

PRACTICE NOTE: DEPENDENT PERSON'S DWELLINGS (DPDs), SLEEPOUTS AND SECOND/SUBSEQUENT DWELLINGS (WAIKATO SECTION)



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DOES THIS AFFECT ME?

This note is relevant to anyone with land subject to the Waikato Section of the Waikato District Plan who has an existing dwelling on-site and wishes to construct an additional building with habitable rooms.

WHAT DOES IT MEAN FOR ME?

This note helps determine whether or not you will require a resource consent. It may also be useful in designing your build to comply with the conditions of a permitted activity rule if there is one for your zone.

1. Interpretation

When proposing an additional building with habitable rooms, the use and design of the building will determine whether it is a sleepout, a dependent persons dwelling (DPD) or a dwelling.

This Practice Note includes a flow chart (Section 6) and a table (Section 7) which are a guide to help interpret the district plan rules.

2. Dependent person's dwellings (DPDs)

Dependent person's dwelling is defined in the District Plan and needs to be constructed and used in accordance with either the District Plan permitted activity rule (if there is one) or a resource consent if compliance with the relevant permitted activity rules cannot be met.

The definition of DPD includes the following specific features;

- A gross floor area not exceeding 70m²
- Is built for occupation by a dependent relative of the occupiers of the principal dwelling on the same site
- Is ancillary to, and held in the same certificate of title as, the principal dwelling already in existence.

To be considered under the DPD rules, a proposal needs to comply with all the above points. A proposal that does not comply with any one of these points (that is, does not meet the District Plan definition of a DPD) cannot be considered for resource consent as a DPD. It will be considered a 'second dwelling'.

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3. Sleepouts

There is no definition of sleepout in the Waikato Section of the District Plan.

A sleepout is a general term used to describe a detached building which includes one or more habitable rooms. In practice, it does not need to include a bedroom and could be, for example, a detached rumpus room.

4. Differences between DPDs and sleepouts

A DPD

- is a self-contained dwelling that does not exceed 70m²
- is ancillary to the principal dwelling and is built for occupation by a dependent relative
- can contain bathroom facilities
- can contain a full kitchen
- may or may not be attached to the principal dwelling/garage.

A sleepout

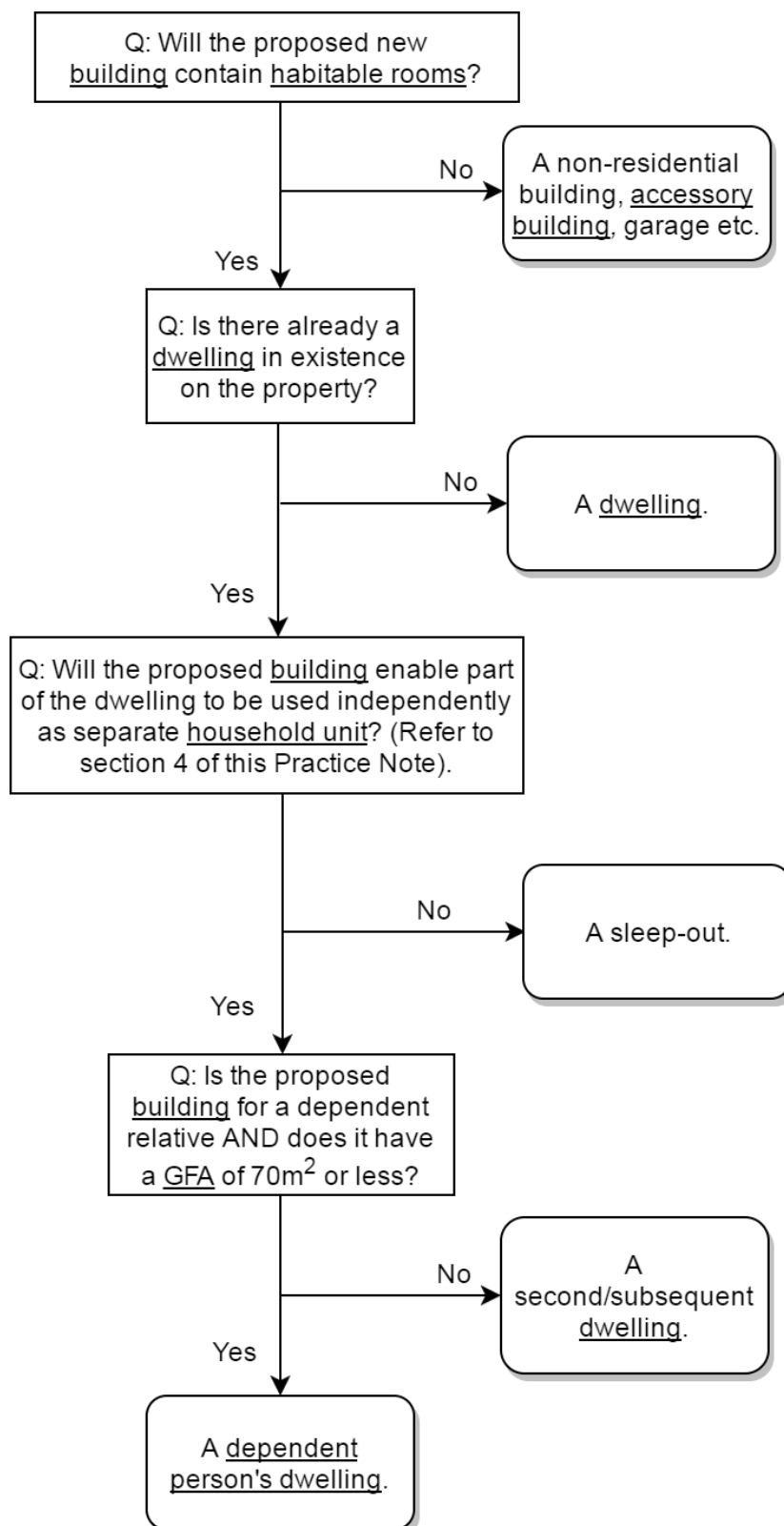
- is a detached building with one or more habitable rooms
- is considered part of the principal dwelling and together with the principal dwelling are managed as one household unit
- is not self-contained and relies upon communal facilities contained within the principal dwelling
- can contain bathroom facilities
- cannot contain a full kitchen
- can contain a kitchenette but only if the presence of the kitchenette does not enable the sleepout to be used independently as separate household unit (depending on the design, it is generally the combination of a kitchenette with nearby bathroom facilities that enable part of a building to be used independently as separate household unit).

5. Second/subsequent dwellings

An additional building with habitable rooms that is not a DPD or a sleepout will, by default, be considered a second/subsequent dwelling.

6. Flow chart to determine type of building

The flowchart below should be read in conjunction with the remainder of this Practice Note. The underlined terms are defined in the Waikato Section of the District Plan – Appendix P3.



7. Permitted activities in each zone

The table below outlines the activity status of dwellings for each zone.

Zone	Number of dwellings per Certificate of Title as a permitted activity	Subsequent dwellings per Certificate of Title provided for as:	DPD provided for as:	Zone-specific conditions for DPD rule
Living Zone	One	Discretionary activity	Permitted activity	<ul style="list-style-type: none"> there is only one dependent person's dwelling on the site, and it shares an outdoor living court with the main dwelling on the site, and the site contains a net site area of at least 900m²
Business Zone	One	Discretionary activity	Permitted activity	No zone-specific conditions
Coastal Zone	None (controlled activity for one dwelling, or two if the title contains at least 40ha)	Discretionary activity	Discretionary activity	<ul style="list-style-type: none"> there is only one other dwelling on the site, and there will only be one dependent persons dwelling on the site, and it is within 20m of the main dwelling on the site, and it shares an outdoor living court with the main dwelling on the site, and it shares a single driveway access with the main dwelling on the site, and there is no more than a single car garage with a maximum gross floor area of 24m² associated with the dependent person's dwelling.
Country Living Zone	One	Discretionary activity	Permitted activity	<ul style="list-style-type: none"> there is only one dependent person's dwelling on the site, and it is within 20m of the main dwelling on the site, and it shares an outdoor living court with the main dwelling on the site, and within an Airport Noise Outer Control Boundary, the dependent person's dwelling is contained within the main dwelling.
Rural Zone	One, or two if the title contains at least 40ha	Discretionary activity	Discretionary	<ul style="list-style-type: none"> there is only one other dwelling on the site, and there will only be one dependent person's dwelling on the site, and it is within 20m of the main dwelling on the site, and it shares an outdoor living court with the main dwelling on the site, and it shares a single driveway access with the main dwelling on the site, and within an Airport Noise Outer Control Boundary, the dependent person's dwelling is contained within the main dwelling on the site and there is no more than a single car garage with a maximum gross floor area of 24m² associated with the dependent person's dwelling.
Industrial Zone	All residential activities are prohibited except for a dwelling for a caretaker or security personnel and activities in Schedule 24A (relating to 14 Herschel Street, Ngaruawahia)			
Pa Zone	Multiple dwellings provided for as permitted activities if; connected to reticulated wastewater and an average site area of at least 300m ² per dwelling, or, if not connected to reticulated wastewater and an average site area of 2500m ² per dwelling. Dwellings with average site areas smaller than this become a discretionary activity.			
Recreation Zone	Any activity that complies with all the effects and building rules is a permitted activity if it is identified and carried out in accordance with a Reserve Management Plan approved under the Reserves Act 1977, is informal recreation, is a temporary event or it is a network utility. Activities that do not fall under this become a non-complying activity.			

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8. Frequently asked questions about DPDs

Are Development Contributions payable?

The 2015 Development Contributions Policy states that

Minor dwelling units (“granny flats”) shall be assessed at 0.5 HEUs each. However, if no separate connections are required (for water, wastewater or stormwater) the fee shall be waived for each such service.

The 2015 Development Contributions Policy defines Minor residential unit (“Granny Flats”) as

a secondary residential unit with a gross floor area that does not exceed 70 square metres, on a site which can be used either as a rental property or to house a dependent relative and is subservient to the larger residential unit on the site. The minor residential unit may be separate, or be a part of a main residential unit.

Refer to the current Development Contributions Policy to calculate the dollar amount of development contributions payable.

What are the size limits?

To comply with the definition of a DPD, the Gross Floor Area (GFA) must not exceed 70m². The GFA of any garage associated with a DPD is not included in this total, unless household facilities are contained within it (see note below).

The Rural and Coastal Zones have an additional condition in the DPD rule which states:

there is no more than a single car garage with a maximum gross floor area of 24m² associated with the dependent person's dwelling.

This means for a DPD to be assessed as a discretionary (rather than non-complying) activity in the Rural and Coastal Zones, it needs to be one 70m² dwelling and one (attached or detached) single car garage with a maximum GFA of 24m².

Where does the GFA start and stop?

It is generally simple to determine the GFA if the DPD is detached. This is done using the definition of GFA in the District Plan. It can be difficult to determine the GFA of the DPD if it is attached to the principal dwelling and has internal access/some shared areas. The intent of the DPD is to enable the occupants of the principal dwelling to be able to support a dependent relative. However it is also essential that any design that attaches the DPD to the principal dwelling does this in such a way that there are two clearly defined areas that make up the principal dwelling and the DPD. It is important that the distinguishing feature between these two dwellings does not become blurred to the point that in effect two large dwellings are created. Separation by a garage is often a good way of achieving two clearly defined areas.

What is the GFA if I have a wing-wall, deck or carport?

The following general principles help when calculating the GFA of a DPD:

- A detached pole carport with no external walls is not included in the GFA.
- A lean-to carport with only one external wall is not included in the GFA.
- Uncovered decks do not contribute to the gross floor area of a DPD.
- Covered decks or patio areas will contribute to the GFA if by design they have external walls that enclose any part of the DPD.
- Wing-walls will contribute to the GFA if by design they have external walls that enclose any part of the DPD.

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Can I increase the living area by putting some household facilities (eg the laundry) in the garage?

It is possible to exclude areas from the DPD's GFA by placing some household facilities in the garage or relying on facilities shared with the principal dwelling.

If a proposed DPD has laundry facilities, for example, in the garage, this area does not need to be included in the GFA of the DPD. The exception to this is that any rooms in the garage will need to be included in the GFA; a laundry room in the garage would count towards the GFA, however having just appliances and a tub with no walls would not count towards the GFA.

Are common facilities shared with the principal dwelling included in the GFA?

Facilities that are part of the principal dwelling but are used by the occupant of the DPD are generally not included in the GFA for the DPD.

If a proposed DPD will use the main laundry of the dwelling and this is, for example, in a shared garage, this area does not need to be included in the GFA of the DPD as it forms part of the principal dwelling.

What does a shared outdoor living court look like?

A common condition of the DPD rules in all zones is that the DPD shares an outdoor living court with the main dwelling on the site.

Although living court is defined in the Waikato Section of the District Plan, shared outdoor living court is not. The Concise Oxford Dictionary (9th ed.) defines 'share' as to use or benefit from jointly with others.

The practical interpretation of a shared living court is considered to be as follows:

- The living court is between the dwelling and the DPD, or directly alongside if there is no space between.
- The living court, by definition, needs to be directly related to the living areas of both the principal dwelling and the DPD and easily accessible.

The principal dwelling can have more than one outdoor living court so long as they are directly related to the living area/s.

Where it is not possible to share an outdoor living court, then a resource consent application to depart from this condition needs to provide sound justification why it is not possible to design the DPD around a shared living court.

Who is a dependent relative?

There is no definition of dependent relative in the Waikato Section of the District Plan. The Concise Oxford Dictionary (9th ed.) defines "relative" as a person connected by blood or marriage and defines "dependent" as unable to do without.

The DPD consent applicant (for both building consent and resource consent) must inform council who the DPD is for and why it is required, for example an elderly parent or dependent child that requires additional support. Council will assess applications on a case-by-case basis.

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Can I build a DPD first and then my principal dwelling?

It is possible to construct a small dwelling with a maximum GFA of 70m² on an empty section and then at some later stage “convert” it to a DPD and construct a larger dwelling. This sequencing does not avoid the need for a resource consent if one is required for a DPD in that zone.

A DPD and a dwelling can also be built concurrently. Again, this does not avoid the need for a resource consent if one is required.

Development Contributions (DCs) will be payable as per the current DC Policy. Generally speaking, if DCs were paid on subdivision, a vacant section will have a 1.0HEU DC credit. If a small (maximum GFA of 70m²) dwelling were constructed first, under the 2015 DC Policy the small dwelling would trigger a 0.5HEU charge and this would come out of the 1.0HEU DC credit. Building consent for the larger dwelling will trigger a 1.0HEU charge which will use the remaining 0.5HEU credit and prompt an additional 0.5HEU charge.

The District Plan and the DC Policy are subject to review and change and there is no guarantee that the rule frameworks will remain the same.

The paperwork for this type of project could all be done up front, however there are lapse dates for giving effect to resource consents (generally 5 years) and building consents (generally 12 months).

For zones with a DPD permitted activity rule (Living Zone, Country Living Zone, Business)

- If a small dwelling with a maximum GFA of 70m² is proposed as the first dwelling on a section, it will be assessed by council at the time of building consent application as the principal dwelling and not as a DPD.
- The small dwelling can be built without resource consent so long as it complies with the District Plan permitted activity rules for a dwelling.
- If, at a later time, a larger dwelling is proposed to be constructed, the building consent application will need to explain that the smaller dwelling will become a DPD and demonstrate that, on completion, the small dwelling will comply with the permitted activity rules for a DPD and that the larger dwelling will comply with the permitted activity rules for a dwelling. The applicant must inform council who the dependent person occupying the DPD will be. A resource consent will be required if the DPD cannot comply with the permitted activity rules.

For zones with no DPD permitted activity rule (all other zones)

- If a small dwelling with a maximum GFA of 70m² GFA is proposed as the first dwelling on a section, it will be assessed by council at the time of building consent application as the principal dwelling and not as a DPD.
- The small dwelling can be built without resource consent so long as it complies with the District Plan permitted activity rules for a dwelling.
- A resource consent will be required if, at a later time, a larger dwelling is proposed to be constructed. This resource consent application can be to authorise the DPD to remain following the construction of the main dwelling, rather than to consider the new dwelling as a second dwelling (provided the DPD complies with the zone requirements).

What is the impact of the Country Living Zone building coverage rules?

The Country Living Zone has a building coverage permitted activity rule that states:

27.47.1 Construction or alteration of a building is a permitted activity if:

(a) total building coverage does not exceed 10%, and

(b) the gross floor area of all accessory buildings does not exceed 80m².

The definition of accessory building states that a “garage that is integrated into and forms part of a dwelling is not an accessory building.” As the definition of dwelling includes a DPD, it holds that a garage that is integrated into and forms part of a DPD does not count towards the 80m² restriction.

There is no definition of ‘integrated into’ or ‘part of’ in the Waikato Section of the District Plan. Using definitions in the Concise Oxford Dictionary (9th ed.), a garage that is integrated into and forms part of a dwelling or a DPD is interpreted to mean it is attached and has internal access to the dwelling.

There is no definition of garage in the Waikato Section of the District Plan. The Concise Oxford Dictionary (9th ed.) defines ‘garage’ as a building or shed for housing a motor vehicle or vehicles.

For a building to be excluded from the 80m² permitted activity accessory buildings GFA limit, it needs to be a building for housing a motor vehicle or vehicles which is attached to and has internal access to the dwelling and/or DPD.

Can I have two DPDs?

While some zones allow a DPD as a permitted activity, resource consent is required in every zone if more than one DPD is proposed. An application would need to provide sound justification why more than one DPD is required.

Can I have two kitchens in one dwelling?

A dwelling cannot have more than one kitchen without resource consent. A dwelling can have one additional kitchenette that is secondary to the main kitchen – but it cannot enable part of the dwelling to be used independently as a separate household unit. The definition of dwelling means that there can be only one kitchen (and one additional kitchenette) per dwelling. The definition of kitchen allows a small scullery or utility room accessed only from the kitchen to be included as part of one kitchen.

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9. Relevant district plan definitions

The following definitions from the Waikato Section of the District Plan are essential to the interpretation and implementation of the District Plan rules and this practice note. Other definitions in the Plan may also be relevant.

Accessory building - Means a building, the use of which is incidental to the use of the principal land use or building on that site. A garage that is integrated into and forms part of a dwelling is not an accessory building.

Building - Has its meaning in the Building Act 2004, excluding: [a number of specific structures not relevant to this Practice Note. Refer to the District Plan for the full definition].

Building coverage - Means the proportion of the net site area that is covered by all buildings on a site, and includes any part of overhangs or eaves in excess of 0.75 metres in width, and required car parking spaces.

Dependent persons dwelling - Means a dwelling with a gross floor area that does not exceed 70 square metres, built for occupation by a dependent relative of the occupiers of the principal dwelling on the same site and that is ancillary to, and held in the same certificate of title as, the principal dwelling already in existence on the site.

Dwelling - Means a building for the occupation of a single household unit containing only one kitchen and may include an additional kitchenette. It includes a dependent person's dwelling.

Gross floor area (GFA) - Means the sum of gross area of all floors of a building, measured either from the exterior faces of the exterior walls, or from the centre line of walls separating two tenancies, as the circumstances may require.

Habitable room - Means any room in a dwelling, or a commercial or community building, apart from a room used solely for the purposes of an entrance, passageway, toilet, bathroom, laundry, garage or storeroom.

Household unit - Means any building or group of buildings, or part of any building or group of buildings, used or intended to be used solely or principally for residential purposes, and occupied or intended to be occupied exclusively as the home or residence of not more than one household.

Kitchen - Means any space, facility or surface for the storage, preparation and/or cooking of food, the washing of kitchenware, the disposal of wastewater, a food preparation bench, sink, oven, stove, hotplate or separate hob, refrigerator, dishwasher or other kitchen appliances. A small scullery or utility room accessed only from the kitchen is included as part of one kitchen. This definition excludes a microwave or an outside kitchen.

Kitchenette - Means a space which may contain a sink and does not meet the definition of a kitchen and is restricted to the purposes of tea and coffee making, drinks bar and the rinsing of utensils and does not include fixed food preparation facilities. A kitchenette shall be secondary to the main kitchen, and shall not enable part of the dwelling to be used independently as separate household unit.

Living court - An area of outdoor space directly related to the living area of a household unit, and for the household's exclusive use. It does not include parking, manoeuvring areas and buildings, but does include swimming pools, pergolas and similar open-framed structures.