

16 February 2023

**Wellington City Council
Proposed District Plan
Hearing Stream 1**

Submission to Hearings Commissioners

1. Submitters Details

Name: Survey & Spatial New Zealand (Wellington Branch)
Submitter #439 and Further Submitter #FS116

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2. Introduction

Our interest in the Stream 1 Hearing is with respect to cross plan definitions.

We made submissions on a number of definitions, and naturally thought that the Definitions chapter of the Proposed District Plan (PDP) would be a “cross-plan” matter by design. However, we can appreciate that submissions on some definitions may be more efficiently heard in respect of the particular stream topic that the definition best relates to. Nevertheless, it is difficult for us to determine which definitions will be heard in a particular hearing stream.

For Stream 1, it appears that the following definitions (of interest to us) are the subject of this hearing.

- Building, Building Coverage and Building Footprint;

3. Building, Building Coverage and Building Footprint - Submissions

Building Footprint:

We made a further submission (FS116.2) to support the submission of Rimu Architects (#318.8) in respect of the definition of “building footprint”. Rimu Architects sought the addition of supplementary definitions to help the application of “building footprint” in recognition of Wellington’s often steeply sloping terrain.

The definition of “building footprint” is taken from the National Planning Standards as follows:

building footprint:

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

This definition informs the definition of “building coverage”, which relates to a number of rules and standards in the PDP. Building coverage is currently best known as “site coverage” in the Operative District Plan (ODP). The definition of building coverage is also taken from the National Planning Standards as follows:

building coverage:

means the percentage of the net site area covered by the building footprint.

The definition of “building” is also relevant for the understanding of “building footprint”. Again, the definition of building is also taken from the National Planning Standards as follows:

building:

means a temporary or permanent movable or immovable physical construction that is:

- a. partially or fully roofed; and*
- b. is fixed or located on or in land;*

but excludes any motorised vehicle or other mode of transport that could be moved under its own power.

Of particular relevance to our submission is the phrase “*partially or fully roofed*”. When this definition of “building” is then used for interpreting “building footprint”, the result is that the extent of the eaves of a building determine the area of the “building footprint” due to the requirement to include “*the area of any section of any of those buildings that extends out beyond the ground floor level limits of the building and overhangs the ground*” (underlining added for emphasis). That is, the coverage is akin to a roof-print rather than a footprint.

Currently in the ODP, the definition of site coverage is to measure the area of the external walls of a building. Eaves are not included unless they are wider than 1m and essentially become a verandah awning.

The submission by Rimu Architects identified the inclusion of eaves within the “building footprint” interpretation. Their submission also noted the bizarre potential outcome for a deck of any height adjacent to a building (which could be partially under an eave of the building) to be considered a partially roofed structure, and as such the whole area of the deck would be a component of the “building footprint” for calculating the “building coverage”.

An email from the WCC Resource Consents Team Manager (Halley Wiseman on 8/11/2022 – copy attached) to some local practitioners confirmed that Council indeed would be including eaves and partially covered decks as being within the “building footprint”.

We can accept that the eaves of a building could be included within the “building footprint”. This appears to have been noted by MfE during consultation on the National Planning Standards.

However, it seems absurd and contrary to the intentions of the MDRS for a deck that is partially covered by an eave to be included within the “building footprint”. As noted by the WCC Resource Consents Team Manager’s email, where an uncovered deck is separated from a building such that it is not under the eave, the separated deck does not count toward the “building footprint” and thus is not included in the “building coverage”.

We would have expected that if Central Government intended decks to be buildings or included in the footprint for coverage purposes, the NPS and MDRS would have been specific on this matter.

Consequently, we support the submission by Rimu Architects to include a supplementary definition to “building footprint” in respect of uncovered decks for the purposes of calculating “building coverage”.

4. Section 42A Report

The Officer’s Report simply states that, as the definitions are from the National Planning Standards, the definitions can be changed. However, we disagree.

Section 14 of the National Planning Standards (2019) addresses definitions and provides mandatory direction as follows:

1. *Where terms defined in the Definitions List are used in a policy statement or plan, and the term is used in the same context as the definition, local authorities must use the definition as defined in the Definitions List. However if required, they may define:*
 - a. *terms that are a subcategory of, or have a narrower application than, a defined term in the Definitions List. Any such definitions must be consistent with the higher level definition in the Definitions List.*
 - b. *additional terms that do not have the same or equivalent meaning as a term defined in the Definitions List.*
2. *Te reo Māori terms used in rules must be defined or translated in English in the Definitions chapter.*
3. *When a definition in the Definitions List is used, consequential amendments may be required to the policy statement or plan to ensure that the application of the definition does not alter the effect or outcomes of policy statements or plans.*
4. *Where the Definitions List incorporates a definition from legislation, the definition applied is the version included in the legislation on the date of gazettal of this standard.*
5. *Local authorities must consider whether to:*
 - a. *include, or cross reference to, diagrams to illustrate definitions*
 - b. *include instructions on how definitions relate to one another (eg, nesting tables or Venn diagrams).*
6. *If a term is used in more than one context (eg, ‘bed’ may relate to the bottom of a river or a place to sleep), local authorities must, in their Definitions chapter, add the context in which the term is defined in brackets after the term name eg, bed (in relation to lakes, rivers and the sea).*
7. *Definitions of terms, whether from the Definitions List or other sources, must be listed numerically and then alphabetically as one list.*

Under section 14.1(a) there is clearly scope for Council to add a sub-category term or add a defined term that has a narrower application with respect to the definition of “building footprint”.

The Officer’s Report also makes a vague statement that the submissions on this point may be further addressed via a consequential change as part of Hearing Stream 2 under the residential matters. This is of little comfort to us, and leaves us in a difficult position of not knowing how or when the submission would finally be determined.

Do we have jurisdiction to be involved in Hearing Stream 2 in respect of the potential consequential changes that might be related to the calculation of building coverage and the definition of building footprint?

Our preference would be for an amendment to the definition of “building footprint” that narrows the application of the “building footprint” term. This could be achieved by adding a definition of “uncovered deck” and stating that they are not included in the “building footprint” for the purposes of calculating “building coverage”.


uncovered deck:

means, in relation to building footprint, the total area of a deck of any height, that is not covered with a roof or by an eave of a building. An uncovered deck is excluded from the building footprint for the purposes of calculating building coverage.

4. Summary of Decision Sought

That the Commissioners amend the definition of “building footprint” of the proposed district plan as suggested in our submission.

Signature of person making submission.



.....
A D Gibson

Date 16 / 2 / 2023

On behalf of Survey and Spatial New Zealand (Wellington Branch)

From: Halley Wiseman <Halley.Wiseman@wcc.govt.nz>

Sent: Tuesday, 8 November 2022 11:44 am

Cc: Halley Wiseman <Halley.Wiseman@wcc.govt.nz>; Bill Stevens <Bill.Stevens@wcc.govt.nz>; Hamish Dean <Hamish.Dean@wcc.govt.nz>

Subject: Where a qualifying matter applies to part of the site AND building, building footprint and building coverage - WCC's interpretation of these

Kia ora everyone,

We hope this email finds you well and you're all working your way through the complexities of the MDRS provisions as related to the PDP without getting a headache?!

This next update is to advise you on how we will be applying two aspects of this as we get further into it.

Qualifying matters where these apply to part of a site -

The attached diagram should hopefully demystify when a qualifying matter applies to part of the site and how are we going to interpret that. We hope that this is self-explanatory but if not, please feel free to get in touch.

Building, building footprint and building coverage -

The definitions of a building and building footprint are as set out below:

Building

means a temporary or permanent movable or immovable physical construction that is:

- a. *partially or fully roofed; and*
- b. *is fixed or located on or in land;*

but excludes any motorised vehicle or other mode of transport that could be moved under its own power.

Building Footprint

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

Accordingly, a "building" is considered to now include the following (noting this differs from how WCC was interpreting a "building" prior to the notification of the PDP where the MDRS now applies and so will now need to be shown on your plans):

- any structure that is fully or partially roofed;
- this can include a deck that is attached to a building, regardless of which level the deck relates to or whether the deck itself is roofed;
- it can also include a deck that is itself partially or fully roofed, irrespective of whether it is attached to a building or free-standing;
- a deck can be fully or partially roofed including by an eave or similar protruding roof from an adjoining building;
- where a deck meets the above criteria, it is irrelevant whether it is cantilevered or has its own piles or other foundations to the ground.

Accordingly, "building footprint" will include the full extent of the roof of a building, including eaves, or any other part of the building visible in plan view whether at ground level or overhanging the ground. "Building footprint" can also include a deck that meets the above criteria. Note that any freestanding deck with no roof cover would not meet the definition of "building" and therefore not contribute to "building footprint". The building footprint directly contributes to the building coverage calculation.

Again, if you have any questions, please just ask. We are finding this just as complex as you are!!

Ngā mihi,
Halley, Bill and Hamish

Application of Operative Plan and Proposed Plan MDRS to sites partially affected by qualifying matters

The example below is based on a flood hazard overlay area but the same principle can be applied to any site that is only partially affected by a qualifying matter which means the MDRS have no legal effect for that area of the site. The principle applies to both medium and high density zones – the example is based on the medium density zone.

The ground level open space requirement of the Operative District Plan, and the outdoor living space, outlook space and landscaped area requirements of the Proposed District Plan, will apply based on where household units are located. Where a household unit is located entirely within one area only the requirements of that area apply. Where a household unit is located within both, both the Operative and Proposed Plan requirements apply to that unit, i.e. complying ground level open space and complying outdoor living space which can provide for outdoor living both need to be provided as does outlook space. Where any new household unit or part of a household unit will be located in the MDRS area the landscaping requirement will apply to the whole site.

