Auckland Unitary Plan

Practice and Guidance note

Urban Subdivision – Residential

1 Introduction

There are three types of subdivision in Auckland's urban areas – vacant site subdivision, subdivision around existing development and subdivision in accordance with a land use consent. Given the focus of the Auckland Unitary Plan (Operative in Part) ("AUP(OP)") on urban intensification, the second and third types of urban subdivision are becoming the most common form.

Associated with this strong move towards urban intensification is the increasing prevalence of apartment development. This prevalence is only likely to grow, especially given the requirements of the National Policy Statement – Urban Development. Subdivision associated with apartment development is usually via unit title subdivision, and this form of subdivision has its own unique considerations.

The urban subdivision provisions of the AUP(OP) are contained within Chapter E38. However, from time to time, planners will need to turn their minds to other chapters, such as to the relevant zone chapter, a precinct or overlay chapter, or the transport chapter (E27).

There are some particular challenges associated with working with Chapter E38. These include the relationship and timing of considerations for joint applications for land use and subdivision consent where the subdivision is contingent on the land use proposal.

This practice and guidance note ("PGN"):

- Outlines the different types of urban subdivision and some of their key characteristics and considerations, with a particular focus on subdivision in residential zones;
- Provides guidance on some of the key AUP(OP) considerations in processing concurrent land use and subdivision consent applications;
- Sets out how to understand and approach 'Future development effects'; and
- Provides guidance on considerations around processing subdivision applications based around existing development.

2 Types of Urban Subdivision

There are three common types of subdivision in Auckland's residential zones, each of which are outlined below.

2.1 Type 1 - Vacant site subdivision

In terms of AUP(OP) terminology, a 'vacant site subdivision' means a subdivision where a new site or sites are being created which:

- Does not have an existing dwelling located on it; and
- Is not based on a concurrent land use consent application, an unimplemented land use consent, or a certificate of compliance; and
- Complies with the relevant minimum net site area standards in E38.8.2.3

Although this type of subdivision application still occurs in Auckland in existing urban areas, it has become less common as large sites have become scarcer. Furthermore, the lack of density rules in most urban zones of the AUP(OP) incentivises higher density development led by land use proposals.

2.2 Type 2 - Subdivision around existing development + vacant site

In this scenario, an existing dwelling is located on a site. The applicant looks to create a new site around the existing dwelling, and then typically creates an additional vacant site (usually to the rear of the dwelling).

As the nature of the subdivision involves both existing development and a vacant site, two rules are triggered in table E38.4.2 Activity Table – Subdivision in Residential Zones (subject to meeting relevant standards) as follows:

Rule E38.4.2(A15):

(A15)	Subdivision around existing buildings and development complying with Standard E38.8.2.2	RD

Rule E38.4.2(A16), presuming parent site is less than 1ha:

(A16)	Vacant sites subdivision involving parent sites of less than 1ha complying with Standard E38.8.2.3	RD

In terms of rule E38.4.2(A15), in order to be classified as a restricted discretionary activity, the existing development (ie. an existing dwelling) has to meet either (a), (b) or (c) of standard E38.8.2.2(1):

E38.8.2.2. Subdivision around existing buildings and development

(1) Prior to subdivision occurring, all development must meet one of the following:

(a) have existing use rights;

(b) comply with the relevant overlay, Auckland-wide and zone rules; or

(c) be in accordance with an approved land use resource consent.

This means that:

- The existing dwelling does not comply with relevant rules and standards in the AUP(OP), but was lawfully established under a previous plan as a permitted activity (i.e., existing use rights); or
- The existing dwelling complies with relevant AUP(OP) rules (including relevant standards referenced by the activity rules); or
- The existing dwelling has been constructed in accordance with an approved land use consent under the AUP(OP) or a legacy plan.

The site that is being created around the existing dwelling does not need to comply with the minimum net site area requirements set out in standard E38.8.2.3. Note however that there are important considerations around this in some zones, such as Residential – Single House. See discussion further below in Section 6.1.

In terms of the vacant site, it must comply with the minimum net site area requirements for each of the zones as set out in standard E38.8.2.3. If it does not, then it is classed as a discretionary activity under rule E38.4.2(A17).

2.3 Type 3 - Concurrent application for land use and subdivision consent

This form of development has become common in Auckland due to the lack of density rules in most urban residential zones. It enables the creation of site sizes smaller than the minimum net site areas for vacant sites set out in standard E38.8.2.2, subject to a suitable development proposal set out through an application for land use consent i.e., the applicant gets the benefit of certainty.

Under this subdivision type, there are three common approaches:

- The applicant lodges an application for land use consent for an adjoined or standalone dwelling development (or a mixture of the two), with an accompanying request for a fee simple subdivision consent.
- The applicant lodges an application for land use consent for a development (usually multi-unit apartments) with an accompanying request for a unit title subdivision consent.
- The applicant seeks a certificate of compliance under s139 of the Resource Management Act 1991 ("RMA") for a permitted activity land use proposal, which if issued, is then treated as a resource consent under s139(10). A subdivision consent is sought at the same time, predicated on the development shown in the certificate of compliance (usually three or less dwellings in the Residential – Mixed Housing Suburban or Urban Zones).

There are a number of practice issues and challenges associated with this type of subdivision. These are addressed in the next section.

3 Guidance on processing applications for land use and subdivision consents

3.1 Meaning of 'in accordance with an approved land use resource consent'

Standard E38.8.2.1(1) states that any subdivision relating to an approved land use consent must comply with that resource consent. This standard applies to rule E38.4.2(A14).

For the purposes of this rule and standard, the council interprets *'approved land use consent'* as a resource consent that includes a use and associated development in the activity table in the relevant zone or precinct (whether permitted or requiring consent).

This includes a consent where the zone activity (e.g., dwellings) is permitted and meets the relevant standards (as demonstrated on the plans) but some associated aspect, such as vehicle access requires resource consent.

It cannot just be an approved land use consent for general site establishment earthworks (as an example) with no direct connection to zone activities.

The intent of the rule and standard is to ensure that the subdivision only occurs on the basis of a specific land use resource consent and its conditions being complied with. The acceptability of the subdivision is entirely predicated on this occurring. Importantly,

this means that the boundaries proposed in the subdivision must reflect the positioning of the buildings approved in the land use consent, and the provision of outdoor living space, outlook, access, and parking as required by the AUP(OP) standards.

The boundaries will logically follow the building layout, design and dimensions approved in the land use consent.

3.1.1 What are some examples of a non-compliance with the land use consent at time of subdivision?

One example of a non-compliance could be where a boundary for a site proposed in a subdivision reduces the size of the outdoor living space to a size that is less than what was approved in the land use consent. In this scenario, the subdivision application would need to be assessed as a discretionary activity under rule E38.4.2(A32), as it would no longer be complying with the land use consent.

Another example of a non-compliance is where a proposed subdivision effectively reduces the dimensions of what was a compliant outlook space in the land use consent, or places the outlook space over what becomes an adjacent site. In this scenario, the subdivision application would also need to be assessed as a discretionary activity under E38.4.2(A32), as it would no longer be complying with the land use consent.

Note that this last scenario would not apply where the outlook space is over a future JOAL or right-of-way, which the proposed site has a legal right to. This is because the land use outcome will remain the same.

In both of the scenarios above, an applicant may choose to pre-empt the future subdivision (even if applied for concurrently) and propose outdoor living space or outlook space areas that do not meet the minimum required dimensions. Doing so ensures that the effects can be considered as part of the land use consent, and if granted, an applicant could then utilise rule E38.4.2(A14) as a restricted discretionary activity.

For the avoidance of doubt, non-compliances to yard and coverage standards that are created as a result of a subdivision are not treated the same as the scenarios above. These non-compliances are considered when assessing the proposed subdivision against the assessment criteria at E38.12.2(6)(a)(i). This is where 'future development effects' can come into play – see Section 5.

3.1.2 The entire land use proposal is permitted – can a subdivision still be applied for under rule E38.4.2(A14)?

Yes, this rule can still apply where dwellings (and any associated works such as earthworks and vehicle access) are permitted – for example, three or less dwellings in the Residential – Mixed Housing Suburban and Mixed Housing Urban Zones, complying with all other relevant rules and standards.

In this case, an applicant would need to apply for and receive a certificate of compliance under s139 of the RMA in order to utilise rule E38.4.2(A14).

Note that a building consent approval cannot be relied upon for the purposes of this rule.

3.2 Applying residential zone and transport provisions in Chapter E38

3.2.1 Standard E38.8.1.1(1)

This standard requires that the access and manoeuvring requirements set out in Chapter E27 – Transport of the AUP(OP) are met in relation to any subdivision.

Compliance with this standard and the words '…*meet the requirements of E27 Transport*' will mean one or more of the following:

1. The subdivision itself complies with Chapter E27 and there is no resource consent requirement under that chapter (or the access and manoeuvring will be a permitted activity);
2. There is an existing land use consent granted (including under the E27 Transport rules relating to access and manoeuvring), that land use consent will precede the subdivision activity taking place, and any infringement is not exacerbated by the proposed subdivision; and/or
3. There are existing use rights relating to access and manoeuvring (when the subdivision is around existing development), and the existing use rights are not extinguished or otherwise affected by the proposed subdivision.

If compliance is not met in accordance with the above, a discretionary activity subdivision resource consent will be required under rule E38.4.2(A31).

3.2.2 Standards relating to Access to rear sites

What constitutes a 'rear site'?

A rear site is defined in Chapter J1 as a site with a frontage (being the boundary line on which the site adjoins a road and any state highway excluding motorways) of less than 7.5m to a legal or private road.

A jointly owned access lot (JOAL) or common accessway subject to a right-of-way easement will not constitute a legal or private road.

Also consider the definition of 'site' in Chapter J1. For example, 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. This means that for a freehold stratum subdivision (for example), where new sites have three-dimensional titles, all such lots will constitute one site. This may be determinative of which of the above rear site standards apply, in terms of the number of new 'sites' being created.

Standard E38.8.1.2(1) – number of rear sites served by an accessway

Standard E38.8.1.2(1) states that a single JOAL or right-of-way easement must not serve more than ten proposed rear sites.

This includes JOALs and rights of way that cater for pedestrians only.

Management of shared accessways can become problematic in larger subdivisions, with issues such as parking. Furthermore, the AUP(OP) promotes housing to address and activate streets – this is potentially more challenging to achieve where a large number or rear sites are accessed off a JOAL or right of way.

Where a subdivision proposes that more than ten rear sites will be served by a single JOAL or right of way, a discretionary activity subdivision resource consent will be required under rule E38.4.2(A31).

The application should be carefully assessed against the relevant objectives and policies in the chapter. This includes policy E38.3(1), which links back to the policies of the residential zones (and their focus on activation and surveillance of streets), and policies E38.3(10) and (11) that relate to block and street design and layout.

Other important considerations include:

- Crime Prevention Through Environmental Design (CPTED) principles;
- Parking;
- Waste management;
- Emergency services;

- Lighting;
- Landscaping;
- Management regime;
- Pedestrian access and safety; and
- General traffic and associated safety risks.

Ongoing maintenance of the accessway, including lighting, landscape treatment, footpaths and carriageways will be required in perpetuity via an incorporated society or other shared entity. This is to avoid the risk that the level of upkeep will diminish overtime, creating unsafe and poorly functioning accessways.

Pedestrian access is also an important consideration. Refer to further discussion below under 'Standard E38.8.1.2(3) – pedestrian access to rear sites'.

Where it is apparent that the access – either existing, or approved under a land use consent – has been designed in a way that generally takes into account the design considerations listed above, then this access design may well be acceptable as an infringement of standard E38.8.1.2(1) in the subdivision application. The main focus will then be on ensuring that a management regime with appropriate legal protection is established for the accessway.

Note that the following are not included in the total rear site count for the purpose of determining the number of rear sites served under standard E38.8.1.2(1):

- Any existing rear sites
- Any rear sites that have their direct vehicular access to a formed legal road (only)
- Any front or corner sites

Standard E38.8.1.2(2) – design of access to rear sites that do not have direct vehicular access to a formed legal road

There is some overlap between the requirements for access under E38 and E27. Some of the requirements for access to rear sites for subdivision are different or more restrictive than the access requirements under Chapter E27 – Transport.

Standard E38.8.1.2(2) applies to both vacant lot subdivision, as well as subdivision around an existing development and subdivision in accordance with an approved land use consent.

If the standard is not complied with, a discretionary activity subdivision resource consent will be required under rule E38.4.2(A31).

A suitable arrangement for access confirmed through a land use consent may well be acceptable in terms of the consideration of an infringement of standard E38.8.1.2(2).

Note that the requirements within table E38.8.1.2.1 do not apply where there are more than 10 rear sites served by a JOAL or right-of-way easement.

Further, the following should not be included in the total rear site count for the purpose of determining the number of rear sites served under table E38.8.1.2.1:

- Any existing rear sites
- Any rear sites that have their direct vehicular access to a formed legal road (only)
- Any front or corner sites

Standard E38.8.1.2(3) – pedestrian access to rear sites

This standard requires that where six or more rear sites (existing and proposed) are served by an accessway, a separate pedestrian accessway must be provided.

The pedestrian accessway can be within the formed accessway, but it should be at least 1m wide, can include the service strip, and should be distinguished and separate from the vehicle carriageway through the use of a raised curb or different surface treatment.

This standard is important in terms of providing for pedestrian safety and also encouraging walking and cycling. The standard links back to Policy E38.3(16).

Where more than ten rear sites will be served by a single JOAL or right of way, the pedestrian accessway required under standard E38.8.1.2(3) may not be sufficient to achieve the purpose of Policy E38.3(16). A higher design standard may be necessary to ensure that the pedestrian accessway is safe.

Consideration should be given to the width and whether the pedestrian accessway can be safely located within the formed driveway or requires a dedicated corridor. This will depend on a range of factors, including:

- The number of pedestrians and vehicles the JOAL or right of way is intended to serve;
- Connectivity to the wider street network;
- Topography; and
- The overall length of the pedestrian accessway from the public road.

3.3 Bundling the assessment of land use and subdivision consent applications

The way that the AUP(OP) is written with regard to subdivision proceeding in accordance with an approved land use consent implies that there is a sequence where a land use consent first needs to be approved and then a subdivision application approved.

This sequence obviously applies where a land use consent is sought and approved separately to a subsequent, separate subdivision application (i.e., an application for the two consent types is not lodged together).

However, the same principle applies where an application is made for the concurrent consideration of land use and subdivision consents. The subdivision consent is still predicated on the basis of being in accordance with an approved land use consent under rule E38.4.2 (A14).

In these situations, there should be separate notification assessments and determinations, and separate consent decisions, all written, decided, and issued on a sequential basis.

3.4 Subdivision consent conditions tying back to an approved land use consent

Where a subdivision consent has been issued in accordance with an approved land use consent application under rule E38.4.2(A14), there is a clear AUP(OP) linkage between the two different decisions. That is, the subdivision application and decision has been predicated on the land use consent decision.

Accordingly, the subdivision consent must include a consent condition that requires that the subdivision is undertaken in accordance with the land use resource consent that it has been based on.

This condition will also require a consent notice to be registered against the titles for the new sites, to ensure that any future development or use of the lots will be in accordance with a land use resource consent. This is not just limited to the construction of new dwellings, but all aspects of the land use consent, including compliance with landscaping and open space requirements, maintenance of pervious areas, and any other specific conditions that may have been imposed. Future owners will need to familiarise themselves with any land use consent to which their site was based on.

It is important here to reinforce that the fundamental rationale for a permissive approach to subdivision regulation in many of the residential zones of the AUP(OP), including the lack of density standards, is that subdivision proceeds in accordance with an approved land use consent. Inherent in this subdivision approval is that a coherent design consistent with the expectations of the AUP(OP) – it's objectives, policies and assessment matters – is then realised 'on the ground' in accordance with an approved land use consent application.

The nature of some development projects is that there can be strong and fundamental inter-relationships and co-dependencies between the dwellings, outdoor areas,

storage/rubbish collection areas, access arrangements, and associated legal arrangements in terms of easements, rights of way, common ownership and implementation of infrastructure etc.

For these development projects, challenges can arise for the new owners of the individual properties to resolve. These include collectively addressing, in a co-ordinated manner, the inter-dependent development aspects mentioned above. These challenges can risk the ability of those owners to implement the development as consented or has the potential to result in development outcomes where built form coherence is diminished.

In some cases, these will be issues that these new owners will need to grapple with independently. Future owners should be ensuring that they have undertaken due diligence to understand the requirements of the development that they have entered into. In other instances where there is the potential for environmental effects should owners not be able to come together to resolve matters, you should consider the use of other appropriate conditions, such as requiring the establishment of common ownership societies (or similar legal entities), or Incorporated Societies where more than 15 new lots are proposed.

4 Staging

Chapter E38 anticipates that subdivisions may be carried out in stages. This can be a common approach where a subdivision involves the creation of a large number of sites and all necessary requirements relating to some sites can be practically completed ahead of other sites. The completion and sale of first stage sites can then help fund works required to deliver subsequent stages.

Standard E38.6.4 requires applicants to provide details of the proposed staging, which should include a separate scheme plan (with any necessary easements shown) for each stage of the subdivision.

Where the subdivision is predicated on an approved land use consent, the applicant should also identify which conditions of that land use consent are relevant to each stage. This is in line with the requirements of general rule C1.2(4) which apply to staging for applications generally.

When considering the proposed staging you will need to think carefully about what is required to ensure that each stage results in an acceptable outcome, including the site size, shape and layout, and the provision of infrastructure, access, planting and

reserves, noting that there is no obligation on an applicant to complete any subsequent stage. Hence each stage needs to be complete in its own right.

5 Future development effects

Sometimes a subdivision will create a lot (or lots) that contain existing/approved development that is above and beyond what would otherwise be enabled by the AUP(OP) as a permitted activity. The flipside of this is that a lot (or lots) may also contain development following subdivision that is substantially below what would be permitted by plan standards.

A future development effect of the proposed design and layout of the subdivision can arise where a lot owner would have the ability to undertake additional development without the need for resource consent, where that additional development would have otherwise exceeded the relevant standard over the parent lot.

The effect can be in relation to maximum impervious area, maximum building coverage and potentially the minimum landscaping area. Commonly it is the case where the proposed subdivision results in a disproportionate share of impervious area, building coverage or landscaping being contained within one or more sites i.e., some sites are below the relevant land use standard while others exceed it. This potential exists regardless of whether the land use consent included approval of infringements to standards such as the maximum impervious area standard on the parent site.

It is important to note that future development effects should not be regarded as being inherently adverse or positive. That is to say that the future effect is not always something to be avoided or controlled, and in some cases may enable a more efficient use of land. However as with any effect of the subdivision, the nature, scale and significance of that effect must be properly understood and considered in your assessment.

5.1 What scope exists to consider future development effects under the AUP(OP)?

Scope exists within Chapter E38 to consider future development effects resulting from subdivision. Of particular relevance, are the matters of discretion set out in E38.12.1, and in particular:

(6) subdivision around existing buildings and development; and subdivision in accordance with an approved land use resource consent:

(a) the effect of the design and layout of the proposed sites created.

(7) all other restricted discretionary activity subdivisions:

(a) the effect of the design and layout of sites to achieve the purposes of the zone or zones and to provide safe legible and convenient access to a legal road;

(b) the effect of infrastructure provision and management of effects of stormwater

(c) the effect on the functions of floodplains and provision for any required overland flow paths

Consideration should also be given to any objectives and policies in E38.2 and E38.3 that are relevant to these matters.

5.2 How to determine whether there are potential future development effects

Future development effects can result when either a subdivision is proposed in accordance with an approved land use resource consent or when subdivision is proposed around existing development (including where this also involves a vacant site).

In any of these subdivision scenarios you can apply the following steps for determining whether future development effects could be created:

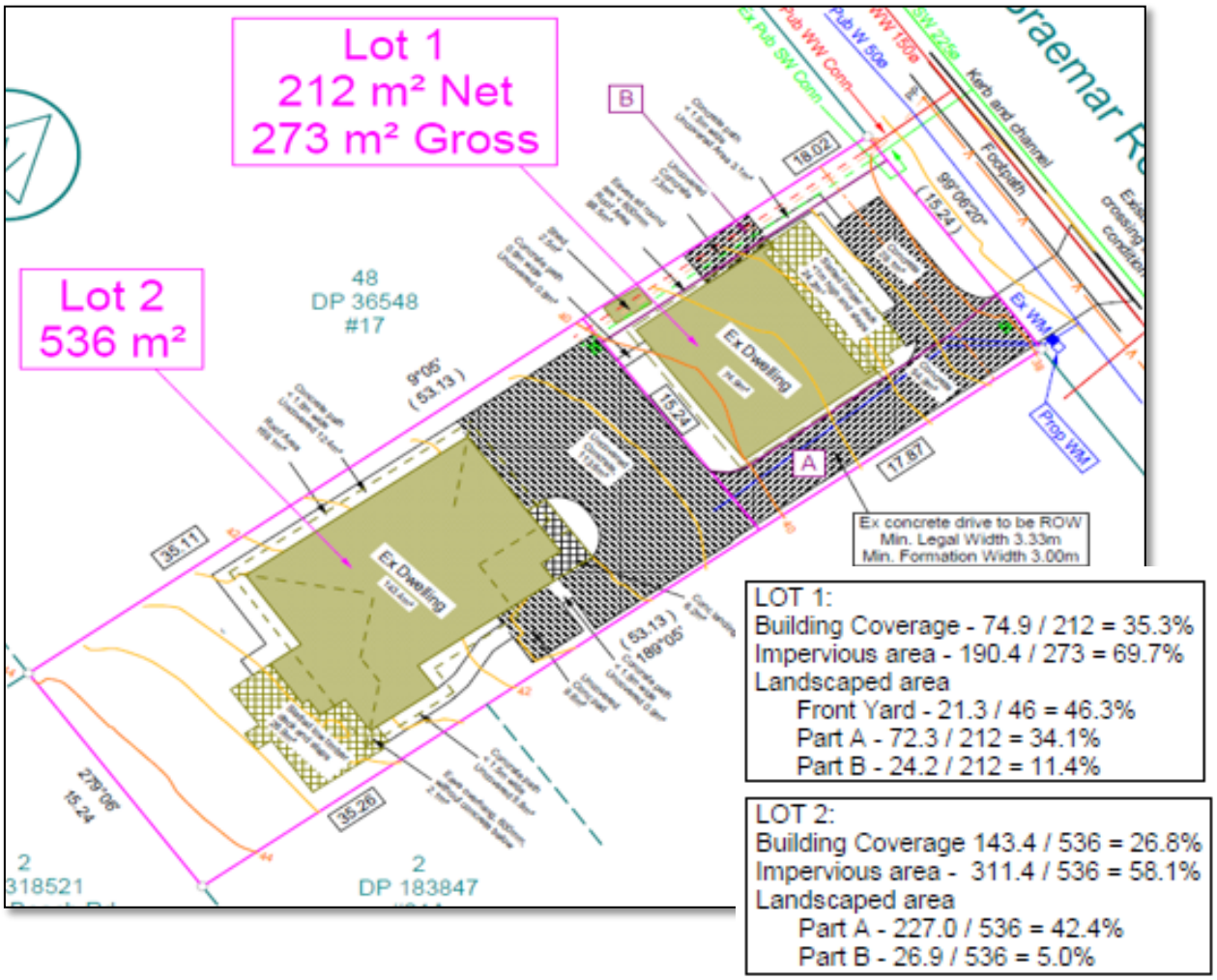
1. Identify the maximum building coverage and maximum impervious area in the relevant zone standards.
2. Calculate the maximum building coverage and impervious area permitted over the parent site.
3. Calculate the maximum building coverage and impervious area proposed and permitted on each of the proposed sites. If a site is to be vacant, assume the maximum permitted area is proposed.
4. Identify those sites where the proposed building coverage or impervious area is less than the maximum building coverage or impervious area permitted on that site (on an individual site basis).
5. For any sites identified in 4 above, would a future increase up to the permitted area result in non-compliance or increased non-compliance over the parent site? – If yes, there is the potential for there to be a future development effect.

There can in some instances be a potential future development effect created in relation to the minimum landscaping area, particularly where a large proportion of the

landscaping is contained within one site, and it is not otherwise required to be retained by a condition of the land use consent. The same steps above can be followed where this is a necessary consideration.

5.3 Example –subdivision around existing development (or subdivision in accordance with an approved land use resource consent)

The example on the following page shows the proposed subdivision of the 809m² parent site into two new sites with a right of way easement over the front site.



	Site area	Building coverage (max 40%)	Impervious area (max 60%)	Landscaped area (min 40%)
Parent site	809m²	218.3m² (27.0%) *Max allowed 323.6m²*	501.8m² (62.0%) *Max allowed 485.4m²*	350.4m² (43.3%) *Min required 323.6m²*
Lot 1	212m² (net) 273m² (gross)	74.9m² (35.3%) *Max allowed 84.8m²*	190.4m² (69.7%) *Max allowed 163.8m²*	96.5m² (45.5%) *Min required 84.8m²*
Lot 2	536m²	143.4m² (26.7%) *Max allowed 214.4m²*	311.4m² (58.1%) *Max allowed 321m²*	253.9m² (47.3%) *Min required 214.4m²*

In terms of building coverage, both lots 1 and 2 could (in the future) each increase their respective building coverages up to a maximum of 40% without requiring a resource consent for infringing the standard.

Lot 1 – 212m^2 x 0.4 = 84.8m²

Lot 2 – 536m^2 x 0.4 = 214.4m²

Total – 298.8m^2

However, as the total is less than 323.6m^2 (being 40% of the parent site) there is no future development effect for either Lot 1 or Lot 2 as a result of the proposed subdivision. Therefore, it is not necessary to impose a consent notice limiting building coverage on Lots 1 and 2.

In terms of impervious area, the proposed impervious area will exceed the maximum permitted area over the parent site by 16.4m^2 (and for the purposes of this example let's assume that this impervious area has already been authorised by a resource consent). Lot 1 will already exceed 60% maximum impervious area so any future increase in impervious area on Lot 1 will require resource consent for infringing the standard. Therefore, there would be no future development effect for impervious area on Lot 1 (that could be undertaken as a future permitted activity).

However, Lot 2 could potentially add an additional 10.2m^2 of impervious area without exceeding the 60% maximum impervious area. The ability for this impervious area to be created in the future without a further resource consent could have a potential effect that you need to consider. In particular, this will require consideration of any flooding and infrastructure capacity constraints that may be present and ways in which the effect could be mitigated (such as additional stormwater detention). If there is a concern with the level of adverse effect (i.e., potentially more than minor) then an ongoing condition

(consent notice) to limit the impervious area on Lot 2 may be appropriate to avoid the effect.

The standard conditions manual sets out the basic structure for how a future development effect condition should be worded.

6 Other Guidance

6.1 Creation of small sites around existing development

Rule E38.4.2(A15) provides for the potential creation of a new site around an existing dwelling, and this is not subject to compliance with the minimum site size requirements.

However, this form of subdivision is a restricted discretionary activity, and a relevant consideration will be the adverse effects generated by the subdivision on character and amenity (even without a minimum site size applying). This tends to be a greater consideration in the Residential – Single House Zone ("SHZ") than in the Mixed Housing Suburban and Urban residential zones, given the central importance of existing character in this zone.

Policy E38.3(1) is particularly relevant in this respect:

E38.3. Policies

(1) Provide for subdivision which supports the policies of the Plan for residential zones, business zones, open space zones, special purpose zones, coastal zones, relevant overlays and Auckland-wide provisions.

In the case of sites in the SHZ, subdivision around existing development should be considered against the relevant policies of the zone[1]. The most relevant policy is H3.3(1):

H3.3. Policies

(1) Require an intensity of development that is compatible with either the existing suburban built character where this is to be maintained or the planned suburban built character of predominantly one to two storey dwellings.

A case-by-case assessment is required as to the suitability of such proposals. As a general approach, the further below 600m^2 the proposed site area is around the existing development, the greater the scrutiny that should be given to the proposal.

[1] As provided for by rule C1.8(1)

The existing character of adjacent sites and the surrounding area is an important consideration. For example, if neighbouring properties have been subdivided down to sites less than 600m^2, then this might potentially support the case for the creation of a lot around existing development that is less than 600m^2 in area.

6.2 Application of rules across different activity tables in Chapter E38

Subdivision applications are often made to council where reasons for consent are triggered under Table E38.4.1 – Subdivision for specific purposes, but also under subsequent tables.

The precis text to Table E38.4.1 states:

*The activities listed in Table E38.4.1 Subdivision for specific purposes **may only comprise a specific element of a subdivision activity**. The other elements of a subdivision may also be listed in Tables E38.4.2, E38.4.3, E38.4.4, and E38.4.5. Where the proposed subdivision activity fits into activities listed in Table E38.4.1 Subdivision for specific purposes and those listed in tables E38.4.2, E38.4.3, E38.4.4, and/or E38.4.5 then the activity status listed for each activity in each table also applies.*

(bold underline is added emphasis)

The words '*may only comprise a specific element of a subdivision activity*' are important to note. Sometimes the subdivision activity will be entirely encompassed by the rule in Table E38.4.1. Other times however the rule in Table E38.4.1 will encompass only a part of the subdivision activity, and another rule from a subsequent table will also apply.

A few of the more common scenarios are explored below.

Cross lease, company lease, unit title and strata-title subdivision

Table E38.4.1 lists the following types of subdivision as controlled activities:

> (A4) Cross lease, company lease, unit title and strata-title subdivision
>
> (A5) Amendments to a cross lease or unit title, including additions and alterations to buildings, accessory buildings and areas for exclusive use by an owner or owners

Each of these activities will by definition relate to either an approved land use resource consent and/or will be around existing buildings and development.

As such, neither rules E38.4.2(A14) or (A15) will apply where these forms of subdivision are proposed.

Further, these forms of subdivision will not create new sites, per the definition of 'site' under Chapter J1 of the AUP(OP). As such, none of the other rules in Table E38.4.2 will apply.

Other rules from Table E38.4.1 may apply however, including but not limited to subdivision establishing an esplanade reserve or strip (or any waiver/reduction), and subdivision of land within natural hazard areas.

Conversion of a cross lease to a fee simple title

The conversion of a cross lease to a fee simple title (rule E38.4.1(A3)) will create new sites, per the definition of 'site' under Chapter J1 of the AUP(OP).

Therefore, while rules E38.4.2(A14) and (A15) will not apply – as rule E38.4.1(A3) does encompass the entirety of the subdivision activity in regard to those rules – there are other rules in table E38.4.2 that could be applicable, in particular those relating to the Subdivision Variation Control, Significant Ecological Areas and the Special Character Areas Overlay.

This is because the rules and standards associated with the rules applying to subdivision within these control/overlay areas expressly refer to the creation of the new sites, which a conversion of cross lease to a fee simple title will do.

6.3 Application of more than one rule within an activity table in Chapter E38

Note that there will often be instances where more than one rule will apply within the same activity table in Chapter E38.

An example is where a subdivision is proposed around existing development in the Special Character Overlay – Residential. In this case, both rules E38.4.2(A15) and E38.4.2(A24) / E38.4.2(A25) will apply.

6.4 Subdivision applications involving minor dwellings

This form of subdivision is explained in Section 5 of the Minor Dwellings PGN.

6.5 Infrastructure Assessment for Subdivision Applications

Where subdivision is proceeding in accordance with an approved land use consent or around existing development, a network capacity assessment is not required, as it should have been addressed in the land use consent application, or the effects on the environment already exist (as the land use proposal is permitted or has existing use rights). However, where the subdivision application is for vacant lots, it is a relevant matter to consider, and an assessment can be requested.