

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council
Hearing topic 065
Definitions

July 2016

AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

Report to Auckland Council Hearing topic 065 Definitions

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1. Hearing topic overview

1.1. Topic description

Topic 065 addresses the definitions and glossary that accompany plan provisions of the proposed Auckland Unitary Plan.

| Topic | Proposed Auckland Unitary Plan reference | Independent Hearings Panel reference |
|-------------------------------|--|--------------------------------------|
| Hearing topic 065 Definitions | Part 4: Definitions | Chapter J: Definitions |
| | | Chapter N: Glossary of Māori terms |

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

The Panel recommends amendments, additions and deletions to the definitions in the Plan consistent with its guidance on definitions and as shown in its recommended version of the Unitary Plan.

As well as the Panel's general approach, this report also addresses specific amendments, additions and deletions where these are considered to be significant.

1.3. Overview

A definition is a formal statement of the meaning or significance of a word or phrase. The purpose of a definition is to clarify the meaning of a potentially ambiguous word or to settle a meaning according to the intention of the person using it. In a resource management

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planning document definitions are very important provisions that determine the meaning and scope of objectives, policies and rules.

In the Parties and Issues Report for this topic the Panel made the following general directions.

- i. Use definitions sparingly and only where needed.
- ii. Do not burden the proposed Auckland Unitary Plan with technical jargon.
- iii. Do not define words of ordinary meaning unless they are used in the plan in an unusual sense.
- iv. Do not duplicate words and phrases defined in statute, regulations or other statutory planning documents (National Policy Statement and National Environmental Standard), unless there is some special meaning that only applies in Auckland.
- v. Consider where diagrams may assist in clarifying a definition. Do not use diagrams in other circumstances.
- vi. Use plain English. Consider whether it would be better to express a plan provision differently and more plainly rather than clutter the text with definitions.
- vii. Any defined word should only have one definition and all definitions should be in the definition section.
- viii. Make sure that the structure of nesting tables is logical and coherent.
- ix. Glossaries may be appropriate, for example, te reo Māori, but the Panel does not consider that glossaries should be in the definitions section and should be located elsewhere and invites the parties to consider where glossaries should be located.

No objection was raised to these directions and at the hearing many submitters stated that they accepted them as principles.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in section 13 Reference documents.

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2. Technical jargon

2.1. Statement of Issue

Avoid definitions which are based on technical jargon.

2.2. Panel recommendation and reasons

For example, in the proposed Plan as notified “protected root zone” was defined as:

The circular area of ground around the trunk of a protected tree, the radius of which is the greatest distance between the trunk and the outer edge of the canopy. For columnar crown species (excurrent or fastigate species), the [protected root zone](#) is half the [height](#) of the tree.

The Plan as notified included two diagrams to show how the definition should be applied, with one labelled “spreading canopy (fastigate)” and the other labelled “columnar canopy (fastigate).”

The first sentence of the definition is clear enough. The second sentence, together with the diagrams, raised several questions from the Panel.

The word ‘excurrent’ means, in a botanical sense, where “the axis remains always in the centre, all the other parts being regularly disposed round it.” It is not apparent that the word adds anything to the description of a tree as “columnar” and should therefore be deleted.

The word “fastigate” has been misspelled and should be “fastigate.” That word means “having branches that point up.” Again, it is not apparent that the word adds anything to the description of a tree as “columnar” and should therefore be deleted from both the definition and the second diagram. It does not properly describe a tree with a spreading canopy and should therefore also be deleted from the first diagram.

The recommended definition is:

The circular area of ground around the trunk of a protected tree, the radius of which is the greatest distance between the trunk and the outer edge of the canopy. For columnar crown species the protected root zone is half the height of the tree.

3. Words with ordinary meanings

3.1. Statement of issue

Words in common usage with ordinary meanings do not require definitions in a planning document.

3.2. Panel recommendation and reasons

The Plan as notified included numerous definitions of words in general or common usage and that have ordinary meanings that are commonly understood. In cases where such words

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are not used in an unusual way in the Plan, then including definitions of them is at best unnecessary. Definitions of such words are unlikely to assist users of the Plan.

In some cases, a definition may have the perverse effect of fixing a meaning which is inconsistent with the ordinary usage of the word or words, leading to possible confusion and misunderstanding. Poorly drafted definitions of such words could have the effect of inadvertently narrowing the meaning of the word or words in ways that could be at odds with the objectives and policies of the Plan.

For example, the Plan as notified included definitions for words such as: *broadcasting, conference facilities, dairies, filming activities, film set, land owner, market, maintenance* and so on. None of these definitions create any unusual meaning to address a policy issue in the Plan or to determine a clear boundary for the purposes of any rule in the Plan.

Definitions such as these have been deleted as they do not assist plan users and pose a risk of unduly narrowing the meaning of such words when applied to activities.

4. Definitions that are self-defeating

4.1. Statement of issue

Remove definitions which render the word (or the activity to which it relates) unusable.

4.2. Panel recommendation and reasons

Three examples demonstrate the ways in which poorly drafted definitions can be problematic.

4.2.1. Artworks

The word ‘artworks’ was defined in the Plan as notified as “any visual works of art” and was followed by a long list of inclusions, one of which was “sound art.” This is an example of a circular definition followed by an example that demonstrates a flaw in the definition.

As is well known, any attempt at defining art, including what is a work of art, faces enormous difficulties. The proposed definition with its list of inclusions did not solve the problem but added to it.

The Panel can see no good resource management reason to attempt to fix this. As long as the Plan only requires the effects of an artwork to be assessed quantitatively or on some other notionally objective basis (such as based on its location or size) and not qualitatively or on a subjective basis, then the artistic characteristics of the work will not require consideration under the Resource Management Act 1991. The Panel recommends that the definition be deleted entirely.

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4.2.2. Artisan industries

In the Plan as notified, the definition of ‘*artisan industries*’ consisted of a complex description apparently intended to limit the extent to which economic activity could be undertaken on a site:

Small-scale industrial activities where goods are produced or repaired using manual skill. If hand tools or mechanical appliances are used, that use must be limited so:

- the person making or repairing the goods always has direct control, at every stage, over production; and
- goods are not made or repaired repetitively using jigs, templates, moulds, patterns, dies, dollies, or other similar devices designed to produce a predetermined pattern for production run purposes, except that hand tools or mechanical appliances can be used to produce the original or first piece.

In practice, the limits of the definition are extreme: by allowing hand tools or mechanical appliances to be used only where a person has direct control over production at every stage and goods cannot be made using patterns, there is no scope for the definition to allow common home occupations or small scale businesses. For example, dressmaking involves the use of tools such as needles and sewing machines and materials such as fabric and thread normally sourced from other suppliers. Woodworking also involves tools (saws, drills etc) and materials (wood, screws etc) from other suppliers. Most dressmakers and woodworkers would routinely use patterns, jigs or templates. Even artists would normally obtain their materials from other suppliers and use methods to replicate successful works.

In these ways the definition goes beyond establishing the meaning of the words defined and imposes controls on the activity to which the words relate. In itself that is bad practice. In this case it is exacerbated because the limits are unreasonable. The Panel cannot think of any resource management reason why this level of control is appropriate.

The Panel recommends deleting this definition entirely and replacing the activity with ‘home occupation’ in residential zones and precincts and with ‘light manufacturing and servicing’ in business zones and precincts where such small scale work is permitted subject to controls which limit the scale of operations but not ordinary working methods.

4.2.3. Light manufacturing and servicing

As a consequence of deliberations on the definition of ‘artisan industries’ the Panel reviewed the definitions of ‘home occupation’ and ‘light manufacturing and servicing.’ No issues were identified with the definition of ‘home occupation’.

The definition of ‘light manufacturing and servicing’ in the Plan as notified is:

Places in which articles, goods or produce are prepared and/or repaired for sale or rent and apart from required parking and manoeuvring, the light manufacturing and servicing activity will be contained entirely within a building. These activities will not generally require the use, storage or handling of large quantities of hazardous substances nor require air discharge consents.

Excludes:

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- sales or servicing of motor vehicles.

This wording is unclear and would benefit from being re-worded as follows:

Places in ~~which~~ where articles, goods or produce are made, prepared and/or repaired for sale or rent and ~~apart from required parking and manoeuvring~~, the light manufacturing and servicing activity ~~will be~~ is contained entirely within a building, ~~These activities will~~ does not generally require the use, storage or handling of large quantities of hazardous substances requiring separate resource consent ~~nor~~ and does not require any air discharge consent.

Excludes:

- sales or servicing of motor vehicles.

The Panel recommends these amendments as a consequential change.

5. Words defined elsewhere

5.1. Statement of issue

Avoid definitions of words that are defined in the Resource Management Act 1991 or in other legislation or statutory documents.

5.2. Panel recommendation and reasons

Words and phrases that are defined in the Resource Management Act 1991 and any regulations or statutory planning documents made under that Act should be used in the same way in the Plan. The rules in the Plan have the force and effect of regulations made under the Act and consistency of language helps to ensure consistency of effect.

Examples of this include 'best practicable option' and 'infrastructure'.

As notified, the Plan reproduced the definition of 'best practicable option' from the Resource Management Act 1991. The Panel recommends that this be replaced by a cross-reference to the Act so that if any amendment is made to the legislation, the Plan does not need to be changed as a result.

In relation to 'infrastructure', the Plan as notified proposed the definition:

The facilities, services and installations that enable a community to function.

This was followed by a long list which included both network infrastructure and a range of social facilities such as education, healthcare, hospitals, public parks and public institutions. The Panel considers that the phrase "that enable a community to function" is extremely broad: it could include housing and employment. In those senses it is difficult to think of anything that would not be included in the Plan as infrastructure.

The word 'infrastructure' is defined in the Resource Management Act 1991 by a list of activities that are all essentially elements of interconnected networks for the purposes of transport, energy, water and wastewater and telecommunications. This list definition, while

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not including a head definition to link the elements of the list, is nonetheless much closer to the usual meaning of infrastructure as “the installations that form the basis for any operation or system” than the more extensive list in the Plan as notified. This is a deliberately narrow meaning that limits infrastructure to an activity which serves other activities rather than being undertaken for its own sake.

In the hearings on this topic and for Topic 042 Infrastructure, the Council submitted that ‘social infrastructure’ should be included as it could consist of networks on a broad interpretation of that word. The Panel considers that this approach heads some distance away from the purpose of the Plan, which is to address resource management issues rather than describe social systems. In particular, this sense of ‘network’ does not relate well either to the interdependent character of the systems listed in the statutory definition, or to the reasons for provisions in the Plan relating to infrastructure, which are generally focussed on construction and maintenance issues.

During the hearing sessions evidence was presented which sought to demonstrate that certain other facilities should also be included, being gas and petroleum storage facilities, storage and treatment facilities for water and wastewater, municipal landfills, defence facilities and air quality and meteorological services. The Panel accepts that evidence.

The Panel considers that the definition of ‘infrastructure’ should be limited to the definition in the Resource Management Act 1991 with the additions referred to in the last paragraph.

With regard to words and phrases defined in other statutes or regulations, the Panel considers that it is good practice for the words and phrases in the Plan to be defined and used in the same way wherever the purpose of that definition in another statute or regulation is consistent with the purpose of the Resource Management Act 1991 and the relevant context of the usage in the Plan. A few examples suffice to show how this works:

Archaeological site – Heritage New Zealand Pouhere Taonga Act 2014

Boarding house – Residential Tenancies Act 1986

Road – Local Government Act 1974

This, however, is not an invariable approach. Where a word is defined in another Act for a different purpose, including where it has a particular meaning in that other Act, then a definition in the Plan may be desirable.

For this reason the definition of ‘building’ in the Plan is not the same as it is in the Building Act 2004. ‘Building’ is defined in the Plan for the purposes of identifying the types of structures that are subject to controls under the Plan, excluding a range of structures, mostly based on their size, where the likely effects of constructing them do not warrant such control. In contrast, the definition of ‘building’ in the Building Act 2004 serves the objective of defining that word for the purpose of controlling building work and excluding things that may be structures but which are not subject to the Building Act regime.

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6. Plain English

6.1. Statement of issue

Use plain, direct, uncomplicated English in defining words and phrases.

6.2. Panel recommendation and reasons

Many submitters asked that the Plan be made clearer and simpler. In some cases that has been done by deleting definitions because they are unnecessary or by replacing definitions with others that are clearer. The deletion of 'artisan industries' and replacement of it by either home occupation or light manufacturing and servicing is an example of that.

On a general basis the Panel reviewed the plan provisions to consider whether it would be better to express a plan provision differently and more plainly rather than clutter the text with definitions.

As a general matter, the Panel has amended the definitions so that the head word in each case is expressed in the singular. The general approach, confirmed by Rule J1.1(4), is that words expressed in the singular include the plural and *vice versa*. Notwithstanding that, the Panel considers that the usual approach of expressing headwords in the singular should be followed in the Plan.

7. Alignment with policy approach

7.1. Statement of issue

In some cases, the plan provisions required a definition to be amended to ensure that the policy approach in the Plan was maintained.

7.2. Panel recommendation and reasons

For example, 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.

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8. Public open space

8.1. Statement of issue

During the course of the hearing it became apparent that the phrase ‘public open space’ was used in the Plan to refer not only to land owned by the Council or the Crown, but also privately-owned land. The definition reflects this, being:

Land vested in the council or the Crown, and privately-owned land where public access is legally secured in perpetuity.

Includes:

- streets
- lanes
- squares
- parks and reserves
- esplanade reserves and esplanade strips.

8.2. Panel recommendation and reasons

The Panel considers that the use of the word ‘public’ in this context is misleading as it includes private open space. The issue of public access is also misleading as there are many areas zoned Public Open Space to which the general public do not have access, such as golf courses. The Panel consequently recommends that the more appropriate phrase ‘open space’ should be used to describe these listed items as well as private open space such as golf courses. The names of the relevant zones are recommended to be amended accordingly.

Further, if the word ‘public’ is no longer used, then this definition is no longer necessary. There no longer appears to be any reason to define ‘open space’ as the phrase is able to be understood in its own terms. The Panel accordingly recommends its deletion.

9. Do not use definitions as policies or rules

9.1. Statement of issue

A definition should be limited to setting out the meaning of the words being defined.

9.2. Panel recommendation and reasons

While definitions are important in specifying the meaning of an objective, policy or rule, it is bad practice to use a definition to perform any of those functions.

Several definitions appeared to establish policies or make rules. The discussion of ‘artisan industries’ above notes the self-defeating complexity of the definition which limited the use of tools and patterns presumably in order to limit the effects of a home occupation or light

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manufacturing activity. The better approach is to define the activity in a way that describes it and then provide for controls on the scale and intensity of its effects by specific rules which address those effects. Issues of scale might be controlled, for example, by limits on the number of people working on a site or the level of traffic movements. Issues of intensity might be controlled by limits on the hours of operation or the noise levels that are permitted.

The following examples illustrate the Panel's approach to amending definitions to avoid this practice.

The Plan as notified defined 'water sensitive design' as:

An approach to freshwater management. It is applied to land use planning and development at complementary scales including region, catchment, development and site. Water sensitive design seeks to protect and enhance natural freshwater systems, sustainably manage water resources and mimic natural processes to achieve enhanced outcomes for ecosystems and our communities.

Water sensitive design approaches:

- utilise and maintain, enhance or restore natural freshwater systems
- minimise hydrological changes to, and the adverse effects of land use development on, natural freshwater systems
- mimic natural processes and minimise the requirement for hard constructed infrastructure to manage stormwater runoff
- maintain, enhance or restore amenity, open space and other community and cultural values.

The first point to note is that this is not a definition: it is a description of an approach to doing something. It does not state what the relevant sensitivities are and it does not specify how the design is to occur.

At the hearing session for Topic 046 Water quality, a substantially revised definition was advanced by the Council and submitters. As explained in the narrative for that topic, the Panel considers that the approach would be better described as an integrated stormwater management approach and set out in the policies on water quality.

Similarly, the Plan as notified set out a lengthy definition of 'water management plan' that is not repeated here. That is also not a true definition but a method. The Panel accordingly recommends that it also be deleted on the basis that the provisions in the Plan dealing with water adequately address the requirements for such a plan in the context of any application for resource consent to take or use water.

The Plan as notified included the following definition of 'reverse sensitivity':

The potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment of other activities which are sensitive to the pre-existing activity.

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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.

10. Keep all definitions in one place

10.1. Statement of issue

Any defined word should only have one definition and all definitions should be in the definition section.

10.2. Panel recommendation and reasons

Given the wide-ranging effect of definitions and to assist users in identifying which words or phrases are defined, it is desirable to have a definitions section in the Plan and to locate all definitions in that section.

There are limited circumstances where a word or phrase may have a special meaning for the purposes of a particular plan provision. Rule J1.1(2) provides that words and phrases used in the Plan have the meaning set out in their definitions in Part J unless the context otherwise requires. In most cases such a special meaning is identified as being specific to a particular policy or rule.

This approach has resulted in checking the Plan for definitions and relocating them.

11. Te Reo Māori

11.1. Statement of issue

The Plan should not define words and phrases in te reo Māori.

11.2. Panel recommendation and reasons

The Plan as notified included, at the end of the definitions section, a list of Māori terms with interpretations in English. This section commenced:

The following Maori terms are provided to assist with interpretation of terms used within the Unitary Plan. They are not intended to be used as definitions.

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The Panel agrees with that approach. The Panel recommends that this approach would be assisted by removing the list of words and phrases in te reo Māori from the definitions section and placing them in a glossary where the interpretations are clearly not to function as definitions.

12. Consequential changes

12.1. Changes to other parts of the plan

Any change to a definition in the definitions section of the Plan has resulted in a consequential amendment to the meaning of those provisions in the Plan.

12.2. Changes to provisions in this topic

As a result of the Panel's recommendations on other topics, there are consequential changes to the provisions in this part of the Plan as set out below.

Addition or amendment of definitions where Plan provisions have been amended or new Plan provisions have been added, for example:

- *Emergency services*
- *Surf lifesaving activities*

Deletions of definitions where the Plan provisions which used those words or phrases have been deleted, for example:

- *Cultural impact assessment*
- *Customary use*
- *Flood mitigation*
- *Flood sensitive area*
- *Framework plan*
- *Retained affordable housing*
- *Serviced site*
- *Serviced villages*
- *Storey*
- *Unconstrained land supply*
- *Un-serviced villages*
- *Urban activities*

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13. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

13.1. General topic documents

Panel documents

[065 - Submission Point Pathway Report - 10 July 2015](#)

[065 - Parties and Issues Report - 7 July 2015](#)

[065 - Mediation Joint Statement - \(17-18 August, 3-4 September and 14 September 2015\)](#)
(16 September 2015)

Auckland Council marked up version

[065 - Mediated Track Changes - 4 September 2015](#)

Auckland Council closing statement

[065 Hrg - Auckland Council \(Jennifer Caldwell\) - CLOSING STATEMENT \(including latest Tracked Changes\)](#) (2 December 2015)