



09 September 2020

Attn: District Plan Manager

Definition of "Building" in the National Planning Standards

I am writing to you on behalf of the New Zealand Motor Caravan Association Inc. (NZMCA) in regard to the definition of 'building' in the National Planning Standards (NPS) and its effect on non-motorised caravans used primarily for camping / temporary accommodation.

Local authorities have between seven and nine years to adopt the definition of 'building' into their district plans, following the date the NPS came into force (3 May 2019). We understand some local authorities have commenced this process, while others will review their plans shortly.

The NPS definition of 'building' captures non-motorised caravans, which are not capable of moving under their own power. NZMCA members use non-motorised caravans for the same purpose as motorised motorhomes, campervans and house buses (which are not captured by the NPS definition). For the NZMCA and its 93,000 members (many of who travel in non-motorised caravans) the NPS definition creates a number of potential implications, which stem from the fact that members with non-motorised caravans will, by definition, be using and parking a 'building'.

In order to address this issue, we recommend that the definition of 'building' is amended at the time your district plan is reviewed and notified, or at the very least practice notes and guidance specific to non-motorised caravans are developed to clarify the approach to non-motorised caravans.

Please find enclosed further information on the issue, including our recommended way forward and a supporting legal opinion from Simpson Grierson.

Yours faithfully

New Zealand Motor Caravan Association Inc.

James Imlach BSc. MRP (Hons)

National Manager – Property and Policy

EXECUTIVE SUMMARY

1. The definition of 'building' in the National Planning Standards (**NPS**) states:

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

(a) Partially or fully roofed; and

(b) 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.

(the '**Definition**')

2. The Definition captures non-motorised caravans. For the NZMCA this creates a number of potential implications, which stem from the fact that members with non-motorised caravans will, by definition, be using and parking a 'building'.
3. For example, NZMCA members go camping in motorised motorhomes, campervans, converted house buses and non-motorised caravans. Members also store their vehicles, including non-motorised caravans, at home when they are not being used for camping. Undertaking these activities in a non-motorised caravan may, depending on the approach taken by certain district plans, trigger the need for resource consent, including when members use non-motorised caravans at NZMCA motor caravan parks, campgrounds, freedom camping sites, or store their caravan at home.
4. The NZMCA recommends amending the Definition at the time you incorporate into your district plan, to avoid such implications.

ABOUT THE NZMCA

5. Formed in 1956, the NZMCA is a non-profit club representing over 93,000 individual New Zealanders who share a passion for exploring our country at leisure in their certified self-contained motorhomes (motorised vehicles) and caravans (non-motorised vehicles).
6. The NZMCA is one of the largest domestic tourism organisations in New Zealand and is projected to surpass 100,000 individual members in 2021.

7. NZMCA members are hybrid campers frequently alternating between commercial camping-grounds, NZMCA motor caravan parks, private properties that offer overnight parking, public campsites and freedom camping areas. The NZMCA currently operates 45 member-only motor caravan parks nationwide. These parks provide members travelling in self-contained motorhomes and caravans with a safe and convenient place to temporarily park overnight.

OUTLINE OF THE ISSUE

8. In its current form the Definition captures non-motorised caravans, being items that are not capable of moving under their own power (i.e. they are towed, not self-propelled). Motorhomes are excluded from the Definition on this basis, as are campervans and house buses, which are self-propelled.
9. The development of the Definition is outlined in detail in the Ministry for the Environment (**MfE**) 'Recommendations on Submissions Report (**Recommendations Report**)'.¹ Relevantly, the Recommendations Report indicates an awareness of the above issue for caravans, and expressed a view that, where appropriate, councils should narrow the Definition in their district plans to exclude caravans as required.
10. The NZMCA considers that a 'use' qualifier would be an appropriate way to deal with this issue, so that the use of caravans for their intended purpose is not captured by the Definition. The amendment to the Definition outlined below seeks to introduce this refinement, so that caravans will not, in all cases, be captured by the Definition.

What the current Definition means for the NZMCA and its members

11. The issue created by the Definition's capture of non-motorised caravans is that there is a need to engage with plan provisions applying to buildings. This may trigger the need for resource consent to be obtained, including when members are staying at NZMCA parks, or storing caravans on their own property when members are not travelling.

¹ Ministry for the Environment. 2019. *21 Definitions Standard- Recommendations on Submissions Report for the first set of National Planning Standards* Wellington: Ministry for the Environment, at 51.

12. This could pose several problems for the NZMCA and its members, including:
- (a) where members store their caravans on their private properties. Depending on the zoning of the property, there may be a need to obtain resource consent for a second building, despite the fact that the caravan may be left vacant and not intended for use as an additional dwelling;
 - (b) there will be a question as to whether any caravan will need to comply with all built form and location standards applying in the relevant zone, including minimum set back from boundaries. If those standards apply, then the caravan will need to be parked in a location that will comply, or there will be a technical infringement of a standard; and
 - (c) depending on the zone (and relevant provisions) of any NZMCA park, there may be issues where more than one caravan uses the site, with the potential to trigger a resource consent.
13. Local authorities may also need to apply for resource consent at freedom camping areas that permit vehicles, including non-motorised caravans.

OPTIONS TO ADDRESS THE ISSUE

14. Part 14 of the NPS comprises a set of mandatory directions, which local authorities must comply with. There is no discretion in relation to the NPS definitions, they must be adopted.
15. However, local authorities have the power to introduce a subcategory into any Definition, as described in direction 1 of Part 14 of the NPS, which provides:

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 in the Definitions List. However, if required, they may define:

- (i) *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.*

16. As noted above, the Recommendations Report acknowledges that non-motorised caravans will meet the Definition and raises the potential for local authorities to use subcategories or narrower definitions to manage or permit these items where required:

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.

(Emphasis added)

17. Accordingly, the NZMCA suggests that it would be appropriate for local authorities to take a pragmatic and more refined approach to incorporating the Definition in their district plans, by adopting one of the following two options:
- (a) adding a subcategory to the exclusion clause in the Definition so that non-motorised caravans are excluded; or
 - (b) adding a subcategory and 'use' qualifier to the exclusion clause, so that non-motorised caravans are excluded when certain criteria are met.
18. The NZMCA accepts that the Definition is not formulated in a way that presents a clear pathway for a 'subcategory' approach. The first two limbs of the Definition are qualifying criteria, rather than descriptive terms (i.e. describing types of buildings), and so it is the exclusion clause that provides the better option for refinement. At present, that exclusion clause is currently limited to:
- (a) motorised vehicles; and / or
 - (b) modes of transport that can be moved under their own power.
19. The NZMCA seeks that an additional exclusion be added for non-motorised caravans and recommends that one of the following amendments be adopted (all changes underlined).

Option 1:

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

- (a) Partially or fully roofed; and
- (b) Fixed or located on or in land;

but excludes:

- i. any motorised vehicle;
- ii. other mode of transport that could be moved under its own power; and
- iii. non-motorised caravans

20. In our view, this approach would be consistent with the subcategory approach, as it adds a new subcategory to the exclusions in a manner that does not widen the application of the Definition. A consequence of this amendment is, however, that all caravans will be excluded from the Definition, when there could be the potential that they are used in practice as buildings.
21. Alternatively, the NZMCA recommends that the exclusion clause be amended to incorporate a subcategory and a 'use' qualifier in the exclusion clause. This would allow the definition to capture non-motorised caravans that are no longer being used for their intended purpose. The NZMCA recommends that this be done by considering use against a temporal measure.

Option 2:

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

- (a) Partially or fully roofed; and
- (b) Fixed or located on or in land;

but excludes:

- i. any motorised vehicle;
- ii. other mode of transport that could be moved under its own power; and
- iii. non-motorised caravans...other than those used for a [residential accommodation / business purpose] for a continuous period of more than XX months.

- 22.** The Option 2 amendment will link the ‘use’ of the caravan to whether it is a building as defined. The NZMCA considers that this approach would be appropriate, and consistent with the discussion in the Recommendations Report.

- 23.** If local authorities are unable to adopt Options 1 or 2 above, we recommend developing practice notes or guidance specific to non-motorised caravans. Given the signals in relation to ‘vehicles’ in the MfE guidance and Recommendations Report, it would seem prudent to publish practice notes or guidance that clarify whether non-motorised caravans are to be treated as buildings, or whether they may, in certain circumstances, be excluded.

To James Imlach, New Zealand Motor Caravan Association Incorporated (**NZMCA**) **9 September 2020**

From Sarah Scott, Mike Wakefield

Subject Advice addressing the definition of “Building” in the National Planning Standards

The Issue for NZMCA

1. At issue for the NZMCA is the definition of “Building” included in the first National Planning Standards (**NPS**),¹ which captures non-motorised caravans because they are not capable of moving under their own power. The full definition is as follows (**Definition**):

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

- (a) Partially or fully roofed; and*
- (b) 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.

2. The capture of non-motorised caravans by the Definition creates a number of potential implications for NZMCA and its members, including that members will, by definition, be operating a ‘building’ when using and storing their non-motorised caravans. This could, depending on the approach taken by district plans, trigger the need for resource consent to be obtained, including when members are either staying at NZMCA-operated motor caravan parks, or storing their caravans when not in use.

Background to the Definition

3. When developing the Definition, the Ministry for the Environment (**MfE**) recognised that non-motorised caravans would be captured. Relevantly, the Recommendation Report notes (our emphasis):²

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**

1 Which were developed in accordance with sections 58B to 58J of the RMA, published in April 2019 and came into force on 3 May 2019.

2 Ministry for the Environment.2019. *21 Definitions Standard - Recommendations on Submissions Report for the first set of National Planning Standards* Wellington: Ministry for the Environment, at 51.

by the definition. We therefore recommend excluding motorised vehicles or any other mode of transport that could be moved under its 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.

4. The above excerpts indicate that the issue that the Definition is trying to address is the use of non-motorised caravans as permanent buildings and for a business or accommodation, rather than for their normal intended use. Treating non-motorised caravans in this way may be entirely appropriate where they are being used as, for example, a residential dwelling for an extended period of time. However, that is a temporal 'use' issue, rather than an outcome determined by whether they can move under their own power, and it is this nuance that the Definition has not, in our view, captured.
5. The consequence is that the Definition has created something of an arbitrary distinction between motorhomes and non-motorised caravans, based on whether they can move under their own power or not, which does not recognise that the use is essentially the same. Importantly however, MfE recognised this issue and suggested that councils will need to address it through individual district plans.
6. While adopting the NPS definitions is mandatory (as they are comprised in Part 14 of the NPS), local authorities can develop more refined solutions for certain definitions. This is subject to a requirement that any solution is consistent with the primary definition, and not widen its scope.
7. We have identified several ways in which the Definition could be refined to address the identified issue.

An additional exclusion

- 7.1 An additional exclusion to the Definition could be added for non-motorised caravans. If this approach were adopted, the Definition could be reformatted as follows:

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

- (a) Partially or fully roofed; and*
- (b) Fixed or located on or in land;*

but excludes:

- i. any motorised vehicle;*
- ii. other mode of transport that could be moved under its own power; and*
- iii. non-motorised caravans (and tents)³...*

7.2 This approach would add a new subcategory to the exclusions without widening the application of the Definition, which was an approach recognised by MfE in its Recommendations Report.

A qualified 'use' exclusion

7.3 The second solution is to include a 'use' qualifier in the additional exclusion, relevant to non-motorised caravans. For example:

but excludes:

- i. any motorised vehicle;*
- ii. other mode of transport that could be moved under its own power; and*
- iii. non-motorised caravans...other than those used for a [residential accommodation / business purpose] for a continuous period of more than XX months.*

7.4 The effect of this type of qualifier would be to ensure that non-motorised caravans that are not being used for their intended purpose, in light of a temporal measure, are captured by the Definition. This approach is similar to that taken by a number of territorial authorities across the country.

7.5 The adoption of a 'use' qualifier does come with the potential that it could be seen as a departure from the Definition. It could also be considered that specific rules and standards of zone provisions will provide a more appropriate way to address land use issues.

Practice note / guidance document

³ The focus of our advice has been on non-motorised caravans, but an exclusion could also be sought for tents, acknowledging that the Definition technically captures these items as well.

- 7.6** A third option, which would sit outside the district plan, would be to develop a practice note / guidance document specific to non-motorised caravans. Given the signals in relation to 'vehicles' in the MfE guidance and recommendations, in our view it would be prudent in any case to clarify how non-motorised caravans are treated by district plans.
- 7.7** Our recommendation is that either of the first two options above are better outcomes as it avoids any confusion or potential for debate as to whether the district plan captures non-motorised caravans in the definition of 'Building'.