

From: GlobePlanning
To: [Planning Standards Mailbox](#)
Subject: Consultation on NZ Planning Standards
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To whom this may concern,

Tena koe,

This is a private submission on behalf of Hamish Barrell in relation to one question concerning National Planning Standard definitions:

[Q18: Are these drafting principles suitable for definitions? Should they be changed or expanded?](#)

I accept that the aim of standardisation is admirable. As Boffa (2015) research report noted there are definitions across the country that are either similarly worded or which include minor/subtle differences in wording across a multitude of District Plans. The approach taken in the consultation NPS appears to take helpful with common elements taken out of the different Plans to create a simpler, plain English meaning.

In doing so the removal of 'uncommon aspects' will result in the introduction of ambiguity for those implementing plans for a time. The Waitaki District Plan (WDP) definition of '[accessory building](#)' helps to illustrate the point. Firstly it is broadly similar to that in the [NPS draft definitions](#), but the WDP's definition has been contextualised to our circumstances through additional wording. The need that the NPS will impose by changing this single definition has the following ramifications:

- It may confuse the user. The WDP definition includes a non-exclusive list of 'common usage' terms the 'average user' may use or be familiar with such as 'sleep out' garden shed, glasshouse and swimming pool which is helpful at the outset to avoid 'debate at the counter'.
- It will mean changes to what's permitted on the ground. In the case of the WDP the definition also clarifies that any garage or carport which is attached to a part of any building shall be deemed to be an accessory building. This would not be the case under the draft NPS definition. In the WDP there's an interrelationship with the setback rules that allow accessory buildings within a defined setback but this will change unless the relevant rules are 'updated' with the timing by which the mandatory changes come into effect, presumably through the cost of a First Schedule Process.
- It will also have unintended consequences as disputes taken to the Environment Court about the new NPS definition, which are often simpler and more open to interpretation, in one district (*based on that particular context*) can be expected to then have implications right across the Country in different contexts.

There could be similar points made about many other definitions. I'll mention just one more concerning the interrelationship between Residential activity and unit definitions.

Many District Plans are based on a residential activity being contained on a single site. For a start there is the definition of **residential activity** itself where the aim has been to 'keep

the definition as simple as possible.’ By doing so it immediately opens the term for debate. It should at least clarify if its temporary or permanent accommodation that’s being covered, otherwise its almost meaningless.

There is considered to be significant differences between whether a policy maker is aiming for a neighbourhood where social cohesion is a consideration, or whether quite different outcomes are intended e.g., visitor accommodation, detention or rehabilitation. The effects of second-homes, for instance, are well studied overseas. While they aren’t necessarily inherently bad they are recognised as bringing particular problems and tensions to specific areas, communities and regions.

My preference would be to exclude visitor accommodation, detention and rehabilitation from the definition of residential activity as these forms of accommodation are better addressed by other definitions.

As noted by the MfE report the **residential unit** definition is extremely important to the practical operation of a district plan’s policy framework about residential development. The proposed definition clarifies what aspects are necessary to be a self-contained unit (cooking, sleeping etc) but doesn’t assist further.

Unless there’s greater clarification it could result in single houses being constructed which are subsequently occupied by persons who do not form a single household without further consideration through a resource consent process. The issue there is that unless such accommodation is well designed and self-managing, then situations of internal overcrowding and external amenity effects (additional traffic, parking and potentially anti-social impacts) can result.

Ways to achieve this without defining ‘household’ in practical terms include stipulating that each principal residential unit would have only one kitchen and be limited to no more than 6 bedrooms. This aligns with the Building Code. I would also draw your attention to the Court cases around this definition in the previous Christchurch City Plan in relation to a student accommodation proposal (Unit Living Limited vs Christchurch City Council 2007). This case and its subsequent follow up in the High Court illustrates the scope for legal challenge associated with ‘simple definitions’. In this case what was deemed an inadequate (simple) definition was being stretched out of context under the then Christchurch City Plan by the ratio of bedrooms to kitchens, but could not be classed as a boarding house or retirement village.

In recognising the flaw in the definition in the Plan the Environment Court attempted a solution, which is useful to the consideration of how the term should be defined. Ultimately the High Court decided that the proposed solution by the Environment Court went beyond what the Plan set out which is exactly the danger than another Court may determine if the definition remains as is. In fact the definition proposed in the NPS is vaguer than the definition in that case where at least the CCC Plan which at least set a maximum of one kitchen!

Reference is also given to England's Use Class Order for [C3 Dwelling Houses](#) which may provide an alternative to stipulating bedroom numbers through reference to what constitutes a household. In England there is a separate category of 'houses in multiple occupation' which specifically provide a category whereupon such situations that aren't boarding or retirement homes can be considered.

My preference would be to reword the definition of Residential Unit as follows:

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. For the purposes of this definition:

- where there is more than one kitchen on a site there shall be deemed to be more than one residential unit;
- where there are more than six bedrooms on a site there shall be deemed to be more than one residential unit.

A definition for kitchen would also be of assistance:

means any space, facilities and surfaces for the storage, rinsing preparation and/or cooking of food, the washing of utensils and the disposal of waste water; including a food preparation bench, sink, oven, stove, hot-plate or separate hob, refrigerator, dish-washer and other kitchen appliances.

Finally a definition of a tree should also be included:

A woody perennial plant, typically having a single stem or trunk, capable of growing to a height of 3 or more metres, and bearing lateral branches at some distance from the ground.

Noho ora
Hamish Barrell