

Converting non-habitable spaces to habitable spaces

Purpose:

This practice note serves as a guide to assist homeowners (and applicants) in understanding the applicability of Building Act Section 112 to residential properties when proposing to convert non-habitable space to habitable space.

Note: This practice note is limited to single household residential dwellings where people live as a single household or family (Classified Use SH). It also applies to associated buildings and spaces that are part of, or used in connection with, the primary dwelling — such as detached garages, workshops, and similar outbuildings used by the occupants of the dwelling (refer [Determination 2024/013](#)). These structures remain within SH use when their function and use are associated with the household.

This practice note does not apply to creating new separate residential units within an existing SH building (e.g. conversion of an internal garage to a separate minor dwelling).

Background:

As per MBIE determinations 2008/93, 2009/021, 2010/107, 2011/16 and 2018/044, the conversion of a non-habitable space to a habitable space is not considered a 'change of use' as long as the building remains as a 'single household unit' (SH) after the building work has been completed.

For reference, visit www.building.govt.nz.

However, a building consent is required for these alterations under the Building Act 2004. Section 112(1) sets out the compliance requirements for these types of alterations.

If building work was completed without consent or is not compliant with the Building Code, a notice to fix may be issued.

Refer to [AC1805](#) and Council webpage on [Certificate of Acceptance \(CoA\) for unconsented building work](#) for more information.

Understanding Section 112 Requirements:

Section 112(1) of the Act states that:

“A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration

(a) the building will comply, as nearly as is reasonably practicable, with the provisions of the [building code](#) that relate to—

(i) means of escape from fire; and

(ii) access and facilities for persons with disabilities (if this is a requirement in terms of [section 118](#)); and

(b) the building will, —

(i) if it complied with the other provisions of the [building code](#) immediately before the building work began, continue to comply with those provisions; or

(ii) if it did not comply with the other provisions of the [building code](#) immediately before the building work began, continue to comply at least to the same extent as it did then comply.”

In simpler terms, **Section 112 (1) (a) (i)** requires consideration of means of escape from fire when converting non-habitable spaces to habitable spaces in residential settings.

The aim is to make the building safer for occupants in the event of a fire than it was before the alteration. The required degree of improvement must be reasonable and proportionate to the proposed building work. For example, an upgrade to interconnected smoke alarms, at a relatively small cost, is a reasonable upgrade that would typically be expected.

Refer to Practice Note [AC2209](#) “Domestic smoke alarms” for more information.

Note that **Section 112 (1) (a) (ii) provision access and facilities for people with disabilities** does not apply to residential buildings and no action is required.

As per determination [2024/018](#), **section 112(1)(b)** requires that the building as a whole, if it complied with particular provisions of the building code before the building work began, must continue to comply, and if it didn't, must continue to comply to at least to the same extent.

For example, under **s.112(1)(b)(i)**, if a bracing wall is removed during an alteration to a post-1992 structure that was designed to NZS3604 and previously exceeded the required bracing demand, the revised layout may still comply provided the remaining bracing capacity continues to meet or exceed the structural requirements. A reduction in bracing units alone does not constitute non-compliance if the overall structural performance remains adequate and continues to satisfy the Building Code requirements.

Note:

- Council can only insist that a building be upgraded if the building is dangerous, earthquake prone or insanitary or where new construction forms part of the alteration work.
- All new work must fully comply in all respects with the Building Code which does not necessarily mean full alignment with a compliance document.

Definitions:

The use for an SH building is taken from the Building (Specified Systems, Change the Use and Earthquake-prone Buildings) Regulations 2005, specifically Clause 6 and Schedule 2.

Clause 6: Uses of buildings for the purposes of regulation 5

1. For the purposes of regulation 5, every building or part of a building has a use specified in the table in Schedule 2 (copied below):

Use	Spaces or dwellings	Examples
SH (Sleeping Single Home)	Detached dwellings where people live as a single household or family, including attached self-contained spaces such as granny flats when occupied by a member of the same family, and garages (whether detached or part of the same building) if primarily for storage of the occupants’ vehicles, tools and garden implements	Dwellings or houses separated from each other by distance

A “household unit” is defined in section 7 of the Act, as:

- a) means a building or group of buildings, or part of a building or group of buildings, that is—
 - i. used, or intended to be used, only or mainly for residential purposes; and
 - ii. occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- b) does not include a hostel, boarding house, or other specialised accommodation

While there is no definition for “household” in the Building Act or in the Building Code, determination 2018/044 defines this term as “a group of people living within this building to be considered a “single household” there must be evidence they live like a family with an atmosphere of trust and harmony which would lead to social cohesion”.