions on this term, nine of which were from local authorities. Three submissions supported the definition (Gisborne District Council, Auckland Council and NZ Transport Agency). Four of the submissions considered that, in order for this term to be clearly understood, that diagrams that specify a method of measurement are required.

Three submissions (Housing New Zealand, Taupō District Council, Horowhenua District Council) requested that the definition include exclusions such as eaves, spouting up to a certain width, chimneys, aerials, decorative features, masts and antennae.

Christchurch City Council sought that the word “maximum” be removed from the definition. Its reasons were to ensure that the measurement of the height in relation to boundary is not restricted to that part of the structure where it reaches its maximum height, and that the length of the infringement of any height in relation to boundary can also be considered.

Auckland Council requested that the definition be amended to clearly indicate what the distance is in relation to. That is, it should indicate whether the distance relates to the boundary of a site, to the boundary of another specified location or to another specified location (which may or may not be a boundary).

In its submission, Horticulture New Zealand was concerned that this definition is intended for urban areas and could have unintended consequences for the rural area due to the definition of ‘structure’.

3.52.3 Analysis and recommendations

Amendments as a result of changes to other definitions

As a result of changes to the ‘height’, ‘building’ and ‘structure’ definitions in the standard, the recommendation is now to include buildings, structures and features within this term. As a result of changes to the ‘structure’ definition, that term no longer captures all buildings so both ‘building’ and ‘structure’ need to be included. The addition of ‘feature’ to the ‘height’ definition in the Definitions Standard is also considered to be helpful as it would then enable the term to have a wider application in case something else has been missed. (For example, Environment Canterbury identified provisions that related to the height of vegetation, which would not have been possible with respect to the draft height definitions (including height in relation to boundary) given that they were restricted to ‘structure’.)

Use of standardised diagrams and methods of measurement

We acknowledge some submitters consider that the use of a standardised diagram in the standard would be helpful to explain this term. However, we have not included diagrams in these standards. More work needs to be done to align different council styles and to provide useful diagrams while leaving it open to councils to prescribe metrics. This is something that can be considered for future standards or guidance. Councils may also include diagrams to illustrate definitions if they wish to.

Use of inclusions and exclusions

We note that many plans include extensive lists of aspects of buildings and structures that do not need to be subject to any rules in relation to height in relation to boundary rules. Some submitters (all of which are district councils) requested that the term also include such a list. However, we consider that exclusions and inclusions can be addressed in plan rules.

Rewording to ensure definition is not misinterpreted

In its submission, Christchurch City Council made the point that the proposed wording of the definition could be read as relating only to that point on a building or structure where it meets its maximum height. This is not the intention of the definition of height in relation to boundary. It is

intended that it relate to any part of the structure or building that infringes the rule, not just the part that relates to maximum height. We agree with this submission.

Auckland Council also noted in its submission that the second part of the proposed definition could be read in two ways. It requested clarification as to whether the height of the structure relative to its distance from the other specified location was related to the boundary of this other specified location or not. As the name of the term suggests, the definition is in relation to the boundary of a site or the boundary of another specified location. We therefore agree that the definition could be refined in order to make this clear.

Unintended consequences in rural area

Horticulture New Zealand considered that the proposed definition would catch ‘artificial crop protection’ structures and ‘crop support’ structures.

We can see no reason why these types of structures should not be captured by a height in relation to boundary rule. It should be noted that if the local authority did not want to capture such structures, it can still exclude them within the specific rule or use setback rules relating to such structures instead. As a height in relation to boundary rule is considered to be a boundary activity, meaning that if an artificial crop protection structure was caught by such a rule, it would likely be considered a “deemed permitted boundary activity” (under section 87BA of the RMA). That means if the person proposing to build such structures obtains the written approval of the neighbouring property owner for the structure, then permission would be granted without the need to apply for a full resource consent.

In addition, to ensure consistency with the definition of ‘height’ above, we recommend changing the word “location” to “reference point”.

We recommend amending the definition of ‘height in relation to boundary’ in the Definitions Standard as follows:

Height in relation to boundary means the ~~maximum~~ height of a structure, building or feature relative to its distance from either the boundary of a:

- (a) site or
- (b) other specified reference point~~location~~

3.53 Historic heritage

3.53.1 Proposed definition

Historic heritage has the same meaning as in section 2 of the RMA (as set out in the box below)

- (a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:
 - (i) archaeological:
 - (ii) architectural:
 - (iii) cultural:
 - (iv) historic:

- (v) scientific;
- (vi) technological; and
- (b) includes—
 - (i) historic sites, structures, places, and areas; and
 - (ii) archaeological sites; and
 - (iii) sites of significance to Māori, including wāhi tapu; and
 - (iv) surroundings associated with the natural and physical resources

3.53.2 Submissions

Two submissions on the definition of ‘historic heritage’ were received (Auckland Council, Te Rūnanga o Ngāi Tahu).

Auckland Council supported including the RMA definition in the Definitions Standard.

Te Rūnanga o Ngāi Tahu opposed the use of the RMA definition on the basis that the RMA definition includes cultural heritage and sites of significance to Māori under the umbrella of historic heritage, but these terms are not associated with the past in the same way. The submitter stated that sites of significance to Māori and cultural heritage are living places of iwi engagement that have historic, present and future relevance to iwi and that by including them in the definition it is disregarding their present and future. Te Rūnanga o Ngāi Tahu acknowledged that this is an RMA definition but suggested that an alternative, more correct definition be used within the Definitions Standard.

3.53.3 Analysis and recommendations

We acknowledge the support for this definition by Auckland Council. In considering the response from Te Rūnanga o Ngāi Tahu, we note our drafting principles to the definitions include not altering any definitions derived from the legislation. However, we acknowledge the evolving nature of how cultural heritage and sites of significance issues are addressed in plans. We consider that our recommended approach to structuring historic heritage and sites of significance in separate sections of plans and using separate headings addresses the concerns raised in this submission without having to alter this commonly understood definition.

3.54 Home Business

3.54.1 Proposed definition

Home business means an occupation, craft, service or profession that is secondary to the use of the site for a [residential activity](#)

3.54.2 Submissions

Fourteen submissions were received on the proposed definition of home business. All submissions supported the definition but 11 submissions requested amendments before the definition is implemented.

New Zealand Transport Agency, Christchurch City Council and Auckland Council all supported the draft definition.

The majority of the submissions stated that the current definition was too broad and open to interpretation, which could lead to issues in the future. Western Bay of Plenty District Council's submission expressed concern that the use of the phrase "secondary to the use of the site for a residential activity" was not sufficient to prevent other activities such as farming from being considered as a home businesses.

The most common amendment sought (six submissions) was the inclusion of a requirement for at least one resident of the site to be employed as part of the home business activity. Porirua City Council argued that this is a common requirement in many of the district plans.

Waitomo District Council and New Zealand Planning Institute requested that a number of nuisance activities be excluded such as panel beating, spray painting, motor vehicle repair or wrecking, fibre glassing activities, sheet metal work, wrought iron work, activities involving scrap metal or demolition materials or hazardous waste substances, activities involving processing fish or meat, boarding and/or breeding kennels or catteries, or funeral parlours.

Hutt City Council requested the definition be amended to specifically identify types of home business activities.

Housing New Zealand's submission noted that there was a missing link to the commercial element of home business, and that this could result in perverse outcomes in interpretation and application as a result.

Western Bay of Plenty District Council requested clarification that a home business excludes any other activity that is specifically listed in the activity lists for the relevant zone.

3.54.3 Analysis and recommendation

We agree with the submissions points raised that the definition should include a requirement for a resident of the site to be involved in the home business. Without this a standalone business with no residential component could simply operate out of a residential unit.

We agree with the submission points that the definition lacks a reference to a commercial element and so is too broad. The definition should not encompass the undertaking of a hobby or craft at home. Amendments are recommended to link the home occupation to the commercial activity definition to remove this issue. It is recognised that the definition of a commercial activity will include the provision of visitor accommodation services. It is considered that the recommended requirements in the definition of home business that the activity must be 'incidental to the use of the site for a residential activity' places some limit on the scale of the activity. Rules within plans can also further manage what is permitted within the bounds of a home business.

In relation to the requests for specific exclusions from the definition, these definitions are framed broadly to enable such exclusions to be provided in plan rules as required to suit local circumstances.

Christchurch City Council requested that the home business be incidental to the residential activity on the site. We agree them and the Western Bay of Plenty District Council that the word 'incidental' is appropriate and relays the meaning that the home business activity accompanies and is the result of the residential activity. We therefore recommend that the word 'secondary' is replaced by the word 'incidental'.

We recommend that the definition of "home business" be amended as follows:

Home business means a commercial activity that is:

- a) undertaken or operated by at least one resident of the site; and ~~n-occupation, craft, service or profession~~
- b) ~~that is secondary~~ incidental to the use of the site for a residential activity

3.55 Industrial activity

3.55.1 Proposed definition

Industrial activity means an activity for the primary purpose of —

- (a) manufacturing, fabricating, processing, packing, storing, maintaining, or repairing goods; or
- (b) research laboratories used for scientific, industrial or medical research; or
- (c) yard-based storage, distribution and logistics activities; or
- (d) any training facilities for any of the above activities

3.55.2 Submissions

Twenty-six submissions were received on this definition.

The draft definition of ‘industrial activity’ was supported, without amendment, by J Swap Contractors and Fonterra.

Christchurch City Council, Environment Canterbury and Horticulture New Zealand opposed the definition and requested its removal from the standard. Their reasons included that the definition packaged together incompatible activities, with different types and scales of effect (Christchurch City Council), and that a new definition would be inefficient given the widespread use of the RMA terms ‘industrial and trade premises’ and ‘industrial and trade process’ (Environment Canterbury, Horticulture New Zealand).

The remainder of submitters either supported the definition or requested specific amendments. These requests have been summarised under the relevant subheadings below.

Requests to expand the definition to accommodate a broader range of industrial activities

Oceana Gold, Genesis Energy and Mercury New Zealand requested changes to expand the range of activities accommodated within the definition of ‘industrial activity’. Submitters frequently commented that the definition of ‘industrial or trade process’ or ‘industrial or trade premise’ encompassed a broader range of activities than provided for by the draft definition. For example, Genesis Energy submitted that processing of waste material and wastewater would meet the RMA definition of ‘industrial or trade process’, but would not meet the definition of an ‘industrial activity’ as the activity does not relate to the manufacture of goods.⁵⁴

Submitters suggested various options to accommodate a broader range of activities. Genesis Energy and Mercury Energy proposed the addition of the following clause to encompass the full range of activities provided for by the definition of ‘industrial or trade process’:

⁵⁴ Clause (a) of the definition limits the processes described to activities associated with the production of goods.

Industrial activity means an activity for the primary purpose of:

- (a)...
- (b)...
- (c)...
- (d) undertaking an industrial or trade process (as defined in section 2 of the RMA)
- (e)...

An alternative suggestion put forward by Oceana Gold, Waikato Regional Council and RMLA was to incorporate activities associated with an 'industrial or trade premise'. RMLA provided suggested amendments to the definition as set out below:

Industrial activity means an activity for the primary purpose of:

- (a)...
- (b)...
- (c)...
- (d) including any industrial or trade premise (as defined in section 2 of the RMA)
- (e)...

Other submitters suggested simpler approaches. For example, ACI Operations and Auckland Council requested the addition of a new clause to the definition to explicitly include activities associated with the processing of raw materials:

Industrial activity means an activity for the primary purpose of:

- (a)...
- (b)...
- (c)...
- (d) ...
- (e) ...the processing of raw materials...

Some submitters requested an even more expansive definition. The Forest Owners Association requested a change to clause (c) to expand the definition to include "sale and distribution activities" associated with industrial activities. This change, it submitted, would accommodate the sale of petrol at truck stops located within rural areas.

The need to accommodate activities ancillary to an industrial activity was raised by a number of submitters.⁵⁵ Atlas Concrete and Western Bay of Plenty District Council submitted these activities could be accommodated by including the phrase "and other ancillary activities" within the definition.

Requests to narrow the definition

Several submitters requested changes to the definition to narrow the types of activities accommodated within the definition of 'industrial activity'.

Training facilities

The oil companies submitted that the inclusion of "training facilities" could result in the co-location of incompatible activities and reverse sensitivity effects. For example, they submitted the definition

⁵⁵ Atlas Concrete Auckland Council, ACI Operations, Forestry Owners Association, Taupō District Council, Selwyn District Council, Western Bay of Plenty District Council.

could result in heavy industrial activities being situated adjacent to educational facilities. To avoid this occurrence, they requested the following change to the definition:

- (d) any training facilities for any of the above activities but does not include any educational facility

In addition, they submitted that this explicit exclusion would complement the definition of 'educational facility', which explicitly excludes any 'industrial activity'.

Christchurch City Council considered the reference to "training facilities" to be problematic, stating many training facilities associated with an industrial activity form part of a wider educational facility.

Research laboratories

Some submitters considered the inclusion of "research laboratories used for scientific, industrial or medical research" could result in perverse planning outcomes. Selwyn District Council used the example of Lincoln University to illustrate the point. Lincoln University, it stated, is an educational facility that includes on-site research laboratories. Thus by definition the university would be considered an 'industrial activity' against the draft definition. A more appropriate approach, it stated, would be to exclude "research laboratories" from the definition and insert a new definition of research activity with specific controls to manage the effects of the activity.

In contrast, the inclusion of "research laboratories" was supported by Forestry Owners Association, subject to a minor change. The submitter requested the term "research laboratories" be replaced with the more general term "research facilities" to accommodate facilities that carry out research but do not contain on-site laboratories.

Repairing of goods

Western Bay of Plenty District Council submitted it was inappropriate to include "repairing of goods" in the definition, stating this would include a diverse range of activities with different effects (eg, it could include jewellery stores or alternatively auto mechanics).

Miscellaneous

A range of miscellaneous changes were also requested by submitters.

Bunnings and Far North District Council stated a definition of 'light' and 'heavy' industries would be more useful than a definition of 'industrial activity', given district plans often differentiate 'light' and 'heavy' industries and apply different planning responses accordingly.

NZPI submitted mineral extraction activities should be omitted from the definition, but did not provide reasons to support its request. Similarly Waitomo District Council and Christchurch City Council submitted "quarrying activities" should be excluded from the definition given the effects of these activities are quite different.

Western Bay of Plenty District Council submitted that the phrase "for the primary purpose of" should be omitted to avoid the potential for unrelated and secondary activities to establish.

Hamilton City Council sought clarification as to whether the "logistics" activity referred to in clause (c) of the definition included passengers in transit, or just goods.

3.55.3 Analysis and recommendations

The section 32 report states a package of “high-level” land use categories has been included in the Definitions Standard to support the Zone Framework Standard.⁵⁶ Included in this package are definitions for ‘commercial activity’, ‘industrial activity’ and residential activity’, with each definition describing general characteristics that distinguish the activity from other land use categories.

However, the definition of ‘industrial activity’ is unique in that it is the only definition in the package that attempts to replicate and expand on terms used in section 2 of the RMA (ie, industrial and trade process, and industrial and trade premises). Consequently, as submitters pointed out, while there is considerable overlap between the draft definition and definitions in section 2 of the RMA, the terms are not identical, leading to ambiguity and exclusion of some activities.

We note⁵⁷ the RMA definitions of ‘industrial or trade process’ and ‘industrial or trade premises’ were considered when drafting the definition of ‘industrial activity’. The section 32 report states both terms were rejected on the basis that they were not sufficiently broad to accommodate the full range of activities carried out within an industrial zone.

We continue to consider that the definition of ‘industrial activity’ should be more expansive than solely the activities listed in the definition of ‘industrial or trade process’ or ‘industrial or trade premises’. This approach is necessary to support the implementation of the Zone Framework Standard and to ensure the appropriate co-location of compatible and similar activities. However, we agree with submitters that the draft definition is unintentionally limiting in this regard. Clause (a) of the definition is too narrow, being limited to a description of activities used to process or manufacture ‘goods’. As a consequence, activities that process raw materials but do not manufacture goods (eg, wastewater treatment facilities) are inappropriately excluded from the definition.

We have considered the suggestions put forward by submitters to address this issue, which include expanding the list of activities to include “processing of materials”, or incorporating the phrases “industrial or trade process” or “industrial or trade premises” into the definition.

We prefer to list the activities within the definition rather than refer to RMA terms. We note that this will avoid the need for a reader to cross-refer to section 2 of the RMA to understand the meaning of the phrases. To accommodate this relief, we recommend changes to the definition as follows:

Industrial activity means an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials (including raw, processed or partly processed materials) or goods.

We consider the reference to “materials (including raw, process or partly process materials)” accommodates the full range of activities listed in the definition of an ‘industrial or trade process’.

We also consider the draft definition unhelpfully conflates the concept of ‘activities’ with the concept of ‘place’. We note this has arisen because the definition has been drafted to “encompass as many of the commonly mentioned activities as possible”.⁵⁸ The result is that when the opening

⁵⁶ Section 32 report, p100.

⁵⁷ Section 32 report, p100.

⁵⁸ Section 32 report, p100.

statement of the definition (which relates to activities) is read in conjunction with clauses (b), (c) or (d) (which relate to locations), the definition fails to work as intended, as shown below:

Industrial activity *means an activity* for the primary purpose of ... *research laboratories used for scientific, industrial or medical research*. (emphasis added)

At a principle level, we consider all references to 'locations' should be omitted from the definition. The purpose of the definition is to describe an 'industrial activity' (emphasis added) and consequently we recommend deleting clauses (b), (c) and (d). We note avoiding any reference to location is consistent with the approach taken when drafting the other 'land use category definitions' included in this package. For example, the definitions of 'commercial activity' and 'residential activity' do not include any references to locations.

However, we have also considered whether there is merit in rephrasing clauses (b), (c) and (d) into a list of activities to be included within the definition. We discuss these points below.

Research laboratories

We agree with Selwyn District Council that including "research laboratories" within the definition could result in some educational facilities being inappropriately classified as 'industrial activity'. We also consider a specific reference to "research laboratories" applies a level of granularity to the definition that is not appropriate for a national definition. As stated in the section 32 report, the intent of these land use categories is that they are "high level" and broad. An explicit reference to activities associated with research laboratories runs counter to that argument and for that reason we recommend they are not included in our revised definition.

Yard storage and distribution activities

The section 32 report⁵⁹ states yard storage and distribution activities have been included in the definition, as these activities have effects similar in nature and scale to effects arising from typical 'industrial activity'.

We agree it is appropriate to accommodate these activities, and consider our earlier recommendations achieve this. The revised definition includes "an activity that ... packages, distributes, stores ... materials (including raw, processed or partly processed materials)". We consider this sufficiently broad to encompass storage and distribution activities.

Training facilities

We agree with Christchurch City Council that accommodating training facilities within the definition of 'industrial activity' is problematic. Training facilities associated with an industrial activity may form part of a wider educational facility, resulting in the inappropriate co-location of activities. For this reason, we do not recommend an explicit reference to include activities associated with training facilities.

Ancillary activities

We agree with submitters there is a range of ancillary activities that may be carried out in association with an industrial activity that should be accommodated within the definition. The section 32 report records that the primary reason for including a definition of 'industrial activity' and not relying on the RMA definition of 'industrial or trade process' is to ensure a definition of sufficient breadth.

⁵⁹ Section 32 report, p100.

To accommodate these activities, we recommend the addition of the following sentence to the definition of 'industrial activity':

It includes any ancillary activity to the industrial activity.

We consider this addition provides a useful distinction between the RMA definition of 'industrial or trade process' and the definition of 'industrial activity'. Where local authorities require a constrained term that relates only to 'processes' and not ancillary activities, the RMA definition of 'industrial or trade process' can be used. In contrast, where a broader term is needed that encompasses ancillary activities, the broader definition of 'industrial activity' may be used.

Miscellaneous requests

We have not recommended any changes to exclude "quarrying activities" from the definition as requested by Christchurch City Council and Waitomo District Council. While quarrying is generally classified under primary production, aspects of related quarrying activities may be a subcategory of an industrial activity, and it is our intent that the definition remains "high level". Furthermore we have provided local authorities the ability to distinguish between an 'industrial activity' or 'primary production' and a 'quarrying activity' by including a recommended definition for 'quarrying activities' in the Definitions Standard.

We also consider it is not appropriate to define subcategories of 'light' and 'heavy' industrial activities in the Definitions Standard. We consider that any such terms would benefit from consultation, and for that reason they are not included in this standard.

We consider our revised definition also addresses the point made by Western Bay of Plenty District Council, which submitted that the phrase "for the primary purpose of" could allow for the establishment of 'secondary activities' on site. The removal of the phrase addresses this concern, while the addition of the words "any ancillary activity to the industrial activity" allows for a range of activities directly related to the operation of the industrial activity.

Finally, we consider expanding the definition to include the sale of items (as sought by Forestry Owners Association) is not appropriate. This change expands the definition too broadly and creates an unhelpful overlap with the definition of 'commercial activity'.

We recommend amending the definition of 'industrial activity' in the Definitions Standard as follows:

~~Industrial activity means an activity for the primary purpose of —~~

~~(a) manufacturing, fabricating, processing, packing, storing, maintaining, or repairing goods; or~~

~~(b) research laboratories used for scientific, industrial or medical research; or~~

~~(c) yard-based storage, distribution and logistics activities; or~~

~~(d) any training facilities for any of the above activities~~

Industrial activity means an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials (including raw, processed or partly processed materials) or goods. It includes any ancillary activity to the industrial activity.

3.56 Industrial and trade waste (new recommended term)

Refer to section 3.99 "Sewage, Wastewater and Industrial and trade waste (new recommended term)" for submissions, analysis and recommendations on the definition for 'industrial and trade waste'.

3.57 Infrastructure

3.57.1 Proposed definition

Infrastructure has the same meaning as in section 2 of the RMA (as set out in the box below)

means—

- (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:
- (b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:
- (c) a network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989:
- (d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—
 - (i) uses them in connection with the generation of electricity for the person’s use; and
 - (ii) does not use them to generate any electricity for supply to any other person:
- (e) a water supply distribution system, including a system for irrigation:
- (f) a drainage or sewerage system:
- (g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:
- (h) facilities for the loading or unloading of cargo or passengers transported on land by any means:
 - (i) an airport as defined in section 2 of the Airport Authorities Act 1966:
 - (j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990:
- (k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:
- (l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166

3.57.2 Submissions

We received 13 submissions on the proposed definition of ‘infrastructure’. Eight of these submissions were in support of the use of the RMA definition, with some of these requesting amendments, while five submissions were opposed to the use of the RMA definition. Several of the submissions requested that we include additional supporting definitions.

Radio New Zealand, WEL Networks, KiwiRail Holdings Ltd, Powerco Limited and Auckland Council all supported the use of the definition without amendment.

Federated Farmers requested “aquifer recharge systems” be included below the RMA definition box.

WasteMINZ supported the use of the RMA definition but requested that “waste network infrastructure” be included either within this definition or as a new definition.

ACI Operations New Zealand Limited did not support the use of this definition, stating it was not suitable because waste infrastructure was not included. They requested either an amendment be made or the definition be removed. Christchurch City Council supported the definition but sought an ability to use this definition but with a narrower version of the definition for some rules such as natural hazards rules.

The West Coast Regional Council was opposed to the proposed infrastructure definition. They were concerned that the use of the RMA definition would conflict with their current use of the term “regionally significant infrastructure”. They queried whether they could include this definition as an additional term under the directions of the Definitions Standard and requested clarification on the matter.

Nationally Significant Infrastructure/ Critical Infrastructure

The New Zealand Defence Force’s view was that that the RMA definition is overly limited and excludes a range of significant non-linear infrastructure types. They requested that the definition of infrastructure explicitly include defence facilities to ensure they are appropriately recognised and provided for in regional policy statements and plans. Their submission requested that additional terms for “nationally significant infrastructure” or “critical infrastructure” be included if amendment to the RMA definition is not considered. It suggested the following definition:

Nationally significant infrastructure or Critical infrastructure: Infrastructure that provides services which have a significant effect on the wellbeing and health and safety of people and communities including, but not limited to, hospitals, airports, ports, state highways, the rail network, defence facilities and emergency response and coordination facilities.

New Zealand Airports Association also supported the inclusion of a nationally significant infrastructure definition.

Strategic Infrastructure

Christchurch International Airport and Lyttelton Port Company Limited both supported the inclusion of the RMA definition of infrastructure but expressed concern with using a broad definition and suggested the inclusion of additional, more specific, infrastructure-type definitions such as “strategic infrastructure”.

Reticulated infrastructure

Whanganui District Council requested the inclusion of the following definition of ‘reticulated infrastructure’:

means networks of infrastructure services including for the provision of water, wastewater, and stormwater services including pipes, associated pumping stations, treatment works, swales, detention areas, and other ancillary equipment, structure or facilities.

Development infrastructure

Whanganui District Council requested a definition of ‘development infrastructure’ be included in addition to the current ‘infrastructure’ definition.

Social infrastructure

Two submissions requested the inclusion of a ‘social infrastructure’ definition (Department of Corrections, Southern Cross Hospitals Limited).

The Department of Corrections stated that, in order to support the definition of ‘community corrections activity’, a definition of ‘social infrastructure’ is required. It suggested the following definition:

means assets that accommodate social services such as health (hospitals), education (schools and universities), cultural, religious, state housing, justice (police stations, courts, community corrections activities and prisons) and community recreation (halls, sports stadiums and parks)

The submission from Southern Cross Hospitals Limited noted the need for a definition of ‘social infrastructure’ to support social infrastructure as a regionally important matter. It proposed the same definition as the Department of Corrections.

3.57.3 Analysis and recommendations

As submitters noted, the RMA narrowly defines ‘infrastructure’ to relate only to activities that are all essentially elements of interconnected networks for the purposes of transport, energy, water and wastewater and telecommunications. However, there are many other types of important infrastructure that councils need to plan for.

As the Auckland Unitary Plan Independent Hearings Panel noted, this definition “is a deliberately narrow meaning that limits infrastructure to an activity which serves other activities rather than being undertaken for its own sake”.⁶⁰

The Auckland Unitary Plan Independent Hearings Panel decided that the Auckland Unitary Plan should adopt the RMA definition with the addition of gas and petroleum storage facilities, storage and treatment facilities for water and wastewater, municipal landfills, defence facilities and air quality and meteorological services.

As noted above in section 2 of this report, we have made a policy decision in response to significant concern from submitters about changing RMA definitions, not to recommend any changes to RMA definitions. For each RMA definition, we have either recommended it be included in the Standards exactly as it is in the RMA or, if submissions indicated justified concerns, we have recommended the removal of the RMA definition. In some cases a new definition has been recommended to address a different but related concept.

On reflection in light of the submissions received on the definition of infrastructure, we consider that the RMA definition is too narrow to reflect the use of the term in plans at present. To include it would restrict councils’ ability to utilise other infrastructure related terms and to address other kinds of infrastructure in their policy statements and plans. We therefore recommend the removal of the term from the Definitions Standard. This will also resolve councils’ concerns about the definition limiting how they currently address infrastructure and the need for other terms to address other categories of infrastructure.

We recommend further work be done on this definition, and all other related definitions. In lieu of a national definition being provided at this time, we consider the definition set out in the RMA provides a useful base definition, from which councils should consider what else might be added to it.

⁶⁰ Auckland Unitary Plan Independent Hearings Panel. (2016). *Report to Auckland Council, Hearing topic 065 Definitions*. Auckland: Auckland Unitary Plan Independent Hearings Panel.

Development infrastructure, nationally significant infrastructure, regionally significant infrastructure, critical infrastructure, reticulated infrastructure and strategic infrastructure

All of the above definitions were requested to take into account important infrastructure in different ways around the country. The breadth of definitions requested shows that these definitions and submitter's ideas about them vary around the country.

As with the definition of infrastructure more detailed policy work is needed on these definitions and choosing which ones to use. We also consider that any of these new definitions would require wider consultation than was possible within the timeframes.

Social infrastructure

We originally agreed with submitters that it was appropriate to address and recognise the types of facilities recommended by Southern Cross Hospitals and the Department of Corrections collectively in plan provisions. We thought that "defence facilities and emergency response and coordination facilities" are of a similar nature and could be added to the definition of 'social infrastructure' requested.

However when this definition was tested with pilot councils and the New Zealand Defence Force, issues were highlighted, including the following.

- The listed subcategories are not addressed together in one definition in some plans and plans would have different provisions applying to these sub categories so it would be difficult to include this definition
- It would be difficult to develop effective objectives and policies that provide for the wide range of potential issues and effects that arise from these activities. For example the effects of and on state housing are vastly different to those of large-scale infrastructure, such as defence, health or corrections facilities.
- Managing reverse sensitivity effects is critical to the operation of many types of large-scale infrastructure. However, other types of infrastructure listed (eg, state housing, parks, some justice facilities) do not require the same protection from reverse sensitivity effects. Therefore, developing relevant and useful objectives and policies for 'social infrastructure', particularly for reverse sensitivity, would be very difficult.
- The proposed definition was considered by some to not recognise the regional or national importance of some types of infrastructure over others. The scale of criticality is lost in the proposed 'social infrastructure' definition, and local infrastructure (eg, police stations, state housing, parks, cultural and religious facilities) should not necessarily be afforded the same weight as facilities that serve a regionally or nationally significant purpose (eg, defence facilities, hospitals, prisons).
- There are other issues with the proposed definition. For example, identifying what constitutes cultural and religious facilities would be fraught with difficulty

Therefore, because of the above issues and the decision not to include a definition of 'infrastructure', we do not recommend including a definition of 'social infrastructure' at this time.

In summary, we recommend the following.

- Delete the proposed definition of 'infrastructure' from the Definitions Standard.
- Do not include any of the following requested terms and related definitions in the Definitions Standard: development infrastructure, nationally significant infrastructure, regionally significant

infrastructure, critical infrastructure, reticulated infrastructure, social infrastructure or strategic infrastructure.

- Further work be done on all of these terms to explore how one or more of these can be defined at a national level.

3.58 Intensive Primary Production

3.58.1 Proposed definition

Intensive primary production means **primary production** activities that involve the production of fungi, livestock or poultry that principally occur within **buildings**

3.58.2 Submissions

Twenty-four submissions were received on the definition of Intensive Primary Production.

Horticulture NZ, NZTA, Poultry Industry Association of NZ, Tegel Foods Ltd supported the definition without amendment.

In contrast, Canterbury Regional Council, NZ Pork Industry Board and Selwyn District Council requested the term be deleted from the standard. They provided different reasons, but collectively these included that was too simplistic (Selwyn District Council), that it failed to recognise and accommodate intensive outdoor agricultural activities (Canterbury Regional Council), and that a definition was unhelpful in the absence of a full package of provisions that addressed setback and reverse sensitivity effects (NZ Pork Industry Board).

The remaining seventeen submissions sought specific amendments to the definition as discussed below.

A common theme present in submissions was confusion as to the intended scope and application of the definition. Submitters often commented that a mismatch existed between the term which is general, and the definition which is narrow. As a consequence, submitters generally fell in to one of two camps – either proposing amendments to narrow the term in line with the definition, or alternatively proposing amendments to broaden the definition. These requests are discussed in detail below.

Outdoor intensive primary production

Requests to broaden the definition were common in the submissions from regional councils. Several regional councils considered the proposed definition was too narrow and failed to accommodate intensive primary production activities which take place outdoors (eg, dairying). Greater Wellington Regional Council submitted the drafting demonstrated that had been crafted with a district plan in mind, where effects common to fungi, livestock and poultry can be addressed through land use controls. Further they submitted, when considered in the context of a regional council's functions⁶¹, the definition was too narrow to enable environmental effects of intensification to be addressed. Similar points were made in the submission by the Otago Regional Council and New Zealand Law Society who submitted it would be prudent to consider a broader definition which takes into account both territorial and regional council functions.

⁶¹ which include maintenance of water quality

Various suggestions were put forward by submitters to address the perceived limitations of the draft definition. Forest and Bird, Ravensdown and the RMLA suggested renaming the term ‘indoor primary production’ to better reflect the narrow scope of the definition. In contrast, another group of submitters proposed amendments to broaden the definition to expand it to include outdoor intensive primary production activities. These submissions often included suggestions as to how ‘intensity’ could be defined for an outdoor operation. Proposals included defining intensive outdoor primary production as activities which:

- exceed a specified nutrient limit, production level or stocking rate (NZ Law Society)
- preclude the maintenance of pasture or groundcover (Horowhenua District Council, Western Bay of Plenty District Council)
- rely on resources being imported onto the property (Greater Wellington Regional Council)
- have no or limited dependency on the quality of soils (Federated Farmers NZ, New Plymouth District Council, Western Bay of Plenty District Council).

Requests to narrow or broaden the types of activities listed in the definition

In addition to above, some submitters sought the explicit inclusion or exclusion of particular activities from the definition.

NZPI and Waitomo District Council requested activities undertaken within a glasshouse and/or greenhouse be included in the definition but did not provide reasons to support the request. In contrast, South Taranaki District Council requested that horticulture undertaken within a greenhouse be excluded from the definition, stating the scale and type of effects generated were dissimilar to those listed in the definition.

Federated Farmers and New Plymouth District Council proposed amendments to exclude any young stock that are periodically kept indoors as part of a normal farming operation (eg, rearing of young animals such as calves and lambs for the first few months of their lives). New Plymouth District Council and South Taranaki District Council proposed changes to exclude activities undertaken in shearing and dairy milking sheds, and South Taranaki District Council proposed a change to exclude any property where fewer than 20 birds, two sows or five weaners exist.

Use of the word ‘principally’

The term ‘principally’ was opposed by Auckland Council, Forest and Bird, Ravensdown, Western Bay of Plenty, with all submitters stating it introduced an element of subjectivity that was unhelpful. Local authorities in particular considered the term would be challenging to enforce and would require case by case assessments to be made to determine the point at which an activity occurs ‘principally’ within a building (Auckland Council, Forest and Bird).

3.58.3 Analysis and recommendation

Scope of the definition – indoor or outdoor?

The submissions indicate a general confusion over the intended scope and application of the definition. Having considered the points raised in these submissions we agree a mismatch exists and that amendments should be made to better align the term and definition.

For further guidance on the intended scope of the definition we have referred to the s32 Report, which provides useful background information relating to the development of the definition:

“...it is important to consider the effects that the provisions surrounding intensive farming /primary productions are trying to manage. The joint submission from the rural sector group suggested the primary effect was odour and the management of reverse sensitivity effects. The draft definition was informed by definitions in other plans – which focus on activities relating to indoor farming of fungi, poultry and pigs”.

It is clear from the excerpt above that during the initial drafting phase the term was intended to have a narrow scope. Fungi, poultry and pigs were nominated on the basis that these activities have the potential to produce odour and noise effects of a scale that requires management through specific controls. A subsequent change was made during the later drafting process to broaden the reference to ‘pigs’ to ‘livestock’ on the basis that densely stocked livestock of any kind would likely have effects of a similar type and scale.

Having considered the above, we consider the most appropriate response is to rename the term so that it aligns with its narrow definition. We agree with submitters that including the word ‘indoor’ in the title of the term would helpfully convey its limited scope and application. For this reason, we recommend the term is renamed ‘intensive indoor primary production’. Taking this approach raises other challenges, discussed further below, in that it will capture animals that may be housed indoors for periods of time, but not exclusively. We prefer this approach rather than referring to other concepts such as “limited dependence on the natural soil quality of the site” which is also subjective.

Relevance to regional council functions

We also acknowledge, however, the points made by other submitters that a narrow term and definition will be of limited utility, particularly when considered in the context of a regional council’s functions. While a broader definition that accommodates intensive outdoor primary production activities may have wider application, we consider it would be imprudent to attempt a more expansive definition without further consultation. We note many regional councils have developed, or are in the process of developing, plans to address the effects of agricultural land use intensification. Invariably these plans use different approaches to describe or quantify land use change, with some using a combination of species and stocking rates to represent the concept of ‘intensity’, while others rely on models and nutrient loss limits as a proxy for intensity. Attempting a one size fits all definition at this point in time without extensive further consultation would be problematic and likely introduce more problems than it solves.

Furthermore, we consider there are other reasons to proceed cautiously in this space. We note the government has signalled, through its *Essential Freshwater* work programme a raft of national direction to address water quality issues. That work programme proposes a new national environmental standard to address matters relating to land use intensification, stock exclusion and nutrient allocation. Embarking on the development of a new definition before that package of material is released, would we consider, be premature.

Having addressed the issue above we now consider specific requests sought by submitters.

Inclusion and exclusions for certain activities

We agree with the argument put forward by South Taranaki District Council that horticulture activities should not be considered ‘intensive primary production’. Horticulture undertaken within a glasshouse or greenhouse generally does not produce the same type or scale of odour or noise effects as the activities listed in the definition. However, given the definition constrains itself to only *fungi, livestock and poultry*, horticulture undertaken within a glasshouse or greenhouse would not meet the definition of ‘intensive primary production’, and so no change is required to accommodate the relief sought by the submitter.

We have also considered submissions that requested an exclusion for activities carried out periodically within the confines of a building. We agree that activities that involve the shearing of sheep or milking of cows do not produce the same scale of effects as those listed in the definition and should be excluded. To accommodate this, we recommend a more specific definition which refers to the *growing of fungi or keeping or rearing of livestock or poultry*. We consider this change will ensure activities relating to the shearing of sheep or milking of cows are excluded.

Following further feedback from Federated Farmers on the drafting of this definition, we acknowledge their concern that this definition (now referring to livestock instead of a narrower reference to pigs) will capture commonplace farming activities such as the keeping young livestock indoors during their first few months of life. We note that plan definitions currently exempt this activity in their plan definition or within the rules themselves. We consider this activity is common throughout the country and warrants specific mention in the definition to signal the intention is not to capture this type of common farming practice.

We considered whether it was appropriate to include a specific threshold with the exclusion for calf-rearing (ie, for a period of up to three months). We noted from plans and in submissions that three months appears to be the main threshold used, but we were not able to thoroughly test it with a broad range of submitters to be certain it was appropriate. On balance, we have not provided for the specific threshold in this definition but instead signal that plans will need to specify the period for which the exclusion applies. This outcome also ensures consistency with our drafting approach to developing national based definitions not to include metrics or thresholds. We expect councils will choose to have a sub-category definition of calf-rearing and then clarify the scale of the exclusion within a rule. For example, calf-rearing up to a period of three months is a permitted activity.

We also acknowledge that submitters raised a number of other circumstances where exclusions should apply to definition. Examples include lifestyle blocks with small numbers of pigs or poultry. We agree with submitters that adverse odour and noise effects from keeping livestock will likely differ depending on scale. We contemplated providing a clause that this definition would only capture commercial scale activities, but have not progressed with it here. It is not possible to address in a national definition all the possible exemptions and be satisfied that it will not adversely affect the ability for local authorities to manage the effects of activities in their local environment.

Accordingly, as with most of the definitions introduced as part of the planning standards, council plans will need to consider what inclusions or exclusions are appropriate in the context of this definition and amend their policy and rules accordingly to retain the original intent of their plan.

Use of the word 'principally'

As noted in other definitions where the word 'principally' was used, we agree that including this word introduces subjectivity to the definition it is preferable to remove the word from a definition. The Oxford dictionary definition of this is "for the most part; mostly". We also sought to remove this term from this definition, but faced difficulties finding an alternative way to convey that some operations of intensively farmed animals do not require animals to be exclusively housed indoors all the time.

We looked again at the variety of plan definitions but have not been able to find a suitable alternative of expressing the concept that intensive farming for the most part, but not exclusively, occurs indoors without using a word like 'principally' as part of the definition. We note for reference that the Auckland Council definition of 'intensive poultry farming' uses the word 'primarily' to

convey a similar concept and the word ‘predominantly’ appears in many plans in their version of the intensive farming definition.

For this reason, we recommend the word ‘principally’ remains in the definition. We expect this will mean that the definition will support a smoother transition into plans where this concept is already used.

In summary, we recommend the definition of “intensive primary production” be amended as follows:

Intensive indoor primary production means primary production activities that principally occur within buildings and involve the production of growing fungi, or keeping or rearing livestock (excluding calf-rearing for a specified time period) or poultry that principally occur within buildings

3.59 Iwi authority, kaitiakitanga, mana whenua, tangata whenua

3.59.1 Proposed Definitions

Iwi authority has the same meaning as in section 2 of the RMA (as set out in the box below)

Means the authority which represents an iwi and which is recognised by that iwi as having authority to do so

Kaitiakitanga has the same meaning as in section 2 of the RMA (as set out in the box below)

the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship

Mana whenua has the same meaning as in section 2 of the RMA (as set out in the box below)

customary authority exercised by an iwi or hapu in an identified area

Tangata whenua has the same meaning as in section 2 of the RMA (as set out in the box below)

in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area

No definitions for ancestral land, hapū, iwi, Maori reserve, papakainga housing or wahi tapu were included in the draft standard

3.59.2 Submissions

Iwi Authority

One supportive submission on ‘iwi authority’ was received from Auckland Council.

Kaitiakitanga

Three submissions were received on the use of the RMA definition for kaitiakitanga. Auckland Council's submissions supported the use of the RMA definition. The Whetu Consultancy Group felt that tangata whenua is a standard term and that tangata whenua should have the ability to define kaitiakitanga themselves.

Christchurch City Council requested an additional definition of tikanga Maori from the RMA as they believe it is a definition that supports the definition of kaitiakitanga.

Mana whenua

Five submissions were received on the proposed definition of mana whenua.

Christchurch City Council supported the definition but requested that the terms iwi and hapu which are in the definition of mana whenua, also be defined.

Survey and Spatial New Zealand supported the definition but requested that an additional definition of wahi tapu be included by way of cross-reference to section 4 of Te Ture Whenua Maori Act 1993 or section 6 of Heritage New Zealand Pouhere Taonga Act 2014.

Auckland Council and the Independent Maori Statutory Board both opposed the use of the RMA definition. The definition in the Auckland Unity Plan was developed and agreed with Auckland iwi authorities. They believe that council's should have the opportunity to develop their own definitions of mana whenua alongside iwi and hapu groups. They request the term be deleted from the standards.

Greater Wellington Regional Council requested that flexibility to use mana whenua or tangata whenua be retained.

Tangata whenua

Two submissions were received regarding the proposed definition of tangata whenua.

Auckland Council supported the use of the RMA definition.

Te Runanga o Ngai Tahu opposed the definition. They believed the definition to be incorrect as according to them, not all tangata whenua are also mana whenua. They state that the two terms are not interchangeable and have their own meanings. They understand that the proposed definition is an RMA term, but does not consider this a reason for not being able to use an alternative, correct, definition within the standards.

Other Requested Definitions

Christchurch City Council requested the definitions of iwi and hapū be included because they are in the definition of mana whenua.

Whanganui District Council requested a definition of ancestral land.

Far North District Council requested that Maori reserve and papakainga housing be defined.

3.59.1 Analysis and recommendation

Both Te Rūnanga o Ngāi Tahu and Whetu Consultancy Group support the fact that Te Reo Māori terms were removed from the definition standard as follows:

The Board is concerned that the locally defined term 'Mana Whenua' in the AUP will be changed under this standard without engagement with Mana Whenua in Auckland. The AUP definition of Mana Whenua was developed with Mana Whenua and refers to possessors of authority regarding ancestral rights as opposed to the RMA definitions of Mana Whenua and Tangata Whenua which refer to the authority possessed and customary rights. The Board recommends flexibility within the standard. Flexibility for Mana Whenua to accept the meanings provided for 'Tangata Whenua' and 'Mana Whenua' in the RMA; or develop and define their own terms and meanings should be provided.

The dialect differences of Te Reo Māori terms across the country was the reason that Te Reo Māori terms were excluded from the draft planning standard originally. Papakainga housing was one that was looked at being developed but excluded on the basis that it had different interpretations across the country by the various Iwi and hapū groups.

It is proposed that the drafting principle of excluding Te Reo Māori be continued to the extent that all of the Te Reo Maori Terms from the RMA are excluded from the planning standard. On the basis of the drafting principle it is proposed not to include any Te Reo Maori terms requested by submissions.

We recommend that the terms: Iwi authority, kaitiakitanga, mana whenua, and tangata whenua be deleted from the planning standard.

We also recommend that the following terms are not included in the planning standard: ancestral land, hapū, iwi, Maori reserve, papakainga housing, tikanga Maori and wahi tapu

3.60 Kaitiakitanga

Refer to section 3.59 "Iwi authority, Kaitiakitanga, Mana whenua, Tangata whenua" for submissions, analysis and recommendations on the definition for 'kaitiakitanga'.

3.61 L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak} , Notional boundary, Rating level, Special audible character

3.61.1 Proposed definitions

L_{A90} has the same meaning as the 'Background ground level' In New Zealand Standard 6801:2008 Measurement of Environmental Sound.

L_{Aeq} has the same meaning as 'time-average A-weighted sound pressure level' in New Zealand Standard 6801:2008 Measurement of Environmental Sound

$L_{AF(max)}$ has the same meaning as the 'maximum A-frequency weighted, F-time weighted sound pressure level' in New Zealand Standard 6801:2008 Measurement of Environmental Sound

L_{dn} has the same meaning as the 'Day night level, or day-night average sound level' in New Zealand Standard 6801:2008 Measurement of Environmental Sound

L_{peak} has the same meaning as 'Peak sound pressure level' in New Zealand Standard 6801:2008 Measurement of Environmental Sound.

Notional Boundary means a line 20 metres from any side of a **building** that contains an activity sensitive to noise, or the legal **boundary**, if it is closer to that **building**

Rating Level means a derived noise level used for comparison with a noise limit

Special audible characteristic means sound that has a distinctive characteristic such as tonality or impulsiveness which affects its subjective acceptability.

The definitions included in this section all support the noise metrics in the draft Noise and Vibration Metrics Standard and the RMA definition of ‘noise’, which is “includes vibration”.

3.61.2 Submissions

‘ L_{A90} ’ received a total six submissions. Four were in support of the current definition or supported it with amendments. Hutt City Council and Environmental Noise Analysis and Advice Service both opposed the use of this definition.

‘ L_{Aeq} ’ received a total six submissions. Four were in support of the current definition or supported it with amendments. Hutt City Council and Environmental Noise Analysis and Advice Service both opposed the use of this definition.

‘ $L_{AF(max)}$ ’ received four submissions, all of which supported the use of this definition.

‘ L_{dn} ’ received five submissions on the proposed definition. Four were in support. Only Hutt City Council was opposed to this definition.

‘ L_{peak} ’ received six submissions. Four supported the definition. Hutt City Council and Environmental Noise Analysis and Advice Service both opposed the use of this definition.

‘Notional boundary’ received 18 submissions. Of these, 13 were in support of the proposed definition. Three submissions supported the definition but requested an additional definition for ‘activity sensitive to noise’. Hutt City Council and Environmental Noise Analysis and Advice Service both opposed the use of this definition.

‘Rating level’ received four submissions. NZTA and Auckland Council both supported the definition as proposed, while Environmental Noise Analysis and Advice Service sought an amendment to be made before its inclusion. Christchurch City Council opposed the definition.

‘Special audible character’ received 10 submissions. Three of these submissions supported the proposed definition, while six submissions opposed the definition or requested amendments to be made if it were to remain in the standard.

Request for change

Christchurch City Councils recommended alternative definitions to clarify the meaning for the general public, such as:

- L_{Aeq} means the equivalent continuous A-weighted sound level in decibels. This is commonly referred to as the time-average sound level. L_{Aeq} is often assessed over a reference time interval of 15 minutes, in accordance with NZS 6802:2008.
- $L_{AF(max)}$ means the A-weighted maximum noise level in decibels measured with a ‘fast’ response time. It is the highest noise level that occurs during a measurement period.
- L_{dn} means the day-night average sound level in decibels over a 24-hour period, which is calculated from the day (07:00-22:00) $L_{Aeq(15h)}$ and night (22:00-07:00) $L_{Aeq(9h)}$ values with a 10 dB penalty applied to the night-time $L_{Aeq(9h)}$. L_{dn} values can be used to describe long term noise exposure by averaging over days, weeks or months.

As an alternative, Christchurch City Council sought the inclusion of the full definitions from the New Zealand Standard.

A number of suggested amendments were sought for 'special audible characteristic' as follows:

- ~~means sound that has a d~~ Distinctive characteristics of a sound, such as tonality or impulsiveness, which affects ~~its~~ the sound's subjective acceptability (Hutt City Council).
- ... means sound that has a distinctive characteristic such as tonality or impulsiveness which affects its subjective acceptability assessed (unless otherwise stated in a rule) at the notional boundary in accordance with the applicable New Zealand Acoustical Standard. (Mercury New Zealand Limited, Contact Energy Limited and Genesis Energy Limited all sought the same amendments.)
- ... means sound that has a distinctive characteristic such as tonality or impulsiveness ~~which affects its subjective acceptability~~ (Horticulture New Zealand).
- ... means sound that has a distinctive characteristic, such as tonality or impulsiveness, which affects its subjective acceptability (Christchurch City Council).
- ... should be specified as being in accordance with or as defined by NZS 6802:2008 (Environmental Noise Analysis and Advice).

Environmental Noise Analysis and Advice Service also requested that three additional definitions are included as follows:

- $L_{Aeq(15\text{ min})}$ – means the 15 minute time average level as defined in NZS 6802:2008
- $L_{Aeq(24h)}$ – means the 24 hour average sound level as defined in NZS 6806:2010
- $L_{A90(10\text{ min})}$ – means the A-frequency-weighted 90% centile level over a 10 minute period as defined in NZS 6808:2010.

3.61.3 Analysis and recommendations

L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak}

These terms are derived from the acoustical New Zealand Standards. Some submitters requested that we just include the definitions from the acoustical New Zealand Standards in a similar manner to how the RMA definitions were included in the Definitions Standard. The definitions in the New Zealand Standards are highly technical. The definitions in the Definitions Standard are intended to provide some clear understanding of what the term is without conflicting with the calculation methodology in the acoustical New Zealand Standards. For example, the definition of 'Day/night level or day-night average sound level, (L_{dn})' within New Zealand Standard 6801:2008 Acoustics – Measurement of Environment Sound is:

The A-frequency-weighted time-average sound level, in decibels, over a 24-hour period obtained after the addition of 10 decibels to sound levels measured during the night

$$L_{dn} = 10 \lg \left[\frac{1}{24} \left(15 \times 10^{0.1 L_d} + 9 \times 10^{0.1(L_n+10)} \right) \right] \text{ dB Equation 3}$$

where:

L_d is the $L_{Aeq(15 \text{ h})}$ over the 15 hour daytime period 0700 h to 2200 h

L_n is the $L_{Aeq(9 \text{ h})}$ over the 9 hour night-time period 2200 h to 0700 h the following day

For this example, we consider that ‘ L_{dn} ’ is what would be included within rules as the metric and therefore this is the term that has been included in the Definitions Standard, with the definition identifying that it is the day/night level or day night average level as specified in the relevant acoustical New Zealand Standard. We recommend that the acoustical New Zealand Standards are not simply repeated in the Definitions Standard due to their technical complexity. As identified in the draft Noise and Vibration Metrics Standard, we are working with Standards New Zealand to explore how to make the relevant acoustical New Zealand Standards publicly available.

One of the submissions in opposition to the L_{A90} and L_{Aeq} definitions identified that the sampling time is important for the definitions. We sought advice from the Acoustical Society of New Zealand, which advised that the reference back to the New Zealand Standard is enough as the sampling time is dependent on the type of the noise source (eg, traffic or factory). The three additional terms with the sampling time are not recommended for inclusion for the same reason. We therefore recommend that only the typo in the ‘ L_{A90} ’ definition is corrected.

Christchurch City Council requested amendments to the ‘ $L_{AF(max)}$ ’ definition to clarify for the public what the term is capturing; however its suggested alternative also removes all reference to the New Zealand Standard and is not supported for this reason. Advice from the Acoustical Society of New Zealand also identified that it is not technically correct to refer to $L_{AF(max)}$ as the highest level; in relation to the request, it stated that:

Do not amend. “Highest” does not add clarity and is incorrect in this instance. The LAFmax level is the highest energy average of a specific duration occurring during the measurement time. It is not the “highest noise level” overall. Retain reference to [NZS6801:2008] Standard

Christchurch City Council recommended a revised definition for L_{dn} . The requested definition contains some of the detail from the New Zealand Standard but does not reference it. We recommend that the L_{dn} definition is retained as proposed to clearly show that it is from the New Zealand Standard.

One submitter stated that the frequency weighting (Z or C) should be specified with the ‘ L_{peak} ’ definition. We recognise that there is some debate in this area among the Acoustical Society of New Zealand members consulted. We recommend making no amendments to the L_{peak} definition so that both the Z and C frequency weighting can still be applied as considered appropriate by the relevant

experts. The majority view of members of the Acoustical Society of New Zealand was against amending the definition, seeing referencing the New Zealand Standard as more appropriate.

Notional boundary

There was support for the ‘notional boundary’ definition although some submitters wanted the wording amended to better reflect the definition in New Zealand Standard 6808:2010 Acoustics Wind Farm Noise and wanted ‘noise sensitive activity’ to be defined. The more recent definition in NZS6808:2010 is considered clearer and removes some of the ambiguity from the NZS6801:2008 definition around how it is determined. We recommend amending the ‘notional boundary’ definition to reflect the NZS6808:2010 definition with a modification to reflect the use of ‘residential unit’ rather than ‘dwelling’ in the planning standards.

Noise sensitive activity

The phrase “activity sensitive to noise” is included in the definition of ‘notional boundary’. A number of submissions⁶² requested that a definition of noise sensitive activity be included in the Definitions Standard. Their reasons included to provide national consistency and to establish when reverse sensitivity effects should be mitigated. The New Zealand Airports Association and Lyttelton Port Company Ltd also noted that they would like to be consulted if a definition were developed and included. The Environmental Noise Analysis and Advice Service provided a definition as follows:

“noise sensitive activity” – means any residential activity including in visitor, student or retirement accommodation, educational activity including in any child care facility, healthcare activity and any congregations within places of worship/marae.

NZTA provided a broader definition: “An activity that may be affected by noise from an external source.”

We consulted stakeholders and our pilot councils on this definition. Feedback from councils was mixed. Some were supportive of the definition but others were concerned that the listing of specific subcategories would preclude others from being considered as noise sensitive activities, or they were generally concerned that this list differed from their own list of subcategories. They reiterated the view that this definition is strongly linked with reverse sensitivity effects and requirements to provide noise protection in buildings where these activities take place in certain circumstances. On balance, we consider that this definition has significant planning implications and requires a wider range of consultation and further input from stakeholders, community and councils. We therefore recommend not including a definition of ‘noise sensitive activity’ at this time.

Rating level

One submitter recommended that ‘rating level’ should be defined in accordance with or as defined by New Zealand Standard 6802:2008 Acoustics – Environmental Noise. The suggested definition is based on the NZS definition with only two words added: “means” (for consistency with other definitions in the Definitions Standard) and “noise” (to clarify the context in which it is used). The inclusion of these two words is not considered to significantly change the definition from the definition in NZS6802:2008, which is “a derived level used for comparison with a noise limit”.

⁶² Christchurch International Airport Ltd, Tegel Foods Ltd, KiwiRail Holdings Ltd, Environmental Noise Analysis and Advice Service, NZTA.

Special audible characteristic

Submitters were concerned that the definition for ‘special audible characteristic’ does not provide enough certainty and is too opinion based. Three electricity generators sought clarification that any special audible characteristic should be determined at the notional boundary. The Hutt City Council submitted that the definition can be amended to better reflect the characteristic of the sound that is captured by the definition. On the advice of the Acoustical Society of New Zealand, we are recommending that the definition is replaced with a reference to the relevant New Zealand Standard. We consider that this will at least partially address the submission points raised by the Environmental Noise Analysis and Advice Service and the electricity generators. We acknowledge that this does not fully address the issue raised by Hutt City Council but consider that it has been possible to apply the New Zealand Standard to date and the lessons learnt from its application will be able to be carried over to the recommended version of this definition.

We have recognised that the draft definitions were not correctly referencing the applicable New Zealand Standards (“Acoustics –” was left out). The recommendations below seek to correct this.

Summary recommendations

We recommend amending the following definitions to correctly reference the relevant New Zealand Standard and appear in alphabetical order and otherwise retaining the definitions as proposed for ‘ L_{Aeq} ’, ‘ L_{dn} ’, ‘ $L_{AF(max)}$ ’ and ‘ L_{peak} ’:

L_{Aeq} has the same meaning as ‘time-average A-weighted sound pressure level’ in New Zealand Standard 6801:2008 Acoustics – Measurement of Environmental Sound

$L_{AF(max)}$ has the same meaning as the ‘maximum A-frequency weighted, F-time weighted sound pressure level’ in New Zealand Standard 6801:2008 Acoustics – Measurement of Environmental Sound

L_{dn} has the same meaning as the ‘Day night level, or day-night average sound level’ in New Zealand Standard 6801:2008 Acoustics – Measurement of Environmental Sound

L_{peak} has the same meaning as ‘Peak sound pressure level’ in New Zealand Standard 6801:2008 Acoustics – Measurement of Environmental Sound.

We recommend amending the ‘ L_{A90} ’ definition to correct a typo and correctly reference the relevant New Zealand Standard as set out below:

L_{A90} has the same meaning as the ‘Background ~~gr~~sound level’ in New Zealand Standard 6801:2008 Acoustics – Measurement of Environmental Sound.

We recommend amending the ‘notional boundary’ definition to reflect the wording in NZS6808:2010 Acoustics – Wind Farm Noise as follows:

Notional Boundary means a line 20 metres from any side of a residential unit or other building used for a that contains an activity sensitive to noise sensitive activity, or the legal boundary, if it is closer to that where this is closer to such a building.

We recommend amending the term ‘rating level’ to “noise rating level” and retaining the definition as proposed.

We recommend that the definition of ‘special audible characteristic’ be replaced to just reference the applicable New Zealand Standard as follows:

Special audible characteristic has the same meaning as ‘special audible characteristic’ in section 6.3 of New Zealand Standard 6802:2008 Acoustics – Environmental Noise.

We recommend not including definitions of ‘ $L_{Aeq(15\text{ min})}$ ’, ‘ $L_{Aeq(24h)}$ ’, ‘ $L_{A90(10\text{ min})}$ ’ and ‘noise sensitive activity’ in the Definitions Standard.

3.62 L_{Aeq}

Refer to section 3.61 “ L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak} , $L_{Aeq(15\text{ min})}$, $L_{Aeq(24h)}$, $L_{A90(10\text{ min})}$, Notional boundary, Rating level and Special audible character” for submissions, analysis and recommendations on the definition for ‘ L_{Aeq} ’.

3.63 L_{dn}

Refer to section 3.61 “ L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak} , $L_{Aeq(15\text{ min})}$, $L_{Aeq(24h)}$, $L_{A90(10\text{ min})}$, Notional boundary, Rating level and Special audible character” for submissions, analysis and recommendations on the definition for ‘ L_{dn} ’.

3.64 $L_{A(max)}$

Refer to section 3.61 “ L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak} , $L_{Aeq(15\text{ min})}$, $L_{Aeq(24h)}$, $L_{A90(10\text{ min})}$, Notional boundary, Rating level and Special audible character” for submissions, analysis and recommendations on the definition for ‘ $L_{A(max)}$ ’.

3.65 L_{peak}

Refer to section 3.61 “ L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak} , $L_{Aeq(15\text{ min})}$, $L_{Aeq(24h)}$, $L_{A90(10\text{ min})}$, Notional boundary, Rating level and Special audible character” for submissions, analysis and recommendations on the definition for ‘ L_{peak} ’.

3.66 Lake

3.66.1 Proposed definition

Lake has the same meaning as in section 2 of the RMA (as set out in the box below)

Means a body of fresh water which is entirely or nearly surrounded by land

3.66.2 Submissions

Two submissions were received on the definition of ‘lake’ (Auckland Council, Te Rūnanga o Ngāi Tahu).

Auckland Council supported retaining the definition without amendment. In contrast, Te Rūnanga o Ngāi Tahu opposed the definition and requested its omission, on the basis that the definition was not specific enough to provide guidance in practical situations.

3.66.3 Analysis and recommendations

We agree with Te Rūnanga o Ngāi Tahu that the definition of 'lake' in the RMA is general in nature. However, unlike the definition of 'bed', where specific examples were provided to illustrate practical difficulties in applying the RMA definition, no such examples have been provided to demonstrate these challenges. We consider the circumstances in determining the 'bed' of a river, as compared with the 'bed' of a lake, to be quite different. While rivers are frequently dynamic, resulting in changing flowpaths and the laying down of new 'bed' material, which makes establishing the 'bed' a challenging exercise, defining a lake is far less challenging.

For these reasons, we consider it appropriate to retain the definition of 'lake'. We consider any further specificity that might be required (eg, to distinguish natural lakes from artificial lakes) could be accommodated through local authorities including subcategories of the definition.

We recommend retaining the definition of 'lake' as proposed in the draft Definitions Standard.

3.67 Land

3.67.1 Proposed definition

Land has the same meaning as in section 2 of the RMA (as set out in the box below)

- (a) includes land covered by water and the airspace above land; and
- (b) in a national environmental standard dealing with a regional council function under section 30 or a regional rule, does not include the bed of a lake or river; and
- (c) in a national environmental standard dealing with a territorial authority function under section 31 or a district rule, includes the surface of water in a lake or river

3.67.2 Submissions

Auckland Council was the only submitter on the definition of 'land'. It supported the inclusion of this definition.

3.67.3 Analysis and recommendation

Given the support, we recommend retaining the definition of 'land' in the Definitions Standard without amendment.

3.68 Land disturbance

Refer to section 3.34 "Earthworks, Land disturbance and Cultivation (new recommended term)" for submissions, analysis and recommendations on the definition for 'land disturbance'.

3.69 Landfill

3.69.1 Proposed definition

Landfill means the use, or the previous use, of land for the primary purpose of the disposal of waste

3.69.2 Submissions

Nine submissions were received on the definition of 'landfill'.

Three submitters sought changes to the definition of 'landfill' to define the term in the context of a location, rather than a land use. Suggested insertions to the definition included "a location that is used, or has been used for ..." (Hutt City Council), "a waste disposal site" (WasteMINZ) and "a site used for, or previously used for ..." (Environment Canterbury).

Three submitters sought to narrow the term "waste" to "solid waste" (Christchurch City Council, Environment Canterbury, WasteMINZ) on the basis that this would enable a distinction from wastes in other forms (eg, liquid animal waste, sewage).

Two submitters asked for clarification of the relationship of the term 'landfill' to the term 'cleanfill' (Auckland Council, Christchurch City Council). Christchurch City Council requested the addition of the words "it excludes cleanfill" to ensure mutually exclusive definitions. Auckland Council sought confirmation from the Ministry for the Environment that 'cleanfill' and 'managed fill' would not be considered to be synonyms of 'landfill' as defined in the standard.

The inclusion of the phrase "or the previous use" was considered to be problematic by one submitter (Bay of Plenty Regional Council). Its reason was that the phrase would capture land that had been successfully remediated in accordance with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS).

Finally, use of the word "primarily" was supported by one submitter (Greater Wellington Regional Council). In contrast, another submitter opposed it on the basis that it would exclude locations where disposal of solid waste is a secondary activity to the primary activity that occurs on site (Hutt City Council).

3.69.3 Analysis and recommendations

The draft Definitions Standard proposes to define the term 'landfill' as a current or past use of land for the disposal of waste.

However, in planning documents the term 'landfill' more typically appears as a noun, used to describe a location where the disposal of solid waste occurs. Landfill sites are generally subject to a restrictions in both district and regional plans, with these restrictions according with functions in sections 30 and 31 of the RMA. District plans often restrict the 'use' of land for a landfill (including the use of land for a landfill) to ensure separation between incompatible land uses, while regional plans often restrict the type and concentration of contaminants discharged from a landfill to maintain water and air quality.

Given the context in which the term 'landfill' appears in planning documents, we agree with submitters that the term should be defined as a 'location' rather than a land 'use'. We consider the addition of the words "an area used for, or previously used for" at the start of the definition will assist in providing this clarity and recommend amendments accordingly.

We also agree with submitters that it is appropriate to distinguish 'landfill waste' from other types of waste that may be disposed of at other locations (eg, animal effluent, wastewater). We consider the suggestion to insert the word "solid" before the word "waste" will enable an appropriate distinction and recommend a change accordingly.

While we acknowledge the issue raised by Bay of Plenty Regional Council that the definition of 'landfill' would include remediated landfills, we consider this can be appropriately addressed by local authorities making consequential amendments to plan provisions to exempt or include remediated sites as appropriate. For this reason, we have not recommended amendments to address the issue.

We also acknowledge the issue raised by Hutt City Council, that the phrase "for the primary purpose of" could arguably constrain the term, and exclude sites where disposal of waste is secondary to another activity on site. For this reason, we have recommended its omission.

Finally, we note plan provisions typically differentiate between cleanfill and landfill locations, and require different management responses that are commensurate with the effects and environmental risks posed by each activity. For this reason, we agree with Christchurch City Council that it is appropriate for the two definitions to be mutually exclusive and recommend amending the definition by the addition of the words "it excludes cleanfill areas".

We recommend amending the definition of 'landfill' in the Definitions Standard as follows:

Landfill means ~~an area the used for, or the previously used for, of land for the primary purpose~~ of the disposal of solid waste. It excludes cleanfill areas

3.70 Mana whenua

Refer to section 3.59 "Iwi authority, Kaitiakitanga, Mana whenua, Tangata whenua" for submissions, analysis and recommendations on the definition for 'mana whenua'.

3.71 Mining, Quarry and Quarrying activities (new recommended term)

3.71.1 Proposed definitions

Mining has the same meaning as in section 2 of the RMA and Crown Minerals Act 1991 (as set out in the box below)

- (a) means to take, win, or extract, by whatever means,—
 - (i) a mineral existing in its natural state in land; or
 - (ii) a chemical substance from a mineral existing in its natural state in land; and
- (b) includes—
 - (i) the injection of petroleum into an underground gas storage facility; and
 - (ii) the extraction of petroleum from an underground gas storage facility; but
- (c) does not include prospecting or exploration for a mineral or chemical substance referred to in paragraph (a)

Quarry means an area of land where the excavation, with or without the processing, of minerals and other solid natural substances occurs

3.71.2 Submissions

Twenty-four submissions was received on the definitions of ‘mining’ and ‘quarry’ (5 and 19 submissions respectively). In general, submissions discussing the definition of ‘mining’ often cross-referred to or repeated matters they raised in discussing the definition of ‘quarry’. Given this overlap, and to enable a comprehensive assessment of the issues raised, we have grouped and summarised the submissions relating to these two definitions together.

With the exception of Straterra, all parties that submitted on the definition of ‘mining’ also submitted on the definition of ‘quarry’.

A common matter raised in submissions was the breadth and scope of each of the proposed definitions.

With respect to the proposed definition for ‘quarry’, submitters generally expressed one of two different views. Some submitters⁶³ considered the term ‘quarry’ in the context of a noun, defined as a *location* from which extraction of minerals occurred. In contrast, other submitters considered the term ‘quarry’ in the context of a verb (quarrying, or to quarry) describing a range of actions (eg, extraction, blasting) and land uses (eg, use of land for a workshop) associated with the operation of the quarry.⁶⁴

These two divergent interpretations led to a diverse range of amendments being sought to the definition. Submitters that considered the term ‘quarry’ in the context of a location generally sought amendments to distinguish quarry locations from areas where general earthworks may occur. Submitters suggested different options to avoid this overlap, including: replacing the word “excavation” with the more specific term “extraction” (Environment Canterbury, West Coast Regional Council); amending the phrase to include references to “commercial or profit” elements specific to quarry operations (Housing New Zealand, NZTA); and including the phrase “permanent removal” to distinguish from general earthworks (NZTA).

Submitters that considered the term in the context of a verb requested amendments to replace the term ‘quarry’ with ‘quarrying’ or ‘quarry-related activities’ (Christchurch City Council, Western Bay of Plenty District Council).

Submissions on this point requested the addition of specific extracting and processing activities (including extraction, blasting, crushing, screening, washing and mixing of material and storage of overburden); and ancillary land use activities associated with the operation of a quarry (including landscaping, rehabilitation of remediated areas, treatment of stormwater and wastewater, recycling of materials, carparking, use of offices and workers’ accommodation).⁶⁵ Requests for a more expansive definition were made on the basis that zoning decisions relating to quarries needed to appropriately accommodate the full range of activities carried out at a ‘quarry’, to ensure protection of extractive activities from reverse sensitivity effects (Oceana Gold); or on the basis that expansive

⁶³ Environment Canterbury, New Plymouth District Council, NZTA, South Taranaki District Council, Upper Hutt City Council.

⁶⁴ Brookby Quarries, Christchurch City Council, J Swap Contractors, Oceana Gold, Winstone Aggregates, Lyttelton Port Company Limited, Western Bay of Plenty District Council.

⁶⁵ Brookby Quarries, Christchurch City Council, J Swap Contractors, Oceana Gold, Winstone Aggregates, Lyttelton Port Company Limited, Western Bay of Plenty District Council.

definitions were necessary to preserve the application of existing plan provisions (Christchurch City Council).

With respect to the proposed definition of 'mining', matters raised in submissions were similar to those regarding 'quarry'. Three submitters requested amendments to expand the definition to include "mining operations" to encompass the range of activities that may occur at a mine (Bathurst Resources, Oceana Gold, Straterra). In contrast, two local authorities requested retention of the definition without amendment on the basis that it aligned with the definition in the Crown Minerals Act 1991 (Auckland Council, Christchurch City Council).

One submitter (Ocean Gold) requested a distinction between the terms 'mining' and 'quarrying'. It stated mining is a collective term used to describe the extraction of both liquid and solid minerals. In contrast, 'quarrying' is a subset of 'mining' and is limited to describing the extraction of clay, rock, silt, sand and aggregates.

3.71.3 Analysis and recommendations

We consider much of the confusion regarding the use of the term 'quarry' arises because the term, or derivatives of the term, are used in a variety of contexts in planning documents.

We note the term 'quarry' is commonly understood to describe a location where clay, rock, sand, silt and aggregates are extracted for use. Where the term 'quarry' is referred to in zone-related provisions, it may describe the resource, or alternatively describe the resource and all surrounding land on which activities essential to the operation of the quarry occur. However, the important matter to note on this point is that the defining element of the term is that it is a location.

However, definitions of 'quarry-related activities' and 'quarry operations' are often included in district plans as collective terms used to describe a range of extractive processes and activities associated with the operation of the quarry. The use of these collective terms avoids the need to repeat lists of activities throughout plan provisions, thus enabling streamlined planning documents.

Given the different contexts in which the term 'quarry' may be used, we consider it is appropriate and necessary to distinguish between a 'quarry' and 'quarrying activities'. We agree with submitters that the term 'quarry' is primarily a location at which material is removed and for this reason we consider references to 'an area or location' should be defining elements of the term.

We also agree that a 'quarry' location should encompass the area on which the resource sits and also the wider surrounds where activities associated with the operation of the quarry occur. We consider an expansive location is appropriate as it will ensure due consideration is given to the full extent of effects associated with the operation of quarries, a consideration that is particularly necessary when undertaking zoning decisions.

We also agree with submitters that a 'quarry' should be distinguishable from a 'mine'. To enable that distinction we recommend replacing the word "excavation" with the word "extraction" and replacing the phrase "other solid natural substances" with the phrase "aggregates (clay, silt, rock and sand)". We consider these changes will distinguish quarry locations from locations where other types of mineral extraction occur (eg, mines for extraction of gold or silver). We also agree it is appropriate to distinguish 'quarrying activities' from 'earthworks' and consider this can be achieved by including the words "associated with the operation of a quarry".

Given these recommended refinements, we do not consider it is necessary to include the phrase 'for commercial use or profit' to distinguish 'quarrying activities' from 'earthworks'. We acknowledge however that this would have the result of capturing farm quarries in the definition. We understand

from Federated Farmers that farm quarries are common to support the use and development of farms and they consider these should not be captured by the definitions.

We understand that some councils manage farm quarries in their plans either through an exemption in a relevant definition or by permitting a certain scale of farm quarry (eg, 1000m² cut limits, one quarry per managed farm). Given this, we do not consider it necessary or appropriate to exclude farm quarries from this national definition in this manner. We expect councils will continue to make decisions on the appropriate scale of farm quarries and will amend their plan rules accordingly to work with this definition.

Having considered refinements to the term 'quarry', we also consider a definition of 'quarrying activities' to be necessary to accommodate requests by submitters for an expansive definition that describes processing activities and ancillary activities carried out at the site of a quarry operation. We note that submissions have a high degree of commonality in the list of activities they requested to be included and we have, to the extent that it is possible to do so, included common activities.

In addition, while submitters generally supported the inclusion of a definition of 'mining', this support was qualified. Submitters stated the definition in the Crown Minerals Act 1991 was not expansive enough and, as a consequence, a specific reference to "mining operations" was necessary.

As discussed earlier in this report, we consider that where the Definitions Standard adopts a term from a legislative instrument, amendments to that term should be avoided, so as to maintain consistency between planning documents and legislative instruments. For this reason we do not recommend amending the definition of 'mining' to include reference to "mining operations".

We have also considered the appropriateness of replacing the definition of 'mining' with a definition of 'mining operations'. However, having referred to the definition of 'mining operations' in the Crown Minerals Act 1991, we consider this term is not appropriate in the context of a resource management document. We consider the definition of 'mining operations' includes some elements of ambiguity⁶⁶ and thus would fall foul of the definition drafting principles, which require "clear and concise" definitions. For this additional reason, we do not recommend its inclusion.

We recommend deleting the definition of 'mining' from the Definitions Standard.

We recommend amending the definition of 'quarry' as follows:

Quarry means a location or area used for the permanent removal and extraction of aggregates (clay, silt, rock or sand). It includes the area of aggregate resource and surrounding land associated with the operation of a quarry and which is used for quarrying activities. of land where the excavation, with or without the processing, of minerals and other solid natural substances occurs

We recommend inserting a new definition of 'quarrying activities' as follows:

Quarrying activities means the extraction, processing (including crushing, screening, washing, blending), transport, storage, sale and recycling of aggregates (clay, silt, rock, sand), the deposition of overburden material, rehabilitation, landscaping and cleanfilling of the quarry, and the use of land and accessory buildings for offices, workshops and car parking areas associated with the operation of the quarry.

⁶⁶ Eg, references to 'the doing of all lawful acts incidental or conducive to operations'.

3.72 Minor residential unit

3.72.1 Proposed definition

Minor Residential Unit mean a self-contained residential unit that is ancillary to the principal residential unit, and is held in common ownership with the principal residential unit on the same site, which can be attached to the principal building or be detached stand-alone building

3.72.2 Submissions

In total, 16 submissions were received on the definition of 'minor residential unit'.

Two submissions (NZTA, Fire and Emergency New Zealand) supported the notified definition.

Two submitters (Horticulture New Zealand, New Zealand Pork Industry Board) opposed the notified definition on the basis that the definition has unintended consequences for seasonal workers' and farm workers' accommodation in rural areas.

The remainder of submitters supported the definition in part, requesting amendment or clarification of the definition.

Housing New Zealand asked whether the definition was to encompass unit title.

Western Bay of Plenty District Council raised an inconsistency between the definition of 'residential unit' and 'minor residential unit' in terms of "self-contained".

Auckland Council supported the concept that the minor dwelling be attached or detached from the principal residential unit on the site.

Four submitters raised concerns with the term "ancillary". Hutt City Council proposed that this should be managed through rules, not definition.

Three submitters (Hutt City Council, Upper Hutt City Council, Porirua City Council) raised issues with the requirement for the dwellings to be held in common ownership. It was requested that the unit be limited to use by family members on the same site, to minimise the risk that it simply be a second dwelling.

Three submitters (Western Bay of Plenty, Auckland Council, Far North District Council) raised questions around the size of the "minor" dwelling, both in terms of large minor dwellings and tiny houses.

Hamilton City Council requested amendment to capture permanently lived-in motorhomes, and requested a consequent definition of 'permanently lived in'.

Christchurch City Council identified that the change within the definition from residential unit to building does not work well, and suggested a definition of 'ancillary activity' be prepared.

Hutt City Council and Christchurch City Council suggested the definition be amended to:

- Hutt City: "A residential unit that is secondary to a principal residential unit on the same site."
- Christchurch City Council: "means a self-contained residential unit that is ancillary to the principal residential unit and is held in common ownership with the principal residential unit on the same site. It can be attached to the principal residential unit or be a detached stand-alone building."

New Plymouth District Council requested an additional definition for 'self-contained' be provided as follows: "means a building, or part of the building, being used as a residential unit, and includes bathroom and kitchen facilities".

Gisborne District Council identified that the definition would cause the need for more substantial changes than permitted outside of the Schedule 1 process.

3.72.3 Analysis and recommendations

Inconsistency between residential unit and minor residential unit

We do not agree there is an inconsistency between the recommended amended definitions for Residential Unit and Minor Residential Unit. A residential unit is the main established unit on the site occupied by the site's household. A minor residential unit can only be established in conjunction with the residential unit, and must be held in common ownership with the residential unit on the same site. It is envisaged that a person would be able to build a small residential unit on a site while they build their substantive residential unit on the same site. During construction the small unit would be the residential unit. Once they complete and/or occupy the substantive dwelling the substantive house will become the residential unit (by definition), and the original smaller dwelling can become the minor residential unit. We consider that these definitions work together in their amended forms.

Detail within the definition

In terms of the unit title question, both the "ancillary" and the "held in common ownership" requirements mean that it may be quite difficult for a unit title development to meet this definition. Unit titles are more likely to be multiple dwellings on the same site (as defined to be the whole of the land subject to the unit development).

The specificity of minor dwellings being either detached or attached to the principal residential unit is unnecessary because these are the only configurations possible, as the definition requires both units to be on the same site. If a council chooses to further manage the form and location of minor dwellings, it can do this through rules.

The need for both the residential unit and the minor residential unit(s) to be on the same site, along with other associated bulk and location requirements, will manage the consequent environmental effects of the units irrespective of whether they are large minor residential units or tiny houses as residential units.

This same construct means that a small residential unit used while the larger dwelling is constructed can turn into a minor residential unit once the principal residential unit is approved and/or built.

Motorhomes will not come within the recommended definition of building because they are vehicles that can be moved under their own power. These are excluded from the definition of building and must therefore be managed by councils under separate rules.

The self-contained nature of the minor residential unit is defined by the building being a "residential unit" by definition that is subject to additional definitional limitations. No additional text is required to address that matter.

Restriction to family members

Restricting a minor residential unit to family members is problematic in terms of both enforcement, and long-term outcomes once the family structure changes or once the site is sold. The need for

both the residential unit and the minor residential unit(s) to be on the same site, along with other consequent bulk and location requirements, will enable managing the environmental effects of the units irrespective of who occupies them. For these reasons, we consider a reference to family members is not appropriate to include as part of the definition. However, if councils wish to restrict the use of minor residential units (and consider there is a resource management reason for doing so), then it can be addressed in the relevant rule.

Additional definitions

Seasonal workers' accommodation and farm workers' accommodation may be captured in the definition of 'minor residential unit' or may not be captured in the definition, depending on the design of the accommodation. There is nothing precluding councils from developing their own definitions and rules around seasonal workers' accommodation and/or farm workers' accommodation to meet the needs of their district, depending on the farming activities that occur in their area. It is unnecessary to define these matters on a national basis.

The term "ancillary" is defined within the National Planning Standards, and the definition as amended since notification is appropriate for use with this definition.

The term "principal" is in common use and there is no need to provide an additional definition.

If "secondary uses" was an additional term to be used in this definition, an additional definition would be required. The definitional construct of the principal residential unit means the ancillary unit must be secondary.

However, there is nothing that precludes a council from placing additional or subordinate definitions within its plans if that suits its particular planning purposes.

Summary

We consider a nationally consistent definition of minor residential unit will provide benefit by setting the 'frame' against which the councils can make the more fine-grained provisions that identify how minor residential units will be treated within their district.

We consider that when this definition is used in conjunction with the definitions of 'building', 'structure', 'residential activity' and 'residential unit', the definitions work together and provide a consistent framework to address how people live in our communities.

We recommend retaining the definition of 'minor residential unit' and amending it as follows:

Minor residential unit means a self-contained residential unit that is ancillary to the principal residential unit, and is held in common ownership with the principal residential unit on the same site, which can be attached to the principal building or be detached stand alone building

3.73 Natural and physical resources

3.73.1 Proposed definition

Natural and physical resources has the same meaning as in section 2 of the RMA (as set out in the box below)

Includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether

native to New Zealand or introduced), and all structures

3.73.2 Submissions

Auckland Council was the only submitter on the definition of 'natural and physical resources'. It supported the inclusion of this definition.

3.73.3 Analysis and recommendation

Given the support, we recommend retaining the definition of 'natural and physical resources' in the Definitions Standard without amendment.

3.74 Natural hazard

3.74.1 Proposed definition

Natural hazard has the same meaning as in section 2 of the RMA (as set out in the box below)

means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment

3.74.2 Submissions

Two submissions, both in support, were received on the definition of 'natural hazard' (Auckland Council, GNS Science).

3.74.3 Analysis and recommendation

Given the support for the proposed definition, we recommend retaining the definition of 'natural hazard' in the Definitions Standard without amendment.

3.75 Net floor area

3.75.1 Proposed definition

Net floor area

- a) means the sum of any **gross floor area** designed for tenant occupancy and exclusive use; and
- b) Includes—
 - (i) both freehold and leased areas; and
 - (ii) any stock storage or preparation areas, whether exclusive or not; but
- c) does not include—

- (i) liftwells and stair wells including landing areas:
- (ii) corridors and mall common spaces:
- (iii) building service rooms:
- (iv) required parking areas

3.75.2 Submissions

Seven submissions were received on the definition of 'net floor area'.

NZTA and Fonterra supported the definition. Fonterra considered there may be issues with retrofitting it into policy statements and plans.

Woolworths New Zealand Ltd requested the definition of 'net floor area' be removed and favoured Auckland Council's approach of only having a definition of 'gross floor area'.

Submissions were concerned that the phrase "for tenant occupancy" limited the definition to tenanted buildings only. Tauranga City Council requested that the definition be amended so it is not restricted to tenanted buildings. Christchurch City Council also suggested the words "for tenant occupancy and" be deleted so the definition could apply to owner occupied buildings and similarly that the phrase "whether exclusive or not" also be deleted because it created confusion with the phrase "for tenant occupancy and exclusive use".

A number of submissions requested specific exclusions and inclusions. Auckland Council supported the definition but requested that it provide for residential activities by having specific inclusions and exclusions – in particular, an exclusion for decks and balconies. Hamilton City Council also requested that all parking be excluded from the definition, not just required parking, because carparking above the required number of parks can still be used to support the use of the building. Auckland Council supported the exclusion for required carparking. Christchurch City Council requested that the definition be clear about whether loading areas are included or excluded. It also requested adding the word "shared" before the exclusion of corridors and small common spaces (although the term is actually "mall common spaces") to clarify that these spaces are those shared by multiple tenants, not within each tenancy. It also drew our attention to a number of grammatical and highlighting issues, including replacing the words "does not include" with "excludes" for consistency.

3.75.3 Analysis and recommendations

We consider that the definition of 'net floor area' will work well together with the definition of 'gross floor area' to enable councils to address both these concepts and choose which one is suitable for particular provisions. In regard to the submissions that referred to Auckland Council's application of only one definition, we note that, in fact, Auckland Council has two definitions of 'gross floor area' – each of which is specified for a different purpose. Therefore we do not agree that the definition of 'net floor area' should be removed.

The definition was not intended to be limited to buildings with tenancies only. We agree that the definition was unclear on this point and consider that removing the words "designed for tenant occupancy and exclusive use" will ensure that the definition is applicable whether it is tenanted or owner occupied. This amendment will also resolve the apparent contradiction and confusion arising because the definition applied only to parts of a building in exclusive use but then specifically excluded parts that were common such as "mall common spaces" and other ones likely to be in common use, such as liftwells and stairwells. The intention was that the definition exclude the

specified areas whether or not they were in common use – not only if they were in exclusive use. The removal of the words “designed for tenant occupancy and exclusive use” will remove this confusion.

We therefore also recommend removing the phrase “whether exclusive or not”, which described “any stock storage or preparation areas”, because it is unnecessary to specify once the phrase “tenant occupancy and exclusive use” is removed.

In relation to specific inclusions and exclusions, we agree that because this definition is of ‘net floor area’ (emphasis added), a list of exclusions is appropriate and necessary.

We agree that the definition should cater for both residential and commercial uses and so we recommend adding an exclusion for balconies and decks, as requested by Auckland Council, as follows: “open or roofed outdoor areas, and external balconies, decks, porches and terraces”. We also recommend adding a number of other exclusions to align with Auckland Council’s submission that it should have specific exclusions. The exclusions recommended are “basement areas used for carparking, manoeuvring and access” and “entrances, lobbies, plant areas within the building” and “off street loading areas”. We also recommend adding “non – habitable floor spaces in rooftop structures” to ensure that the list of exclusions is comprehensive.

We also agree that carparking within the floor area should be excluded even if it is not specifically “required” as all carparking, whether required or not, would make the same contribution to intensity of use.

We recommend that the word “shared” should be added before the word “corridors” to clarify that only shared corridors are excluded not those within an apartment, for example.

We agree with Christchurch City Council that the phrase “does not include” should be changed to “excludes” for consistency and the small grammar and highlighting issues be rectified.

We recommend amending the definition of ‘net floor area’ in the Definitions Standard as follows:

Net floor area

- a) means the sum of any **gross floor area** ~~designed for tenant occupancy and exclusive use;~~
and
- b) Includes—
 - (i) both freehold and leased areas; and
 - (ii) any stock storage or preparation areas, ~~whether exclusive or not;~~ but
- c) ~~does not include~~ **excludes**—
 - (i) void areas such as liftwells and stair wells, including landing areas;
 - (ii) shared corridors and mall common spaces;
 - (iii) entrances, lobbies and plant areas within a building;
 - (iv) open or roofed outdoor areas, and external balconies, decks, porches and terraces;
 - (v) off street loading areas;
 - (vi) **building** service rooms;
 - (vii) ~~required~~ parking areas and basement areas used for car parking, manoeuvring and access, and
 - (viii) non-habitable floor spaces in rooftop structures.

3.76 Net site area

3.76.1 Proposed definition

Net site area means the total area of the site, but does not include:

- a) any area of land that legally provides access to another site:
- b) any area of land used primarily for legal access to a rear site:
- c) any area of land subject to a designation that is intended to be taken or acquired under the Public Works Act 1981

3.76.2 Submissions

Christchurch City Council pointed out that the words “does not include” should be replaced by “excludes” for consistency with the drafting principles and that reliant definitions should be highlighted.

NZTA supported the definition but pointed out that the difference between the two exclusions in clauses (a) and (b) is not clear and they need amendments to resolve ambiguities.

A number of submissions (Survey and Spatial New Zealand, CivilPlan Consultants Ltd, A Crang) requested that the limits of the access be more specific or identifiable, whether within the definition or by allowing councils to specify a size.

Submissions also were concerned that the definition was too vague and subjective. In particular, CivilPlan Consultants Ltd, Queenstown-Lakes District Council and Auckland Council were concerned about the use of the word “primarily” in “used primarily for legal access” because it is subjective and ambiguous. CivilPlan Consultants Ltd also requested that, rather than excluding land used primarily for access, access legs and or entrance strips be excluded and that these terms be separately defined. CivilPlan Consultants Ltd and Survey and Spatial New Zealand pointed out that rear site is undefined with varying views on whether it requires a definition or is generally understood.

Tauranga City Council requested an exclusion for access to a site itself within a site to safeguard future occupants’ interests, especially in residential developments. It also queried whether the reference to access includes pedestrian access or vehicle access only.

Hamilton City Council requested that ‘net sit area’ only include the useable area of a site and exclude common areas.

Hastings District Council requested that the word “contiguous” be applied to the word “site” in the definition to accord with its plan rules, particularly in its Plains Production Zone.

Housing New Zealand and Western Bay of Plenty District Council were concerned about the exclusion for land subject to a designation that is intended to be taken. Housing New Zealand did not agree with the exclusion because such land still forms part of the site until it is taken and owners should not be penalised by a pending designation. The Western Bay of Plenty District Council preferred the words “may be taken” rather than “intended to be taken” because the latter wording is not clear.

Christchurch City Council pointed out reliant definitions that need highlighting and Whanganui District Council pointed out words highlighted that should not be.

Horticulture New Zealand was concerned about the definition of 'net site area' as it relates to coverage and the fact that structures such as crop protection structures could be included in the calculation.

3.76.3 Analysis and recommendations

We agree with Christchurch City Council that the words "does not include" should be replaced by "excludes" for consistency with the drafting principles and that reliant definitions should be highlighted. We recommend those changes.

We agree with NZTA that the difference between clause (a) and clause (b) is not clear because the phrase "any area of land" did not specify that the area of land is within the site. We therefore recommend replacing "area of land" with "part of the site" to make it clear that the area being referred to is part of the site. In addition, we recommend in clause (b) adding the words "part of the rear site" to ensure it is clear that it refers to access over the rear site, rather than providing access over one site to a rear site.

In relation to submissions requesting that a size be specified for the access or that the definition refer to size as specified in a council plan, we consider that to specify a size would be departing from the drafting principle that definitions should not constitute de facto rules and that councils can provide specific sizes in relevant rules. Further, the definition cannot refer to any size specified in a plan rule because the definitions in these standards must be fit for both policy statements and plans, and policy statements would not include any such rules.

We agree that the word "primarily" is too vague and subjective and recommend its removal from the definition. Once the words "used primarily for" are replaced by "that provides" in clause (b), which deals with access to a rear site, then clause (b) becomes more certain and there is no need to provide specific exclusions for access legs and entrance strips or provide separate definitions of these so we do not recommend this be done. We consider that the removal of the word "primarily" has no significant effect on the meaning or application of the definition.

We consider that "rear site" does not require a definition as we consider that it has an ordinarily understood meaning.

We agree with Tauranga City Council that an exclusion for access to a site itself should be provided and recommend that this be added to the exclusions. This aligns with the other exclusions and would accord with most plans that exclude these. We consider that whether the reference is to vehicle or pedestrian access does not need to be clarified because the access must be legal access irrespective of whether it is for vehicles or pedestrian. We consider this is a sufficient qualifier.

Hamilton City Council requested an exclusion for common use areas. We consider that council rules may be crafted to ensure that these areas are not taken into account if required. Most existing definitions in plans do not specify that common areas in cross-leases are excluded from the definition of 'net site area'. In accordance with that, we do not recommend excluding common use areas.

Hastings District Council requested the inclusion of the word "contiguous" to accord with its plan rules.

It was difficult for us to discern what plan rules would be affected and in what way but it is the intention of these standards that they do not alter the meaning or effect of rules and so consequential changes to rules may be needed to ensure that this is the case. We also consider that the submission was really about the definition of 'site' rather than the definition of 'net site area'. We have recommended changes to that definition to remove clause (e) of that definition so that

'site' would no longer be defined as "an area of *adjacent* land comprised in two or more computer freehold registers where an activity is occurring or proposed" (emphasis added). We therefore do not recommend adding the word "contiguous" to the definition of 'net site area'.

In relation to the submissions on the exclusion for land subject to a designation, we consider that such an exclusion is warranted because 'net site area' should relate only to land that is available for development, and land that may be taken pursuant to a designation is not. We therefore consider it is appropriate to retain the exclusion and recommend retaining the "designation" exclusion. This is in accord with most plans, which have exclusions for areas set aside for road widening but extends it to other designations because they may also involve acquiring land.

We do agree with the Western Bay of Plenty District Council that words "intended to be taken" are too uncertain because a council may not be able to determine what the "intention" of the requiring authority is. We agree that it is more certain to refer to any area of land that "may" be taken or acquired. Whether or not the designation allows land to be taken or acquired can be determined by the content of the designation. Some designations may only set out restrictions on the use of the land.

Horticulture New Zealand's submission on 'net site area', noting that rules about coverage would then capture crop protection structures, really relates to the definitions of 'building', 'coverage' and 'structure' and we have addressed this within the analysis of those terms. We have recommended that the definition of 'coverage' relate to buildings rather than structures. If a crop protection structure comes within the definition of 'building', it is preferable for council rules to manage crop protection structures rather than the definition.

For highlighting, we recommend rectifying minor highlighting issues.

We recommend amending the definition of 'net site area' in the Definitions Standard as follows:

Net site area means the total area of the site, but ~~does not include~~ excludes:

- a) any part of the site ~~area of land that legally provides legal access to another site:~~
- b) any part of a rear site ~~area of land used primarily for that provides legal access to that site~~
a rear site:
- c) any ~~area of land~~ part of the site subject to a designation that ~~may is intended to be taken or~~
acquired under the Public Works Act 1981.

3.77 Network utility operator

3.77.1 Proposed definition

Network Utility Operator has the same meaning as in s166 of the RMA (as set out in the box below)

means a person who—

- (a) undertakes or proposes to undertake the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or
- (b) operates or proposes to operate a network for the purpose of—
 - (i) telecommunication as defined in section 5 of the Telecommunications Act 2001; or
 - (ii) radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989; or

- (c) is an electricity operator or electricity distributor as defined in section 2 of the Electricity Act 1992 for the purpose of line function services as defined in that section; or
 - (d) undertakes or proposes to undertake the distribution of water for supply (including irrigation); or
 - (e) undertakes or proposes to undertake a drainage or sewerage system; or
 - (f) constructs, operates, or proposes to construct or operate, a road or railway line; or
 - (g) is an airport authority as defined by the Airport Authorities Act 1966 for the purposes of operating an airport as defined by that Act; or
 - (h) is a provider of any approach control service within the meaning of the Civil Aviation Act 1990; or
 - (i) undertakes or proposes to undertake a project or work prescribed as a network utility operation for the purposes of this definition by regulations made under this Act,—
- and the words **network utility operation** have a corresponding meaning

3.77.2 Submissions

There were five submitters on the definition of ‘network utility operator’. All were in support of the proposed definition without change.

3.77.3 Analysis and recommendation

‘Network utility operator’ is an RMA term that all five submitters supported and should be retained.

We recommend retaining the definition of ‘network utility operator’ as proposed in the Definitions Standard.

3.78 Noise

3.78.1 Proposed definition

Noise has the same meaning as in section 2 of the RMA (as set out in the box below)

Includes vibration

3.78.2 Submissions

Only Whanganui District Council and Auckland Council commented on the ‘noise’ definition. Auckland Council supported definition while Whanganui District Council considered that the definition does not actually define what ‘noise’ is and that reference should be made to the acoustical New Zealand Standards.

3.78.3 Analysis and recommendation

There is no better definition for 'noise' in the acoustical New Zealand Standards. We consider it appropriate to continue to include the RMA definition.

We recommend retaining the definition of noise as proposed in the Definitions Standard.

3.79 Notional boundary

Refer to section 3.61 "LA90, LAeq, LA(max), Ldn, Lpeak, LAeq(15 min), LAeq(24h), LA90(10 min), Notional boundary, Rating level and Special audible character" for submissions, analysis and recommendations on the definition for 'notional boundary'.

3.80 Official sign

3.80.1 Proposed definition

Official Sign means all signs required or provided for under any statute or regulation, or are otherwise related to aspects of public safety

3.80.2 Submissions

Six submissions were received on the definition of 'official sign'.

The oil companies, Mercury New Zealand Limited and Auckland Council supported the proposed definition. Reasons given were that signs are not limited to council and/or road signs. They also cover health and safety signs, and hazardous substances signs. These are different from normal advertising. Auckland Council suggested further consideration may need to be given to signs otherwise related to aspects of public safety.

NZTA, Christchurch City Council and Gisborne District Council supported the definition in part.

NZTA sought clarification of what the term "building safety" captures.

Christchurch City Council considered that "required or provided for under any statute or regulation" is insufficiently certain because the underlying regulations could change, changing the effect of the definition and any associated rules without a plan change. It suggested amending the definition to remove general reference to other statutes or regulations as it considered other signs (eg, election signs) can be included as a separate activity. It proposed an amendment that results in a definition of "means all signs ~~required or provided for under any statute or regulation, or are otherwise related to aspects for the purposes of promoting or ensuring public safety~~". It suggested a new definition for 'public safety signs' could be used to manage signs provided by individuals or business for safety reasons.

3.80.3 Analysis and recommendations

This definition is a subset of the 'sign' definition, recognising that a different management regime can be appropriate for some signage, especially when it is required to be provided by legislation or relates to public safety.

The oil companies' submission clearly identified the purpose for the definition, stating:

The definition is supported, noting that unlike many existing plan definitions of ‘official signs’, it is not limited to council and/or road signs. The Oil Companies are required under other legislation to display health and safety signage and hazardous substances signage at their facilities. It is important to recognise the unique nature of such signage and to enable it to be managed separately to more general advertising type signage.

This point is not limited to the oil industry or road signage. There is a range of signage required for safety purposes, including around hazard identification or hazardous substances, and this definition enables these types of signage to be managed separately from advertising signage. Ballance also identified that it has “had issues with District signage rules capturing ‘official signs’ amongst advertising signage”.

The NZTA submission sought clarification of what is meant by the term “building safety”. This is thought to mean “public safety”. The section 32 report identifies that this is intended to capture health and safety signage but it is also considered broad enough to capture the road safety billboards that NZTA raised in its submission on the sign definition.

The amendments suggested by Christchurch City Council are not supported as we consider that just limiting it to public safety is too narrow to capture the signage that is already adequately managed or required through regulation. For instance, a hazard board on a construction site is not necessarily for public safety (given the public cannot enter a construction site) but is still required for valid safety reasons. Another example is that the National Grid is required to identify the phases of each three-phase transmission line (a wire for each phase on alternating current lines) and this is considered a safety issue that is not for the public at large.

Christchurch City Council also raised the concern that regulations can change and any changes to regulations will affect the rule. We accept that this is correct but in this instance it can also be a way to reduce unnecessary duplication or conflict between different legislative requirements. It allows plan provisions to enable signs that are legally required to be provided without being caught by plan provisions aimed at managing the amenity effects of advertising signage. All signs can still be required to adhere to any plan provisions around matters like traffic safety and intersection sight lines.

There is nothing raised in the submissions that alters that explanation of this term in the section 32 report.

We recommend retaining the ‘official sign’ definition as proposed in the Definitions Standard.

3.81 Operational need (new recommended term)

Refer to section 3.43 “Functional need and Operational need (new recommended term)” for submissions, analysis and recommendations on the definition for ‘operational need’.

3.82 Outdoor living space

3.82.1 Proposed definition

Outdoor living space means an area of open space for the use of the occupants of the residential unit or units to which the space is allocated

3.82.2 Submissions

Christchurch City Council supported the definition of 'outdoor living space' without changes.

Some submissions (Housing New Zealand, Waitomo District Council, NZPI) requested that exclusions be added to the definition such as outdoor service and storage areas, driveways, and manoeuvring and parking spaces. Hutt City Council suggested that a broader description be added to encompass the concept that the space should be unobstructed. It suggested adding the following underlined text: "means an area of open space for the use of the occupants of the residential unit or units to which the space is allocated which is required to be unoccupied and unobstructed by buildings, pedestrian access ways and parking or manoeuvring areas".

Auckland Council supported the definition, particularly because it provides for outdoor living spaces to be at levels above ground level, which is appropriate for apartments.

Whangarei District Council requested that the definition be more specific about whether the space must be outdoor and whether balconies and decks are included. It suggested the following:

An area of outdoor open space including balconies, decks and roof terraces, available for the exclusive use of the occupants of the residential unit to which the space is allocated, that has direct access to a main living space and that does not contain structures that would impede its use for outdoor living purposes.

Dunedin City Council requested that the definition be altered so it is more suitable for common areas of outdoor space such as common outdoor space used in retirement villages or student hostels.

Gisborne District Council provided a reference to a relevant rule in its plan.

3.82.3 Analysis and recommendations

Some submissions requested more specific detail be added to the definition to make it clear that the space must be clear and unobstructed, and requested that particularly exclusions be added. However, even a broad statement in the definition that the space is required to be unoccupied and clear of obstructions would lead to uncertainty about what constitutes an obstruction. We consider that it is preferable to leave the definition broad so that councils can set out their own particular rules for these.

In relation to the submissions that requested specific inclusions for decks and balconies, we consider that the definition clearly does not limit outdoor space to ground floor outdoor space and would include decks and balconies. Auckland Council's submission confirms that this is the council's understanding also. We consider therefore that there is no need for decks and balconies to be specifically included. We consider that it is better for the specific extent of the details of any balcony or deck (ie, to the extent of enclosure or access to the main living space) to be addressed in plan rules.

For Dunedin City Council's submission about extending the definition to encompass outdoor living space in common use, such as in retirement villages or student hostels, we consider that the definition is intended to link outdoor space to a single occupation. If common spaces need to be addressed, a different definition can be used.

Therefore, we recommend retaining the definition in the Definitions Standard without amendment.

3.83 Peak particle velocity

Refer to section 3.16 “Building damage from vibration and Peak particle velocity” for submissions, analysis and recommendations on the definition for ‘peak particle velocity’.

3.84 Primary production

3.84.1 Proposed definition

Primary production

- a) means any aquaculture, agricultural, pastoral, horticultural, or forestry activities for the purpose of commercial gain or exchange; and
- b) includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but
- c) does not include processing of those products.

3.84.2 Submissions

Twenty-three submissions were received on the proposed definition for Primary Production.

New Zealand Transport Agency and Poultry Industry Association of New Zealand supported the proposed definition. Key reasons for support were that the proposed definition removes emotive language, and it allows objectives and policies that include all forms of primary production, including primary production that occurs principally within buildings.

Six submissions opposed the definition. The key matters raised in opposition include that the definition is overly simplistic and a list of exclusions and inclusions is required if consistency is to be achieved (Western Bay of Plenty District Council, Auckland Council, Environment Canterbury).

Submitters also stated it will require significant changes, and will result in unintended consequences to policy and rule frameworks. This is especially true for intensive primary production. Further, including farming and forestry together, which may have different management regimes because of the National Environmental Standards for Plantation Forestry (NES-PF), is not appropriate (Western Bay of Plenty District Council, Auckland Council, Gisborne District Council, Dunedin City Council).

Environment Canterbury requested that if a definition is to be retained, that it be replaced with “Means any agricultural, pastoral, horticultural, forestry or aquaculture activities; and includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but does not include processing of those products. “

The remaining fifteen submissions supported the definition in part, either raising issues of concern that need to be addressed, or seeking a new or amended definition.

Particular matters of concern raised throughout all submissions are as follows:

Use of the term auxiliary rather than ancillary

Synlait Milk Ltd, Forest and Bird and Auckland Council requested that the term auxiliary be replaced with the term ancillary. Christchurch City Council requested the same thing, subject to their request to amend the definition for ancillary being accepted.

Definitions should link to other RMA definitions

Federated Farmers of New Zealand Incorporated identified that the definition should relate to the definition of production land in the RMA.

Commercial gain or exchange purpose is problematic

Federated Farmers of New Zealand Incorporated identified the purpose of commercial gain or exchange makes the scope of the definition too narrow. Environment Canterbury identified that the link to commercial gain inappropriately constrains the definition as it precludes councils from regulating all forms of primary production activities (whether for commercial gain or not) have the potential to create adverse environmental effects (eg, farming on lifestyle blocks).

Tasman District Council considered there should be no link to sale of products. They did not support the use of the term commodities.

Brings farming and primary production together

Auckland Council was concerned that the definition brought farming and primary production together. This means activities with only a limited relationship with the rural environment may fall under this definition. They consider there should be a functional need for a rural location as a prerequisite of this definition.

Difference between production and process

Horticulture New Zealand requested the definition include washing and packaging because most primary production of horticulture products includes some washing and packing as part of preparing a product for market and this should be allowed for and not caught in the exclusion for “processing”.

Christchurch City Council identified an inconsistency between (b) and (c); and requested if the point was to manage “value added” processing, this should be clarified.

Forest and Bird requested guidance be provided on implementation of this definition, to clarify that processing is a separate activity, and may be defined where the common meaning is not certain.

Dunedin City Council identified that further processing into different products may be difficult to define, and may create a conflict with working from home. They suggest a clarification that the product was grown on the property.

Matters and specific inclusions with preclusions identified within the definition

Horticulture – Tasman District Council requested arable be used instead of horticulture.

Mining – Stratera and Oceana Gold (New Zealand Ltd) identified that mining should be part of primary production as minerals are a primary product, and mining is part of the primary sector. They identify that exclusion cannot be justified in terms of the scale of environmental effects. They also identify it mining is included in the definition of primary production within the Christchurch Plan. New Plymouth District Council identified that the definition should include farm quarries.

Forestry – Christchurch City Council identified that forestry has very different effects to other agriculture, pastoral and horticultural activities. Therefore, they consider they warrant either different definition or exclusion from this definition. Dunedin City Council identified a difficulty in grouping forestry with farming, as a result of the National Environment Standards for Plantation Forestry.

Aquaculture – Christchurch City Council identified that aquaculture has very different effects to other agriculture, pastoral and horticultural activities. Therefore, they consider they warrant either different definition or exclusion from this definition; and the reference to aquaculture activities in rural activities supports separate definitions. Western Bay of Plenty District Council considered that aquaculture fits better with intensive primary production.

Link to Intensive Primary Production – Auckland Council identified that intensive primary production should be included in the primary production definition because in their view it is part of primary production. In their plan, it is included within the definition of rural production. They did not think it was clear, without a specific reference, that ‘intensive primary production’ is a subset of primary production. Conversely, Waitomo District Council asked that intensive primary production be specifically excluded from the definition of ‘primary production’. Dunedin City Council asked that the exclusion of Intensive Primary Production be clearly identified. Selwyn District Council asked for the definition of intensive primary production to be deleted but raised the point that the farming of chickens, pigs and fungi not at an intensive scale may instead fall within the definition of primary production but may not come within any of the terms agriculture, horticulture or pastoral.

Poultry farming – Tegel Foods Ltd requested a new definition for poultry farming because it has different effects, particularly from other types of intensive primary production activities and should be considered separately. Selwyn District Council were concerned poultry farming and intensive pig farming would be treated the same, which they consider is inappropriate, and may create issues associated with status of activities.

Other activities – New Plymouth District Council identified that the rural environment is not just about primary production. They requested the definition be amended to include stock sale yards, and research facilities. Waitomo District Council and New Zealand Planning Institute asked whether bee keeping would be part of primary production. Selwyn District Council asked how fungi farming is to be treated.

Proposed amended definitions include:

- “Primary Production
 - a) means any agricultural, pastoral, horticultural, forestry or aquaculture activities on production land; and
 - b) includes any land and auxiliary buildings used for the initial production of the products that result from the listed activities; but
 - c) does not include processing of these products.” (Federated Farmers of New Zealand Incorporated)
- “Primary Production
 - a) means any agricultural, pastoral, horticultural, forestry or aquaculture activities; and
 - b) includes any land and auxiliary buildings used for the production of the products, including storing, washing and packaging of product for market, that result from the listed activities
 - c) does not include processing of these products into a different product” (Horticulture New Zealand)
- “Primary Production
 - a) means any agricultural, pastoral, horticultural, forestry, mining/quarrying and related activities or aquaculture activities for the purpose of commercial gain or exchange; and

- b) includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but
 - c) except for mining/quarrying does not include processing of those products” (Straterra)
- “Primary Production
 - a) means any agricultural, pastoral, horticultural, forestry or aquaculture activities for the purpose of commercial gain or exchange; and
 - b) includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but
 - c) does not include processing of those products” (Whanganui District Council)
- “Primary Production
 - a) means any agricultural, pastoral, horticultural, forestry or aquaculture activities for the purposes of research, commercial gain or exchange; and
 - b) includes any land and auxiliary buildings located on production land and/or used for the initial production of the products that result from the listed activities;
 - c) does not include processing of those commodities into a different product (New Plymouth District Council)
- “The production (but not processing) of primary products including from agriculture, aquaculture and forestry and includes the use of land and auxiliary buildings for these purposes” (Greater Wellington Regional Council)

3.84.3 Analysis and recommendation

Auxiliary v ancillary

Some submitters have requested that the word ‘auxiliary’ be replaced with ‘ancillary’ as ‘ancillary activity’ is a term included in the planning standard. When drafting the definition of primary production the word ‘ancillary’ was specifically excluded because of the definition in the planning standard. While the definition of ancillary activity was not appropriate for land and buildings used for primary production overall, ‘ancillary activity’ is appropriate for the initial processing of commodities from primary production, for example early washing of potatoes on-site, boxing kiwifruit, and removing mussels from aquaculture ropes.

We recommend the definition of primary activities to include the initial processing as part of primary production, but only when it is an ancillary activity (as defined in this report) to the production of commodities.

Straterra and Oceania Gold request that mineral extraction or mining and quarrying be included in the definition of primary production. The Oceania Gold submission explained the issue as:

Mineral extraction is excluded from the definition even though minerals are a primary product and mining is clearly part of the primary sector (see for example the analysis of the primary sector’s contribution to the New Zealand economy as reported on The Treasury website [<https://treasury.govt.nz/publications/wp/contribution-primary-sector-new-zealands-economic-growth-pp-05-04-html#child-15>]). ...The reference to the RMA definition of ‘production land’ in the Evaluation Report ...and the statement that the definition of ‘primary production’ attempts to ‘link’ to the RMA definition of ‘production land’ is unhelpful. As far as OGNZL is aware the only

reference to production land in the RMA is found in the section 2 definition of 'industrial and trade premises'. That definition excludes production land, with the consequence that the section 15(1)(c) and (d) restrictions on the discharge of contaminants do not apply to production land. This provides no proper basis for excluding mineral extraction from the definition of primary production.

While the Standards do not provide any indication of the purpose of defining 'primary production' OGNZL presumes it is intended to be a convenient shorthand way of describing activities that may typically be provided for or enabled in rural areas. On the basis that this is correct, OGNZL submits it is important that the definition is inclusive of all primary production activities, including those relating to mineral extraction. Primary production, including relating to minerals, is important to the social and economic wellbeing of New Zealand's people and communities. Most primary production, including mineral extraction, occurs in rural areas. There is no planning justification for excluding mineral extraction from the definition...

We agree with these submissions that most mineral extraction occurs in rural areas. We agree that the definition of "production land" in the RMA is used for a limited purpose and does not define all primary production activities. In contrast, the common meaning of primary production relates to the production of all raw materials. In relation to the terms to be used, mineral extraction or quarrying and mining, we prefer to refer to the terms 'mining' and 'quarrying' separately because quarrying activities are included as a definition in the standards. We therefore recommend including mining and quarrying within the definition of primary production.

The definitions in the standards are crafted to cover broad concepts allowing councils to differentiate with sub categories or narrower applications with appropriate rules as required. This definition includes a number of components which are likely to be addressed separately by plan rules. We anticipate that just as aquaculture must have different rules from horticulture, and forestry is separate because of the National Environmental Standards for Plantation Forestry, mining and quarrying will also need to be addressed separately in plans. We expect, therefore, that the term "primary production" is most likely to be used in higher level provisions in plans rather than rules which will need to differentiate between the different effects of the subcategories.

We acknowledge that some plans have definitions of primary production which are focussed on farming (agriculture and horticulture). Those terms may need to be changed to a different term which reflects this subcategory of the wider definition of "primary production" in the Standards. The Standards aim to enable consequential changes to be made to plan provisions where required so the implementation of the planning standards will reflect the same outcomes as currently sought by the operative plans.

We recommend the word aquaculture is moved within the definition to ensure that there is no confusion with the term aquaculture activities which is defined in the RMA for a particular purpose.

Submitters also requested that the phrase 'for the purpose of commercial gain or exchange' be removed because effects of these activities may need to be regulated whether or not commercial gain is achieved. The wording suggested by New Plymouth District Council also identified that one of the primary production uses of land may be for research purposes. We also agree that the purpose of commercial gain or exchange is not appropriate in this instance for the management of environmental effects and recommend that the reference to 'for the purpose of commercial gain or exchange' be removed.

Horticulture NZ requested that it be made clearer that some initial preparation of crops (washing and packaging), which could be considered processing, is required as part of the preparation for the sale of the product. Straterra sought an amendment to the exclusion of processing from the definition on the basis that some processing occurs as part of the extraction process for both mining and quarrying. It is considered that some of the Christchurch City Council's requested wording will

address these situations as well as it includes initial production activities and excludes any further process of the commodity. We recommend that the Christchurch City Council requested amendments to points b) and c) around this point be included in the definition.

Some submitters questioned whether farming of chickens, pigs and fungi were captured by the definition. There were also questions around whether bee keeping was included. A review of dictionary definitions of agriculture showed that the raising of livestock and crops, and cultivating soil are consistent components of the definition. Given the role that bees have in plant pollination and honey production we consider that bee keeping is clearly captured by the words agriculture and horticulture. We see no need to provide further clarification that the farming of chickens, pig and fungi or bee keeping is captured by the definition.

3.84.4 Recommendation(s)

We recommend that the definition of primary production be amended as follows:

- a) means any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry or aquaculture activities for the purpose of commercial gain or exchange; and
- b) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a); and
- c) includes any land and ~~auxiliary~~ buildings used for the production of the ~~products~~ commodities from a) and used for the initial processing of the commodities in b); that result from the listed activities; but
- d) ~~does not include~~ excludes further processing of those products commodities into a different product.

3.85 Quarry

Refer to section 3.71 “Mining, Quarry and Quarrying activities (new recommended term)” for submissions, analysis and recommendations on the definition for ‘quarry’.

3.86 Quarrying activities (new recommended term)

Refer to section 3.71 “Mining, Quarry and Quarrying activities (new recommended term)” for submissions, analysis and recommendations on the definition for ‘quarrying activities’.

3.87 Raft

3.87.1 Proposed definition

Raft has the same meaning as in section 2 of the RMA (as set out in the box below)

means any moored floating platform which is not self-propelled; and includes platforms that provide buoyancy support for the surfaces on which fish or marine vegetation are cultivated or for any cage or other device used to contain or restrain fish or marine vegetation; but does not include booms situated on lakes subject to artificial control which have been installed to ensure the safe operation of electricity generating facilities

3.87.2 Submissions

Auckland Council was the only submitter on the definition of 'raft'. It supported the inclusion of this definition.

3.87.3 Analysis and recommendation

Given the support, we recommend retaining the definition of 'raft' without amendment in the Definitions Standard.

3.88 Rating level

Refer to section 3.61 " L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak} , $L_{Aeq(15\ min)}$, $L_{Aeq(24h)}$, $L_{A90(10\ min)}$, Notional boundary, Rating level and Special audible character" for submissions, analysis and recommendations on the definition for 'rating level'.

3.89 Reclamation

3.89.1 Proposed definition

Reclamation means the infilling of any part of a [waterbody](#), [bed](#) of lake or [river](#) or part of a [waterbody](#) or [coastal marine area](#), to create permanent [land](#), and includes any embankment or causeway, but does not include beach re-nourishment or any deposition of material or infilling that is not permanent.

3.89.2 Submissions

Seven submissions were received on this definition.

Mercury NZ Ltd supported the definition without change and Christchurch City Council supported the definition subject to minor highlighting changes. The West Coast Regional Council and Environment Canterbury opposed the definition and sought amendments. Auckland Council, Bathurst Resources Ltd and New Zealand Transport Agency sought amendments.

Some submissions sought specific exclusions from the definitions so that associated rules don't capture activities not usually intended to be managed by reclamation rules or which would have different effects from those which reclamation rules normally manage. In particular, submissions pointed out that reclamation rules are usually intended to manage reclamation to create an area of land that can be used for land based activities, rather than other purposes such as protection against hazards or rehabilitation.

These requests for exclusions were:

- piles, pylons, boat ramps, rubble mound breakwaters, filling behind seawalls (unless the purpose of the seawall and filling is primarily for the purpose of creating land); beach nourishment where the newly created land is still subject to the ebb and flow of the tide; any area of surface water impounded by a dam; and culverts parallel to the direction of water flow. ie, the same as the definition in the Auckland Unitary Plan (NZTA)
- rehabilitation of open pit mining (Bathurst Resources Ltd)

- rock protection structures/ hazard protection works (West Coast Regional Council).

Auckland Council’s submission addressed a number of the terms used in the definition as follows:

- “bed of lake or river or part of a waterbody” – should be removed as, as the term “waterbody” includes lakes and rivers and also “part of a water body” is included twice
- "to create permanent land" is misleading. The RMA definition of land includes land in the Coastal Marine Area and reclamation is about creating dry land. ‘Dry’ is needed because the RMA definition of ‘land’ can include land in the CMA
- “embankment” should be qualified because it could be confused with a seawall or breakwater, which is often excluded and not considered to be reclamations in plans
- “permanent” may need to be considered more carefully because sometimes reclamations are temporary, for example, those associated with construction activities.

Auckland Council suggested the following:

Reclamation means the infilling of any part of a waterbody, ~~bed of lake or river or part of a waterbody~~ or coastal marine area, to create permanent dry land, and includes any embankment or causeway constructed to create permanent dry land, but does not include beach re-nourishment or any deposition of material or infilling that is not permanent, or structures such as boat ramps, rubble mound breakwaters, moles, groynes or sea walls, or culverts in rivers that are parallel to the direction of water flow.

Conversely, Environment Canterbury requested the definition be recrafted in a much broader and simpler manner because some of the specific terms used would not be understood by the general public. They suggested the following:

Means the creation of permanent land by deposition of infill or other material onto the bed of a lake or river or coastal marine area.

Christchurch City Council’s submission pointed out highlighting omissions in the draft definition but otherwise supported the definition.

3.89.3 Analysis and recommendation

Reclamations are used for a number of purposes including for residential development, activities dependent on proximity to water, vehicle, rail or pedestrian transport routes or even just the disposal of fill. The RMA includes a number of provisions addressing reclamations including RMA sections 12 and 13 that require authorisation to reclaim land in the coastal marine area and in relation to the beds of lakes and rivers. Sections 245 and 246 also deal with approval and deposit of survey plans once a reclamation has been completed.

The Marine and Coastal Area (Takutai Moana) Act 2011 also addresses the reclamation of land from the marine and coastal area. It includes a definition of reclaimed land (not the activity of reclamation) in the coastal marine area as follows:

“reclaimed land means permanent land formed from land that formerly was below the line of mean high-water springs and that, as a result of a reclamation, is located above the line of mean high-water springs, but does not include—

- (a) land that has arisen above the line of mean high-water springs as a result of natural processes, including accretion; or
- (b) structures such as breakwaters, moles, groynes, or sea walls.”

The New Zealand Coastal Policy Statement does not include a definition but policy 10 requires the avoidance of the reclamation of land in the coastal marine area except in certain circumstances.

We considered whether the term “reclamation” relates to the activity of reclamation or the reclaimed land itself, which is referred to as a reclamation. These two meanings are confused in the proposed definition; for instance, the inclusion of the tangible nouns “embankment and causeway” within the activity of infilling. We consider that the term is intended to refer to the activity of reclamation. This is the sense in which it is used the relevant RMA sections and in plans. Therefore we have framed the definition to be an activity. Changes recommended to the definition therefore refer consistently to activities not objects ie, the “formation” of dry land and the “construction” of seawalls and breakwaters – not just the seawalls and breakwaters themselves.

We agree that an essential element of the activity of reclamation is that it specifically creates new dry land whereas natural hazard protection structures such as seawalls and breakwaters are constructed to protect existing land. That natural hazard protection structures such as seawalls and breakwaters are not considered to be reclamations is made clear in the definition of the term “reclaimed land” in the Marine and Coastal Area (Takutai Moana) Act 2011 which excludes them. We consider that the definitions in the two acts should be aligned and we recommend adding an exclusion for “natural hazard protection structures such as breakwaters, seawalls or groynes”. The two definitions cannot be exactly the same because the Acts are for different purposes and the RMA definition relates to rivers and lakes not just the coastal marine area.

We recommend confining the exclusion for the construction of structures such as seawalls and breakwaters to those parts where their purpose is natural hazard protection. Where those structures are part of the new land that is formed they would be considered as part of the reclamation. In addition, a breakwater can sometimes be constructed further than what is needed for natural hazard protection so it forms new land for other purposes eg location of buildings. Where this is the case, that part of the breakwater constitutes a reclamation. We therefore recommend that the exclusion for structures such as seawalls, breakwaters and groynes is for the following: *“the construction of natural hazard protection structures such as seawalls, breakwaters or groynes except where the purpose of those structures is to form dry land”*.

We have included the construction of groynes in the list of structures excluded from reclamation in order to align with definition of reclaimed land in The Marine and Coastal Area (Takutai Moana) Act 2011 and to ensure that the list that follows structures clearly includes both river and marine structures; groynes being also in rivers. We have not included the word “moles” however, which is also in the list in The Marine and Coastal Area (Takutai Moana) Act 2011 because this does not have a generally understood or accessible meaning. It can be a breakwater or a causeway and its exclusion could therefore conflict with the inclusion of a causeway in the definition of reclamation as originally proposed.

Further, the exclusion from the activity of reclamation for the construction of natural hazard protection structures does not extend to any filling behind those seawalls. Councils may use rules to permit or otherwise manage any aspects such as minor filling behind seawalls.

For the requests for exclusions and inclusions in general we consider that that such exclusions and inclusions are better addressed in plan rules rather than within definitions.

For beach re nourishment, we agree with Environment Canterbury that it is not a commonly understood term. It is also unclear what the extent of beach re – nourishment is. Therefore, we recommend that it no longer be a specified inclusion. Councils may set out their own definitions of beach nourishment specifying the limits of this and manage the activity through rules.

We agree with Auckland Council that the term water body should not be repeated twice. But we recommend that reference to “the bed of lake or river” be retained as well as the reference to a water body because a waterbody (as defined by the RMA) means the water only and doesn’t include the bed. The key element of a reclamation is that it affects the bed of a river or lake and the RMA requires express authorisation for this (through a rule in a plan, a national environmental standard or a resource consent – see RMA sections 12 and 13). We therefore recommend that the reference to the bed of a lake or river is retained.

We agree with Auckland Council’s submission that the definition should specify that the land formed is dry land otherwise the definition may cover land under water because the RMA definition of land encompasses land covered by water.

We agree with Auckland Council’s submission that the word embankment has a number of meanings and could be confused with seawalls. Dictionary definitions of embankment indicate that an embankment could be either a river flood management embankment or a railway embankment for a route across water. In fact, we consider that plans use the word more generally to mean a solid sloping bank or side rising from the ground or water. Given the various meanings, an embankment may be a lesser category of a reclamation in some circumstances but not all. We considered whether to retain the inclusion with the amendments suggested by Auckland Council but given the confusion over the meaning of the term we consider it is preferable to remove it. Councils may define the construction of an embankment as a narrower application of reclamation where it meets the terms of the reclamation definition, if they require.

We recommend retaining the word “permanent”. We acknowledge that some construction activities may involve the temporary formation of land where there was previously water but we consider that the RMA sets out specific processes for dealing with reclamations that clearly show it is intended that a reclamation be permanent. Sections 245 and 246 require the holder of every resource consent for a reclamation to submit and deposit a survey plan for a reclamation (RMA). Section 355 also sets out an application process for the vesting in a person the ownership of Crown owned land reclaimed from a river or lake bed. It is clearly intended that a reclamation will result in the formation of permanent land that can be surveyed and may eventually be comprised in a record of title under the Land Transfer Act 2017. If councils wish to address activities similar to reclamation that are temporary only, they may address these within a different category and with different rules.

We also consider that an essential element of a reclamation is that it is manmade and not the result of accretion or other natural processes. We therefore recommend adding the term “man-made” into the definition to make this clear.

The dictionary meaning of the word “infilling” is the blocking up or filling of a space or hole. We don’t consider that there is actually a hole or space to be filled. Instead, we consider that a reclamation involves putting material on the bed of a river or lake or in the coastal marine area. We therefore recommend replacing the word “infilling” with phrase “the positioning of material into or onto”. We considered whether to use other words such as placing or depositing. However, RMA sections 12 and 13 address reclamation separately from other actions such as placing and depositing and we consider that it is preferable to maintain this distinction in the definition to avoid confusion.

We recommend the word “formation” be used in the definition because this aligns with the use of the word “formed” in the definition of reclaimed land in the Marine and Coastal Area (Takutai

Moana) Act 2011. In addition, we recommend that reference to the formation of the land comes first in the definition rather than the positioning of the material because it's the formation of the land that is the key element of reclamation.

We also note that some plans also refer to reclamation where land is dried out as a result of a structure such as a causeway or seawall excluding coastal water from part of the coastal marine area. We consider that this may, depending on the circumstances of each situation, constitute reclamation because it would occur as a direct result of the deliberate positioning of the material which blocked the water ingress. The definition is therefore framed widely enough to encompass this. The cutting off of the water flow in this situation may also constitute other activities, including draining.

We recommend that the definition of "Reclamation" be amended as follows:

Reclamation means the manmade formation of permanent dry land by the positioning of material into or onto any part of a waterbody, bed of a lake or river or part of a waterbody or the coastal marine area, to create permanent land, and

- a) includes the construction of any embankment or causeway, but
- b) excludes does not include beach re-nourishment or the construction of natural hazard protection structures such as seawalls, breakwaters or groynes except where the purpose of those structures is to form dry land. any deposition of material or infilling that is not permanent

3.90 Residential activity

3.90.1 Proposed definition

Residential activity means the use of land and buildings by people for the primary purpose of living accommodation

3.90.2 Submissions

Seventeen submissions were received on the definition of 'residential activity'.

Five submissions supported the definition. One submission provided no reason for its support. Others supported the definition as it does not discriminate against prefabricated construction methods, and because it provides for a diverse range of residential activities with similar effects.

Six submissions supported the definition in part; requesting amendment or raising concern with parts of the definition.

Six submissions opposed the definition.

Inconsistency with RMA definition

Environment Canterbury noted an inconsistency with the definition of 'residential activity' under section 95A(6) of the RMA. On that basis, it requested the definition be deleted, or renamed as

something like ‘residential use’. The RMA definition is linked to activities and mandatory public notification.

(6) In subsection (5), **residential activity** means any activity that requires resource consent under a regional or district plan and that is associated with the construction, alternation, or use of 1 or more dwellinghouses on land that, under a district plan, is intended to be solely or principally for residential purposes.

Limit to people referring to the accommodation as “house or home”

NZTA requested an addition to the definition to include reference to “that people will generally refer to as their house or home”. They suggested that, for the avoidance of doubt, it be clarified that residential activity can also occur in community housing and in a holiday home.

Fit with existing definitions

Gisborne District Council requested that the definition creates no inconsistency with the definition from their Plan (ie, the Tairāwhiti Resource Management Plan):

The use of premises for any domestic or related purpose by persons living alone or in family or non-family groups (whether any person is subject to care or supervision), and shall include emergency and refugee accommodation. Residential activity shall not include home occupation, visitor accommodation, or residential care homes, camp groups or motor camps.

Scope of activities encompassed in the definition and fit with other definitions

Kāpiti Coast District Council and Tauranga City Council considered the definition resulted in uncertainty about what was to be included or excluded from the definition, and exactly what living accommodation encompasses.

Seven submissions identified the need to clarify that visitor accommodation or guest accommodation, or commercial accommodation, including bed and breakfast accommodation, is not part of residential activities.

Christchurch City Council requested that custodial living (ie, prisons) be particularly excluded as this activity has significantly different effects.

Dunedin City Council raised concerns about the need for clarification as to whether supported living and house rentals are included in this definition.

Kāpiti Coast District Council asked whether temporary accommodation is to be included or excluded from residential activities.

Far North District Council asked whether workers’ accommodation was to be included. It identified points of concern about requirements for members to be of the same household, or have separate cooking facilities. These specific details relate more to the definition of ‘residential unit’.

Several submissions asked for clarification that particular activities or development forms should be included as ‘residential activity’:

- community housing (NZTA)
- holiday homes (NZTA, Tauranga City Council)
- retirement villages, including their ancillary activities (Retirement Villages Association of New Zealand).

Retirement villages

Auckland Council supported the definition in principle. It asked whether, if an activity is separately defined such as a retirement village, it cannot be considered as part of the more general definition of ‘residential activity’ (eg, use versus development).

For other definitions, Retirement Villages Association of New Zealand sought an amendment to the definition of ‘retirement village premises’ to clarify they are a ‘residential activity’, and an amendment of ‘residential unit’ definition to add “retirement village” at the end of the definition.

3.90.3 Analysis and recommendations

The definition of ‘residential activity’ is closely associated with and influences a variety of other definitions in the Definitions Standard, including ‘residential unit’ and ‘visitor accommodation’.

Case law

Current case law has found that ‘residential activity’ relates to the activity, not the building. This means not all residential activities occur in residential units. For example, a retirement home may not occur in a ‘residential unit’ but it is a ‘residential activity’. Case law has also found that in some circumstances, visitor accommodation can be a residential activity. While those findings are from particular cases subject to particular plan definitions, any final National Planning Standards definition and its relationship to other definitions should not categorically preclude these findings.

Inconsistency with RMA definition

A concern was raised by Environment Canterbury regarding the inconsistency between the proposed definition and the definition of ‘residential activity’ under section 95(6) of the RMA for the purpose of codifying notification limitations. The guidance for the amendment to the RMA that brought in that definition makes it clear that the “activity” relates both to the construction and parameters of the residential unit including land modification, yards, driveways and infrastructure connections and its consequent use, and is confined to consideration of proposals already requiring resource consent. This provision is solely aimed at providing limitations on both notification and affected persons. On the basis that it is quite specifically for different purposes, we see no need to specifically address the section 95(6) definition within the National Planning Standards definition.

The intent of the RMA definition is significantly different from the intent of a definition of ‘residential activity’ within RMA plans. In RMA plans, ‘residential activity’ is a more limited concept focused on the activity or use. Activities and the physical development are considered quite separately. The development may be encapsulated in an associated definition for a ‘residential unit’. The ‘residential activity’ may be a permitted activity in a residential zone, but the associated ‘residential unit’ (the development) may require resource consent because of its particular bulk and location parameters. Associated activities such as earthworks or driveways can be separately considered from the ‘residential unit’, as part of the ‘residential activity’. On this basis, we consider it appropriate that a ‘residential activity’ definition be provided as part of the Definitions Standard.

In addition, we have used the term “living accommodation” rather than “dwelling house”, as dwelling house is a term used for a residential unit, which is a separate definition. We have used the term “living accommodation” as a means of describing the activity (verb) rather than the noun (residential unit).

Use of term “primary purposes” – discretion

While no specific submissions on the term “primary purposes” were received on this definition, submissions on other definitions raised concerns with this term. We considered this term is uncertain and subjective, which makes enforcement difficult. The intent of this term is to enable matters such as carparks and working from home to be encompassed within the definition. As these are considered an integral part of a residential activity, no specific reference to ancillary activities is required.

However, if any council needs to provide specific provisions to address any activities that occur within the homes (such as working from home), it will be able to create, through a normal Schedule 1 process, sub-definitions of residential activities and associated rules to address those matters.

Limit to people referring to the accommodation as “house or home”

NZTA requested an addition to the definition to include reference to “that people will generally refer to as their house or home”. We consider that this limitation will not suit all forms of residential activities and brings in a social construct of belonging. This is subject to interpretation and may not suit all situations. For example, people renting a flat with a two-month tenancy are undertaking a ‘residential activity’, but they may not relate to the place as their home. However, this point did raise the need to tie the definition to people, to ensure that activities like a cattery are not included as a ‘residential activity’.

Fit with existing definitions

The request for no definitional inconsistency requested by Gisborne District Council relates to an existing definition that is quite detailed. It includes a range of exclusions and inclusions, is subject to a judgement having to be made on the determination of what “related purposes” are, and is directly tied to the use of premises. Other “activities” in National Planning Standards definitions are not tied to buildings or land; rather they relate to the activity. In addition, the intent for National Planning Standards definitions is to not have matters of judgement within the definition. On this basis, we do not recommend amending the definition to reflect what was requested.

Scope of activities encompassed in the definition

The question of whether there is a need to tie the accommodation to domestic or household purposes is more finely balance, and has significant consequences for the implementation of the definition. The limitation of the ‘residential activity’ definition to “household” may be appropriate in context of the ‘residential unit’ definition. However, it would exclude activities such as student hostels, which we consider should be a ‘residential activity’. On that basis, we do not support incorporating a limitation to “household”. The Oxford Dictionary definition of ‘domestic’ is “relating to the running of a home or to family relations”. As identified above, student hostels or short-term rentals would be excluded from this definition.

What is equally problematic is that by framing the definition around living accommodation, this enables consideration of custodial living (prisons) as a ‘residential activity’. This was a concern raised in a submission. While we acknowledge people live in a prison, this residency is ancillary and consequential to the retention, containment or rehabilitation of those people. At this stage, we consider that prisons do not meet the ‘residential activity’ definition. However, home detention or groups of prisoners living in homes under home detention type systems are generally not limited by RMA plans. While we can see value in providing a ‘custodial living’ definition to address these matters, forming this definition will require in-depth work with a range of parties, and that will not

be possible before the legislatively required date for this first set of National Planning Standards. Councils may choose to clarify matters themselves by providing a more specific sub-definition for 'custodial living'.

Several submissions sought clarification about whether particular constructs were to be included or excluded from the definition. We consider the listing of examples of included or excluded residential activities is best achieved by the different councils rather than being required in all plans throughout the country. This can be achieved through either sub-definition or rule. Sub-definitions would need to be consistent with the overarching definition but have the potential to be more specific than the proposed definition. If a proposal met two definitions, the more specific definition would prevail.

The request for specific cross-reference to the definition of 'retirement village premises' is not supported, as a retirement village is just one of the many specific constructs of a residential activity. Specific matters to be included and excluded from definitions can be achieved more appropriately at a local level. Different forms of residential activities may result in different environmental effects, depending on the area's existing environment and its threshold for change and should be clarified in rules by councils.

Alignment with other standards

The 'residential activity' definition is very broad and has ties to several other definitions. However, it works particularly closely with the definitions of 'residential unit' and 'visitor accommodation'. For example, 'visitor accommodation' is a residential activity that does not occur in a residential unit.

If a council has a local issue that supports the need to place controls on short-term rental of residential units at a local level, it will be able to prepare a separate subcategory definition of 'residential activity' and manage the matter through that sub-definition.

Summary

In summary, after considering all the matters raised, we recommend retaining a definition of 'residential activity'. However, the definition should be amended to remove reference to primary purpose.

We recommend amending the definition of residential activity in the Definitions Standard as follows:

Residential activity means the use of land and buildings ~~by people for the primary purpose of~~ for people's living accommodation.

3.91 Residential unit

3.91.1 Proposed definition

Residential Unit means a building (hyperlink) or part of a building (hyperlink) that is used for a residential activity (hyperlink) exclusively by one household, and must include as a self-contained unit or a self-contained group of units sleeping, cooking, bathing and toilet facilities.

3.91.2 Submissions

In total, 19 submissions were received on the definition of 'residential unit'. Seven submissions supported the definition. Three submissions opposed the definition. Other submissions sought amendments.

Three submitters (NZTA, Fire and Emergency New Zealand, Auckland Council) supported the definition.

Three submissions (Cottages New Zealand, Sunshine Homes & Cabins Ltd, Kennerley Consulting Ltd) supported the definition, on the basis that it did not discriminate against prefabricated construction methods.

Inconsistency between residential unit and minor residential unit

One submitter (Western Bay of Plenty District Council) raised an inconsistency between the definition of 'residential unit' and 'minor residential unit'.

Bring in concept of 'self-containment' to the definition

Globe Planning requested the definition be amended to read: "means a self-contained building or unit (or group of buildings, including accessory buildings) used for a residential activity by one or more persons who form a single household".

Definition of 'household'

CivilPlan Consultants, Western Bay of Plenty District Council, Tauranga City Council and Globe Planning requested that a definition of 'household' be provided.

Housing New Zealand Corporation identified the reference to one household is unclear, and the mix of combining concepts of dwellings and units (apartments) makes it an unclear definition.

The Department of Corrections requested the definition identify that it does not have to be limited to family members, and it does include people who provided day-to-day care, whether paid or not.

The Ministry of Social Development identified that a definition of 'household' is required to make it clear whether use for temporary residential accommodation would fall within this definition of a 'residential unit'.

Defining the features that will define the number of "units" and defining the parts of the definition

Six submitters raised questions around the numbers of "features" associated with a residential unit.

- CivilPlan Consultants asked what features trigger the determination of "two residential units".
- The Department of Corrections asked that the definition be amended to identify that a 'residential unit' may contain any combination of the features; but all are not a mandatory requirement. That is, the department would like a 'residential unit' to cover units that do not have to have cooking facilities or bathing facilities.
- Three submitters, Christchurch City Council, Western Bay of Plenty District Council and Globe Planning requested setting a limit on the number of kitchens per residential unit.
- Western Bay of Plenty District Council and Globe Planning also identified the need to limit the number of bathrooms or bedrooms, and to constrain the definition to the space being "self-contained".

Retirement Villages Association of New Zealand supported the definition on the basis that 'residential activity' and 'residential unit' are different definitions, and a residential activity does not have to occur in a residential unit.

Two submitters (Horticulture New Zealand, Pork Industry Board) opposed the definition, on the basis that it has consequences for seasonal workers' accommodation or farm workers' accommodation. They requested additional definitions be included.

Three submitters (Horticulture New Zealand, Pork Industry Board, Clarke Group Management Ltd) asked that the definition be amended to enable particular activities to be included in the definition. These included seasonal workers' accommodation, farm workers' accommodation and boarding houses.

Western Bay of Plenty District Council identified the definition is too basic (eg, are bathing facilities covered by a swimming pool?) and requires further clarification or definitions.

Gisborne District Council raised a conflict with its existing plan, in which its provisions around "permanent living" would lead to conflicting rules with the definition notified.

Additional definitions

Western Bay of Plenty District Council asked for the following additional associated definitions:

- a definition of 'self-contained' as: "when a building contains a kitchen and/or kitchenette, a bathroom and a living area and/or bedroom and is separated from any other self-contained area by being in another building, or where within the same building, by a door, a wall or a garage"
- definitions for 'kitchen' and 'kitchenette'.

3.91.3 Analysis and recommendations

Inconsistency between residential unit and minor residential unit

We do not consider there is an inconsistency between the recommended amended definitions for 'residential unit' and 'minor residential unit'. The premise proposed is that the residential unit is the main established unit on the site occupied by the site's household. A minor residential unit can only be legally established in conjunction with the residential unit, and must be held in common ownership with the residential unit on the same site. It is envisaged that a person would be able to build a small residential unit on a site while they build their substantive residential unit on the same site. During construction the small unit would be the 'residential unit'. Once they complete and/or occupy the substantive dwelling the substantive house will become the residential unit (by definition), and the original smaller dwelling can become the minor residential unit. We consider that these definitions work together in their amended forms.

Bring in concept of 'self-containment' to the definition

'Residential unit' is limited to a residential activity used exclusively by one household. On that basis, it will be self-contained by default. As such, a self-contained limit does not need to be added to the definition on a national basis, nor does a new definition of self-contained need to be prepared.

We note, however, that a 'residential unit' may be constructed in the form of several independent buildings, and the definition should be amended to reflect that possibility.

Additional definitions

Seasonal workers' accommodation and farm workers' accommodation may be captured in the definition of 'residential unit' or may not be, depending on the design of the accommodation. There is nothing precluding councils from developing their own definitions and rules around seasonal

workers' accommodation and/or farm workers' accommodation to meet the needs of their district, depending on the farming activities that occur in their area. It is unnecessary to define these matters on a national basis.

Boarding houses are different to a standard 'residential unit'. There is nothing precluding councils from developing their own provisions around boarding houses to meet the needs of their district. It is unnecessary to define this matter on a national basis.

We also see no need to provide a national definition of 'kitchen' or 'kitchenette'. The term "cooking facilities" covers both matters. Any council will be able to provide sub-definitions if it considers a greater level of control or definition is required to meet the needs of its community.

Defining the features that will define the number of "units"

Councils will retain the ability to develop their scale of development they consider should constitute one residential unit. For example, while one district may consider a dwelling should only contain one kitchen, this limit may not meet the needs of the community in another district. Each council should be able to make that decision itself, rather than having that limit set on a national basis.

However, we consider at least one of each of these features identified (sleeping, cooking, bathing, and toilet facilities) is required to make a 'residential unit' able to be used exclusively by one household. If it does not contain any of the facilities identified, it is dependent on that facility being provided elsewhere. If organisations such as the Department of Corrections need to accommodate people in alternative forms of housing, they should be able to address their needs through 'residential activity', although not meeting the 'residential unit' definition.

Defining the parts of the definition

We consider the commonly understood meaning of the terms in the definition are sufficient to understand the definition. If a council considers it needs to provide additional definitions for sleeping, cooking, bathing and toilet facilities, there is nothing precluding it from doing this.

Definition for 'household' required

Early tested definitions of 'household' created uncertainty and were considered subject to interpretation.

The commonly understood meaning of a household is sufficient to understand the term. It is commonly understood that people do not have to be related to form a household. In addition, carers within a household –whether as a parent, a nanny, an au-pair, or carers in supported living accommodation (eg, IHC houses) – are all members of a household and enable those households to function.

Temporary residential accommodation or emergency housing may or may not fit under this definition, dependent on how the accommodation is constructed. However, there is nothing that precludes councils from preparing particular provisions to specifically enable temporary residential or emergency accommodation.

Alignment with other standards

The 'residential unit' definition has ties to several other definitions. It works particularly closely with the definition of 'residential activity' and 'visitor accommodation'. For example, 'visitor accommodation' is a residential activity that does not occur in a residential unit.

If a council has a local issue that supports the need to place controls on short-term rental of residential units at a local level, it will be able to prepare a separate subcategory definition of 'residential activity' and manage the matter through that sub-definition.

Overall considerations

In summary, we consider a nationally consistent definition of 'residential unit' will provide benefit by setting the 'use' and 'facilities' frame against which the councils can provide the more fine-grained provisions that identify how residential units will be treated within their district.

We consider that when this definition is used in conjunction with the definitions of 'building', 'structure', 'residential activity' and 'minor residential unit', the definitions work together and provide a consistent framework to address how people live in our communities.

We recommend retaining a definition for 'residential unit' in the Definitions Standard and amending it as follows:

Residential Unit means a [building\(s\)](#) or part of a [building](#) that is used for a [residential activity](#) exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities

3.92 Retirement Village Premises

3.92.1 Proposed definition

Retirement village premises has the same meaning as in section 226A of the RMA (as set out in the box below)

means premises (including any land and associated buildings) within a complex of premises for occupation as residences predominantly by persons who are retired and any spouses or partners of such persons

3.92.2 Submissions

Six submissions were received on the proposed definition of retirement village premises.

Auckland Council supported the use of the RMA definition, but noted they had a definition for 'retirement village' which had a different function than the definition of retirement village premises proposed in the planning standards. All other submissions opposed the definition or requested either amendments, additions or entirely new versions of the definition.

Housing New Zealand Corporation considers the definition of retirement village as used in the Auckland Unitary Plan is more appropriate.

Arvida Group Limited expressed that they did not consider the RMA definition adequately captures the range of activities that are found in modern day retirement villages. They seek the following amendment be made "*means premises (including any land and associated buildings) within a complex of premises for occupation as residences and/or care facilities predominantly by persons who are retired and any spouses or partners of such persons, and may include accessory recreation, leisure and supported residential activities.*"

Selwyn District Council felt that the RMA definition as intended to be applied specifically to retirement village premises at the time of subdivision and that the National Planning Standards are

trying to extend this meaning beyond its intended use. They support a definition for retirement village premises but believe that further thought should be given to this definition to determine appropriateness in all situations.

Similarly, Christchurch City Council preferred the version of the definition in its current district plan, stating that the definition of retirement village premises in the RMA s226A is for a specific purpose in terms of leases not being a subdivision, and is not fit for purpose for more general District Plan rules. The Council suggested adding registration requirements under the Retirement Villages Act 2003 or as a rest home under the Health and Disability Services Act 2001.

The submission received from the Retirement Villages Association of New Zealand showed strong opposition to the use of RMA definition. They were concerned that the terminology of 'retirement village premises' will encourage local authorities to ignore the definition and include their own definition of 'retirement village', making the standardised definition pointless.

They proposed that the definition requires the following four elements:

The two elements already included in the proposed definition:

- (a) Accommodation predominantly for persons in their retirement and their spouses or partners; and
- (b) A complex of two or more units.

Two additional elements:

- (a) A registered retirement village under the RV Act or a rest home under the Health and Disability Services (Safety) Act 2001; and
- (b) Other services or amenities offered on site, such as nursing, medical care, welfare, recreation and leisure, and other accessory non-residential activities.

They emphasised the importance of the statutory references as they provide important safeguards for residents and that *"...practically speaking, including the statutory references in the definition also ensures that only reputable operators of retirement villages who provide a high standard of care and amenity for residents are included"*. They reference the Auckland Unitary Plan and the Christchurch Replacement District Plan as examples of the definition that are more appropriate.

3.92.3 Analysis and recommendation

Submitters opposed to the draft definition, identified that it was too narrow to capture the integrated facilities of modern retirement villages. The Retirement Village Association along with Christchurch City Council and Selwyn District Council identified that the proposed definition is not suitable in the context of RMA plans and is only relevant in the context of subdivision activities.

In light of the submissions on the applicability of the RMA definition, we accept the RMA definition is not an appropriate term for use in plans to identify all of the activities and facilities that can be included in a retirement village. Given this, and in light of other submissions requesting a definition is still provided, it is recommended that the term for any new definition should be 'retirement village' so that the planning standards definition does not result in a modification of an RMA definition.

Turning now then to what a new definition of 'retirement village' should include, we noted the Retirement Village Association submission refers to the Auckland Unitary Plan and the Christchurch Replacement District Plan definitions for retirement village as a useful starting point. However, in their recommendations, they clearly prefer a version of the definition that is closer to that adopted

in the Christchurch Replacement District Plan (ie, it has specific reference to other pieces of legislation to narrow the scope of what can be a retirement village).

Many aspects of the two definitions are similar (eg, reference to what type of people accommodation is provided for, multiple units, wide range of facilities and services provided).

In considering the submissions, we also note the general support for aspects of the RMA definition being carried over into any new definition and recommend these form the basis of a new definition. These are:

- accommodation being provided for people in their retirements and their spouses or partners
- complex

We prefer a reference to 'complex' over the more specific requirement to have two or more units on the site (which is used in both the Auckland and Christchurch plans). This is principally because of the drafting principle that the planning standards definitions should not include thresholds. Doing so will also necessitate a link to the residential unit definition. We acknowledge the submission point by the Retirement Village Association that while most retirement villages contain residential units, this is not the only type of accommodation provided. For a national definition, we consider the most relevant concept to convey is that these are a 'complex', which in this context is taken to mean a group of similar buildings or facilities on one site.

We also note the broad consensus that retirement villages contain a mix of services and facilities and that this should be brought into the definition. Again, taking a broad approach to the definition, we consider it sufficient to reference a range of activities including recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities.

The notable difference between the Auckland and Christchurch plan definitions appears to be that the Christchurch Replacement District Plan definition includes a test that the retirement village be either a registered retirement villages under the Retirement Villages Act 2003 or a rest home as defined in the Health and Disability Services (Safety) Act 2001. The Auckland Unitary Plan does not include these concepts, but talks more broadly about a 'managed comprehensive residential development'.

The Christchurch IHP decision⁶⁷ does not explicitly discuss the rationale for this aspect of the definition. We understand the original drafting of the definition did not include these references, and that the Council accepted submissions on this point and amended its proposed definition accordingly. We take it then, that there was little need for further discussion on this point.

The Auckland IHP decision⁶⁸ did comment specifically on the need for these statutory references, but came to a different view about the need for these references. They noted:

"It is the Panel's view, and that of the Council, that the focus of the Plan needs to remain on the resource management reasons relating to villages, primarily due to their typical site/building size and scale and the management of effects associated with accessory activities that tend to establish with the village – matters not determined by a particular ownership model".

On balance, and keeping in mind the drafting principles of the national planning standards, we consider the definition does not need to include references to the Retirement Villages Act or Health and Disability Services (Safety) Act 2001. We acknowledge that including these specific statutory

⁶⁷ Christchurch Replacement District Plan IHP Decision 58 – Chapter 2 Definitions Stage 2 and 3. 25-11-2016

⁶⁸ Auckland IHP report to AC Topic 059 Residential zones. 2016-07-22

references would provide more certainty in their application (ie, as it would be clear whether a village met the registration criteria or not), but in line with our drafting approach for national level definitions, we consider a slightly broader definition is more appropriate and note that local authorities still wanting to include the additional registration requirements could do so in their rule framework. We suggest the definition should however include reference to it being a 'managed' complex.

Lastly, we note the submission point by the Retirement Village Association that retirement villages should be considered residential activities and that the definition of retirement village should also clarify this. As noted earlier in our analysis of residential activities, the approach to that definition (and many others) is not to provide explicit lists of inclusions or exclusions as we consider it is better for these to be placed in the rules. However, we consider that it is clear, from the analysis above and the wording of the definition, that the main function of retirement villages is the provision of residential living accommodation, and that a range of other services, facilities and non-residential activities are also provided for.

We recommend the notified term retirement village premises be deleted and replaced with:

Retirement Village means a managed comprehensive residential complex or facilities used to provide residential accommodation for people who are retired and any spouses or partners of such people. It may also include any of the following for residents within the complex: recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities.

3.93 Reverse Sensitivity

3.93.1 Proposed definitions

The definition of the term Reverse Sensitivity as proposed in the draft standards was:

means the potential for the operation of an existing lawfully established activity to be compromised, constrained, or curtailed by the more recent establishment or alteration of another activity which may be sensitive to the actual, potential or perceived adverse environmental effects generated by an existing activity.

3.93.2 Submissions

We received 39 submissions on this definition. Around 26 supported the definition but requested amendments. 11 submitters opposed the definition.

The two key issues raised by submitters were:

- that the term does not capture all of the activities that are part of the existing environment, and
- the need to prove that an activity is lawfully established.

The Electricity Generators, Auckland Council, Poultry Industry Association of NZ, Resource Management Law Association, and New Zealand Planning Institute all sought amendments to clarify that case law has now determined that consented but unimplemented activities are part of the existing environment and should be referred to in the definition of reverse sensitivity.

KiwiRail supported that definition including the reference to the “establishment or alteration” of an activity. They consider the alteration component to be important in recognising the potential for reverse sensitivity effects and in providing mitigation.

Hamilton City Council, Tauranga City Council, and Poultry Industry Association of NZ sought amendments to ensure that permitted activities and permitted baseline activities are captured by the term.

Hutt City Council requested that the definition be deleted and ‘reverse sensitivity effect’ is defined instead as this would be clearer.

There were a number of suggestions for amending the definition. Some submitters, such as Genesis Energy Limited, requested that words such as “consented (but unimplemented)” and “potential establishment” be included in the definition so that permitted activities and resource consents for infrastructure not yet implemented could be included to reflect case law on what the “existing environment” is. Genesis Energy also noted that the definition implies that new activities sensitive to the existing activity must be “recently established” in order for there to be a reverse sensitivity effect. Genesis Energy noted that plans often seek to avoid reverse sensitivity effects from the outset which can mean the sensitive activity is not established in a particular locality. They consider that the definition should “therefore refer also to the “potential establishment” of new activities”.

Meridian Energy Limited, Contact Energy Ltd, and Trustpower Limited wanted the words “consent or” added for similar reasons.

The Resource Management Law Association and New Zealand Planning Institute also wanted the definition amended to cover a situation where an activity is consented but not implemented.

Poultry Industry Association of New Zealand considered the use of the term ‘existing lawfully established’ problematic and potentially litigious as it requires existing activities to prove their lawfulness and “it fails to recognise the permitted baseline and receiving environment”.

Christchurch City Council preferred the definition in its plan as they considered it to be more concise and in plainer English. The council considered the proposed definition to be ‘doubling up’ on the potential effects on existing activities from the potential effects of another existing activity. The Christchurch definition also acknowledges that intensification of existing activities can contribute to reverse sensitivity effects. The council also suggested changes to “improve clarity of the definition”.

Mercury Energy noted that they have two major issues with the definition; the first being that Policy D of the National Policy Statement for Renewable Energy Generation requires decision makers to “...manage activities to avoid reverse sensitivity effects on consented and on existing renewable electricity generation activities”. Mercury consider this policy to be a strong directive and that its application to consented activities (renewable electricity generation) is unique amongst the current National Policy Statements. They go on to point out that the Ministry for the Environment Evaluation Report (Part 2C – Definitions, page 120) states that:

“such [consented but unimplemented] activities form part of the existing environment, and therefore are caught by the term “existing activity”.” Although case law confirms that unimplemented consents do form part of the existing “environment”, the current proposed definition of reverse sensitivity refers to “an existing lawfully established activity”.

Mercury Energy queried whether a consented (but unimplemented) resource consent will meet the establishment test. They consider this to be “a significant issue needing to be addressed in order to give effect to the NPS-REG.”

The second issue Mercury had with the definition was that it implies an activity must be recently established for there to be a reverse sensitivity effect. It considered the definition should therefore refer also to the “potential establishment” of new activities given that:

“many electricity generation projects have a long lead time from consenting to construction / implementation, it is important that they are protected from reverse sensitivity effects caused by new land uses or activities occurring in close proximity or in an inappropriate location. This characteristic would be common to many infrastructure projects. For example, the establishment of a new dwelling in close proximity to a consented infrastructure project that is consented to emit higher noise levels (e.g. a wind farm, a road, a railway line, a port or airport), with the resultant effect that the new dwelling may have its amenity affected by the infrastructure project if constructed.”

Federated Farmers considered that the definition confuses the meaning of “effect”. They consider that “it is as much the potential outcome as the actual outcome which is the reverse sensitivity effect”.

Te Runanga o Ngāti Ruanui Trust requested that the definition be amended so that it does not focus on existing lawfully established activities. As they consider that “practically, such activities should not pose any restrictions on permitted activities (do not require resource consent)”.

The Department of Corrections generally supported the draft definition for reverse sensitivity, however noted that the definition does not provide for the expansion of lawfully established activities. The expansion of activities is often necessary for their ongoing operational needs. It is appropriate to recognise that the expansion of existing lawful activities can also be adversely affected by the establishment of sensitive activities.

Auckland Council supported the standardisation of term and definition. The Council notes that much of the draft definition appears to have come from the notified Proposed Auckland Unitary Plan definition of reverse sensitivity (with variation to the last part of the draft definition). They state that:

This definition was not followed through....as a result of the Independent Hearing Panel’s recommendation that it best sits outside the Unitary Plan. The view of the Panel was that: Reverse sensitivity has been identified in case law as a type of effect. While the proposed definition does describe the nature of that effect, the Panel does not consider it appropriate to include a definition of this in the Plan as it is not a thing which can be specified by these words for types of cases and all the circumstances that may arise. This statement can be found in 'IHP Report to AC Topic 065 Definitions 2016-07-22', pages 12 – 13.

Whanganui District Council requested that the definition be replaced with “means the conflict between incompatible land uses where a newly established activity complains about the effect on amenity (environmental qualities ie, levels of noise) from a legally established pre-existing activity.”

Forest and Bird considered the definition to be complex and not clear in terms of proposed/new activities that may be considered in a plan. They requested amendments to make this clearer.

3.93.3 Analysis

In considering the submissions requesting the definition to be wider and encompass consented but unimplemented activities and activities permitted by rules and those querying the need for the definition to be limited to lawfully established activities, we tested a wider definition which addressed both of these concerns with our pilot councils.

There were mixed views with some supporting the changes and others preferring the original proposed definition. Others were concerned about the removal of the requirement for an activity to be lawfully established. Some were concerned that if consented activities were to be included, all types of consent should be referred to – not just those permitted by rules or with resource consent but also those with existing use rights, designations and deemed permitted activities.

While the NPS for Renewable Electricity Generation refers to reverse sensitivity effects on consented renewable electricity generation activities (in addition to existing activities) this extension has not been made to the understanding of the term reverse sensitivity more generally. While it may be that the concept of reverse sensitivity may broaden over time, this is not something that the Environment Court has specifically considered to date.

In relation to the potential to include in the definition reference to an activity that holds resource consent but has not yet commenced, we consider that if this is included in the definition, it would also need to address the likelihood of an activity actually being commenced. If recognition of this was not included in the definition it could require the consideration of effects on a consented activity that was not likely to ever go ahead. It was considered that adding in this reference would also complicate the definition.

In addition, if the definition is extended to cover consented but not yet commenced activities, then to be consistent, it should also be extended to cover those activities permitted by rules. However, we consider that extending the definition to these activities would mean that activities that are too uncertain would be considered.

We consider that there are other ways that councils take into account such effects for instance by ensuring appropriate consent status for activities that don't accord with zones, or requirements for internalisation of effects for new activities (rather than existing activities) that are permitted in the zone, and other rules.

In relation to the issue of whether there should be a requirement for an activity to be a lawfully established activity we acknowledge that this can sometimes be very difficult to do. However, we do not consider that the concept of reverse sensitivity can be extended to activities that are not lawfully established.

We also considered the decision report of the Auckland Independent Hearings Panel regarding the proposed definitions in the Auckland Unitary Plan. In their report the panel stated the following about the draft Auckland definition of reverse sensitivity (which the proposed planning standards definition was based on):

Reverse sensitivity has been identified in case law as a type of effect. While the proposed definition does describe the nature of that effect, the Panel does not consider it appropriate to include a definition of this in the Plan as it is not a thing which can be specified by these words for types of cases and all the circumstances that may arise. The Panel recommends that a better approach to informing people about the issue of reverse sensitivity would be by way of guidance material outside the Plan itself. Such material could be adapted to suit the needs of particular users and be kept up to date in the event of new case law that affects the way in which reverse sensitivity effects are considered.

Therefore, considering all of the difficulties in drafting an appropriate definition, we recommend removing this definition from the standards because case law in this area is still evolving. While the concept of reverse sensitivity in relation to an existing activity is fairly settled, the extent to which this is applied to consented but unimplemented activities and activities permitted by rules may still be addressed in case law given the case law on what constitutes the existing environment. We

acknowledge that this case law and the NPS REG are currently in conflict we do not consider that the planning standards are the right place to address this conflict and more detailed policy work is needed on this issue than Officials can carry out within the timeframe of the planning standards. We also consider that any amended definitions would require wider consultation than was possible within the timeframes.

We do however still consider that defining this term at some point would have merit. We consider that it could be an appropriate addition to a future planning standard.

We also consider that the issue of the definition within the NPS REG will likely be considered when the Ministry for the Environment and the Ministry of Business and Innovation consider their response to the productivity commissions report *Low-emission economy*. The following statement is from that report:

The Government agrees that this [amendments to the NPS REG and NPS Electricity Transmission] needs investigation.....MBIE and MfE are providing advice to Ministers on the resource management system and options for renewable and electricity transmission activities. Decisions on next steps are expected by June 2019.⁶⁹

We recommend the definition of reverse sensitivity is removed from the planning standards for the time being and considered again alongside any consideration of other infrastructure definitions and in the context of other policy development underway at present.

3.94 River

3.94.1 Proposed definition

River has the same meaning as in section 2 of the RMA (as set out in the box below)

means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)

3.94.2 Submissions

Two submissions were received on the definition of 'river'. Te Rūnanga o Ngāi Tahu opposed the definition and requested its omission, on the basis that the definition was not specific enough to provide any guidance in practical situations. Auckland Council requested an amendment to the definition to exclude 'ephemeral streams' on the basis that the Auckland Unitary Plan distinguishes between different types of river by using the terms 'permanent river or stream', 'ephemeral stream', 'intermittent stream' and 'natural stream management area'.

⁶⁹ New Zealand Productivity Commission. 2018. *Low-emissions economy: Final report*. Wellington: New Zealand Productivity Commission. Available from www.productivity.govt.nz/low-emissions

3.94.3 Analysis and recommendations

We agree with Te Rūnanga o Ngāi Tahu that the definition of 'river' is somewhat 'general'. However, we consider this lack of specificity definition does not render the definition inappropriate for inclusion, particularly given the list of exclusions contained within the definition.

We also consider that excluding 'ephemeral streams' from the definition of 'river' as requested by Auckland Council would not be appropriate. While we acknowledge the characteristics of ephemeral streams are different from continually flowing waterbodies (owing to their temporal existence), these waterbodies often still provide important ecosystem and/or drainage services. We consider the exclusion of 'ephemeral streams' from the definition of 'river' could have significant and wide-ranging implications for decision-makers exercising duties and functions under the RMA. For example, a 'carve-out' of 'ephemeral streams' from the definition of 'river' would exempt decision-makers from being required to recognise and provide for the preservation of ephemeral rivers from inappropriate subdivision use and development, as required by section 6 of the RMA. The flow-on effects of such an omission would trickle down to the exercise of functions by local authorities under sections 30 and 31 of the RMA, with one outcome being to limit the ability to include provisions in policy statements and plans to preserve values associated with these waterways.

While we acknowledge the issues Auckland Council raised, we consider its particular concerns could be addressed using the general term 'river' where appropriate and by using subcategories (eg, 'continually flowing river', 'intermittently flowing river' and 'ephemeral river') where appropriate to the context. This would enable protection of the broad values of all river systems to be retained while enabling, where appropriate, local authorities to include more nuanced definitions that recognise the different characteristics and values of different river types. For these reasons, we recommend retaining the definition of 'river' in the Definitions Standard without amendment.

3.95 Road

3.95.1 Proposed definition

Road means has the same meaning as in section 2 of the RMA (as set out in the box below)

has the same meaning as in section 315 of the Local Government Act 1974; and includes a motorway as defined in section 2(1) of the Government Rooding Powers Act 1989

3.95.2 Submissions

Two submissions were received on the definition of 'road'. Auckland Council supported the definition in its present form. Beca identified that the drafting principle of repeating the definition in the standard rather than referring to an external document has not been followed. Beca sought that whole definition is included in the Definitions Standard.

3.95.3 Analysis and recommendations

Consistent with our recommendations elsewhere, we consider that the definition should be included in full within the Definitions Standard in accordance with the drafting principle being followed for other terms.

We recommend amending the 'road' definition so that it is included in full within the Definitions Standard as follows:

Road has the same meaning as in section 2 of the RMA (as set out in the box below)

has the same meaning as in section 315 of the Local Government Act 1974; and includes a motorway as defined in section 2(1) of the Government Roding Powers Act 1989 which are:

Section 315 of the Local Government Act 1974 road definition:

road means the whole of any land which is within a district, and which—

- (a) immediately before the commencement of this Part was a road or street or public highway; or
 - (b) immediately before the inclusion of any area in the district was a public highway within that area; or
 - (c) is laid out by the council as a road or street after the commencement of this Part; or
 - (d) is vested in the council for the purpose of a road as shown on a deposited survey plan; or
 - (e) is vested in the council as a road or street pursuant to any other enactment;—
- and includes—
- (f) except where elsewhere provided in this Part, any access way or service lane which before the commencement of this Part was under the control of any council or is laid out or constructed by or vested in any council as an access way or service lane or is declared by the Minister of Works and Development as an access way or service lane after the commencement of this Part or is declared by the Minister of Lands as an access way or service lane on or after 1 April 1988;
 - (g) every square or place intended for use of the public generally, and every bridge, culvert, drain, ford, gate, building, or other thing belonging thereto or lying upon the line or within the limits thereof;—

but, except as provided in the Public Works Act 1981 or in any regulations under that Act, does not include a motorway within the meaning of that Act or the Government Roding Powers Act 1989

Section 2(1) of the Government Roding Powers Act 1989 motorway definition

motorway—

- (a) means a motorway declared as such by the Governor-General in Council under section 138 of the Public Works Act 1981 or under section 71 of this Act; and
- (b) includes all bridges, drains, culverts, or other structures or works forming part of any motorway so declared; but
- (c) does not include any local road, access way, or service lane (or the supports of any such road, way, or lane) that crosses over or under a motorway on a different level

3.96 Root protection area

3.96.1 Proposed definition

Root protection area means the circular area surrounding a tree, which is the greater of the radius, measured from the base of the trunk to:

- a) the outer extent of the branch spread; or
- b) half the height of the tree.

3.96.2 Submissions

Eight submissions were received on the definition of 'root protection area'.

NZTA supported the definition without changes.

Other submissions varied in their views on the validity of the formula used to measure the relevant area. Auckland Council supported the formula because, while not perfect to provide absolute protection in all circumstances, it is adequate to protect the root areas of trees without being too complex to implement. Nelson City Council preferred a formula based on the diameter of the trunk because, if based on the branch spread or height, this measurement can change if a tree is trimmed or pruned. Treecology Tree Consultancy noted that the definition is based on an outdated British standard. It requested the use of the formula from the updated 2012 BS5873 standard, which is based on 10 to 12 times the trunk diameter, because it is improved best practice and better estimates the actual likely root area for a typical tree. The New Zealand Arboricultural Association made similar points, noting that the measurement method in the proposed definition could misrepresent a tree's root protection area and lead to fencing being installed too close to a tree, in turn causing damage to the tree. It proposed the following definition:

A root protection zone is the [arborist-defined] minimum area surrounding the trunk of a tree deemed to contain sufficient roots and rooting volume to maintain a tree's viability and to ensure future tree health and stability. The preliminary RPA can be determined as a circle with a radius twelve times the diameter of the tree's main stem (trunk).

The Western Bay of Plenty District Council considered that the formula needed amendments to make it clearer because the words "which is the greater of the radius" do not make sense.

Christchurch City Council requested that the term 'root protection area' be changed to 'dripline' as a more commonly used term.

Some submissions (Hutt City Council, Auckland Council, Western Bay of Plenty District Council, New Zealand Arboricultural Association) referred to the diagram that was included as a draft diagram along with the definition. Hutt City Council and Western Bay of Plenty District Council considered the diagram made the definition more difficult to understand because it did not match the definition and confused the concepts by suggesting that the root protection area was measured differently for different types of trees. Hutt City Council considered the definition to be clear without the diagram and requested it be removed. Auckland Council sought an amendment to the diagram so it has separate diagrams for circular and columnar trees, with a columnar diagram showing the root protection area of half the height of the tree. The New Zealand Arboricultural Association requested a different formula and therefore a different diagram.

3.96.3 Analysis and recommendations

This definition does not describe a root protection area, but sets out a method to measure the root protection area. Plan rules that use this definition are often designed to protect the soil structure and roots of identified notable trees. Such rules may, for instance, require sufficient land available for development on a site outside of any identified notable trees' root protection areas. Submissions proposed different measurement methods. We considered these methods and the references provided by the New Zealand Arboricultural Association carefully.

We also consider that the method adopted by this definition may be “adequate” as suggested by Auckland Council, given that it is currently being applied to its notable trees without, we assume, any adverse effects. However, we have considered the submission from the New Zealand Arboricultural Association that this definition is based on an outdated standard, which may lead to damage to tree roots. We therefore consider it is not appropriate to retain the proposed definition unchanged as a national standard.

We agree with Auckland Council that any measurement method should not be complicated to implement and the method proposed by the New Zealand Arboricultural Association would be reasonably simple to implement.

However, it is based on a British standard that may not be entirely appropriate for New Zealand trees. We also consider that to apply the definition method as a national standard could lead to a significantly larger area being required for a root protection area than some councils previously required and we do not have sufficient information to decide that this is essential at a national level.

Therefore, we consider that what constitutes the appropriate root protection area is a matter for experts and councils to determine. In the absence of a New Zealand standard, or further work, it is not yet appropriate to be standardised in the planning standards at a national level. We recommend removing this definition.

It is therefore not necessary to address the other submissions on this definition, except to note that the diagram that accompanied the definition was merely a sample of a type of diagram and was not intended to be accurate.

We recommend deleting the definition of ‘root protection area’ from the Definitions Standard.

3.97 Rural industry

Rural industry means an industrial activity where the principal function supports primary production or aquaculture activities

3.97.1 Submissions

Sixteen submissions were received on the definition of rural industry.

Four submitters supported the definition without amendment (Atlas, Fonterra, PIANZ and Tegel Foods). All other submitters either opposed or sought changes to the definition.

References to industrial activities

The reference to ‘industrial activity’ attracted submissions both in support and opposition.

PIANZ and Tegel supported the reference to 'industrial activity', stating it appropriately recognised and accommodated activities which are industrial in nature, but that necessitate a rural location (eg, feed mills, quarrying, transport depots).

In contrast, Christchurch City Council requested the phrase 'industrial activity' be deleted from the definition, on the basis that its inclusion would allow for a broad range of inappropriate industrial activities to operate within rural environments. In the alternative, they stated, if the phrase is retained, changes should be made to ensure only industrial activities which have a dependency on the rural resource are accommodated.

Horticulture NZ and Federated Farmers opposed the reference to 'industrial activity' and requested its removal. However, in contrast to Christchurch City Council, these submitters opposed the term on the basis that the phrase was too restrictive, potentially excluding commercial activities that support rural industries (eg, transport depots and packhouses, rural contractor depots, post-harvest facilities and research facilities). An alternative term 'rural services and industry' and an accompanying definition was suggested by Horticulture NZ, with the submitter stating the alternative would more appropriately accommodate the full range of activities associated with rural industries:

Rural services and industry means an activity undertaken within a rural area where the activity is directly related to rural production activities and includes:

- facilities for processing, packing, and storing primary products; and
- activities which service rural production;
- rural contractor depots
- postharvest facilities
- research facilities

References to primary production and rural locations

New Plymouth District Council submitted the definition should be broader and accommodate a range of activities that occur within the rural environment. Limiting the definition to only those that support activities that derive products from the land would result in an inappropriately narrow definition. Instead, they suggested the following definition is considered:

Rural industry means the use of land and/or buildings or activities that manufacture, process and/or transport raw materials and livestock in a rural environment.

Similar points were made in the submission by J Swap Contractors, who stated the definition should be expanded to include activities which necessitate a rural location owing to the nature of the business (eg, quarrying). An alternative definition to achieve this outcome was included with their submission:

Rural industry means an industrial activity where the principal function supports primary production or aquaculture activities or by the nature of the business must be located within a rural setting such as quarrying

References to aquaculture

Federated Farmers, Christchurch City Council and Western Bay of Plenty District Council submitted that the phrase 'aquaculture activities' should be omitted, given these activities are already provided for within the definition of 'primary production'.

References to 'principal function'

Western Bay of Plenty District Council submitted that the phrase 'principal function' introduced ambiguity into the definition and would result in the need for case by case assessments to differentiate between 'principal' activities and secondary activities on-site.

3.97.2 Analysis and recommendation

Submitters held divergent views as to whether the definition of 'rural industry' should include references to 'industrial activity' and 'primary production'. For completeness, and to assist with our analysis, we set out the recommended definitions for each term below:

Primary production

- (a) means any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and
- (b) includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but
- (c) does not include processing of those products

Industrial activity means an activity that manufactures, fabricates, processes, packages, distributes, repairs, stores, or disposes of materials (including raw, processed or partly processed materials) or goods. It includes any activity that is ancillary to the industrial activity

We agree with Christchurch City Council that cross-referencing the definition of 'industrial activity' within the definition of 'rural industry' results in a very broad definition, which will create significant challenges for councils to manage the effects of these activities. The recommended definition of 'industrial activity' includes activities ancillary to the manufacture, fabrication, processing, packaging, distribution, repairing, storing or disposing of materials (including raw, processed or partly processed materials) or goods. The types of effects arising from these activities are likely to be materially different from those generated from primary production activities, and there is a risk of grouping together incompatible activities. For this reason, we recommend the phrase 'industrial activity' is removed from the definition.

However, we also agree the draft definition of 'rural industry' is overly limiting in some respects. As illustrated in the submission by Horticulture NZ, there are a range of businesses and industries that are dependent on and service primary production activities. We consider given this relationship and these interdependencies it is appropriate for the definition of rural industry to be expanded to include these associated activities. To accommodate this, we have recommended changes to the definition to include any industry or business undertaken within a rural environment that directly supports, services or is dependent on primary production.

We tested this aspect of the definition with the rural sector group. It received general support except that it has the potential to capture a variety of day-to-day activities that routinely occur on farms. Examples provided included small scale 'cottage industries' like cheese making, mini abattoirs used to slaughter animals for private consumption, and maintenance of farm equipment. We appreciate this could become an issue and so considered whether it was possible to address the scale of these activities within the scope of the definition.

One option was to provide an exemption for 'home business', but we note our recommended definition of this includes a link to a 'residential site'. A further option is to explore how ancillary activities associated with farming activities could be excluded. We note that some plans already provide for these concepts in either their definitions or rules. Another option was to remove the definition altogether, but we consider a definition of this nature is necessary to recognise the broad range of (usually large scale) industries that locate in the rural environment.

On balance, we consider that this is another example where submitters are seeking specific plan outcomes via the planning standards definitions; outcomes that potentially pre-determine the effects of some activities. Given the potential scope of possible exemptions, it is not practical to identify some of these but not others without a much wider consultative process. Our clear expectation is that where plans already explicitly permit such activities (or exclude them from consideration in the relevant definition) they will need to amend their rules to ensure the plans achieve the same outcome if they need to adopt the planning standards definition. We can provide further information on this issue in planned guidance material. This may support those councils who are unsure which types of activities might be expressly permitted in their plans.

We also recognise and acknowledge the point made by J Swap Contractors that there are other activities which are dependent on the productive capacity of the environment and necessitate a rural location. We note our recommended changes to the definition of 'primary production' now include a reference to 'mining' and 'quarrying' activities and therefore further amendments to the definition of 'rural industry' are not required.

Finally, we address requests for a number of minor amendments to the definition. We agree with Federated Farmers, Christchurch City Council and Western Bay of Plenty District Council that the phrase 'aquaculture activities' should be removed as activities are already accommodated for within the definition of 'primary production'. We also agree the phrase 'principal function' is somewhat ambiguous and therefore recommend it is replaced with the phrase 'directly supports'. We consider this is more robust and addresses the point made by Western Bay of Plenty District Council.

We recommend that the definition of "Rural Industry" be amended as follows:

Rural industry means an ~~industrial activity~~ industry or business undertaken in a rural environment that where the principal function directly supports, services, or is dependent on primary production. ~~or aquaculture activities/~~

3.98 Setback

3.98.1 Proposed definition

Setback means the distance between a structure or activity and the boundary of its site, or other feature specified in the Plan.

3.98.2 Submissions

Eleven submissions were received on the definition of 'setback'.

Six submissions supported the definition. Of these, Auckland Council supported the definition because it sufficiently aligns with a similar term and definition used in its plan and specific Auckland Unitary Plan exclusions from yard definitions can be redeveloped into setback standards.

Christchurch City Council supported the definition because it now refers to an "activity" such as earthworks as a potential starting point for a setback. Three submissions (Housing New Zealand, Horticulture New Zealand, Western Bay of Plenty District Council) focused on the scope of the defined terms that represent the limits or measuring points of a setback – that is, structure and boundary. Angela Crang sought a standardised method for considering whether a setback has been infringed; whether from a boundary, or as a percentage of yard reduced, or from the line of a permitted yard.

Housing New Zealand and Horticulture New Zealand expressed the view that the broad scope of the definition of 'structure' (which is included in the 'setback' definition) will lead to more being captured by any setback rules than intended. Housing New Zealand requested that the definition of 'setback' refer to 'building' instead of 'structure'. Horticulture New Zealand requested that the definition of structure be limited to fixed structures so that crop protection structures do not come within the meaning of the definition. Western Bay of Plenty District Council sought clarification that the definition of setback applied to buildings as well as structures and requested that the definitions of 'building' and 'structure' be combined.

Western Bay of Plenty District Council also requested that there be provision for a setback to be measured from the inner edge of driveway easement, as well as from the boundary of a site, to prevent buildings from locating on a driveways. It further requested that the comma after the word "site" be removed to improve meaning.

Western Bay of Plenty District Council also requested the definition specify that the setback be measured horizontally. Its reason was that this amendment would avoid the distance being measured on a slope, which would result in the activity and structure being located closer than intended.

3.98.3 Analysis and recommendations

In relation to the different views expressed about whether a setback should be measured from a structure or a building and what should be included or excluded from each of these definitions, we consider that, as far as possible, the setback definition should not determine what the setback is measured between or what is captured by related setback rules. We consider that a simple solution is for the definition to no longer specify the starting point. We removed the words "structure" and "activity" so that the definition could focus on the fact that a setback is a distance from a boundary or item or feature specified in the plan and leave it to plan rules to determine whether a setback runs from a structure or a building, either movable or fixed.

In addition, we agreed that the definition needed to be wide enough to encompass a setback from a driveway or any other item or feature specified in a plan. The second leg of the definition "or other feature specified in in the plan" is sufficiently wide to cover the edge of a driveway easement. We acknowledge a potential for confusion because in the RMA the word "feature" is often associated with natural features or outstanding natural features. In order to cover all things from which a setback could be measured, we have added the term "item" into the definition.

We also consider the word "plan" should be replaced by "rule" to be more specific.

We agree that a setback distance should be measured horizontally in most circumstances and that it is appropriate for this to be specified in the definition. We acknowledge that vertical setbacks are sometimes used, for example, from transmission lines where structures may locate underneath but not extend within a specified distance of the lines. However, we consider that it is more helpful to specify that the setback is measured horizontally to cover the most common use and avoid later debate. Any vertical transmission line setback could be covered by a different, more specific term.

Given these conclusions, we tested an amended version of the definition with our pilot councils as follows: "setback means a distance measured horizontally from a boundary, feature or item as specified in a rule". There was a range of views but many noted that they relied on rules to specify setbacks rather than having a setback definition. They queried the usefulness of such a broad definition.

On balance, given the difficulty of crafting a definition to fit all relevant situations while it still remains sufficiently specific, we recommend removing the definition of setback from the Definitions Standard.

3.99 Sewage, Wastewater and Industrial and trade waste (new recommended term)

3.99.1 Proposed definitions

Sewage means any water that contains any toilet or urinal waste, or any waste in water from industrial or commercial processes

Wastewater includes sewage and greywater

3.99.2 Submissions

Submissions relating to the definitions of ‘sewage’ and ‘wastewater’ have been grouped and analysed together in recognition of the relationship of these terms to each other.

Twelve submissions were received on the definition of ‘sewage’ and eleven submissions on the definition of ‘wastewater’.

One submitter sought retention of the definition of ‘sewage’ as drafted (NZTA), while two submitters supported retaining the proposed definition for ‘wastewater’. The remainder of submitters requested amendments to the terms.

The use of the phrase “or any waste in water from industrial or commercial processes” in the definition of ‘sewage’ was specifically commented on in eight submissions, with four submitters in opposition⁷⁰ and four in support⁷¹. Two submissions supported the phrase on the basis that the definition and its related companion term ‘wastewater’ accommodated wastes from industry sources (Genesis Energy Ltd, Mercury New Zealand Ltd).

In contrast, four submitters opposed the definition of sewage including reference to “wastes from industrial and commercial processes”. Opposition was generally on the basis that the nature of the contaminants and the risks to human health were considerably different between sewage and trade wastes (Synlait Milk, Environment Canterbury). Two submitters requested the inclusion of a separate definition of ‘trade waste’ to enable a distinction between the different types of waste waters and noted consequential changes may be necessary to the definition of ‘wastewater’ if this relief was accommodated (Synlait, Tegel Foods).

Reference to ‘water’ in the definition of ‘sewage’ was opposed by three submitters (Auckland Council, Forest and Bird, Otago Regional Council) on the basis that inclusion of the term would have unintended consequences. Submitters stated that, as drafted, rivers that receive sewage would, by definition, be considered ‘sewage’, an outcome that would be inappropriate. Requests to replace the term “water” with “liquid” were made in response to this issue.

Auckland Council requested an amendment to the definition of ‘sewage’ to include the phrase “drainage from animals from a working farm/rural setting” and another amendment to include reference to the “coastal marine area”. These amendments, the council stated, would align the definition with the definition of ‘sewage’ in the Resource Management (Marine Pollution)

⁷⁰ Environment Canterbury, NZTA, Synlait Milk, Tegel Foods.

⁷¹ Genesis Energy, Mercury Energy Ltd, Nelson Marlborough Health, NZTA.

Regulations 1998. In contrast, Environment Canterbury requested that the definition be constrained to “human faecal matter and urine” to distinguish sewage from other forms of excrement (eg, animal waste).

3.99.3 Analysis and recommendations

A common theme throughout the submissions was the need for a clear distinction between ‘sewage’ and ‘wastewater’ from an industrial or trade origin.

We agree with submitters that including the phrase “waste in water from industrial or commercial processes” expands the definition of ‘sewage’ beyond its commonly understood meaning of excrement and urine. We consider this to be inappropriate, given policy statements and plans that incorporate this term generally do so based on the common meaning of the term, and include provisions appropriate to manage the range of contaminants and effects that may arise.

We consider the use of a broad definition of sewage (ie, one that incorporates trade wastes as a component of the definition) could have significant implications for outcomes anticipated in policy statements and plans. In contrast to sewage, where the nature of the contaminants and its effects are readily understood, wastes from trade and commercial activities are variable and often necessitate tailored management responses to avoid or mitigate environmental effects. In recognition of this, we consider the definition of ‘sewage’ should be amended to be constrained to its commonly understood meaning – that is, excrement and urine – and a new definition of ‘industrial and trade waste’ should be included within the Definitions Standard.

We also agree with submitters that including the term “water” in the definition of ‘sewage’ could result in unintended consequences.⁷² For this reason, we consider the term should be omitted, and in its place the phrase “human excrement and urine” should be inserted. We also note that this will address Environment Canterbury’s submission that the term ‘sewage’ should be constrained to faecal matter and urine from human sources.

We also agree with Environment Canterbury that the phrase “from toilets and urinals” inappropriately constrains the definition and would exclude sewage from other sources. We consider this to be an inappropriate outcome and for that reason have recommended the omission of the phrase. Furthermore, we note plan provisions often distinguish between treated and untreated sewage, and apply nuanced policy settings that are commensurate with the risks and adverse effects of each contaminant type. For this reason, we consider it appropriate to keep a broad definition as this will enable local authorities to preserve plan outcomes by inserting qualifying terms (eg, untreated versus treated) where appropriate.

We also consider it is not appropriate to amend the definition of ‘sewage’ to include the phrase “drainage from farm working animals”, or any reference to the coastal marine area, as sought by one submitter. While we note the proposed definition of ‘sewage’ differs from that included in the Resource Management (Marine Pollution) Regulations 1998, we note these two legislative instruments serve different purposes. The Marine Pollution Regulations regulate activities within the marine environment only. In contrast, the RMA (under which these planning standards are promulgated) applies to a broader range of receiving environments, including air, land freshwater and coastal. The definition of ‘sewage’ therefore needs to be appropriately unconstrained to recognise the wide range of receiving environments administered under policy statements and plans. Furthermore, we consider the inclusion of the phrase “drainage from farm working animals”

⁷² Eg, rivers becoming sewage by definition, given the definition of ‘water’ in section 2 of the RMA.

would create an unhelpful overlap with other definitions in policy statements and plans. We note the terms “animal effluent” and “animal waste” are commonly included in policies and rules that regulate farming activities. For this reason, we consider the phrase should not be included.

We note that a narrower definition for the term ‘sewage’ will have implications for the definition of wastewater. We consider the proposed definition of ‘wastewater’ should be retained as a collective term used when referring to combined waste streams.⁷³ In contrast, where plan provisions relate to specific waste streams, the revised definitions of ‘greywater’, ‘sewage’ and ‘industrial and trade waste’ may be used.

We recommend amending the definitions of ‘sewage’ and ‘wastewater’ in the Definitions Standard as follows:

Sewage means ~~any water~~ human excrement and urine that contains any toilet or urinal waste, or any waste in water from industrial or commercial processes

Wastewater ~~includes~~ means any combination of two or more of the following wastes: sewage, and greywater or industrial and trade waste

We recommend including a new definition of ‘industrial and trade wastewater’ as follows:

Industrial and trade waste means liquid waste, with or without matter in suspension, from the receipt, manufacture or processing of materials as part of a commercial, industrial or trade process, but excludes sewage and greywater

3.100 Sign

3.100.1 Proposed definition

Sign

- (a) means any device, character, graphic or electronic display, whether temporary or permanent, that is visible from beyond the site boundary, for the purposes of—
 - (i) identification of and provision of information about any activity, [site](#) or [structure](#);
 - (ii) providing directions;
 - (iii) promoting goods, services or forthcoming events; and
- (b) includes the frame, supporting device and any associated ancillary equipment whose principal function is to support the message or notice; and
- (c) may be two- or three-dimensional, and manufactured, painted, written, printed, carved, embossed, inflated, projected onto, or fixed or attached to, any [structure](#) or natural object; and
- (d) may be illuminated by an internal or external light source.

‘Sign’ or ‘signage’ is a commonly used term in plans and would benefit from standardisation.

3.100.2 Submissions

Eleven submissions were received on the definition of ‘sign’.

⁷³ Comprised of greywater, sewage, and industrial and trade waste.

The oil companies, Woolworths New Zealand Limited and Auckland Council supported the proposed definition with no amendments.

Christchurch City Council and Environment Canterbury supported the definition but they sought amendments to be made to it.

Christchurch City Council sought amendment to the proposed definition to reframe the description of materials used to support the sign, and add specific reference to exclude product packaging. The amendments it proposed are:

- (a) means any device, character, graphic or electronic display, whether temporary or permanent, that is visible from beyond the site boundary, for the purposes of—
 - (i) identification of and provision of information about any activity, **site** or **structure**;
 - (ii) providing directions;
 - (iii) promoting goods, services or forthcoming events; and
- (b) includes the frame, supporting device and any ~~associated~~ ancillary equipment whose principal function is to support the ~~message or notice~~ **sign**; and
- (c) may be two- or three-dimensional, and manufactured, painted, written, printed, carved, embossed, inflated, projected onto, or fixed or attached to, any **structure** or natural object; and
- (d) may be illuminated by an internal or external light source
- (e) excludes product packaging.

Environment Canterbury suggested the definition would benefit from simplification as follows:

- ~~(a)~~ Means any device, ~~character~~, structure, graphic, or display (including electronic displays), whether temporary or permanent, used to communicate or advertise information to the public.

It suggested deleting the remainder of the proposed definition.

Five of the submissions received were opposed to the definition.

The main opposition to or amendments sought around this definition related to the level of detail within the definition and the need for some clarification around what was included. One submitter was opposed to signs being only those visible beyond the site boundary while another specifically supported this aspect of the definition.

Housing New Zealand identified the current definition would include letter box numbers, and suggested replacing the proposed definition with the Auckland Unitary Plan definition, which is:

A visual device which can be seen from a public open space (including the coastal marine area) or an adjoining property, to attract people's attention by:

- providing directions;
- giving information; and
- advertising products, businesses, services, events or activities.

Includes

- the frame, supporting device and any associated ancillary equipment whose principal function is to support the message or notice;
- murals, banners, flags, posters, balloons, blimps, light projections, footpath signs, hoardings, projections of lights; and
- signs affixed to or incorporated within the design of a building

NZTA identified that digital signs and billboards, including road safety billboards, need to be explicitly included as they are not official road signs. It also asked for the reference to illumination to be removed, as this matter is better addressed through rules rather than the definition.

Hutt City Council requested that the definition be amended to simplify the purposes for a sign, and that reference to the materials, how the sign is formed, and lighting be removed. The definition it proposed is:

- (a) ~~means a~~ Any device, character, graphic or electronic display, whether temporary or permanent, ~~that is visible from beyond the site boundary,~~ for the purposes of providing information—
 - ~~(i) identification of and provision of information about any activity, site or structure;~~
 - ~~(ii) providing directions;~~
 - ~~(iii) promoting goods, services or forthcoming events; and~~
- (b) includes the frame, supporting device and any associated ancillary equipment that ~~whose principal function is to support~~ the message or notice; ~~and~~
- ~~(c) may be two or three dimensional, and manufactured, painted, written, printed, carved, embossed, inflated, projected onto, or fixed or attached to, any structure or natural object; and~~
- ~~(d) may be illuminated by an internal or external light source~~

3.100.3 Analysis and recommendations

Term “principal”

In accordance with our drafting principles to ensure that definitions should avoid using subjective language, we recommend deleting the word “principal” as it applied to the principal function of ancillary equipment in clause (b). We consider that no meaning is lost through this change; if equipment has a function of supporting the message or notice, it will be included. This avoids any subjective judgement about the extent of the equipment’s function.

Visibility beyond the site

Hutt City Council requested that the definition removes the requirement that any sign is visible beyond the site, on the basis that:

There are situations where a district plan may need to address the potential effects of a sign when the sign is only visible within a site, particularly if it is a public site. For example, the Seaview Marina is a single site that is owned by a council owned organisation. It is a mix of public and private recreation space and commercial and industrial businesses. The Council may wish to address the effects of a sign that is visible within the Marina on the amenity values of Marina users.

In general, the National Planning Standards shouldn’t be distorting a common term away from its everyday meaning. Most people wouldn’t imagine that a sign is not technically a sign under a district plan because it is not visible beyond a site boundary.

In contrast, Christchurch City Council supported “limiting the definition to signage that is visible beyond the site boundary”. Three other submitters supported the definition without amendment. We agree that the definition of ‘sign’ should not include rules about the extent to which a sign may or may not be visible. We recommend deleting the reference to visibility beyond

the site. We have also replaced the word “site” with the word “property” to provide a wider application than the defined meaning of “site”.

Simplification of the proposed definition

Some submissions have sought that either the definition is simplified or parts of the definition be removed.

We agree that clause (d) in the definition is unnecessary and should be removed.

We also recognise that the word “associated” can be deleted from clause (b) without any consequence.

We have also removed the reference to ‘site’ given the narrower meaning of ‘site’ recommended in these standards. We have replaced it with a reference to ‘property’ which has a wider meaning but can also include ‘site’.

We have also removed the word ‘forthcoming’ from clause (a)(iii) because it is unnecessary to specify whether the events referred to on the sign are forthcoming or not. It would be a perverse outcome if an out of date sign that referred to an event in the past could no longer be managed by rules as a sign.

The section 32 report identifies that the definition is seeking to exclude any sign writing on vehicles. This is achieved through the requirement in clause (c) that it is “projected onto, or fixed or attached to, any structure or natural object” as the definition of ‘structure’ does not include motor vehicles as they are not fixed to land. We consider it is important to retain the words quoted above but agree that the remainder of clause (c) can be removed from the definition.

We recommend amending clause (a)(i) by changing “and” to “or” to be clear that a sign does not have to meet both tests of ‘identification’ and ‘provision of information’.

We also recommend reordering the clauses so that the reference to the frame and ancillary equipment comes after the requirements about the sign itself. This is a more logical order.

Illumination of signs

Hutt City Council and NZTA requested the removal of illuminated signs from this definition. We agree that illumination of signs is better addressed through rules that manage the effects of that illumination, rather than the sign definition itself. We recommend removing this part of the definition.

Particular sign forms

Taupō District Council suggested excluding electioneering signage. Election signs are one of the matters captured by the ‘official sign’ definition as there are regulations around electioneering signage. Also, councils can still include a local definition of electioneering signage as a subcategory of the ‘sign’ term if they want to manage electioneering signage separately to other types of signs.

The NZTA was concerned that the definition did not include road safety billboards. To alleviate this and help align the definition with the ‘official sign’ definition, we recommend including the phrase “or an aspect of public safety” as set out below. We also recommend reversing the order of clauses (b) and (c) so the definition can follow on more logically.

We recommend amending the definition of ‘sign’ in the Definitions Standard as follows:

means any device, character, graphic or electronic display, whether temporary or permanent, ~~that is visible from beyond the site boundary which,~~

- (a) ~~is for the purposes of—~~
 - (i) ~~identification of and or provision of information about any activity, [site](#), [property](#), or [structure](#) or an aspect of public safety;~~
 - (ii) ~~providing directions: or~~
 - (iii) ~~promoting goods, services or forthcoming events; and~~
- (b) ~~may be two or three dimensional, and manufactured, painted, written, printed, carved, embossed, inflated, is projected onto, fixed or attached to, any [structure](#) or natural object; and~~
- (c) ~~includes the frame, supporting device and any associated ancillary equipment whose principal function is to support the message or notice; and~~
- (d) ~~may be illuminated by an internal or external light source.~~

3.101 Site

3.101.1 Proposed definition

Site means:

- (a) an area of [land](#) comprised in a single computer freehold register (record of title as per Land Transfer Act 2017); or
- (b) an area of [land](#) which comprises two or more adjoining legally defined [allotments](#) in such a way that the [allotments](#) cannot be administered separately without the prior consent of the council; or
- (c) the [land](#) comprised in a single [allotment](#) or balance area on an approved survey plan of [subdivision](#) for which a separate computer freehold register could be issued without further consent of the Council; or
- (d) in the case of [land](#) subdivided under the Unit Title Act 1972 or the cross lease system, a site is deemed to be the whole of the land subject to the unit development or cross lease; or
- (e) an area of adjacent [land](#) comprised in two or more computer freehold registers where an activity is occurring or proposed.

3.101.2 Submissions

Twenty-three submissions were received in total for this submission. Six were supportive, two were neutral or unclear and 15 submitters were opposed to the term.

Other meanings of the word 'site'

One of the main issues submissions raised was the applicability of the definition to all meanings of the word 'site'.

Some submissions (Mercury NZ Ltd, RMLA, Forest and Bird) were concerned that the definition did not provide for the wider use of the word 'site', noting that 'site' can mean a spatial feature, area, an area where a permitted or consented activity takes place, the bed of a river, the coastal marine area or an assessment site, and that these may not align with property boundaries. Other concepts that could also be considered to be sites were referred to such as significant natural areas and

outstanding landscapes (Mercury New Zealand Ltd). Mercury New Zealand Ltd's submission sought the flexibility to be able to specify in a rule what the term 'site' applied to, if the context was different from the 'legal property boundary' focus of the proposed definition, or for the term to be deleted.

RMLA considered that the definition of site is unworkable because there are so many meanings to the word 'site' in plans but this definition is focused on the use of the word as a 'property'. It requested that the definition be deleted or that it be expanded to encompass all of the meanings of site. It suggested the definition specify that a 'site' should be a contiguous area of land, bed, or coastal marine area that can be described either using legal identifiers or spatially on a map. For example:

depending on context, means a contiguous area of land, bed or coastal marine area that can be described:

- a) using legal identifiers (eg, legal description or certificate of title); or
- b) spatially on a plan within which a consented or permitted activity can take place; or
- c) spatially to identify a feature specified in a policy statement or Plan.

Regional councils were commonly concerned about the application of this definition to the regional council use of the word. The submissions of Horizons, Bay of Plenty, Taranaki and Greater Wellington regional councils and of Marlborough District Council addressed the same point: that this definition is focused on legal entities but the regional council use of the word is wider and different. For example, regional councils use it for areas that have a common value such as 'sites of significance' and other applications such as freshwater bathing sites, on-site effluent, contaminated sites, rules about construction sites, archaeological site, sites of traditional cultural activities, cultural sites, heritage sites, bathing sites, baptism sites, significant sites (in the context of recognising kaitiakitanga for the protection of ...) and sites of spiritual, cultural and historical significance.

Horizons Regional Council noted that its plan has a wider definition of 'site', which includes "where in the context it is appropriate, an area or place or river reach". Solutions requested included:

- apply the term only to district plans because it is not applicable to regional council use of the term (Horizons RC and Bay of Plenty RC)
- use 'property' as the defined term instead or provide another definition for regional plans and policy statements (Greater Wellington Regional Council)
- focus the definition on the site of an activity, not on the property (Marlborough District Council).

However, Gisborne District Council did not have problem with the definition.

Forest and Bird raised the same point that the definition is too specific and the term 'site' is used in other contexts. It requested that the definition be deleted.

Whether the term should relate to an activity site

An interlinked point that submissions raised was whether or not the definition should provide for the meaning of 'site' that relates to an activity site.

The following points were raised.

- Defining site as relating to legal boundaries may cause problems (often in a rural setting) because the term may be used in rules in relation to an activity within the legal boundaries of a large 'site' but some distance from a particular feature such as a heritage feature (Federated Farmers).

- Site may not be the whole of an allotment (Kāpiti Coast District Council).
- The definition set out in clause (e) should be associated with a different term, for instance ‘activity area’, because it is use-based and inconsistent with the other clauses (Selwyn District Council).

Workability in plan rules – clause (e)

The Western Bay of Plenty District Council pointed out that this definition will be used as the basis of a number of plan rules, for instance those that address site coverage or limits on earthworks, or residential units per site. It was concerned that clause (e) will not work for this because it requires a number of adjacent titles where an activity is occurring or proposed to be considered as one site. It used the example of a farm that comprises five titles, where clause (e) could mean that the entitlement (volume of earthworks or number of residential units) may be reduced to the allowance of one site – and this would not be the intention.

Application of the term to the coastal marine area

Submissions also pointed out that it is unclear how the definition would apply in the coastal marine area (Mercury New Zealand Ltd).

Application of the term to the beds of rivers and lakes

Submissions also pointed out that the definition of ‘site’ does not relate to the bed of a river or lake because the RMA definition of land does not include the bed of a river or lake for regional rules. The submissions referred to the problem this might have when applying the term ‘site’ to the sites of dams or bridges.

Clause (e) – “adjacent”

Submissions (Trustpower Ltd, Far North District Council) were concerned about the use of “adjacent” in clause (e), which states, “an area of adjacent land comprised in two or more computer freehold registers where an activity is occurring or proposed”. The following concerns were expressed.

- The term “adjacent” should not be confined to meaning abutting or actually connected because in some cases it can mean close but separated by a road or river. Trustpower Ltd was concerned about the application to hydroelectric power schemes, which may comprise titles that are nearby but not abutting each other.
- Far North District Council supported the definition but was concerned that farms comprised in two titles that spanned a river or a road would not be considered to be adjacent.

Application of ‘site’ to other definitions in the standards

The RMLA pointed out that requirements in other definitions to be “on the same site” will not work if the ‘site’ is limited to one legal entity. For example, the definition of ‘ancillary activity’ refers to primary activities and ancillary activities that are subsidiary to the primary activities “on the same site” as the primary activity. In addition, a wind farm may be sited on a farm where both are considered to be primary activities, otherwise they would not qualify to have ancillary activities. The same would apply to ‘accessory building’.

Particular terms: clause (b) –“administered separately”; clause(d) – “the cross lease system”, Unit Titles Act 1972

The New Zealand Law Society and Thames Environmental Consultancy were concerned about the word “administered”. Thames Coromandel Consultancy queried whether it referred to amalgamated titles or other linked titles.

Selwyn District Council pointed out that some sites are held together in such a way that they cannot be administered separately (under covenants such as those set out in section 220(1)(b) of the RMA) but they are not adjoining. They may be separated by a road or a river or by another title. So the definition may need to apply to this situation or be clear whether it does.

The New Zealand Law Society was also concerned that the word “administered” in clause (b) implies actions of a public body and it would be better replaced by the words “dealt with”.

The New Zealand Law Society was concerned that the reference in clause (d) to the “cross lease system” would be more accurately described by the phrase “by a cross lease”. Auckland Council and Selwyn District Council requested that the reference to the Unit Titles Act 1972 in clause (d) be updated to the most recent version of the Act.

Legal issues

Selwyn District Council raised points about the accuracy of the concepts referred to in the definition as follows.

For clauses (a), (c) and (e), consideration should be given to including the types of estate described in section 12(1)(b)–(e) of the Land Transfer Act 2017 for which a record of title may be issued, not just the freehold estate described in section 12(1)(a). This would then encompass leasehold as well as freehold titles. Selwyn District Council suggested that this could be resolved by adding the words “or equivalent” at the end of each of these clauses, for example: “an area of land comprised in a single computer freehold register (record of title as per the Land Transfer Act 2017); *or equivalent*”.

Diagram requested

Auckland Council suggested that a diagram would be useful.

More detail requested

Dunedin City Council requested more detail to be included in the definition because it has more detail in the definition in its plan. However, it did not provide that detail.

3.101.3 Analysis and recommendations

Other meanings of the word ‘site’, whether the term should apply to an activity site, workability in plan rules – clause (e), application of the term to the beds of rivers and lakes and the coastal marine area

Submissions were concerned that this definition only applied to the concept of a site as a property and did not recognise the many ways in which the term was used. They were concerned that the definition would restrict, confuse or not provide for these other uses of the word. Regional councils, in particular, were concerned that the ‘property’ focus of the definition was inappropriate for many of the ways in which regional councils use the word.

Other submissions had mixed views about whether the definition should apply to an activity as well as the property or legal entity type of concepts (ie, whether clause (e) should be retained or be applied to a different term). One submission raised problems with the application of clause (e) within district plan rules that calculated allowances per site.

We considered whether to extend the definition in the way suggested by Horizons Regional Council to encompass both the concepts of a wider, more regional-focused definition and the concept of an 'activity area' by adding a second leg to the definition as follows:

2. Where in the context it is appropriate, it includes:
 - a) an area, place or river reach; or
 - b) an identifiable place or area where an activity takes place.

But comments on this option from pilot councils were not favourable. They were concerned about the broadness of these terms and in general they favoured retaining the more legal entity-focused definition and leaving the concepts set out in the suggested (2) above to be defined by councils as required. We agree with this.

We agree with the concerns expressed that the definition does not encompass the many different meanings of 'site'. We consider that the definition is primarily focused on the 'legal entity' meaning of the word 'site' and is more appropriate to that application. We agree that any references to land in the definition of 'site' do not apply to regional council rules for the beds of lakes and rivers. We agree that the definition of 'site' as proposed would not be very applicable in the coastal marine area. While the definition of 'land' clearly encompasses the seabed, it is unlikely that land below mean high-water springs would be comprised in a record of title, or allotment, survey plan or other legal instrument referred to in the definition (apart from within the process of a reclamation: see section 89 of the RMA, which provides for subdivision and other activities proposed to be undertaken for land intended to be reclaimed to be dealt with by a territorial authority as land within its district).

We agree with the regional councils that pointed out that although they sometimes use the word 'site' with the 'legal entity' meaning, they mostly use it in a different context with a different meaning.

Therefore we recommend that the definition be changed so that it is clear that it only applies to district plans. However, district plans will still use the word 'site' with many other meanings. These definitions only apply where the context is appropriate and so this definition of 'site' will not apply where district plans use the word to have a different meaning, such as for heritage sites.

Workability in plan rules – clause (e)

We note the concerns also expressed that clause (e) is inconsistent with the other clauses and relates to a different concept – that is, the concept of a larger site that spans a number of records of title if an activity is occurring on them. One submission expressed concern that this would reduce a number of records of title (where an activity takes place, eg, a farm) to one site and any rules specifying allowances (eg, residential units per site or earthworks volumes per site) would be reduced. We agree with this and therefore recommend deleting clause (e). If councils wish to set out specific requirements or allowances for a property where an activity spans a number of legal sites, then they may do so using a different term.

Application of 'site' to other definitions in the standards

The RMLA had concerns about 'site' being limited to one legal entity coupled with the requirement, in some definitions such as 'ancillary activity' and 'accessory building', for location on the same site and for a primary and ancillary activity to be identified on that site. We consider that recommended changes to those definitions address this concern.

Particular terms: clause (b) –“administered separately”; clause (d) – “the cross lease system”, Unit Titles Act 1972 and other legal issues

We agree with submissions concerned about the term “administered” and recommend replacing it with the words “dealt with”. We also recommend updating the references to cross lease system and the Unit Titles Act. We agree that the references in clauses (a) and (c) should be expanded to encompass the types of estates for which a record of title can be issued under section 12(1)(b)–(e) of the Land Transfer Act 2017 and recommend changes accordingly.

We do not recommend adding a diagram because we have not included diagrams in these standards. More work needs to be done to align different council styles and to provide useful diagrams while leaving it open to councils to prescribe metrics. This is a matter that can be considered for future standards or guidance. Councils may also include diagrams to illustrate definitions if they wish to.

We recommend amending the definition for 'site' in the Definitions Standard as follows:

Site ~~for district plans and the district plan component of combined plans~~ means:

- (a) an area of **land** comprised in a single ~~computer freehold register~~ record of title as per the Land Transfer Act 2017; or
- (b) an area of **land** which comprises two or more adjoining legally defined **allotments** in such a way that the **allotments** cannot be dealt with ~~administered~~ separately without the prior consent of the council; or
- (c) the **land** comprised in a single **allotment** or balance area on an approved survey plan of **subdivision** for which a separate ~~computer freehold register~~ record of title as per the Land Transfer Act 2017 could be issued without further consent of the Council; or
- (d) except that in relation to each of sub clauses (a) to (d), in the case of **land** subdivided under the Unit Titles Act 1972 or 2010 or a **the cross lease system**, a site is ~~deemed to be~~ the whole of the land subject to the unit development or cross lease.
- ~~(e) (an area of adjacent land comprised in two or more computer freehold registers where an activity is occurring or proposed.~~

3.102 Small scale renewable electricity generation

3.102.1 Proposed definition

Small scale renewable electricity generation means renewable electricity generation which does not exceed a power rating of 20kW.

3.102.2 Submissions

Eight submissions were received on the proposed definition of ‘small scale renewable electricity generation’. Six submissions were in support of the definition, with three of those suggesting amendments. Auckland Council and West Coast Regional Council were opposed to definition.

Genesis Energy Limited, NZTA and Mercury New Zealand supported the use of the definition as presented without amendment.

The NZPI, Trustpower Ltd and Contact Energy Ltd supported the definition but recommended that the energy generation level be increased from 20kW to 500kW due to developments in domestic energy generation technology. They expressed concern that, by limiting the level to 20kW, it could lead to incorrectly categorised energy generation activities.

Auckland Council and West Coast Regional Council both opposed the use of the definition for the same reason. They both felt that the limit of 20kW was unreasonably low and, looking ahead, it could prove problematic as energy generation technology advances. They both proposed that stating a limit within the definition is too restricting.

West Coast Regional Council argued that environmental variation makes it too difficult to impose a strict kilowatt limit to small scale operations. It provided the following example:

For example, a take of 200L/second with a 15 metre long head would generate approximately 20kW. On the West Coast, we have various takes of 125L/sec with a 36 metre head, 100L/sec with a 100m head, and 20L/sec with a 600m head occurring. Another generation activity in South Westland generates 22kW, making the 20kw limit arbitrary.

Auckland Council suggested adding a community-scale electricity generation definition to try to close the gap between scales of energy generation.

3.102.3 Analysis and recommendations

We agree that having an arbitrary power limit within the definitions is likely to be inappropriate. A power generation level is not an indication of the adverse effects of a proposal. We also agree that this limit would need to be updated often as technology becomes more efficient.

We considered adding other forms of limits such as a maximum number of sites serviced by the generation, but we were unsure how to determine such a limit.

Therefore, we consider that the term should be considered as part of a wider piece of work around electricity generation and/or transmission at a future date. We also consider that a new definition would require wider consultation than was possible within the timeframes. Any future definition could be added to a future set of planning standards.

We recommend deleting the definition of ‘small scale renewable electricity generation’ from the Definitions Standard for the time being.

3.103 Special audible character

Refer to section 3.61 “ L_{A90} , L_{Aeq} , $L_{A(max)}$, L_{dn} , L_{peak} , $L_{Aeq(15\ min)}$, $L_{Aeq(24h)}$, $L_{A90(10\ min)}$, Notional boundary, Rating level and Special audible character” for submissions, analysis and recommendations on the definition for ‘special audible character’.

3.104 Stormwater

3.104.1 Proposed definition

Stormwater means water from natural precipitation (including any contaminants it contains) that flows over land or structures (including in a network), to a waterbody or the coastal marine area.

3.104.2 Submissions

Twenty-two submissions were received on the definition of ‘stormwater’.

Four submitters supported the definition without amendment (Atlas Concrete Ltd, Fonterra Ltd, J Swap Contractors Ltd, NZTA). The remainder of submitters either opposed or requested amendments to the definition.

The proposed inclusion of the phrase “to a waterbody or the coastal marine area” was commented on in 11 submissions.⁷⁴

Four submitters⁷⁵ stated the definition should be limited to a description of the physical processes used to generate stormwater and its components, and should not extend so far as to include potential receiving environments. Bay of Plenty Regional Council submitted an unintended consequence of listing receiving environments within the definition was that ‘run-off’ would not be considered ‘stormwater’ until after discharge. This in turn, it submitted, would result in plan provisions that regulate stormwater at source ceasing to have application. In a similar vein, other submitters stated that references to potential receiving environments should be excluded from the definition, particularly given policies and rules may necessitate different strategies or outcomes for different receiving environments (Environment Canterbury, the oil companies).

In contrast, seven submitters⁷⁶ requested changes to the definition to include ‘land’ as an additional receiving environment, on the basis that stormwater is commonly discharged to land. Taupō District Council noted that not all of the receiving environments listed in the definition occur within the boundaries of a local authority’s region or district⁷⁷ and requested the ability to omit receiving environments from the definition where appropriate for the local context.

Some submitters⁷⁸ requested changes to constrain the definition of stormwater to run-off that is *intercepted, accelerated and diverted as a result of land modified through human action*. Submitters considered these amendments were necessary to ensure natural run-off (eg, run-off of a hillside) continued to be excluded from the definition.

West Coast Regional Council sought the omission of the word “contaminants” from the definition, on the basis that its inclusion “gave a misleading impression that discharges of contaminants were permitted”. Minor amendments to include references to additional flowpaths (including over

⁷⁴ Auckland Council, Bay of Plenty Regional Council, Environment Canterbury, Forest and Bird, Gisborne District Council, Horizons Regional Council, Otago Regional Council, RMLA, the oil companies, Taupō District Council, Te Rūnanga o Ngāi Tahu.

⁷⁵ Environment Canterbury, Bay of Plenty Regional Council, the oil companies.

⁷⁶ Auckland Council, Gisborne District Council, Forest and Bird, Horizons Regional Council, Otago Regional Council, RMLA, Te Rūnanga o Ngāi Tahu.

⁷⁷ Eg, the coastal marine area.

⁷⁸ Environment Canterbury, Greater Wellington Regional Council, New Zealand Law Association, the oil companies.

carparks and through structures) were also sought by two submitters (Te Rūnanga o Ngāi Tahu, Christchurch City Council).

3.104.3 Analysis and recommendations

The inclusion or omission of potential receiving environments in the definition of stormwater attracted the greatest number of submissions. We consider the submission by Bay of Plenty Regional Council illustrates the potential unintended consequences that might arise if references to receiving environments are included in the definition. The most significant of these is that existing plan provisions that require, through policies and rules, treatment of stormwater at source would cease to apply. We agree this would be an undesirable and unintended outcome that should be avoided, and in response recommend the complete omission of receiving environments from the definition. We consider the best place to include these references is within the policies and rules themselves. We note that omitting these references from the definition will ensure that where plan provisions direct or anticipate different outcomes for different receiving environments, these continue to be preserved.

We also agree with submitters that the definition of ‘stormwater’ should distinguish between natural run-off (eg, run-off from an unmodified hillside) and run-off that arises as a result of human action or modification of a land surface. A distinction between discharges that result from human action and run-off that results from natural events is reflected in the language in section 15 of the RMA:

15 Discharge of contaminants into environment

- (1) No *person* may discharge any
 - (a) contaminant or water into water; or
 - (b) contaminants onto or into land ... (emphasis added)

Inclusion of the term “person” in section 15 of the RMA constrains the application of section 15 to regulating only discharges that result from an action by the Crown, a corporation sole, or a body of persons, whether corporate or incorporate.⁷⁹ We consider the definition of ‘stormwater’ should be similarly constrained and recommend amendments accordingly.

We also agree there are a range of additional flowpaths through which stormwater may pass and recommend these are recognised within the definition of ‘stormwater’. We consider this is best accommodated by omitting the phrase “over land or structures” and replacing it with the phrase “from the surface of any structure”. This more generalised phrase will ensure all flow paths (eg, through, over, under) are accommodated within the definition.

We do not agree that use of the word “contaminants” in the definition of stormwater is inappropriate or conveys a permissive planning regime.⁸⁰ Regional councils have a function, under section 30 of the RMA, for controlling the “discharge of contaminants” to land and water,⁸¹ a function that is generally exercised through policies that direct how activities are to be managed and through rules that set limits on the quality and quantity of contaminants discharged. Furthermore, it is the planning framework, not the definition, which establishes the outcomes to be achieved and the management regime that may apply to an activity. That regime may be permissive or restrictive depending on the effects of the activity and the outcomes desired. For this reason, we consider use

⁷⁹ Definition of ‘person’ in section 2 of the RMA.

⁸⁰ Submission by West Coast Regional Council.

⁸¹ Section 30(1)(f).

of the term “contaminants” to be both appropriate and independent of plan outcomes, and for this reason we recommend retaining it.

We recommend amending the definition of ‘stormwater’ in the Definitions Standard as follows:

Stormwater means ~~water from natural precipitation (including any contaminants it contains) that flows over land or structures (including in a network), to a waterbody or the coastal marine area.~~ run-off that has been intercepted, channelled, diverted, intensified or accelerated by human modification of a land surface, or run-off from the surface of any structure, as a result of precipitation and includes any contaminants contained within.

3.105 Structure

Refer to section 3.14 “Building and structure” for submissions, analysis and recommendations on the definition for ‘structure’.

3.106 Subdivision

3.106.1 Proposed definition

Subdivision has the same meaning as “subdivision of land” in section 218 of the RMA (as set out in the box below)

means—

- (a) the division of an allotment—
 - (i) by an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment; or
 - (ii) by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or
 - (iii) by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or
 - (iv) by the grant of a company lease or cross lease in respect of any part of the allotment; or
 - (v) by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of a unit on a unit plan; or
- (b) an application to the Registrar-General of Land for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by section 226

3.106.2 Submissions

Three submissions were received on the definition of ‘subdivision’ (Auckland Council, Kāpiti Coast District Council, Fire and Emergency New Zealand). All three submissions supported the use of the RMA definition.

Kāpiti Coast District Council requested that the definition include boundary adjustments.

3.106.3 Analysis and recommendations

On principle, we do not recommend changes to RMA definitions so do not recommend amending the definition to include boundary adjustment. Given the support for the proposed definition, we recommend retaining the definition of 'subdivision' in the Definitions Standard without amendment.

3.107 Sustainable management

3.107.1 Proposed definition

Sustainable management has the same meaning as in section 5 of the RMA (as set out in the box below)

means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

3.107.2 Submissions

Auckland Council was the only submitter on the definition of 'sustainable management'. It supported the inclusion of this definition.

3.107.3 Analysis and recommendation

Given the support, we recommend retaining the definition of 'sustainable management' in the Definitions Standard without amendment.

3.108 Swale

3.108.1 Proposed definition

Swale means an area of land that has been shaped to allow a watercourse to form during stormwater collection

3.108.2 Submissions

3.108.3 Submissions

Nine submissions were received on the proposed definition of swale.

Atlas Concrete Limited, New Zealand Transport Agency and Christchurch City Council supported the use of this definition.

Environment Canterbury suggested the following amendment to the definition:

“an a grassed or vegetated watercourse designed, formed and constructed to convey stormwater [area of land that has been shaped to allow a watercourse to form during stormwater collection”.

Five of the submissions received opposed the definition of swale.

The Urban Engineers Ltd argued that swale is a technical stormwater management practice that could be used as part of water sensitive design and is well understood by those working in stormwater management and so does not need to be defined. The Urban Engineers Ltd did not see much purpose in this definition as they believe the definition of green infrastructure would encompass swales and that if swale was to be defined other green infrastructure devices would also need to be defined.

Auckland Council and Christchurch City Council opposed the definition for similar reasons.

Bathurst Resources Limited and Greater Wellington Regional Council questioned the need for this definition to be included when so many others, that they would have considered more valuable definitions, were not.

3.108.4 Analysis and recommendations

The submitters opposed to the submission questioned the need to include the definition, especially when this is the only type of green infrastructure that has been defined. Two submitters also considered that any definition of ‘swale’ should describe the key components of a swale and stated that the draft definition did not achieve this. Auckland Council identified the following issues with the definition:

The purpose of including this specific definition is unclear. The definition of Green Infrastructure would include swales. If swales were to be defined then there would be many other green infrastructure devices that should be defined too (eg, raingardens, green roofs, infiltration trenches, etc). A swale has been designed to have treatment qualities, usually by the inclusion of vegetation to trap and filter contaminants. It is also considered that the term ‘watercourse’ should not be used. The Unitary Plan approach is to define stormwater management devices which lists a number of green infrastructure device types as well as proprietary devices. It is considered that a definition for swale is unnecessary and should be deleted from the Standards.

We agree that the definition of ‘green infrastructure’ would include ‘swales’ and that it is inappropriate to single out a single form of green infrastructure for definition. As ‘green infrastructure’ continues to be recommended for inclusion in the Definitions Standard, we consider this is sufficient for the time being.

Urban Engineers Ltd identified that swale “does not need to be defined, it is a specific technical stormwater management practice that could be used as part of water sensitive design and is well understood by those working in the stormwater management space”. We consider that this term could be revisited as the Ministry for the Environment progresses its work around urban water management and water sensitive design.

We recommend deleting the term 'swale' from the Definitions Standard.

3.109 Tangata whenua

Refer to section 3.59 "Iwi authority, Kaitiakitanga, Mana whenua, Tangata whenua" for submissions, analysis and recommendations on the definition for 'tangata whenua'.

3.110 Temporary military training activity (requested term)

3.110.1 Submissions

A definition for temporary military training activity was not provided in the draft version of the Definitions Standard available for public submissions. The New Zealand Defence Force (NZDF) requested a definition to be as follows:

Temporary military training activity means a temporary activity undertaken for defence purposes. Defence purposes are those undertaken in accordance with the Defence Act 1990.

NZDF advised that it currently seeks provision for temporary military training activities in district, regional and combined plans across New Zealand.

All submissions on the planning standards have been publicly available on the Ministry for the Environment website.

The proposed definition (with a comment identifying the original definition as requested by NZDF) was sent to the team of pilot councils that assisted the Ministry for Environment by providing feedback and testing ideas throughout the development of the National Planning Standards.

No feedback from the pilot councils opposed the proposed definition or its inclusion in the National Planning Standards.

Far North District Council, Hamilton City Council, Tasman District Council and Wellington City Council supported the amended definition, with no comments or concerns with the proposed changes.

Selwyn District Council, Environment Southland and Dunedin City Council recommended it is more appropriate to tie the original definition directly to the Defence Act 1990. Selwyn District Council stated that use of the word "including" is not determinative and implies there are other non-defined defence purposes. Environment Southland identified that as defence purposes are defined in the Defence Act 1990, we should rely on the other existing legislation, rather than restating it and risking that the planning standard definition becomes out of date.

Timaru District Council recommended the amended definition, as section 5 of the Defence Act 1990 could be changed.

Both Waimakariri District Council and Dunedin City Council questioned the need to include the term "temporary" in the definition. Questions were raised about whether training is truly "temporary" if it is temporary but reoccurring or frequent. The need to differentiate between 'military training activities' and 'temporary military training activities' was not clear.

Waimakariri District Council and Environment Southland mentioned the definition seems to capture the activities but none of the effects that might go with it, for example, different noise types, vegetation disturbance and timing of events.

Dunedin City Council identified that the term “activity” within the definition will make reference in the plan more complicated, for example, in policies.

Timaru District Council identified that in a 2017 submission, the New Zealand Defence Force identified it supported wording in the then operative Timaru Plan that identifies that the Defence Act 1990 enables areas used for temporary military training activities to be restricted.

3.110.2 Analysis and recommendations

We have recommended very few additional definitions be included in the standards but have done so for this definition because it describes a planned activity that can occur throughout the country, and for which there are similar definitions in many existing regional and district plans. We consider a consistent definition across plans would assist with consistent interpretation of associated provisions. It will assist NZDF to manage forward planning.

The definition proposed by NZDF referred to defence purposes being those “undertaken in accordance with the Defence Act 1990”. We made changes to the definition to spell out these purposes and tested this with our pilot councils. NZDF did not object to that change, and identified that the intent and application of this revised definition is effectively the same as what it originally proposed. Therefore NZDF accepted that it is an appropriate definition to include in the Definitions Standard.

We have consulted with our pilot councils on this term and feedback from them is largely favourable, with very few issues raised.

Some feedback from councils was that it would be better just to rely on the reference to the Defence Act 1990 without setting out the purposes in full. We consider that reference only to the defence purposes does not clearly show a user what those purposes are without having to refer to the Defence Act 1990. We consider that a definition should be clear on its face and not require users to view other Acts in order for its meaning to be clear. The standards do not require links through to external websites to access other legislation for definitions because these are difficult to maintain. There is no definition of ‘temporary military training activity’ in the Defence Act 1990. If there had been, that would have been included in the Definitions Standard verbatim (with appropriate references) as long as it was considered to be fit for the purpose of including in RMA plans. For these reasons, we consider it appropriate to set out in the definition the list of defence purposes as set out in section 5 of the Defence Act 1990.

We agree with the pilot councils’ feedback that the definition is more certain if it refers to the Defence Act 1990 specifically and we recommend including this reference in the definition. We also recommend confining the reference to those purposes set out in the Defence Act 1990 and not using the term “including” because all the activities must clearly come within the purposes set out in the Defence Act 1990.

While the list of defence purposes transferred from the Defence Act 1990 into the proposed definition is very broad, we consider that reference to the Defence Act 1990 provides more context for the type of activities undertaken. By including specific reference to the Defence Act 1990 within the definition, if any review of that Act results in changes to those purposes, then consideration of those changes, the impact of those changes on RMA plans, and any consequent amendment will be undertaken for this definition.

We consider the term “temporary” within the definition is required. Other permanent military training activities with their associated facilities have a different scale, and different effects that

need to be considered, over and above temporary activities. Examples of temporary military training activities are:

- search and rescue
- driver training
- medical and dental services
- camp setup, including field kitchens and ablutions
- small construction tasks
- signals (radio communications) exercises
- medevac simulation
- Civil Defence support and emergency response
- improvised explosive device disposal (IEDD) exercises
- IEDD search exercises (in commercial or industrial buildings as well as outdoors)
- infrastructure support (eg, water purification and supply facilities)
- dog training.

These activities are considered to be temporary as most occur over hours or a few days, but larger exercises could take place over a week or more. These larger exercises are not the norm. The largest exercise that NZDF undertakes is Exercise Southern Katipo, which takes place over six to eight weeks once every two years or more. Some exercises are also mobile, so even if the exercise as a whole takes place over weeks, a particular site might only be occupied or used for some of that time and not for the entire exercise duration.

There are other activities that occur each year that councils consider “temporary” such as school fairs, returning circuses and festivals. Councils will be able to prepare rules, in consultation with NZDF, that will be able to detail the scale of event, timing or frequency, and effects that will need to be managed when providing for a ‘temporary military training activity’. While we acknowledge that the term “activity” within the definition may make referencing within plans including policies more difficult, for reasons of definition consistency the term “activity” should be retained. For example, the standards contain definitions of other activities such as ‘residential activity’, ‘commercial activity’ and ‘industrial activity’. We recommend retaining the definition as ‘temporary military training activity’.

We consider that if councils wish to reflect in their provisions that temporary military training activities may cause land to have restricted access, they can do this within policies, rules or advice notes in discussion with NZDF. While we acknowledge that this is useful information, we consider it is more suited to guidance material than being provided within the definition. It is also a matter of how the operation is organised, which can differ in the circumstances.

Accordingly, we recommend including the definition of ‘temporary military training activity’ in the Definitions Standard as follows:

Temporary Military Training Activity means a temporary activity undertaken for the training of any component of the New Zealand Defence Force (including with allied forces) for any defence purpose. Defence purposes are those purposes for which a defence force may be raised and maintained under s5 of the Defence Act 1990 which are:

- a) the defence of New Zealand, and of any area for the defence of which New Zealand is responsible under any Act:

- b) the protection of the interests of New Zealand, whether in New Zealand or elsewhere:
- c) the contribution of forces under collective security treaties, agreements, or arrangements:
- d) the contribution of forces to, or for any of the purposes of, the United Nations, or in association with other organisations or States and in accordance with the principles of the Charter of the United Nations:
- e) the provision of assistance to the civil power either in New Zealand or elsewhere in time of emergency:
- f) the provision of any public service.

3.111 Territorial authority

3.111.1 Proposed definition

Territorial authority has the same meaning as in section 5 of the Local Government Act (as set out in the box below)

means a city council or a district council named in Part 2 of Schedule 2

3.111.2 Submissions

One submission was received on the definition of ‘territorial authority’ from Housing New Zealand. It submitted that we should include reference to the full name of the Act: “Local Government Act 2002”.

3.111.3 Analysis and recommendation

This is a simple amendment and so we recommend retaining this definition of ‘territorial authority’ in the Definitions Standard but with this change to reflect the year the legislation was enacted.

Territorial authority has the same meaning as in section 5 of the Local Government Act 2002 (as set out in the box below)

means a city council or a district council named in Part 2 of Schedule 2

3.112 Visitor accommodation

3.112.1 Proposed definition

Visitor Accommodation Means **land** and/or **buildings** used primarily for accommodating non-residents, subject to a tariff being paid

3.112.2 Submissions

In total, 23 submissions were received on the definition of 'visitor accommodation'. Two submissions supported the definition, of which one provided no reason for its support and the other commented it was a clear definition. Twelve submissions supported the definition in part, requesting amendment or raising concern with parts of the definition. Nine submissions opposed the definition.

NZPI, New Zealand Visitor Caravan Association and Tauranga City Council considered the definition resulted in uncertainty about what was to be included or excluded from the definition. Examples of activities that submitters identified as requiring specific consideration include:

- camping grounds and camping, especially those with long-term caravan residents (New Zealand Visitor Caravan Association, Thames Environmental Consultancy, NZTA)
- private hospitals (NZTA)
- recognised or seasonal workers' accommodation (Western Bay of Plenty District Council, Horticulture New Zealand, Hastings District Council)
- Air B&B, BookaBach and similar accommodation – some submissions wanted this activity as a part of visitor accommodation and others did not. (Western Bay of Plenty District Council, Auckland Council)
- holiday homes
- boarding houses
- temporary or relief accommodation.

Scope of activities encompassed in the definition

Both NZPI and Western Bay of Plenty District Council requested the ability to list or a listing of examples of activities encompassed by this definition.

Christchurch International Airport supported the definition, but believed there needs to be a different definition for noise sensitive activities, for example, limiting length of stay.

Christchurch City Council suggested the definition should include ancillary activities, as if they are in the rules this will be complex and long. It requested the definition be amended to include ancillary activities such as offices, meeting and conference facilities, and provisions of goods and services primarily for the convenience of guests.

Horticulture New Zealand suggested there be a separate definition of 'seasonal workers' accommodation'.

Western Bay of Plenty District Council requested the definition be amended to:

Accommodation facility means any form of residential accommodation that is accessory to a primary dwelling, forms part of a primary dwelling, or is a standalone facility, that does not comply with the definition of dwelling, or accessory building. Included within this definition is; home-stays, farm-stays, beds and breakfast, boarding houses, hotels, motels, hostels and camping grounds. Excluded from this definition are Retirement Villages and Rest Home. Occupancy is based on one person per single bed and two per double bed.

Christchurch City Council suggested the defined term be amended to 'guest accommodation' to include occupants who live in the same town and people relocated for a variety of reasons.

Term “used primarily for” – matter of discretion

Concerns were raised that the term “used primarily for” is problematic as it is subject to discretion, raising questions about secondary uses (Western Bay of Plenty District Council and Tauranga City Council). Hutt City Council asked if this meant by default, if the primary activity was something else (eg, commercial or residential), the secondary uses of visitor accommodation would be subsumed into the primary use. Queenstown-Lakes District Council also identified this term as being subjective, and identified that it makes enforcement impossible. However, Christchurch City Council supported the use of “primarily” as visitor accommodation can be used to accommodate displaced residents and homeless residents. Auckland Council identified that “primarily” enables scale and frequency of the activity to be considered, but considered this may create significant interpretation issues especially if they relate to permitted activities. Taupō District Council requested clarification as to whether “used primarily for” includes ancillary activities like restaurants and conference facilities.

Term “non-resident”

The term “non-resident” was considered ambiguous and subject to interpretation (eg whether it relates to New Zealand residents or district residents) (NZTA, Western Bay of Plenty District Council). Western Bay of Plenty District Council suggested this may be addressed through consideration of people that would not ordinarily live in that particular accommodation. Hastings District Council raised concerns with monitoring, especially with residential dwellings being rented by non-residents.

Christchurch City Council suggested changing the defined term to ‘guest accommodation’, as occupants are not always visitors.

Hutt City Council suggested amending the definition to: “Land and/or buildings used for accommodating non-residents subject to payment of a tariff”.

Scale and timeframe

Horowhenua District Council requested the definition be amended to differentiate between short-term rental and long-term rental. Western Bay of Plenty District Council suggested that a timeframe (eg, six months) be set as the trigger between renting and visitor accommodation. Tauranga City Council requested the definition be amended to include a definable measurement for the amount of time, land or buildings that must be used for the accommodation of non-residents to become ‘visitor accommodation’.

Bright-line test

Queenstown-Lakes District Council suggested using a bright-line test for visitor accommodation. It is anticipated that a bright-line test would relate to timeframes, or in a traditional sense could refer to length of ownership before use can be transferred from residential use to visitor accommodation.

Tariff

Concerns were raised that the term “tariff” is not commonly used or associated with paying for accommodation (Western Bay of Plenty District Council). Far North District Council considered the difference between a tariff and rent is unclear. Housing New Zealand considered that reference to “tariff” is unnecessary. Auckland Council considered that “tariff” is an important part of the definition and supported its use.

3.112.3 Analysis and recommendations

Case law

One case identifies that visitor accommodation is inherently a residential activity. We note that this determination was relevant to specific facts and definitions, and is not a determination to be applied in every case, but it may be relevant. Another case identifies that visitor accommodation is often used to capture accommodation arrangements that are temporary (for a known and stated length of time), rather than permanent. This definition should not be inconsistent with those findings.

Scope of activities encompassed in the definition

Several submissions sought clarification on which types of accommodation would be captured by the definition, and asked for inclusion of examples of activities within the definition. Several submissions asked questions around the inclusion or exclusion of particular activities within this definition. We agree that the notified definition has a very wide scope, and potentially for some councils it may inappropriately capture some activities or not capture others. Different areas of New Zealand are facing different pressures from visitor accommodation. We consider it will work best if councils retain the ability to include or exclude particular provisions for different types of visitor accommodation that suits their needs, through the provision of sub-definitions and associated rules. Inclusions or exclusions should be at the discretion of the individual council.

Submissions supported a wide interpretation enabling the building or land to be used to accommodate displaced residents and homeless residents. We consider the proposed definition is not necessarily precluded as visitors can be from anywhere.

Renting of residential units including homes or holiday homes

Another key matter to address is short-term renting of residential units through mechanisms such as Airbnb and BookaBach. We acknowledge that this is an emerging issue in some areas of New Zealand, and has strong links to policy questions around housing affordability, the residential long-term rental market and urban development.

A range of current work programmes across the government sector is looking at these issues, and the final approaches to addressing these issues are not yet known. We consider at this stage it is not appropriate that a definition provide policy direction by directing a nationally consistent approach to addressing these issues. There is a risk that any definition may not fit with the solutions promoted across the government sector, once its work is complete.

In many cases, the RMA effects that are able to be assessed in a section 32 analysis of plan and policy statement provisions are similar to those involved in assessing residential use and visitor accommodation. For example, a person having a flatmate in their residential house creates not dissimilar effects to someone having a homestay for international students, or housing a live-in au pair. Likewise, the environmental effects of people loaning their holiday home to family members are similar to those of people renting it out to non-family.

In light of this we have drafted a very wide definition, to enable councils to prepare sub-definitions as the wider government work programme provides multidisciplinary solutions to the problem, which can then be supported through plans.

Boarding houses

Boarding houses are a different type of accommodation, where rooms are let for people to live in but facilities are shared. People live in boarding houses; they are not visitors. Boarding houses create

different environmental effects from visitor accommodation, and we consider they are not part of the definition.

Seasonal workers' accommodation

On the basis that seasonal workers' accommodation can be leased through service tenancies, and the workers are not "visitors to the site", it is quite purposefully different from visitor accommodation. Although it is a residential activity that may not occur in a residential unit, we consider it is not visitor accommodation. Councils will have the ability to provide a sub-definition for seasonal workers' accommodation under 'residential activity' if they need to provide particular provisions to manage these activities.

Options for sub-definitions

If a wide definition is set for 'visitor accommodation', councils are then able to set through rules or more specific sub-definitions either particular types of visitor accommodation or the length of time accommodation is used for, before it needs to be directly managed by the district plan.

The Auckland Unitary Plan Independent Hearing Panel identified:

in relation to the definition of 'visitor accommodation', the definition as notified included 'camping grounds'. This activity has been removed from definition of 'visitor accommodation' and also separated from visitor accommodation in the nesting table for residential activities because in many of the activity tables both camping grounds and visitor accommodation are listed as separate items with different activity statuses. To avoid confusion between the extent of 'visitor accommodation' and the different activity statuses, the two should be defined as being separate. The definition of 'visitor accommodation' has also been amended to remove the references to the form of title in which it is held. This has no direct resource management purpose. Any issue arising from subdividing visitor accommodation into residential units can be addressed more directly by controls on subdivision and by conditions of consent.

We consider that while the separation of visitor accommodation and camping grounds is appropriate for the Auckland Unitary Plan, it may not be required for all plans. Councils are able to prepare more activity-specific sub-definitions and associated rules. Where an activity meets more than one definition, the specific and targeted definition would apply. In addition, the proposed definition does not place limits on form of title, or place any specific controls on subdivision.

Term "used primarily for" – matter of discretion

The section 32 report identified the purpose of "used primarily for" in the notified definition was to link "primarily for accommodating non-residents", to enable consideration of scale and frequency of the activity. We consider this is best achieved through each council's discretion as set through its rules.

Several submissions raised concerns with the term "used primarily for", both on grounds of creating a discretion that makes enforcement impossible and raising questions of how "secondary uses" would be treated. Submissions asked whether ancillary activities would be included. We agree that the term "used primary for" is problematic; it has too wide a scope of discretion and should be removed. We consider an addition to the definition reflecting the ability to have ancillary activities is necessary, to reflect visitor accommodation typologies like hotels also have restaurants and other facilities.

Term non-resident

We agree that the term “non-resident” is problematic. It could be subject to challenge or interpretation; and will result in monitoring difficulties. Suggestions were made to use terms such as “ordinarily living in the particular accommodation” and “guest”. We consider, at its most basic level, ‘visitor accommodation’ is about visitors who can be from anywhere. We have chosen to retain the term “visitors”, as there is a common understanding of what this means. If a local person is renting the accommodation, they are still visitors to the site as they have no ‘interest’ in the land or building, and so are able to fit within that term.

Scale and timeframe

We consider amendment is required to the definition, to remove the matters where a ‘decision’ on scale needs to be made, and to clarify the intent of the definition.

Several submissions identified a need to differentiate between short-term and long-term rental. We consider that setting a timeframe of use that is relevant throughout the country is problematic. Not all councils will have the resources or need to monitor the implications of such as definition.

Particular councils may choose to define the time period that separates visitor accommodation from other residential activities. They will be able to provide this through their rule structure if this is supportable under their section 32 analysis to address their area’s resource management needs.

Bright-line test

Queenstown-Lakes District Council identified the need for a bright-line test for visitor accommodation. We are aware that the conversion of residential accommodation to visitor accommodation is an issue in this council’s area of New Zealand. While we can see value in this approach, we consider it is inappropriate to define a nationally required bright-line test set through definition.

Tariff

Submissions identified concerns with the term “tariff”. One submission thought it was an unnecessary part of the definition. Other submissions identified difficulties in differentiating between tariff and rent. Auckland Council supported the use of the term in its current form. We looked at different ways “tariff” could be defined, including looking at the ways different lease and tenancies work. However, on balance, we consider the ordinary meaning of the term is sufficient to meet the needs of this definition, and no further definition is required.

Alignment with other standards

We have recommended the definition for ‘noise sensitive activity’ is removed to allow for further consultation. The removal of that definition from the standard removes the concerns about its alignment with the definition of ‘visitor accommodation’.

The ‘visitor accommodation’ definition works together with the definition of ‘residential activity’. ‘Visitor accommodation’ is a residential activity that does not necessarily occur in a residential unit. It provides for traditional visitor accommodation activities such as hotels, motels and camping grounds, but also provides for other forms of visitor accommodation such as holiday home rentals.

If a council has a local issue that supports the need to place controls on short term rental of residential units at a local level, it will be able to prepare a separate subcategory definition of ‘visitor accommodation’ and specifically manage the matter through that sub-definition.

Summary

In summary, after considering all the matters raised, we recommend retaining a definition of ‘visitor accommodation’ in the Definitions Standard. However, the definition should be amended to:

- remove “primarily”
- reference “visitors” rather than “non-residents” as “visitors” is easier to understand
- include ancillary activities to enable restaurants, conference facilities in hotels and so on.

We recommend amending the definition of ‘visitor accommodation’ in the Definitions Standard as follows:

Visitor Accommodation means land and/or buildings used primarily for accommodating visitors subject to a tariff being paid, and includes any ancillary activities

3.113 Wastewater

Refer to section 3.99 “Sewage, Wastewater and Industrial and trade waste” for submissions, analysis and recommendations on the definition for ‘wastewater’.

3.114 Water

3.114.1 Proposed definition

Water has the same meaning as in section 2 of the RMA (as set out in the box below)

- (a) means water in all its physical forms whether flowing or not and whether over or under the ground:
- (b) includes fresh water, coastal water, and geothermal water:
- (c) does not include water in any form while in any pipe, tank, or cistern

3.114.2 Submissions

One submission was received on the definition of ‘water’. Auckland Council supported the definition and sought for it be retained without amendment.

3.114.3 Analysis and recommendation

Given the unqualified support for the proposed definition, we recommend retaining the definition of ‘water’ in the Definitions Standard without amendment.

3.115 Water sensitive design

3.115.1 Proposed definition

Water sensitive design means an interdisciplinary approach to land use and development planning, design and implementation which integrates land use and water management, to minimise adverse effects on freshwater systems and coastal environments, particularly from stormwater runoff

3.115.2 Submissions

Nine submissions were received on the definition of 'water sensitive design'. Of these, two were in support of the inclusion of the current definition, two were opposed and wanted it removed, and five felt that amendments to the wording were needed before it should be included.

Christchurch City Council and Urban Engineers Ltd supported the current proposed version of the definition with no requests for changes to the wording.

The common theme among most of the submissions was concern that the definition would restrict what qualifies as water sensitive design because the wording is too specific. The general consensus was that the definition needed to be simplified or more generalised.

Hutt City Council's submission was that the proposed definition contained a lot of redundant information that, while a part of water sensitive design, was not needed within a definition. It felt that the wording of "an interdisciplinary approach" limited the definition to exclude water sensitive designs that were not developed by multiple disciplines. It requested the following simplification: "Design that minimises adverse effects on freshwater, coastal water and the associated ecology".

Auckland Council supported this definition as it is similar to a definition proposed for its Auckland Unitary Plan (which did not make it to the final plan). However, it believed that it should be limited to just the content of the first sentence in order to ensure the definition is not restrictive of the inclusions.

Environment Canterbury's submission strongly opposed the definition. It felt that the definition served no useful purpose and that the current version of the definition overly constrained what could be included under it.

Horticulture New Zealand supported this definition but requested the inclusion of groundwater recharging effects in the following portion of the definition: "to minimise adverse effects on freshwater systems (surface and groundwater) and coastal environments".

NZTA wanted the Ministry for the Environment to consider if this definition was the easiest or most practical to define and suggested defining 'hydraulic neutrality' instead. It recommended the following amendment:

Means an interdisciplinary approach [~~to land use and development planning, design and implementation~~] which integrates land use and water management, to minimise adverse effects on freshwater systems and coastal environments, particularly from stormwater runoff.

Greater Wellington Regional Council felt that the definition was too much of a policy approach and highlighted that the wording of "minimise adverse effects" was not appropriate. It recommended deleting the second half of the definition.

Isovist Limited's submission stated that the definition was too inconsistent to be used.

3.115.3 Analysis and recommendations

We agree that, as proposed, the definition is too specific and could limit the use of water sensitive design. We also agree that a simplified or more generalised definition may be appropriate. However, we are concerned that a more generalised definition will not achieve much change. We also consider that a new definition would require wider consultation than was possible within the timeframes.

Therefore, we consider this issue needs more policy work and we recommend deleting the current definition from the Definitions Standard. We consider that further work to develop an appropriate definition can continue through the work of the Ministry for the Environment and possibly the Urban Water Working Group. If a definition is produced, it may be included in a future set of planning standards.

3.116 Waterbody

3.116.1 Proposed definition

Waterbody has the same meaning as in section 2 of the RMA (as set out in the box below)

means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area

3.116.2 Submissions

Two submissions were received on the definition of 'waterbody', both from local government.

Auckland Council sought retention of the definition without amendment. In contrast, New Plymouth District Council sought substantial amendments to the definition to exclude stormwater ponding areas, overland flow paths, areas of saturated soils, ephemeral streams and artificial waterbodies⁸² to avoid the application of district plan rules to the exclusions referenced above.

3.116.3 Analysis and recommendation

We consider the extensive amendments requested by New Plymouth District Council would considerably narrow the breadth of the term, with significant consequences for the application of provisions in policy statements and plans that use the term 'waterbody' as a collective term for all freshwater and geothermal resources.

We consider the submitter's concerns could be accommodated through consequential amendments to the district plan. These amendments could include omitting the general term 'waterbody' and instead using specific terms such as 'river', 'aquifer' and 'wetland'. Such amendments would preserve the original intent of these rules, while ensuring the continued exclusion of these provisions to stormwater ponds, artificial watercourses and drains.

We recommend retaining the definition of 'waterbody' in the Definitions Standard without amendment.

⁸² Including artificial farm drains, ponds, canals or water supply races)

3.117 Wet abrasive blasting

Refer to section 3.1 “Abrasive blasting, Dry abrasive blasting and Wet abrasive blasting” for submissions, analysis and recommendations on the definition for ‘wet abrasive blasting’.

3.118 Wetland

3.118.1 Proposed definition

Wetland has the same meaning as in section 2 of the RMA (as set out in the box below)

includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions

3.118.2 Submissions

Six submissions were received on the definition of ‘wetland’.

Two submitters supported the inclusion of a definition of ‘wetland’ (Auckland Council, Fonterra). However, one of these submitters considered the definition required refinement to distinguish between natural and constructed wetlands and to preserve plan outcomes (Fonterra).

The remaining submitters opposed the inclusion of the definition.⁸³ Some argued that it was too broad and would include artificial or constructed wetlands⁸⁴ and wet exotic pasture (Bay of Plenty Regional Council, Environment Canterbury). Submitters provided examples of planning solutions used to overcome these practical difficulties, including the use of sub-definitions (eg, constructed wetland), exclusions (eg, wetland excludes wet pasture), and diagrams and photographs (Te Rūnanga o Ngāi Tahu, Bay of Plenty Regional Council, Environment Canterbury). Submissions on these points requested similar amendments to the definition to ensure preservation of plan intent.

The Horticulture New Zealand submission requested the omission of the definition. It stated a more useful approach would be to rely on spatial mapping to determine the extent and location of wetlands.

3.118.3 Analysis and recommendations

As discussed in previous sections, our general approach is to retain RMA definitions without amendment where these are fit for purpose. We appreciate the practical difficulties associated with the RMA definition of ‘wetland’ but consider these difficulties are not a compelling reason to omit the term from the Definitions Standard.

As for our other recommendations in relation to other RMA terms,⁸⁵ we consider these difficulties can be overcome by using qualifying phrases or exclusions to narrow the application of the term. For example, to preserve the original intent of the provision, phrases such as “ecologically significant”

⁸³ Bay of Plenty Regional Council, Environment Canterbury, Horticulture New Zealand, Te Rūnanga o Ngāi Tahu.

⁸⁴ Eg, those constructed for the treatment of stormwater and wastewater.

⁸⁵ Eg, the definition of ‘bed’.

and “artificially constructed” could be used to qualify the term ‘wetland’ and differentiate between provisions.

Furthermore, we consider retaining the RMA definition of ‘wetland’ is necessary to avoid inconsistencies with other instruments under development. For example, the Collaborative Working Group’s draft National Policy Statement for Indigenous Biodiversity adopts RMA terms, including the term ‘wetland’. While we note this document is still being considered by Government, we consider, as far as is practicable to do so, the Definitions Standard should avoid any inconsistencies with instruments under development. For this reason, we recommend retaining the definition of ‘wetland’ in the Definitions Standard without amendment.

We note here that the planning standards must give effect to national policy statements. So, if that proposed national policy statement does result in a change to the definition of wetland, the planning standards definition will need to be amended as a consequential change and that this would be identified in any consultation process.

3.119 Additional terms

3.119.1 Exclusions

We have decided not to include the following requested definitions within the Definitions Standard. We acknowledge the points made from submissions but many of these are entirely new definitions and we consider more extensive work and testing would be required before they could be implemented into the Standards.

Some of the requested definitions were not included due to not meeting the requirements of our selection criteria as outlined in Section 2 of this report.

We also want to acknowledge that although they are not recommended here, many of the proposed definitions were taken into consideration when dealing with the definitions that had been proposed. These are noted by an asterisk.

- Activities sensitive to aircraft noise*
- Activities sensitive to noise*
- Adaptive management approach
- Ancestral land*
- Aquaculture Activities*
- Archaeological site
- Associated rural activities
- Average exceedance probability (AEP)
- Business land
- Care home within a retirement village
- Cattery
- Clearance of indigenous vegetation
- Comprehensive residential development
- Critical infrastructure*
- Cultural landscape
- Decision maker
- Demand
- Development capacity
- Development infrastructure*
- Dwelling*
- Early childhood facility
- Electricity standards
- Electricity transmission network
- Emergency services
- Environmental risk
- Ephemeral
- Essential drinking water and sanitation*
- Existing use rights

- Exploration
- Feasibility
- Floodplain
- Forestry
- Free-range poultry farming
- Front site
- Frontage
- Genetically modified organism
- Genetically modified organism release
- Genetically modified veterinary medicine
- Geothermal water*
- GIS
- Gross business area
- hapu
- Hapu*
- Hazardous facility
- Healthcare facilities
- Hospital within a retirement village
- Household*
- Impermeable surface
- Impervious area
- Indigenous vegetation
- Intermittent
- iwi
- Kennel
- Kitchen
- Kitchenette
- Korero
- $L_{A90(10\text{ min})}$ *
- $L_{Aeq(15\text{ min})}$ *
- $L_{Aeq(24h)}$ *
- Landscaping
- Local authority
- Maintenance
- Managed fill
- Manoeuvring space
- Maori reserve*
- Maritime exemption area
- Mining operations
- Minor upgrade
- National environment standard
- National grid
- Nationally significant infrastructure*
- Noise sensitive activity*
- Non-permanent residential unit
- Overburden
- Overland flow path
- Papakainga housing
- Parking Space
- Permanent
- Permeability
- Place of assembly
- Plan
- Policy Statement
- Poultry farming
- Precautionary approach
- Production forestry
- Prospecting
- Rear site
- Reflectivity
- Regional Plan
- Regionally significant industry
- Regionally significant infrastructure*
- Relocatable building
- Repair
- Residential care facility
- Retail activity*
- Retail*
- Reticulated infrastructure*
- Riparian margin
- Riparian zone
- Rural production activities*
- Secondary flow
- Secondary flow path
- Segregation strips
- Sensitive activities
- Service station
- Solar energy
- Streams
- Supermarket
- Telecommunications
- Tikanga Maori
- Transitional residential accommodation
- Tree*
- Trimming or pruning of trees
- Vegetation clearance
- Viable genetically modified veterinary vaccine
- Vibration dose value
- Wahi tapu*
- Wind energy facility

- Workers accommodation*
- Yard

4 Guidance

4.1.1 Guidance to accompany this standard

A number of submissions noted the need for more detailed guidance to accompany the Definitions standard.

Submissions requested a range of guidance material on topics such as how the standards definitions would be applied in plans, mechanisms or examples of appropriate rule changes required when the definitions are included in plans, and the relationship of these definitions to the definitions in other national instruments.

Councils also requested guidance on the meaning and application of the mandatory directions and how to determine the threshold between consequential changes or Schedule 1 changes. Several submissions requested guidance on the use of diagrams and nesting tables.

Some submissions requested guidance on specific definitions. This was mostly in relation to how, when and where to apply the term, how to identify whether a term is used in a different context, and the relationship of the Standards' terms and definitions with existing policy statement and plan provisions.

We will work towards creating a comprehensive package of guidance for implementing the Definitions Standard. Some of this guidance will be available at the time of gazettal, while some will be prepared as soon as possible after gazettal. We will take all of the suggestions received into consideration when deciding on what guidance to produce to ensure that the use and implementation of the content within the Definitions Standard is as clear as possible.