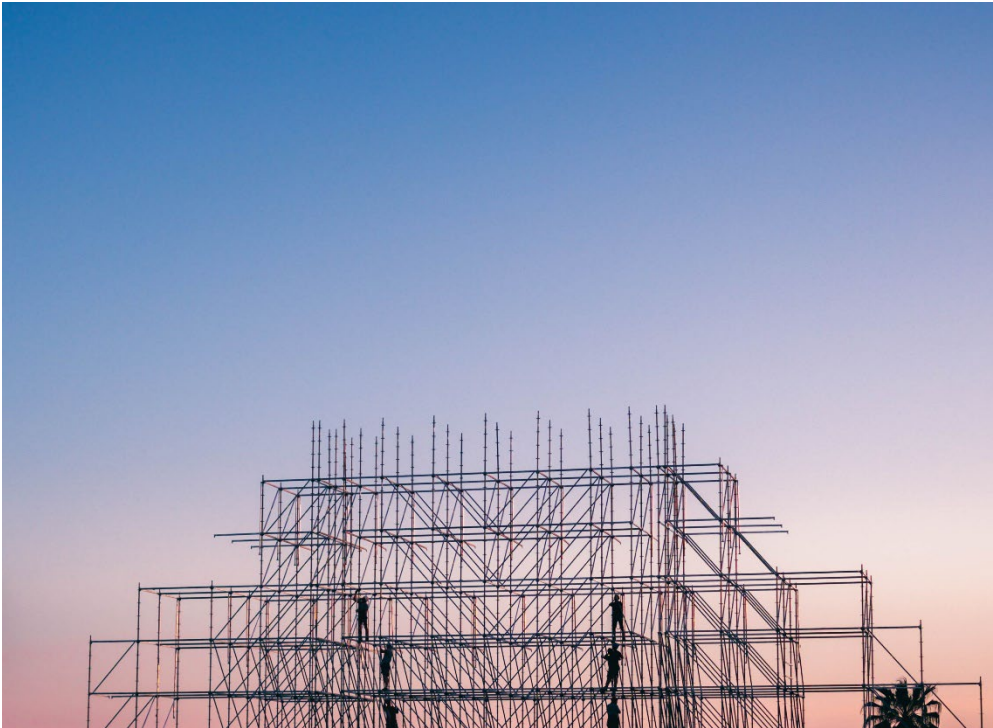


PC78 Learning Summary

Topic: MDRS vs AUP Definitions – Spot the Difference



1. Introduction

You may have noticed that there are differences in the words used in [Schedule 3A, Part 2](#) of the Resource Management Act 1991 (RMA) for the Medium Density Residential Standards (MDRS), and the words that Auckland Council have used in the incorporated provisions notified under [Plan Change 78: Intensification \(PC78\)](#) of the Auckland Unitary Plan (AUP).

For example, where the MDRS standards within the RMA use the term “residential unit”, the standards as incorporated into the AUP (OP) use the term “dwelling”.

This is because the [RMA \(Enabling Housing Supply and Other Matters\) Amendment Act 2021](#) was drafted using the terms set out in section 14 of the [Ministry for the Environment National Planning Standards 2019](#).

The AUP and associated plan changes on the other hand use words and definitions already contained in [Chapter J1](#) of the operative AUP.

This learning summary sets out the key differences between the terms and words used in the national planning standards and AUP.

The key takeaway is:

A term used in the MDRS (Schedule 3A) that is defined in the national planning standards has the same meaning as set out in those standards – **and not from the AUP definitions.**

This is irrespective of whether PC78 has proposed to incorporate the new national planning standards definitions at this time.

2. Key differences between the National Planning Standards and AUP

Below are the terms and definitions that differ between the MDRS within the RMA (Enabling Housing Supply and Other Matters) Amendment Act 2021, and the AUP.

MDRS Residential unit— Means a building or part of a building that is used for a residential activity exclusively by 1 household; and includes sleeping, cooking, bathing, and toilet facilities
AUP Dwelling— Means living accommodation used or designed to be used for a residential purpose as a single household residence contained within one or more buildings, and served by a food preparation facility/kitchen. A food preparation facility/kitchen includes all of the following: <ul style="list-style-type: none">- means for cooking food, food rinsing, utensil washing and waste water disposal- space for food preparation (including a suitable surface) and food storage including a refrigerator or a perishable food storage area capable of being cooled.
Where will this difference matter? <ul style="list-style-type: none">• In determining the number of residential units that are proposed as part of a development and distinguishing between a building comprising one or more residential units. For example, it now appears that one residential unit cannot be split across more than one building.• The MDRS outdoor living space, outlook space, windows to street and landscaped area requirements only apply to a residential unit. An accessory building fronting the street that is not a residential unit would not need to include windows, for example, in order to comply with the permitted activity density standards.

MDRS

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.

AUP (OP)

Building—

Means any permanent or temporary structure including those listed in table J1.4.1 (*full definition not included here*).

Where will this difference matter?

- In determining height, height in relation to boundary, setbacks, and building coverage – the MDRS density standards only address ‘buildings’ that are partially or fully roofed, and not structures generally.
- In determining what physical structures need to be kept clear of outdoor living spaces and outlook spaces. These spaces only need to be kept clear of constructions that are buildings under the National Planning Standards, and not structures generally.

MDRS

Building coverage—

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

Net site area means the total area of the site, but excludes:

- (a) any part of the site that provides legal access to another site;
- (b) any part of a rear site that provides legal access to that site;
- (c) any part of the site subject to a designation that may be taken or acquired under the Public Works Act 1981.

Building footprint means... 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.

AUP—

Building coverage—

The part of the net site area covered by buildings.

Includes:

- overhanging or cantilevered parts of buildings
- any part of the eaves or spouting that projects more than 750mm horizontally from
- accessory buildings.

Excludes:

- uncovered swimming pools
- pergolas
- uncovered decks

Where will this difference matter?

- In determining the maximum building coverage for a site under the MDRS Building Coverage standard.

MDRS

Habitable room—

Means any room used for the purposes of teaching or used as a living room, dining room, sitting room, bedroom, office or other room specified in the Plan to be a similarly occupied room.

AUP

Habitable room—

Any room in a building used for a residential nesting table activity and in a care centre or healthcare facility with an overnight stay facility, excluding a laundry, bathroom, toilet or any room used solely as an entrance hall, passageway, garage, or other space of a specialised nature occupied neither frequently nor for extended periods.

Where will this difference matter?

- In determining what rooms in a residential unit must be provided with outlook space.

MDRS

Height—

means the vertical distance between a specified reference point and the highest part of any feature, structure or building above that point.

AUP

Height—

Height is the vertical distance between the highest part of a building or structure and a reference point. The reference point outside the coastal marine area is ground level unless otherwise stated in a rule. The reference point inside the coastal marine area is mean sea level. Height rules or standards are always a maximum unless otherwise stated in a rule or standard.

The AUP definition goes on to list a range of exclusions – note that these can no longer be relied upon where the word ‘height’ is used in an incorporated MDRS standard.

Where will this difference matter?

- In determining building height and height in relation to boundary.
- Any exclusions listed in the AUP definition of height will no longer apply.

MDRS

Height in relation to boundary—

means the height of a structure, building or feature, relative to its distance from either the boundary of:

- (a) a site; or
- (b) another specified reference point.

AUP

Height in relation to boundary—

The height of a building relative to its distance from the boundary of a site. The allowable height increases as the distance from the boundary increases up to the maximum height allowed.

Note: Previously, the AUP height in relation to boundary standards did not use the words 'height in relation to boundary' within the text of the standards themselves, which has meant that to date, this definition has never been applied. However, the new incorporated standard does use these words, and therefore there is now a relevant definition. However, the AUP exclusions within the height definition will not apply, as the definition of 'height' in the MDRS is more encompassing.

Where will this difference matter?

- In determining height in relation to boundary. Note that it appears that only buildings are required to comply with this standard. Any structure that is not partially or fully roofed will likely not be required to comply with the MDRS height in relation to boundary density standard.

MDRS

Ground level—

Means:

- (a) the actual finished surface level of the ground after the most recent subdivision that created at least one additional allotment was completed (when the record of title is created);
- (b) if the ground level cannot be identified under paragraph (a), the existing surface level of the ground;
- (c) if, in any case under paragraph (a) or (b), a retaining wall or retaining structure is located on the boundary, the level on the exterior surface of the retaining wall or retaining structure where it intersects the boundary.

AUP

Ground level—

The finished level of the ground at the time of the completion of the most recent subdivision in which

additional sites were created, unless stated otherwise in the subdivision consent, except that where no such subdivision has occurred since 31 January 1975, ground level must be deemed to be the finished level of the ground on 23 November 2013.

In relation to the measurement of the girth of a tree, ground level must be taken from the uphill side of the tree trunk.

Where will this difference matter?

- In determining where height in relation to boundary is measured from along a boundary.
- In determining what constitutes a residential dwelling located at ground level, for the purposes of outdoor living space provision.

MDRS

Outdoor Living Space—

means an area of open space for the use of the occupants of the residential unit or units to which the space is allocated

AUP—

Outdoor living space

Outdoor area which is:

- clear of any parking or manoeuvring area; and
- set aside for the exclusive use of the occupants of the dwelling to which they relate.

All outdoor living spaces must be clear of any buildings, except for the following:

- pools;
- rainwater tanks less than 1m in height if located outside of required 20m² minimum dimension 4m area
- rainwater tanks within the required 20m², minimum dimension 4m area if located wholly below ground level;
- building eaves;
- pergolas, lattice fences or similar open structures; and
- decks and terraces.

Where will this difference matter?

- In determining what constitutes outdoor space for a residential unit.
- In determining what area of open space of another residential unit cannot be overlooked by outlook space.

MDRS

Site—

Means:

- (a) an area of land comprised in a single record of title under the Land Transfer Act 2017; or
- (b) an area of land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be dealt with separately without the prior consent of the council; or
- (c) the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate record of title under the Land Transfer Act 2017 could be issued without further consent of the Council; or
- (d) despite paragraphs (a) to (c), in the case of land subdivided under the Unit Titles Act 1972 or the Unit Titles Act 2010 or a cross lease system, is the whole of the land subject to the unit development or cross lease.

AUP

Site—

Any area of land which meets one of the descriptions set out below:

- (a) an area of land which is:
 - i. comprised of one allotment in one certificate of title, or two or more contiguous allotments held together in one certificate of title, in such a way that the allotments cannot be dealt with separately without the prior consent of the council; or
 - ii. contained in a single lot on an approved survey plan of subdivision for which a separate certificate of title could be issued without any further consent of the council;

being in any case the smaller area of clauses (i) or (ii) above; or

- (b) an area of land which is composed of two or more contiguous lots held in two or more certificates of title where such titles are:
 - i. subject to a condition imposed under section 75 of the Building Act 2004 or section 643 of the Local Government Act 1974; or
 - ii. held together in such a way that they cannot be dealt with separately without the prior consent of the council; or

- (c) an area of land which is:
 - i. partly made up of land which complies with clauses (a) or (b) above; and
 - ii. partly made up of an interest in any airspace above or subsoil below a road where (a) and (b) are adjacent and are held together in such a way that they cannot be dealt with separately without the prior approval of the council;

Except in relation to each description that in the case of land subdivided under the Unit Titles Act 2010, the cross lease system or stratum subdivision, 'site' must be deemed to be the whole of the land subject to the unit development, cross lease or stratum subdivision.

Where will this difference matter?

- Most MDRS definitions refer to site. Determining what constitutes a site will be determinative of many things, including how many residential units can be proposed as a permitted activity, where measurements are taken from etc.

3. Why is it important to understand these differences?

The differences could have quite a significant impact on how an overall development is assessed and determined.

For example, any structures on a site that do not have a roof will no longer be considered as buildings and will not be required to be included within any building coverage calculations.

The AUP also includes a range of structures including rainwater tanks above a certain size that cannot be installed within an outdoor living space area. The outdoor living space definition in the National Planning Standards is less prescriptive, and it is likely that ancillary servicing structures like these will yet again be allowed within these outdoor areas, provided they do not meet the MDRS definition of building.

From the other side, the definition of height in the National Planning Standards does not include any exclusions. This means that the exclusions typically considered under the Chapter J1 definition – e.g., roof plant, rails – must now be included in any height measurement relating to a building proposed in reliance on the MDRS standards.

4. What about words used within the NPS definitions?

The words used within the National Planning Standards definitions are defined in accordance with those definitions. Defined words can be identified with turquoise coloured text, as shown in the following image:

- (a) an area of **land** comprised in a single record of t
2017; or
- (b) an area of **land** which comprises two or more ac
in such a way that the **allotments** cannot be dea
consent of the council; or
- (c) the **land** comprised in a single **allotment** or bala

5. What if the word is not defined in the National Planning Standards?

If the word is not defined in the National Planning Standards, then the word or phrase will need to be interpreted in accordance with the AUP rules for interpretation provisions at J1.1.

6. Why have these new definitions not been incorporated into the AUP?

Auckland Council have chosen to not incorporate the new National Planning Standards definitions into the AUP at this time. We expect that this is so they can undertake a more complete plan change at some stage in the future to incorporate the other requirements of the National Planning Standards.

We expect that the dual definition framework will cause confusion for the time being, as planners will need to be aware of two sets of definitions that may apply, even to different components of the same development proposal.

7. Summary

- A term used in the MDRS (Schedule 3A) that is defined in the national planning standards has the meaning as set out in those standards – not the equivalent AUP definition.
- This is even where Auckland Council have chosen to use existing plan language in the incorporated provisions – e.g., ‘dwelling’ in the new rules will instead need to be interpreted as ‘residential units’.
- We recommend that those engaged with processing or preparing resource consent applications have a combined set of the different definitions, so comparisons can easily be made.

Interested in learning more about resource management, or have a plan change that you’re interested in learning more about?

Contact us at contact@colabplanning.co.nz and we’ll produce a quick learning summary for the topic.

Note that this learning summary is intended as guidance only. See [our website](#) for a full disclaimer.