

Submission on bright-line rule changes and definition of "hotel"

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Contents

Introduction.....	3
Summary.....	3
“Hotels” should be broadly defined and excluded from the bright line rules	3
There is no simple definition of “hotel”	4
Common hotel land/building ownership structures	4
There is no simple definition of “serviced apartment”, either	7
Conclusion – offer of further assistance.....	7

Introduction

1. Hotel Council Aotearoa (**HCA**) is New Zealand’s dedicated industry body for hotels and hoteliers. We represent over 140 New Zealand hotels (15,600 guest rooms).
2. We refer to the discussion document “Design of the interest limitation rule and additional bright line rules” (the **Discussion Document**).

Summary

3. “Hotels” should be broadly-defined and excluded from the bright-line rules.
4. An inclusive, multi-part test should be devised so that all common hotel real estate ownership structures are captured within the definition. Crude “percentage-use” formulas are not suitable since mixed-use and strata title hotel buildings are already common in the hotel sector. More sophistication is needed.
5. The test should consider ownership/control of the hotel components of the building. It should also consider how (and by whom) the hotel components are operated and the ultimate guest perspective of the relevant accommodation offering. Finally, the definition should be sensitive to the fact that individually owned hotel “units” might be withdrawn from hotel use and returned to private apartment usage.
6. HCA is happy to work alongside Government, including government departments already familiar with tourism-related issues such as MBIE, to help devise a broad and inclusive definition of “hotel” for the purposes of the amended bright-line rules.

“Hotels” should be broadly defined and excluded from the bright line rules

7. It is in New Zealand’s best interests that “hotels” are broadly defined in connection with any exemptions from the bright-line rules.
8. Absent of COVID and related border closures, tourism is our country’s largest export earner. Highest-spending international business and leisure travellers gravitate towards hotels, as opposed to staying with friends/relatives, at campsites, backpackers, youth hostels or in alternative accommodation such as Air BnB and other home-share platforms. Hotels create more full-time employment than other forms of overnight accommodation on a per-room night basis.
9. Hotels are typically centrally-located near public transport, built vertically and comprise of relatively small “private” guest rooms augmented by shared public areas. They are a more environmentally sensitive and sustainable option that many other transient accommodation types. Hotels provide centre-city amenity and help create a “sense of place”.
10. New Zealand’s low capital base has negative consequences for our tourism sector. As recently as 2017, a severe shortfall in hotel rooms supply was anticipated, leading to a multi-million dollar government-led campaign to attract new international and domestic investment into the New Zealand hotel sector (“Project Palace”). Generally speaking, New Zealand has historically suffered from a shortage of investment capital for hotel projects, leading to repeated “boom and bust” cycles in hotel development.

11. Future investment into hotels should be actively encouraged if New Zealand aspires to be and remain a premier international tourist destination. The bright line rules should not work against the overall goal of facilitating investment into hotel real estate.

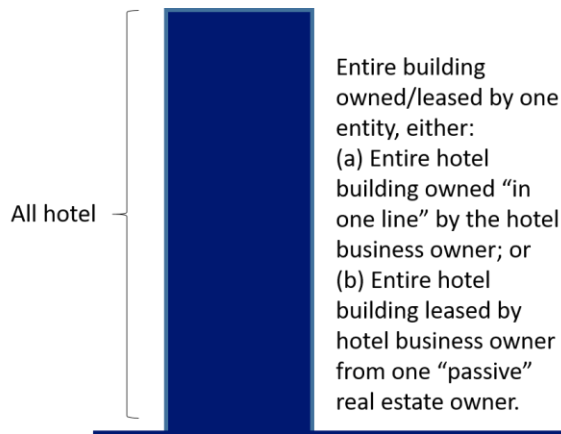
There is no simple definition of “hotel”

12. There is no simple definition of “hotel”.
13. As is the case around the world, New Zealand’s hotels are owned and operated under different business models. The most common business models are (1) independent/owner-operated; (2) franchised; (3) managed; (4) leased; (5) strata title; and (6) brand-owned.
14. Different business models have arisen in response to commercial decisions made by hotel investors and hotel management companies around the following issues:
 - 14.1. Who owns the hotel site/building/guest rooms?
 - 14.2. Is the hotel part of a larger chain of hotels operating under the same brand, or is it independently branded?
 - 14.3. Who sets and enforces brand standards?
 - 14.4. Who accepts the majority of the risk/reward from operating a hotel business at this location?
 - 14.5. Who makes day-to-day operating decisions at the hotel (including selecting and training employees)?All of these factors could be relevant in formulating an appropriate definition of “hotel”.
15. Since the bright line rules apply in respect of capital gains generated from the ownership of real estate, it is important that policymakers are particularly mindful of the different real estate *ownership* structures that exist in the hotel sector (paragraph 14.1 above). Policymakers should not impose a definition or test that unfairly excludes any of the commonly employed hotel ownership structure or falls down on the basis of a crude “percentage-use” measure.
16. More sophistication is needed, hence HCA’s recommendation of a multi-part test. In a multi-part test, the different *operating* criteria (paragraphs 14.2 to 14.5) might help further inform the assessment of whether particular real estate is part of a “hotel” for the purposes of the legislation.

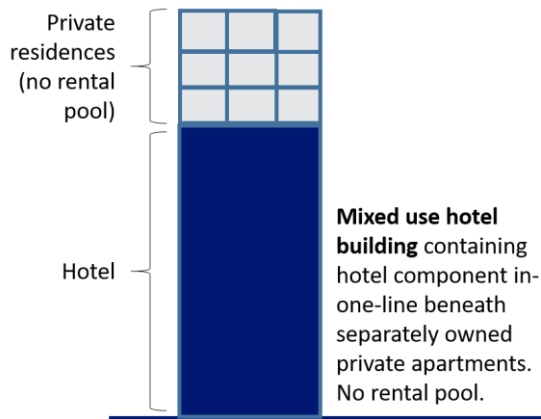
Common hotel land/building ownership structures

17. Set out below are common ways for a hotel real estate to be owned. “In-one-line” means the entirety of the hotel component of the building is owned under one legal title. “Strata title” means that separate components of the hotel are owned under separate legal titles, with the hotel business owner holding a long-term lease of any necessary hotel components it does not directly own.

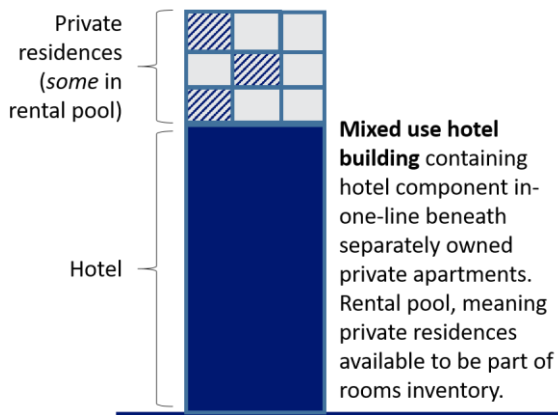
17.1. Hotel building owned “in-one-line”:



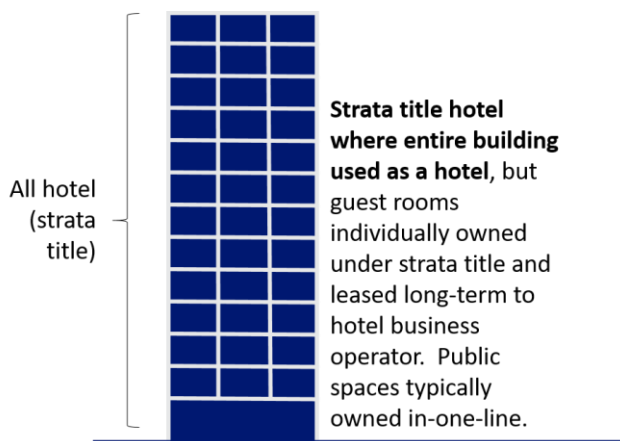
17.2. Basic mixed use hotel (hotel/residential, no rental pool):



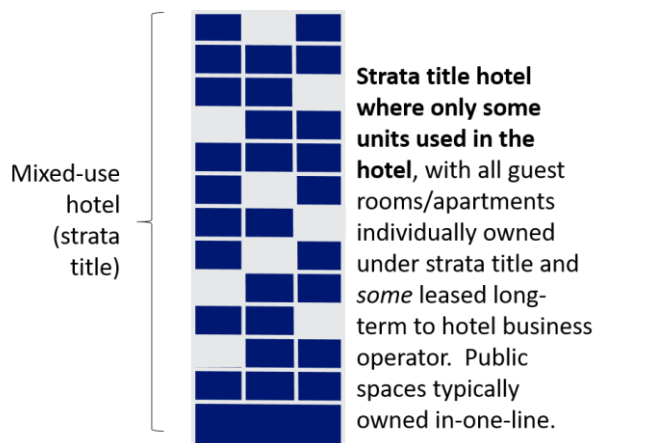
17.3. Mixed use hotel (hotel/residential, with rental pool):



17.4. Basic strata title hotel:



17.5. Mixed use strata title hotel:



18. In each of the above examples, parts of the hotel building might also be separately titled and owned by (or leased to) third parties for retail use. This means the issues identified in paragraphs 2.64 to 2.69 of the Discussion Document could affect application of the bright-line rules to hotels, as well. While additional retail components within a hotel building might be geared towards guest needs (such as jewellery shops, boutiques, convenience stores or additional F&B outlets), they are not strictly part of the hotel's profit and loss accounts (although rental income for the premises *might* flow to hotel P&L, depending on the operating and real estate ownership structure in place).
19. Note that from the guest perspective, all of the hotels described in paragraphs 17.1 to 17.5 might *seem* to be one contiguous property under single ownership and control. Hotel owners and operators make conscious design, management and ownership structuring decisions to “protect” the guest journey and “hide” the underlying real estate ownership structures from guest view.
20. Certain service offerings or amenities might be persuasive in indicating that a property is being managed as a hotel (or is perceived as such by guests). These could include the property having:
 - 20.1. communal guest spaces (such as lobby, gym, pool, meeting spaces);
 - 20.2. in-house food and beverage offerings; and/or
 - 20.3. a liquor license.

There is no simple definition of “serviced apartment”, either

21. Just as there is no simple definition of “hotel”, there is also no simple definition of “serviced apartments”. Nevertheless, there should *definitely* be a carveout for “serviced apartments that more closely resemble hotels” (paragraph 2.86 of the Discussion Document).
22. Many international and regional hotel chains offer guest room product that looks and feels like an apartment rather than a typical hotel guest room. Such properties offer larger guest rooms/suites that may include kitchenettes, or even full-sized kitchens and private laundry facilities. There are numerous such brands in New Zealand and around the world, including Quest, Ramada, Fraser Suites, Ascot Residences, Meriton Serviced Apartments, Marriott Executive Apartments, Residence Inn and Mantra.
23. Branded serviced apartments of the kind referred to above tend to sell a portion of their rooms/suites to “long-stay” guests, being visitors intending to stay at a location for longer than the typical hotel stay, but not long enough to justify the admin of setting up “permanent” residence, such as creating utilities accounts, etc. Many branded serviced apartments will also operate as “transient hotels” as well, selling at higher daily rates during peak times to transient guests who simply want more space than offered by a traditional hotel guest room. These types of properties tend to have the amenities listed in paragraph 20, but perhaps on a smaller scale than found at “ordinary” hotels.
24. Branded serviced apartments should definitely be included within the definition of “hotel”, and thereby exempted from the bright-line rules. Ultimately, how best to do this will depend on the general definition of “hotel” used in the legislation. Branding could be an important component of any definition in this context. We note that Smith Travel Research maintains a list of international and regional hotel and serviced apartments brands: https://str.com/sites/default/files/2019-10/STR-Chain%20Scales-20191025_0.pdf
25. Serviced apartments, particularly strata title serviced apartments, are the category of hotel real estate that is most susceptible to “switching” between hotel use and private residential use (or private landlording). For this reason, a “use” test may be required as part of the relevant definition to ensure the overall definition of hotel/serviced apartment works as intended.

Conclusion – offer of further assistance

26. HCA is happy to work alongside Government, including departments already familiar with tourism-related issues such as MBIE, to help devise a broad and inclusive definition of hotel real estate for the purposes of the amended bright-line rules.
27. We strongly endorse the broadest-possible definition of “hotel”, which should capture “serviced apartments that more closely resemble hotels”.

About Hotel Council Aotearoa

Hotel Council Aotearoa (**HCA**) is an advocacy-focused organisation with a mission to educate and influence key decision-makers on matters of importance to the New Zealand hotel industry. HCA's target membership encompasses hotel owners, general managers, operators/brand companies, consultants, academics, advisors and other organisations and individuals having a close professional connection with the hotel industry. HCA currently represents over 140 New Zealand hotels, comprising over 15,600 guest rooms or 5.6 million available room-nights per annum.

To learn more about HCA or to become a member, please visit www.hotelcouncilaotearoa.com or email admin@hotelcouncilaotearoa.com.



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