

# Practice and Guidance Note

## Minor dwellings

### Auckland Unitary Plan rules for minor dwellings:

1. [What is a minor dwelling?](#)
2. [Is a 'minor dwelling' a 'dwelling'?](#)
3. [What activity status is a minor dwelling?](#)
4. [What is included in the 65m<sup>2</sup> calculation?](#)
5. [Can a new site be created for a minor dwelling?](#)
6. [Can a minor dwelling that existed on 30 September 2013 be converted into two dwellings?](#)
7. [Can a minor dwelling be converted into a principal dwelling to enable subdivision?](#)
8. [Can there be a home occupation in a minor dwelling in addition to one located in a principal dwelling?](#)
9. [The precinct does not provide for minor dwellings, what activity status are they?](#)
10. [Assessment of applications where a proposed minor dwelling infringes the floor area standard](#)
11. [Other Resources](#)

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# 1 What is a minor dwelling?

The [Auckland Unitary Plan \(Operative in part\)](#) (“AUP(OP)”) defines minor dwellings in [Chapter J](#) as follows:

## **Minor Dwelling**

A dwelling that is secondary to the principal dwelling on the site.

This means that minor dwellings are not the same as principal dwellings. Different rights and restrictions apply to minor dwellings. Minor dwellings can sometimes depend on some of the functions of the principal dwelling, such as shared driveways, shared pedestrian access, and shared parking etc.

For the avoidance of double, a minor dwelling is still a dwelling. To qualify as a minor dwelling, the activity must also comply with the AUP(OP) definition of dwelling. This means that the minor dwelling must contain a kitchen/food preparation facility and be designed to be used for a residential purpose. This is discussed in more detail in [Section 2](#).

## **1.1 What is the AUP(OP) trying to achieve with minor dwellings?**

In the Single House Zone and the rural zones, the question as to whether a second dwelling on a site is a minor dwelling is important in terms of the integrity of the AUP(OP). This is because in these zones the AUP(OP) is intentionally providing the opportunity for additional ‘secondary’ housing of a smaller scale in zones which are otherwise not anticipating more than one dwelling per site. This is provided for through the minor dwelling provisions.

If this question is not carefully considered, there is the potential that a significant number of sites in these zones will see second dwellings (which are not minor dwellings) as opposed to *secondary* dwellings (minor dwelling), established incrementally.

In particular, some rural zones provide for a second dwelling on larger sites (40ha +). A second dwelling on any rural site under 40ha is a non-complying activity. There is a risk that, if a minor dwelling is not clearly ‘secondary’ in nature and doesn’t meet the standards, then it is actually just a second dwelling.

## **1.2 How is a minor dwelling distinguished from a principal dwelling?**

Whether a dwelling is a ‘minor dwelling’ or a ‘principal’ dwelling will often depend on a variety of factors. These factors include (but are not limited to):

- Relative size compared to the principal dwelling. For example, where the minor dwelling and principal dwellings are the same or similar in size. In this case, even if the 'minor dwelling' is 65m<sup>2</sup> or less, both dwellings are often designed to function as principal dwellings.
- The number of bedrooms in the minor dwelling, particularly where the minor dwelling is proposed to be more than 65m<sup>2</sup>.
- The spatial relationship and connection between the minor dwelling and any associated accessory buildings on the site (e.g., sleepouts that could be used as bedrooms associated with the minor dwelling).
- Where the minor dwelling is located far from the principal dwelling. In this case, it is less likely that they are functionally linked. This will apply more to rural minor dwellings than urban minor dwellings due to the difference in lot sizes.

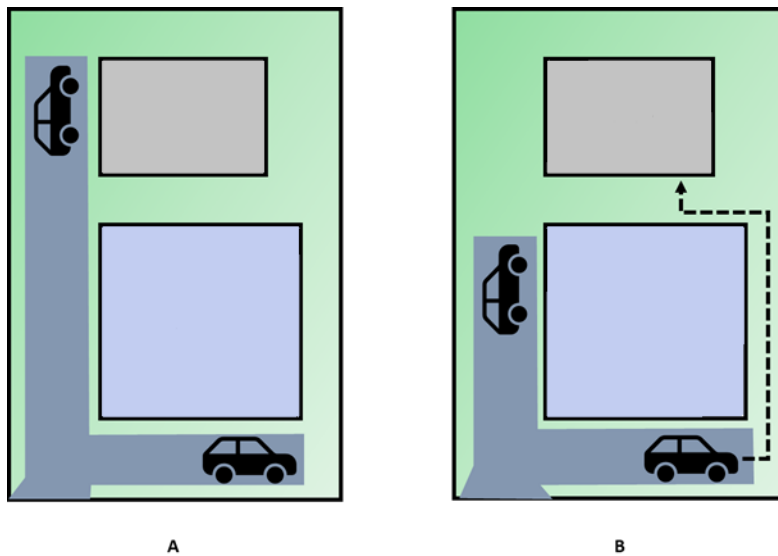
Once a dwelling is greater than 65m<sup>2</sup>, there are a range of factors that still need to be considered as they may influence whether the dwelling is secondary to the principal dwelling on the site and therefore a 'minor dwelling'. These matters relate to its design and 'functional dependence' and would be assessed through a resource consent process. A minor dwelling has a greater likelihood of having functional dependence on a principal dwelling by virtue of its close proximity and shared use of amenities such as driveways or parking areas. This is suggestive that the dwelling is secondary – and is therefore a 'minor dwelling'.

A context-specific assessment will always be required. However, the following considerations can help guide an assessment.

### For the Single House Zone

The following are examples only and are not exclusive. Usually more than one criteria would apply in determining whether a dwelling is minor or not.

- **Whether the proposal for a minor dwelling has vehicular access provided directly to the principal dwelling.** If the minor dwelling is reliant on pedestrian access from the front of the site (B on page 4) rather than direct vehicular access and adjacent parking (A on page 4), then this is a factor which might support it being considered secondary to the principal dwelling and therefore qualifying as a minor dwelling.



**Diagram 1: Whether the proposal for a minor dwelling has vehicular access provided directly to the dwelling**

- **Whether the minor dwelling is smaller or contains less bedrooms than the principal dwelling** on the site, and to what extent. If it is not smaller/less bedrooms, then it is unlikely to be credible to argue that the dwelling is a ‘minor dwelling’. More than two bedrooms is potentially a good indicator of whether the minor dwelling is in fact a principal dwelling.

Note, however, that the “minor” dwelling could potentially be smaller than the principal dwelling and not be a minor dwelling. For example, it is not credible to argue that a second dwelling comprising four bedrooms and a floor area of 150m<sup>2</sup> is a minor dwelling simply by virtue that it was smaller than an existing 250m<sup>2</sup> house. Although there is no set area metric as discussed above, the larger a potential minor dwelling gets, the greater the scrutiny that should be given as to whether the dwelling is secondary to a principal dwelling. However, a case-by-case assessment will be required and the other factors provided as guidance are important.

- **Whether the minor dwelling is located close to the principal dwelling, or remote.** There will always be a limit to how remote a second dwelling can be located from an existing dwelling on a suburban section. However, for deeper sites, larger separation distances might be possible. Once the separation distance starts to increase, it becomes more likely that the dwelling is not secondary to the principal dwelling, as it will have a weaker locational and functional relationship. This is on the basis that an isolated second dwelling is unlikely to be reliant on the primary dwelling in the sense that it is independent from as opposed to secondary to the primary dwelling.

## For the various rural zones

As per above, the following are examples only and are not exclusive. Usually more than one criteria would apply in determining whether a dwelling is minor or not.

- **Whether or not the minor dwelling shares the vehicle access of the principal dwelling.** As per the Single House Zone this provides some useful guidance as to whether "minor" dwelling is a minor dwelling. If a "minor" dwelling utilises a separate access to the first dwelling, with no other functional relationship, then suggests it is not secondary to the principal dwelling.
- **The distance of the minor dwelling from the principal dwelling.** If the minor dwelling is located a relatively short distance from the principal dwelling, in a rural context - such as within 50m - then it is more likely to be a secondary land use activity and therefore a 'minor dwelling'. Once the separation distance starts getting larger, the chances increase that the dwelling is not secondary to the principal dwelling, as it will have a weaker locational and functional relationship. This is on the basis that an isolated second dwelling is unlikely to be reliant on the primary dwelling in the sense that it is independent from as opposed to secondary to the primary dwelling.
- **The geography between the minor and principal dwellings.** If the topography (such as a stream, bush areas, or a gully) physically separates the minor dwelling from the principal dwelling, then in all likelihood the two dwellings would be functionally independent of each other and therefore one could not be a minor dwelling.

Please note that these considerations are only addressing whether the proposed activity can be considered as being within the definition of a 'minor dwelling' or not. Once it is established that the proposed activity falls within the minor dwelling activity classification, then the activity will still need to be assessed against the relevant AUP (OP) provisions.

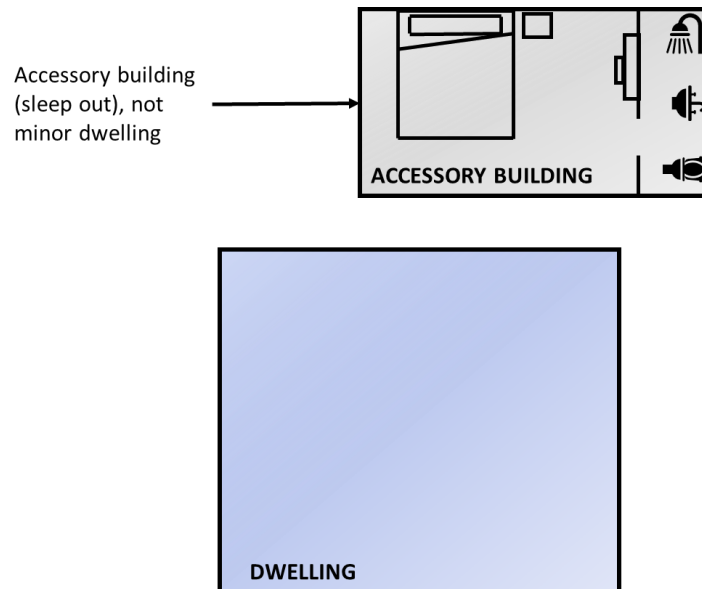
## 2 Is a 'minor dwelling' a 'dwelling'?

A minor dwelling is a type of dwelling. To qualify as a minor dwelling, the activity must also comply with the AUP(OP) definition of dwelling. This means that the minor dwelling must contain a kitchen/food preparation facility and be designed to be used for a residential purpose.

Where an activity does not meet the definition of a dwelling, it cannot be a minor dwelling. For example, a sleep-out (i.e., an external habitable space without a

kitchen/food preparation facility) would not be a minor dwelling – it would be an accessory building.

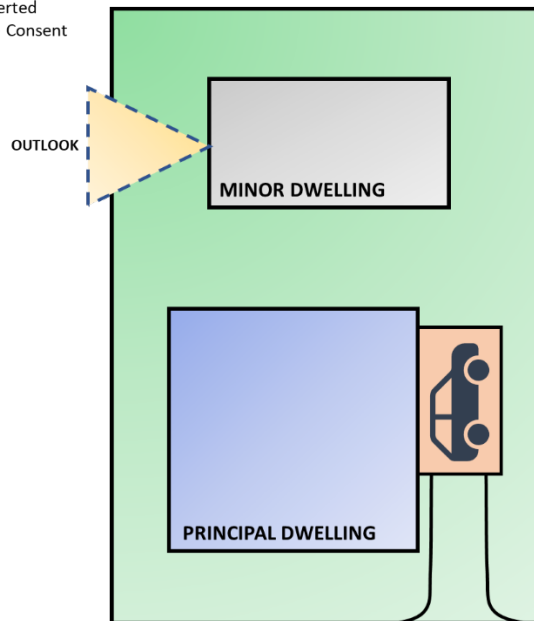
The definition of ‘minor dwelling’ expressly requires a minor dwelling to be secondary to the principal dwelling on the site. Minor dwellings therefore cannot be located on a site that does not have a principal dwelling. The ‘minor dwelling’ in that case would actually be the principal dwelling as that is the principal residential use on that site.



**Diagram 2: Accessory building (sleep out), not a minor dwelling**

If a landowner wants to convert their existing minor dwelling to a principal dwelling, they must meet all the standards for a principal dwelling (including outlook, daylight, building coverage, etc.) and obtain any necessary consent for that conversion.

In this example, potential conversion of a minor dwelling **does not** comply with outlook space rule, or parking. Could only be converted subject to Resource Consent Approval



**Diagram 3: Example showing non-compliance with outlook space rule or parking**

### 3 What activity status is a minor dwelling?

Once it has been confirmed that a proposed activity is a minor dwelling, the next step is to consider the standards set out in the relevant activity tables to determine whether a resource consent is required and what the status of that activity might be. Minor dwellings are provided for as summarised in Table 1 below.

For these activity statuses to apply, a number of standards must be satisfied and there can be no more than one minor dwelling on each site. Please consult the relevant zone rule and standards for a full list of requirements.

Minor dwellings are not provided for as a class of activity in the Low Density Residential Zone, Mixed Housing Suburban (MHS), Mixed Housing Urban (MHU) and Terrace Housing and Apartment Buildings (THAB) zones. Therefore, a minor dwelling is a non-complying activity in these zones as an 'activity not provided for' (A1 in the Activity Table in each zone). However, in reality, an applicant would ordinarily just propose normal dwellings.

Zones	Activity status of a minor dwelling	Standards (summary only, see relevant chapter for full list of standards that apply)
<a href="#">Single House Zone</a>	Permitted	<ul style="list-style-type: none"> <li>- maximum floor area standard applies (65m<sup>2</sup>)</li> <li>- the minor dwelling must provide sufficient outdoor living space</li> <li>- no more than one minor dwelling per site</li> </ul>
<a href="#">Large Lot Zone</a>	Restricted Discretionary	<ul style="list-style-type: none"> <li>- maximum floor area standard applies (65m<sup>2</sup>)</li> <li>- the minor dwelling must provide sufficient outdoor living space</li> <li>- no more than one minor dwelling per site</li> </ul>
<a href="#">Rural and Coastal Settlement zones</a>	Restricted Discretionary	<ul style="list-style-type: none"> <li>- maximum floor area standard applies (65m<sup>2</sup>)</li> <li>- the minor dwelling must provide sufficient outdoor living space</li> <li>- no more than one minor dwelling per site</li> </ul>
<a href="#">Rural zones</a> Production Mixed Rural Rural Coastal Rural Conservation Countryside Living	Restricted Discretionary	<ul style="list-style-type: none"> <li>- no more than one minor dwelling per site</li> <li>- yards setback requirement (refer Table H19.10.3.1)</li> <li>- max height 9m</li> <li>- site must be greater than 1ha</li> <li>- maximum floor area standard applies (65m<sup>2</sup>)</li> <li>- minor dwelling must share the same driveway access as the principal dwelling</li> </ul>



<a href="#">Waitākere Foothills zone (A37)</a> and <a href="#">Waitākere Ranges zone (A40)</a>	Permitted	<ul style="list-style-type: none"> <li>- no more than one minor dwelling per site</li> <li>- colour reflectivity requirements for exterior walls and roofs</li> <li>- maximum floor area standard applies (65m<sup>2</sup>)</li> <li>- minor dwelling must share the same driveway access as the principal dwelling</li> <li>- requirements on fencing, water tanks and driveway materials</li> <li>- max height 8m</li> <li>- yards requirement</li> <li>- building coverage requirements (Waitākere Ranges zone only)</li> </ul>
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**Table 1: Summary table for minor dwellings under different zones**  
(see relevant chapter for full list of standards)

## 4 What is included in the 65m<sup>2</sup> calculation?

All zones that provide for a minor dwelling as a specified activity contain the following standard:

*“A minor dwelling must not exceed a floor area of 65m<sup>2</sup> excluding decks and garages”*

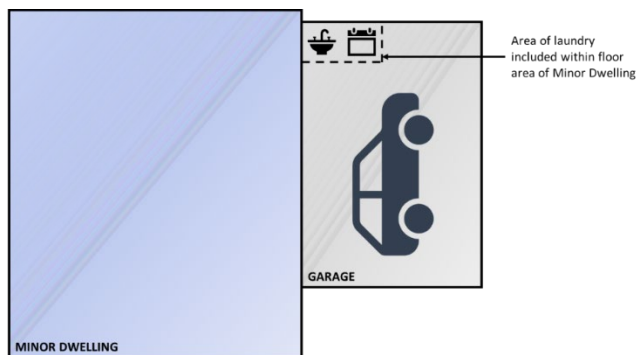
This standard is clear that decks and garages are excluded from the floor area calculation. All other internal space associated with the minor dwelling must be counted.

The council will apply the method set out below when calculating floor area for the purpose of determining compliance with the 65m<sup>2</sup> standard. While the AUP (OP) itself does not direct a specific approach, the council’s approach is based on an approach to interpretation that ties back to the purpose of the floor area standard.

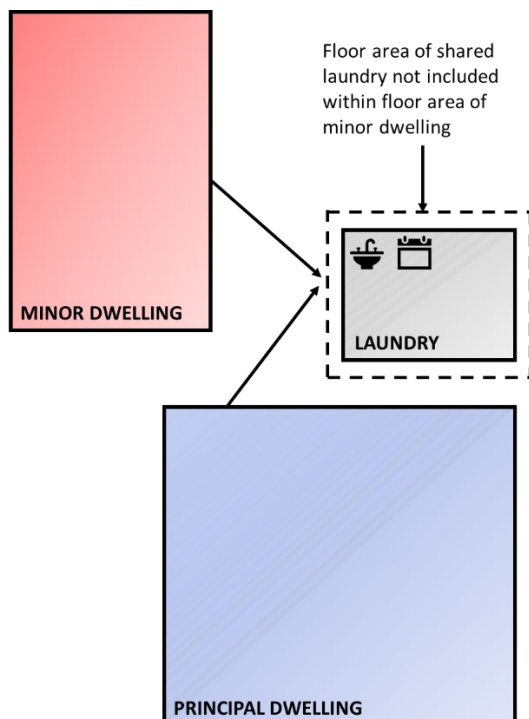
**Floor area calculation:** Floor area is taken from the exterior faces of the exterior walls; or from the centre line of an internal wall separating the minor dwelling from another building.

**Laundry in an associated garage:** Where a minor dwelling's laundry is located within an associated garage (Diagram 4), the laundry area is included within the floor area calculation, but the balance of the garage is not. Where this occurs the floor area calculation must include the space taken by the tub and clothes washer and the space to stand directly in front of those facilities. This will likely cover only 2 to 3m<sup>2</sup> but will depend on the design of those areas.

**Laundry shared with the principal dwelling:** Where the minor dwelling shares a laundry with the principal dwelling on site (i.e., that laundry must be located in an accessible shared space, see Diagram 5) then that laundry space is attributed to the principal dwelling. It does not form part of the floor area calculation of the minor dwelling.



**Diagram 4: Floor Area of laundry included within floor area calculation of minor dwelling**



**Diagram 5: Area of laundry not included within floor area of minor dwelling**

### **Stairways:**

Where an internal stairway separates the minor unit from a principal unit or an area not part of the minor unit, such as a garage, 50% of the area of the stairway shall be included within the 65m<sup>2</sup> calculation.

## **5 Can a new site be created for a minor dwelling?**

### **Urban:**

**Yes** – if the site meets the minimum lot size. For subdivision in all residential zones, (Subdivision - Urban) activity table E38.4.2 applies. Rule E38.4.2(A26) provides for subdivision of land resulting in the separation of a minor dwelling from its principal dwelling where both the proposed new lots comply with the minimum site size requirement for subdivision in the applicable zone as a RDA.

**No** – if the site does not meet the minimum lot size. Subdivision of a minor dwelling from the principal dwelling in residential zones where the proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone is a prohibited activity as specified at rule E38.4.2(A27). As set out in [s87A\(6\)](#) of the RMA, no application for such a subdivision can be made.

If an applicant attempts to lodge an application for such a proposal, the council is not rejecting the application under [s88\(3A\)](#), but it is returning the application (and marking it on our computer system as lodged in error) under [s87A\(6\)\(a\)](#) as no application can be made.

### **S87A Classes of activities**

*(6) If an activity is described in this Act, regulations (including a national environmental standard), or a plan as a prohibited activity, —*

*(a) no application for a resource consent may be made for the activity; and*

*(b) the consent authority must not grant a consent for it.*

There is a two-step process that needs to be followed to achieve such a subdivision without it being prohibited.

An applicant must first change the status of a minor dwelling to a dwelling. This can be achieved in a few ways:

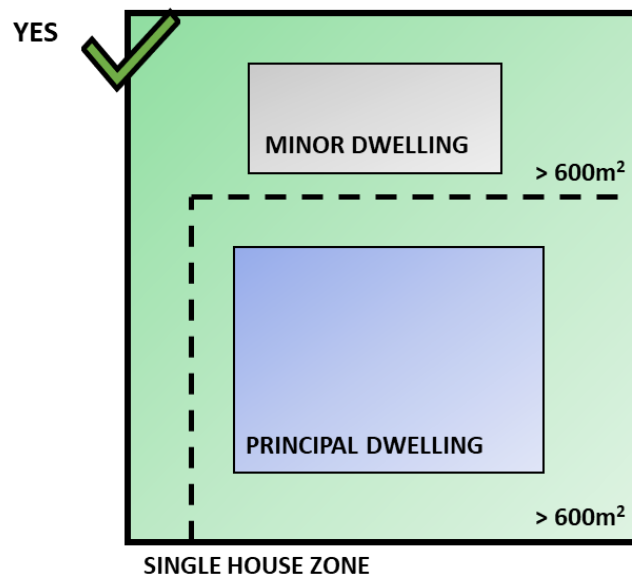
- by showing in the subdivision application that the building complies with all the relevant standards for dwellings in the applicable zone and can already function as a principal dwelling without any further resource consent. If there is an existing resource consent for a minor dwelling, this should be surrendered under [s138](#) of the RMA; or

- by applying for a Certificate of Compliance (CoC) (if the building complies with all the relevant standards for dwellings in the applicable zone); or
- by applying for a resource consent if some of the standards cannot be met.

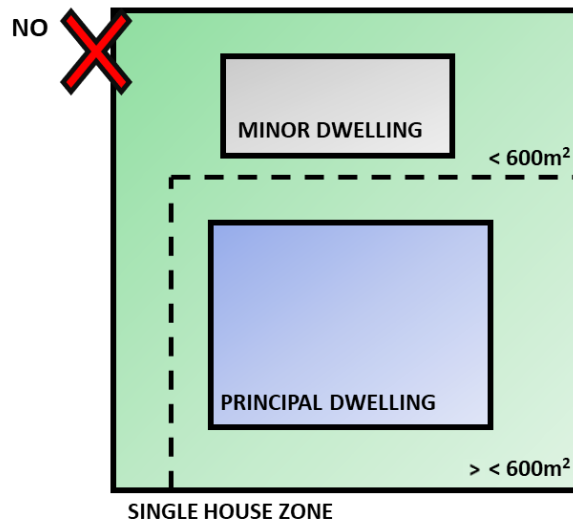
An application for land use consent will be assessed on its merits and with regard to the relevant standards and policy framework. See [Section 7](#) for more guidance.

Depending on how the minor dwelling was originally established, a s127 application to alter conditions on another resource consent may also be required, or an application under s221 to cancel or vary a consent notice may also be necessary.

Once a CoC has been issued, a permitted use established or a land use consent granted that establishes the minor dwelling as a dwelling, a subdivision consent can be lodged as it would no longer be a prohibited activity. Note that depending on the specifics of the land use consent, it may need to be given effect to before an application for subdivision can be lodged.



**Diagram 6: Subdivision can occur**



**Diagram 7: Subdivision cannot occur**

### Rural:

**No** – under rules E39.4.2(A26) and E39.4.5(A35) the subdivision of a minor dwelling from the site on which the principal dwelling is located is a prohibited activity. This means that it is not even possible to make an application for subdivision as the activity status is prohibited and the council cannot accept such an application for processing under [s87A\(6\)\(a\)](#) of the RMA.

### Waitākere Foothills zone and the Waitākere Ranges zone:

**Yes** – if the site meets the minimum lot size. Rule E39.4.5(A37) (any subdivision not otherwise provided for) enables the potential subdivision of land resulting in the separation of a minor dwelling from its principal dwelling where both the proposed new lots comply with the minimum site size requirement for subdivision in the applicable zone as a discretionary activity.

**No** – if the site does not meet the minimum lot size. Rule E39.4.5(A35) prohibits subdivision of land resulting in the separation of a minor dwelling from its principal dwelling where either or both proposed sites do not comply with the minimum site size requirement for subdivision in the applicable zone. This means that it is not even possible to make an application for subdivision as the activity status is prohibited and Council cannot accept such an application for processing under [s87A\(6\)\(a\)](#) of the RMA.

## **6 Can a minor dwelling that existed on 30 September 2013 be converted into two dwellings?**

**No** – The residential zones conversion rules (e.g., rule H3.4.1 (A4)) allow for the conversion of a principal dwelling existing as of 30 September 2013 into two dwellings as a permitted activity. However, this rule does not apply to minor dwellings.

## **7 Can a minor dwelling be converted into a principal dwelling to enable subdivision?**

**Yes, potentially** – Conversion of a minor dwelling to a principal dwelling is possible provided the dwelling can comply with all relevant rules and standards for dwellings such as outdoor living space, outlook etc. within the relevant zone.

Where through the process of conversion, the relevant standards for dwellings are not complied with, a resource consent will be required in accordance with the relevant zone rules and standards and assessed on its merits. In some situations, for example in the Single House Zone or Rural Zones, it could be a non-complying activity as the conversion would then result in more than one dwelling on the site.

Once the dwelling has been established as a principal dwelling rather than a minor dwelling by way of resource consent or as a permitted activity (including where a Certificate of Compliance has been obtained), the subdivision rules for minor dwellings would fall away (i.e., the site would no longer contain a minor dwelling). The general subdivision rules would then apply.

## **8 Can there be a home occupation in a minor dwelling in addition to one located in a principal dwelling?**

**No** – While the rules for home occupation activities in each of the zones do not specify that the home occupation activity must be located in a principal dwelling, or indeed in a dwelling, only one home occupation activity per site is enabled.

## 9 The precinct does not provide for minor dwellings, what activity status are they?

Most precincts do not provide for minor dwellings, they generally only provide for dwellings. Therefore, other activity tables will need to be consulted.

Some precincts have a 'catch all' in their activity table for 'Activities not provided for', but many do not. If a precinct does not provide for minor dwellings and has the 'catch all' then a minor dwelling would be whatever activity status is given to 'Activities not provided for'. If no 'catch all' rule is contained within the precinct activity table, then the activity table from the underlying zone for the status of minor dwellings will apply.

## 10 Assessment of applications where a proposed minor dwelling infringes the floor area standard

### Urban:

A key matter that planners need to address is where a resource consent application is made for a minor dwelling that exceeds the 65m<sup>2</sup> floor area standard. This matter involves not only assessing the environmental effects arising from the proposal, but also considering the policy context. The approval of larger minor dwellings potentially undermines the integrity of the plan.

Where there is a minor dwelling rule, [C1.9\(3\)](#) of the AUP(OP) sets out the matters that council will restrict its discretion to when assessing these applications. As well as objectives and policies relevant to the standard, the purpose of the standard also needs to be considered. In terms of the floor area standard for the Single House and Rural Zones (H3.6.4(1) and H2.6.4(1)), the following purpose is relevant:

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to provide accommodation that is limited in size and secondary to the principal dwelling on a site

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Limiting the size of the minor dwelling is therefore a key aspect of the standard. This reinforces the secondary nature of minor dwellings. While larger minor dwellings can still have a secondary relationship to a principal dwelling, their size may challenge the purpose of the 65m<sup>2</sup> floor area standard.

Key considerations will also include relevant objectives and policies. The relevant provisions for the Single House Zone emphasise characteristics such as spaciousness. Where there are infringements to one or more standards such as site coverage in addition to an infringement of the minor dwelling floor area standard,

there might be grounds to refuse the application on the basis of adverse effects on the sense of spaciousness. However, where the minor dwelling complies with all standards, it may be harder to conclude that sense of spaciousness is compromised.

It's also important to note that many sites in the Single House zone are subject to the Special Character Overlay. In these cases, minor dwellings – whether under or over 65m<sup>2</sup> – will need to be assessed against the provisions of the overlay for new buildings. Special character then becomes an additional matter to consider.

### **Rural:**

In the rural zones (excluding the Waitākere Foothills Zone and Waitākere Ranges Zone), minor dwelling activities are restricted discretionary activities provided they comply with standard H19.10.11, which includes a floor area limit of 65m<sup>2</sup>.

If they do not comply with this standard, then they are a non-complying activity under rule H19.8.1(A28). As a non-complying activity, assessment is not limited to the matters over which discretion is restricted under H19.12.1(3) for minor dwellings less than 65m<sup>2</sup>. However, these matters provide a useful point of reference.

As a non-complying activity, an application should be assessed against the requirements of s104 of the RMA, and the specific considerations for non-complying activities in the 'gateway tests' under s104D.

Once a minor dwelling gets significantly larger than 65m<sup>2</sup>, the chances that there will be adverse effects on rural and coastal character may increase. However, the question of effects on character will always come down to a case-by-case assessment and a number of site-specific factors will be relevant.

Like the purpose of the minor dwelling standard in the Residential – Single House Zone, size limitation is an important consideration. It is important from both a policy and effects basis that minor dwellings are not only secondary to principal dwellings, but also limited in size. Although this relates partly to visual effects on rural character, it has another important aspect which relates to the overall intensity of development occurring in rural areas which ties back to character and amenity.

Although none of the rural objectives and policies directly relate to minor dwellings, a number of them are relevant. These include objectives and policies that relate to rural character and amenity, the avoidance of land fragmentation, reverse sensitivity, and the productive use of land.

## **11 Other Resources**

See also the [Detached House + Minor Dwelling Unit guide](#) prepared by the Auckland Design Office.