

SECTION 42A REPORT

Hearing Notes

Hearing 5: Chapter 13 Definitions

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1. Good Morning Chair and Commissioners. My name is Anita Copplestone and this is my colleague Megan Yardley. We are the s42A reporting officers for Hearing 5 which covers Chapter 13 – Definitions. Chapter 13 sets out the defined meaning of terms used in the Proposed Plan.
2. We were engaged by the Council to prepare the s42A report for this hearing. We also prepared rebuttal evidence in response to expert evidence presented on behalf of submitters. Our qualifications and experience are set out in the s42A report.
3. Given the depth and breadth of our s42A report, we do not intend to cover our recommendations in detail. Our opening statement will provide a broad overview of:
 - The approach we have adopted to addressing submissions and the National Planning Standards in our s42A report.
 - Key issues raised in the submissions and evidence on Definitions, including in particular on our approach to the Planning Standards definitions.
 - Key definitions that remain in dispute.
 - Those Planning Standard definitions which will require particular consideration at future hearings, due to the breadth of consequential amendments required to the Plan.

Approach taken in our report

4. At paragraph 17 of our s42A report, we identify that definitions are important to the interpretation of objectives, policies and rules in a plan.
5. Definitions are being considered at the beginning of this Plan review hearing schedule, which means the detailed, substantive assessment of how the definitions are used in practice follows their consideration at this hearing. We acknowledge that any recommended amendments to a defined term are likely to have consequences for how that term is applied elsewhere in the Proposed Plan, and the same can apply in the reverse.
6. Our decision to address the mandatory directions in Standard 14. Definitions of the National Planning Standards has provided a layer of complexity to the consideration of many of the definitions in Chapter 13. In many cases, it has resulted in the need for consequential amendments to other parts of the Plan.

7. This is mainly because under the Definitions Standard, we cannot recommend a list of exclusions (or inclusions) to a definition.¹ Typically, the definitions in the Planning Standards are broad and high level. Therefore the finer detail of exclusions/inclusions to these definitions will need to be incorporated into the rules as consequential amendments or through the creation of sub-definitions. As a result, a number of our recommendations will need to be revisited in the context of considering other submissions in the hearings that follow.
8. Where possible, we have tried to assist you (and submitters) by providing an interim recommendation on submissions. Appendix 3, as updated to reflect our rebuttal evidence, signposts which definitions we consider require consideration at future hearings. You may consider further evidence on Definitions would assist you in your deliberations, once other topics have been heard and the implications identified.

Overview of Submissions

9. Around 300 submissions points and 160 definitions are addressed in the s42A report on Chapter 13. Broadly, the relief sought by submitters falls into one or more of the following categories:
 - Submissions requesting that all of the Planning Standards definitions be adopted now, through this Plan review process.
 - Support for definitions as notified.
 - Requests for amendments or deletion of proposed definitions.
 - Requests for rationalisation of definitions, especially for terms which are largely synonymous.
 - Requests for new terms to be defined, often to support a request for new or amended rules.
 - Requests for definitions in the Operative District Plan to be carried forward.
10. The s42A report provides full analysis of these submissions, with some submissions resulting in recommendations to delete, amend or add new definitions to Chapter 13. We draw your attention to Table I in our rebuttal evidence, which records those definitions where there is no

¹ Ministry for the Environment. 2019. *National Planning Standards 14. Definitions Standard*. Wellington: Ministry for the Environment, Mandatory Direction 1.

disagreement from planning witnesses for submitters to the recommendations in our s42A report (on those definitions).

National Planning Standards

11. We received a number of submissions, further submissions and expert evidence on the National Planning Standards Definitions. There is broad support to adopt the Definitions Standard now. As submitters pointed out, the Definitions Standard is mandatory, and the Council does not need to rely on submissions to adopt definitions from the National Planning Standards Definition List.
12. In the most part, submitters accept and support the approach we took in the s42A report. However, some planning witnesses think we should have gone further than addressing only those Planning Standard Definitions that have been submitted on; and addressed all the definitions that apply. We agree that this plan review process is the appropriate time to undertake this integration task. As set out in our rebuttal evidence, we understand that this work will be undertaken and published in time to report to the Integration Hearing, towards the end of the hearing process. This will provide an opportunity to exchange evidence, having the advantage of a collective understanding of the range of issues and definitions explored during the topic and zone hearings.
13. We also flag here that published guidance from the Ministry for the Environment on what constitutes a 'consequential amendment' with respect to adoption of the Planning Standards definitions is imminent. Reporting on the remaining definitions at the Integration Hearing will have the added benefit of this guidance.
14. Finally, in relation to the National Planning Standards, the Ministry for the Environment recently published a list of minor amendments to the National Planning Standards. In terms of the Definitions List, there is a substantive amendment to the definition of 'net site area'.² That definition has been amended to delete clause (c), which excluded any part of a site that is used for access to the site from the calculation of a net site area. This amendment means paragraph 212 of the section 42A report is no longer correct, and our recommended wording to pick up any consequential amendments, if the Planning Standards definition of net site area is adopted, should also be updated. That update should record that any access to a site of up to 6m wide is excluded from the calculation of a net site area. We recommend drafting an addendum to the section 42A report to identify this change. This is so that any party looking at the section 42A

² Part 3.15 of the section 42A report

report for guidance on the differences on the definition of 'net site area' in the Proposed Plan and National Planning Standards and any potential consequential amendments, may pick up this change. There are a number of other minor amendments that update definitions to correctly reflect their RMA definition, and generally tidy up punctuation, hyperlinks and the bracketing of alpha-numeric. These will need to be picked up in an updated 'Appendix 2, Recommended amendments to Chapter 13', but should not affect the analysis of our section 42A report.

Definitions requiring further discussion

15. The main definitions that are still at issue in light of the filed evidence are:

Definition	Outstanding issues
'noise sensitive activity', 'sensitive land use', 'reverse sensitivity'	Whether to include or exclude various land uses as 'sensitive activities' in these defined terms (places of assembly, workers accommodation). Whether or not to include a definition of 'reverse sensitivity' in the Proposed Plan.
'extractive industry', 'aggregate extraction activities', 'mineral extraction and processing'	What activities should be encompassed in the definition of extractive activity, on the basis that these activities are 'typical' of quarrying and mining operations.
'Rural industry' and 'primary production'	Relationship between 'farming' and 'rural' industry' and whether or not the Planning Standards definition of 'primary production' should be introduced.
'rural activities' and 'productive rural activities'	Whether a definition is needed. Scope and coverage of definition and relationship with the definitions of 'primary production' and 'farming'.
'workers accommodation'	Whether a definition is needed and the scope of that definition.
'sign'	Scope of the nature of signs that should be captured by the rules, given our recommendation to adopt the Planning Standards definition of sign. Whether to provide clarity about the application of the rules to buildings and structures painted in corporate colours.
'commercial activity'	Do small scale and large format retail need to be regulated differently in the Plan? Should the land use activity rules provide for 'government and administrative services' as a land use activity. Should sub-definitions of 'commercial services' and 'retail activity' that are consistent with the Planning Standards definition of 'commercial activity' be included/retained?
'educational facility' and 'childcare facility'	Whether a definition of childcare facility is needed and whether it is a sub-definition of educational facility.
'entertainment facility'	Whether a definition is needed which would apply across the plan, and how it might integrate with existing definitions.

'impervious surface'	Whether the definition provides sufficient clarity about what is an impervious surface.
'wastewater treatment plant'	Scope of any potential definition.

Complex definitions which will require broad consideration

16. There are a number of Planning Standard Definitions that, because of their high-level nature and broad coverage, do not reflect the local circumstances in corresponding terms defined in the Proposed Plan. The Council cannot amend a Planning Standards definition. To retain those circumstances, the Council has to make consequential amendments to other parts of the Plan, principally the rule framework, or through creation of sub-definitions. We included Appendix 3 in our section 42A report, (updated in our rebuttal evidence) to identify those definitions that require further consideration in later hearings (largely due to the nature of required consequential amendments to the rule framework). A number of those definitions stood out to us as needing careful thought to ensure the integration of those terms does not have unintended consequences. In particular, we flag the following definitions from that table:

Report Section Number	Definition	Summary of issue, submission point or consequential amendment which requires further consideration	Hearing topic where the definition will require further consideration
3.8	'Boundary'	Consider whether the term 'boundary' is the most suitable measuring point, or whether an alternative such as 'site', may be better suited for any relevant control.	All zones
3.14	'Site'	<p>A number of definitions are reliant on the definition of 'site'.</p> <p>Review the application of rules to see how they apply to cross lease and unit development sites.</p> <p>Consider qualifying statements for rules for 'net site area', 'building coverage', building setback, daylight admission, noise, glare and artificial light to provide for cross lease and unit developments.</p> <p>Review rules for multi-use development and retirement villages, which are often established as unit developments,</p>	All applicable zones

Report Section Number	Definition	Summary of issue, submission point or consequential amendment which requires further consideration	Hearing topic where the definition will require further consideration
		<p>and consider whether specific provision is needed for cross lease and unit development.</p> <p>Review rules that limit the number of activities on a 'per site' basis. Consider whether provision is needed for cross lease and unit development sites.</p> <p>Review the use of the term 'site' in subdivision rules. Where effects are referred to as a consideration for 'an adjoining site', consider whether provision is needed for cross lease and unit development sites.</p>	
3.15	'Net Site area'	<p>Consider whether provision for cross lease and unit developments is needed.</p> <p>Review use of the term in subdivision rules and whether provision for cross lease and unit developments is needed.</p>	All applicable zones
3.16	'Structure'	<p>Consider whether the term should be used in conjunction with the term 'building', or on its own, and whether its use is appropriate, noting it applies to structures fixed to land only.</p>	All applicable zones
3.17	'Building' and 'vehicles and motorised vehicles'	<p>Scope of inclusions or exclusions which should be captured in the rules, if Planning Standards definition is adopted .</p> <p>Consider the need for qualifying statements excluding the application of any rules controlling buildings that may apply to:</p> <ul style="list-style-type: none"> - immovable vehicles that are not occupied, and vehicles that are movable, but cannot move on their own ('motorised vehicles and vehicles'), - Buildings listed in section 9 of the Building Act 2004 (specifically, 	All applicable zones

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		<p>cranes, magazines, containers and passenger ropeways) - Crop protection structures, tanks and decks. Those rules are likely to be 'height', 'daylight admission', 'building setback', 'building coverage', 'gross floor area' and 'gross leasable floor area' rules, as well as the rules for 'signs' where they apply to buildings.</p> <p>Consider whether 'structures' that are not 'buildings' under the Planning Standards definition of 'building', but were controlled by the definition under the Proposed Plan, need additional controls in the rules. See report for a list of these structures.</p> <p>Review the use of the term 'building' in subdivision rules. Consider whether a qualifying statement is necessary to exclude 'vehicles and motorised vehicles' from the application of the rules to 'buildings'.</p> <p>Consider definition of 'crop protection structures'</p> <p>Consider exclusions for mobile pig shelters, cargo and containers</p> <p>Consider application of Planning Standards definition of 'building' on infrastructure</p>	
3.18	'Building coverage'	<p>Qualifying statement confirming what is included and excluded from the 'building coverage' calculation to carry over the exclusions from the Proposed Plan, to a building coverage rule.</p> <p>Review rules for 'building coverage' and consider whether provision for cross lease and unit developments is needed.</p>	All applicable zones
3.41	'Height' and 'ground level'	Identify the specified reference point from which 'height' is	All applicable zones.

Report Section Number	Definition	Summary of issue, submission point or consequential amendment which requires further consideration	Hearing topic where the definition will require further consideration
		<p>measured. In most cases this is 'ground level'. For earthworks this will be the bottom of a cut or fill area.</p> <p>Identify any 'structures' that should be excluded from the 'height' rules.</p>	
3.42	'Height control plane' and 'height in relation to boundary'	<p>Check daylight admission rules refer to the term 'boundary', rather than 'site boundary' or 'site' as the specified reference point from which the measurement is taken.</p> <p>Identify any structures that should be excluded from the 'height in relation to boundary' rules.</p>	All applicable zones.
3.43	'Earthworks'	<p>Requests to include or exclude various activities (farming activities, biosecurity issues, trenchless excavation) and to clarify the relationship with 'ancillary rural earthworks'.</p> <p>Consider implications of adopting the Planning Standards definition of 'cultivation' for the definition of 'ancillary rural earthworks', and the rules for this activity.</p>	Rural, Country Living, Maori Sites of Significance, Infrastructure and Energy Zone
3.56	'Rural industry'	<p>Relationship between 'farming' and 'rural' industry' and the consequences of adopting the Planning Standards definition of 'primary production', which introduces the Planning Standards definitions of 'quarrying activities' and 'quarry'.</p>	Rural Zone
3.57	'Rural activities' and 'productive rural activities'	<p>Should the Planning Standards definition of 'primary production' replace 'productive rural activities' in Strategic Objective 5.1.1 and what further amendments are required to this objective to retain the intended meaning.</p> <p>Review Rule 14.12.1.2. in relation to use of the term 'residential and rural activities'.</p>	Rural Zone and Rural Environment

Report Section Number	Definition	Summary of issue, submission point or consequential amendment which requires further consideration	Hearing topic where the definition will require further consideration
3.66	'Community facility', 'community activity' and 'place of assembly'	Should the activity rules for 'community facility/activity' and 'place of assembly' be rationalised? Should the rules for 'community activity' state that these do not apply to a 'childcare facility'?	Business Zone, Business Town Centre Zone, Business Zone Tamahere, Rural Zone, Country Living Zone Residential Zone
3.89	'Sign'	Identify appropriate amendments to the rules to: - limit the application of controls to signs that are visible from a public place person - include signs attached to objects that are supported by their own weight, and potentially signs on vehicles - provide that a building or structure that is painted in whole or part in corporate colours is not of itself a sign.	All zones

Summary

17. To conclude, overall, the changes recommended within our s42A report in response to the submissions, are to:

- Adopt the Planning Standards definitions, where submissions have been received on the equivalent term in the Proposed Plan.
- Improve clarity and accuracy of the proposed definitions.
- Remove unnecessary terms.
- Include new defined terms.

18. Again, we appreciate that there is likely to be a need to revisit a number of our recommendations, including potentially through further exchange of evidence at the Integration Hearing.

19. We look forward to hearing evidence presented by submitters over the course of the day.

20. We welcome any questions that you have.