



To: Chief Executives, City and County Councils,
Directors of Planning Services, City and County Councils,
An Bord Pleanála,

CC: Senior Planners, City and County Councils

Circular Letter PL 01/2018

9 February 2018

Re: Amendments to Exempted Development Provisions - Planning and Development (Amendment) Regulations 2018, Planning and Development (Amendment) (No. 2) Regulations 2018, and Planning and Development (Amendment) (No. 3) Regulations 2018

I am directed by Mr Damien English, T.D., Minister of State at the Department of Housing, Planning and Local Government with Special Responsibility for Housing and Urban Development to advise that he has recently made three new sets of regulations, with each coming into operation with effect from 8 February 2018.

The Regulations amend provisions in the Planning and Development Regulations 2001 (the Principal Regulations) concerning development that is exempt from the requirement to obtain planning permission, with each of the Regulations dealing with a specific type of development, as follows:

1. **Planning and Development (Amendment) Regulations 2018 (S.I. No. 29 of 2018)** - providing exemptions in relation to development by Irish Water for the purpose of the provision of water services;
2. **Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018)** - providing an exemption, for a period of time, for the change of use, and related works, of vacant commercial premises for residential purposes, and
3. **Planning and Development (Amendment) (No. 3) Regulations 2018 (S.I. No. 31 of 2018)** - amending the existing provisions relating to certain works undertaken by statutory undertakers authorised to provide a telecommunications service.

A copy of each of the three Regulations is enclosed for information.

Restrictions on Exemptions

Exempted development provisions are subject to restrictions set out in Section 4 of the Planning and Development Act. In addition, Article 6 and Schedule 2 of the Principal Regulations, which set out

certain classes of development which are exempt from planning permission requirements, have specific conditions or limitations which restrict the exemption. These are also subject to any general restrictions on exemptions as set out in Article 9 of the Principal Regulations.

As the Regulations referred to in points 1 and 3 above comprise permanent amendments to Article 6 and Schedule 2 of the Principle Regulations, these exempted development provisions are subject to the restrictions in Article 9 of the Principle Regulations.

However, the Regulations at point 2, which though permanent in nature can only be availed of for a temporary period, comprise of amendments to the changes of use provisions in Article 10 of the Principle Regulations and are not subject to the restrictions in Article 9 of the Principle Regulations. Therefore, these Regulations separately contain some of the restrictions from Article 9 that will also apply to the new exempted development provisions.

An overview of the key provisions of each set of Regulations is set out below.

1. Planning and Development (Amendment) Regulations 2018 (S.I. No. 29 of 2018)

S.I. No. 29 of 2018 relates to the provision of a number of exemptions for development works undertaken by Irish Water in the provision of water services, subject to conditions and limitations. These Regulations amend the Principal Regulations by the insertion of a dedicated new class of exempted development, Class 58, in Part 1 of Schedule 2 and by amending Article 5 to provide for a definition for 'associated accessories' in relation to pipes, water mains and such apparatus.

These exemptions will permit Irish Water to undertake works relating to its normal day to day operational activities without the need to obtain planning permission from the relevant local planning authority, similar to other statutory utility undertakers in the provision of electricity, gas and telecommunications.

The exemptions, which are subject to specific conditions and limitations, include works relating to:

- the maintenance and repair of existing water services pipes and water mains and associated apparatus;
- the installation of new pipes and water mains and associated apparatus including the provision of above ground apparatus such as kiosks and service connections, with restrictions;
- the provision of below ground pumping/booster stations/holding tanks, with restrictions;
- the provision of telemetry and telecommunications apparatus on water services sites, with restrictions;
- the provision of structures on water services sites for sampling and testing, with restrictions;
- the carrying out of remedial works in compliance with conditions of a certificate or licence issued by the Environmental Protection Agency under the Waste Water Discharge (Authorisation) Regulations 2007;
- the maintenance, repair or upgrading of water structures on a water services site, with restrictions;
- the installation of plant or equipment on a water services site as necessary to avert risk to public health or critical failure of infrastructure;
- the carrying out of emergency works to ensure the continued supply of essential water services;
- the provision of fences and gates etc. on water services sites, with restrictions; and
- the test drilling for public water supplies.

2. Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018)

A key objective of Pillar 5 of the Government's Action Plan for Housing and Homelessness – Rebuilding Ireland is to ensure that existing housing stock is used to the maximum degree possible and focuses on measures to use existing vacant stock to renew urban and rural areas.

Specifically, Action 5.9 of Rebuilding Ireland commits to reviewing planning legislation to allow the change of use of vacant commercial units in urban areas, including vacant or under-utilised areas over ground-floor premises, into residential units without having to go through the planning process. This proposal is also incorporated in Action 6 of the Action Plan for Rural Development.

The main objectives of the exemption are to facilitate the provision of increased and much needed housing supply, to maximise the use of vacant underutilised spaces and assist in the rejuvenation of inner-core urban areas.

Therefore, S.I. No. 30 of 2018 amends Article 10 of the Principal Regulations to provide an exemption for the change of use, and any related works, of certain vacant commercial premises to residential use without the need to obtain planning permission. The exemption applies to existing buildings that have a current commercial use with reference to Class 1, 2, 3, and 6 of Part 4 to Schedule 2 of the Principal Regulations.

The change of use, and any related works, must occur between when the Regulations come into operation on 8 February 2018 and 31 December 2021. In other words, while the exempted development permitted will be permanent in nature, the exemption can only be availed for a temporary period, concurrent with the lifetime of Rebuilding Ireland. In addition, the existing structure or part of the structure, which is the subject of the change of use, is required to be vacant for a period of two years immediately prior to when the development takes place.

A number of other conditions and limitations also apply, including:

- Related works shall primarily affect the interior of the building, with limited external works being permitted which are in keeping with the building and neighbouring buildings, including the provision of on-street access to upper floors, and alterations to existing ground floor shop fronts in respect of window and architectural details.
- Works to the ground floor of any structure shall not conflict with an objective in a development plan for the structure to remain in retail use, with the exception, as mentioned above, of works solely for the provision of on-street access to upper floors.
- No more than 9 individual residential units can be provided in a building, thereby keeping below the Part V social housing obligation threshold of 10 housing units.
- Minimum standards shall apply to residential units being developed such as minimum requirements in relation to overall floor areas, storage space requirements and the need for adequate natural light in living rooms and bedrooms.
- Works to a protected structure shall not be permitted unless a section 57 declaration has been issued by a planning authority to indicate the works will not affect the character or elements of the structure which has been identified for protection.
- Works for the provision of on-site wastewater treatment and disposal systems i.e. septic tanks, shall not be permitted under the exemption.

- Works shall not be permitted in a number of limited areas, such as areas of special planning control, areas to which special amenity area orders relate and within certain proximity distances of establishments to which the major accident regulations apply.
- A number of other general restrictions as set out in Article 9 of the Principal Regulations are identified as applying to this exemption. In addition, development must not contravene a condition attached to a permission issued under the Act, including any condition specifying the permitted use of the building concerned.

The Regulations also provide a definition within Article 10(6) for ‘habitable room’ being a room for living and sleeping purposes and ‘relevant period’ being the period during which the exemption will apply.

Notification Provision

A planning authority must be notified in writing of the details of the development at least 2 weeks prior to the commencement of the proposed change of use, and related works, and the notification must include information on the location and details of residential units being developed. A planning authority is required to:

- maintain a record of any notifications received,
- make the record publicly available online and at their office, and
- submit annual returns to the Minister detailing the notifications received.

[See Appendix 1 for a more detailed overview of the provisions of S.I. No. 30 of 2018.]

Planning Enforcement

Planning authorities are reminded of their statutory obligations under Part VIII of the Planning Act 2000 and the importance of a proactive approach to planning enforcement generally in this regard. Previous Departmental Circular Letter PL 6/2013 entitled Planning and Development (Planning Enforcement) Policy Directive 2013 refers.

In the context of this new change of use exemption, planning authorities are advised to put appropriate monitoring and inspection arrangements into place to ensure that exempted development notified to them under Article 10(6) fully complies with the specific requirements and standards that apply under the exemption. In putting in place such inspection arrangements, mechanisms should be put in place to ensure a co-ordinated approach between such planning inspections and wider building regulations and fire safety or other inspections (e.g. conservation) required in relation to the relevant wider consents.

Compliance with Building Regulations

In this context, as with the planning system generally, neither the granting of planning permission or the provision of an exemption from the requirement to obtain planning permission, removes the requirement to comply with any other code, particularly in relation to building regulations. The aim of the Building Regulations are to provide for the safety and welfare of people in and about buildings. It is important to note in the context of the new exemption, that compliance with the Building Regulations 1997 to 2017 must still be achieved and Building Control procedures will still apply.

Under the Building Control Acts 1990 to 2014, primary responsibility for compliance with the requirements of the Building Regulations, including Part B (Fire Safety), rests with the owners, designers and builders of buildings. In particular, the Building Control (Amendment) Regulations 2014 require

greater accountability in relation to compliance with Building Regulations in the form of statutory certification of design and construction by registered construction professionals and builders, lodgement of compliance documentation, mandatory inspections during construction and validation and registration of certificates.

Working Group on the Re-Use of Existing Buildings

The Action Plan for Housing and Homelessness – Rebuilding Ireland identified the need to examine the potential barriers to re-use of existing buildings. The regulatory systems relating to planning, fire safety, accessibility, building control and conservation are perceived as creating competing agendas (particularly for historic buildings) and if dealt with in isolation or sequentially can result in uncertainty regarding the reuse of existing buildings.

In order to facilitate the development of “existing” vacant buildings for residential use, the Department has established a multi-disciplinary Working Group, which consists of Departmental and local authority representatives with expertise in building regulations, fire safety in buildings, planning, design, heritage and also industry representatives with experience in designing and developing such refurbishment projects.

A key task of the Working Group is to develop guidance in order to provide clarity on what regulatory requirements apply in relation to conversion works on existing vacant buildings and to provide advice on how best to facilitate the re-use or development of under-used older buildings in the context of these regulatory requirements. It is intended that this guidance will be finalised in the coming months and will supplement these exempted development planning regulations. A further Circular will issue in due course in this regard.

3. Planning and Development (Amendment) (No. 3) Regulations 2018 (S.I. No. 31 of 2018)

S.I. No. 31 of 2018 amends aspects of the existing provisions of Class 31 of the Principal Regulations relating to exemptions for certain works undertaken by a statutory undertaker authorised to provide a telecommunications service.

The Regulations aim to take account of technological advancements in the telecommunications sector in recent years. As such they are more technical in nature with amendments that include changes to the permitted height of poles or other support structures carrying overhead telecommunications lines, the number and size of dishes and antennae that can be permitted on such structures, facilitating a greater number of antenna to be permitted on larger structures, and the inclusion of a specific new exemption for the deployment of small cell antenna, including on smaller structures in urban areas.

The Regulations will generally facilitate improved broadband and mobile phone services and specifically assist in the roll-out of the National Broadband Plan and support the provision of enhanced mobile phone services, particularly in remote areas, as envisaged in the Action Plan for Rural Development.

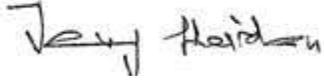
The amendments to the exemptions include:

- In Class 31(b) relating to overhead telecommunications including poles and support structures, in *condition and limitation* 1 and 2, the following:
 - increasing the allowable height of poles or other support structures carrying overhead lines or other equipment to **12 metres** [previously 10 metres];

- permitting that other equipment can include **two transmitting or receiving dishes** [previously one dish] and increasing the allowable diameter of such dishes to **0.6 metres** [previously 0.3 metres]; and
- increasing the dimensions for panel type antennae, placed on support structures, to **0.85 metres x 0.65 metres x 0.2 metres** [previously 0.5 metres x 0.3 metres x 0.2 metres].
- In Class 31(g) relating to transportable radio installations, in *condition and limitation 2(c)*, increasing the duration that a temporary replacement structure can be in place to **16 weeks** [previously 12 weeks].
- In Class 31(h) relating to the attachment of additional antennae to an existing support structure, in *condition and limitation 1 and 2*, the following:
 - creating a distinction between **two categories of structures**, one for structures under 15 metres in height and one for structures 15 metres and above,
 - permitting up to **18 antennae**, of which not more than **12 shall be dish type**, to be placed on the **structures with a height of 15 metres and above** [no change for structures under 15 metres], and
 - increasing the dimensions allowed for panel type antennae to **3 metres x 0.6 metres x 0.2 metres** [previously 1.5 metres x 0.4 metres x 0.15 metres].
- In Class 31(j) relating to the provision of a new antenna support structure in place of an existing antenna support structure, in *condition and limitation 4 and 5*, the same amendments as made in Class 31(h).
- In Class 31(k) relating to attaching antennae to existing structures, the list of existing structures to which antennae, including **small cell antenna**, can be attached is being increased to include **agricultural storage buildings and water towers**. Also, in *condition and limitation 2* of Class 31(K), in the case of a structure with a flat roof, the height by which a fixture can exceed any existing parapet or railing on the roof is being increased to **3 metres** [previously 2 metres].
- New Class 31(l) makes provision for a new exemption specifically relating to the deployment of **small cell antennae to smaller structures** including electricity poles, telegraph poles, lamp posts, lighting structures, flag poles, CCTV poles, phone kiosks and bus shelters. This new exemption is subject to 6 conditions and limitations, which broadly mirror those that apply to Class 31(k), with some adjustments. Notably:
 - small cell antennae must be attached **directly to the structure concerned** without any support fixture structure,
 - in the case of flat roof structures, such as phone kiosks and bus shelters, the antennae must be attached **directly to the roof**, and
 - there is a limit of **no more than 2 small cell antennae** being allowed to be attached to any one structure.

The Regulations amend Article 5 of the Principal Regulation to provide for a definition of 'small cell antenna'. In addition the Regulations also update existing references to the Director of Telecommunications Regulations, where they appear in the above exemptions, which office is now known as the Commission for Communications Regulation.

Any enquires in relation to this Circular can be emailed to planning@housing.gov.ie.

A handwritten signature in black ink that reads "Terry Sheridan". The signature is written in a cursive style with a large initial 'T'.

Terry Sheridan
Principal
Planning Policy

Enclosures:

1. Planning and Development (Amendment) Regulations 2018 (S.I. No. 29 of 2018)
2. Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018)
3. Planning and Development (Amendment) (No. 3) Regulations 2018(S.I. No. 31 of 2018)

Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No. 30 of 2018)
Detailed Overview of Provisions

Background

A key objective of Pillar 5 of the Action Plan for Housing and Homelessness – Rebuilding Ireland is to ensure that existing housing stock is used to the maximum degree possible and focuses on measures to use existing vacant stock to renew urban and rural areas.

Specifically, Action 5.9 of Rebuilding Ireland commits to reviewing planning legislation to allow the change of use of vacant commercial units in urban areas, including vacant or under-utilised areas over ground-floor premises, into residential units without having to go through the planning process. This proposal is also incorporated in Action 6 of the Action Plan for Rural Development.

These Regulations have been brought forward on foot of those Actions.

Duration the exemptions will apply

Subject to conditions and limitations, the Regulations will apply for a limited period and to changes of use and related associated works which occur from when the exemption comes into operation, on 8 February 2018, until 31 December 2021. This period is concurrent with the lifetime of Rebuilding Ireland and is aimed at acting as an incentive for those who wish to avail of the exemption to do so as soon as possible. This, in turn, has the potential to bring forward the delivery of additional residential units by means of conversion works at the earliest possible date.

Current Classes of Use to which the exemption will apply

The Regulations apply to commercial type buildings which may be vacant, and therefore available, and are also suitable for housing such as shops, offices etc. As such, the exemption will only apply to buildings that currently have a specific class of use with reference to the Exempted development – Classes of Use set out in Part 4 of Schedule 2 of the Principal Regulations, as follows:

Class 1: Use as a shop.

Class 2: Use for the provision of

(a) financial services,

(b) professional services (other than health or medical services),

(c) any other services (including use as a betting office),

where the services are provided principally to visiting members of the public.

Class 3: Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

Class 6: Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

Other limitations on the buildings which benefit from the exemption

There are some limitations on the nature and type of building, or part of a building, which may avail of the exemption as follows, it:

- must have been completed prior to the making of the Regulations on 8 February 2018,

- must have been used for one of the 4 classes of use (Class 1, 2, 3 and 6) at some time in the past, and
- the structure or part of the structure which is to be developed must have been **vacant for 2 years or more immediately** prior to the commencement of development.

As envisaged by the Action in Rebuilding Ireland, the Regulations aim to facilitate reuse of existing and vacant commercial buildings for residential purposes.

Limitations on the Development works

Given the relatively expansive exemption being provided, it is important that certain restrictions and controls are put in place to ensure that the development undertaken by availing of the exemption is consistent with the principles of “proper planning and sustainable development”.

In this regard, there are certain limits or restrictions that apply to any works, as follows:

- The works to the building must primarily relate to works which only affect the interior of the structure although some limited works to the external appearance of the structure are permitted and must be consistent with the character of the structure and of neighbouring properties.
- External works to existing ground floor shop fronts must be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures. See an example in figure 1 below.

Figure 1:



- Works cannot be carried out to a ground floor area that conflicts with an objective of the relevant local authority development plan or local area plan to remain in retail use. Such an objective is designed in particular areas to keep ground floor premises in retail use and ensure the continued vibrancy of commercial streets and areas. The only exception to this requirement in the exemption is to allow minor works to provide on-street access to the upper floors of the structure. This is necessary to enable the development of “above the shop” premises.
- The provision of an onsite wastewater treatment and disposal system is not exempted development.

Minimum Requirements – Residential Units

The Regulations set out some minimum standards that apply to any residential units being provided, including minimum floor areas, storage space and the provision of natural light.

- A maximum of 9 residential units can be provided in any structure.
- The minimum floor area and minimum storage space requirements of the **‘Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities’, December 2015 *** must be complied with. This ensures that apartments will be of adequate size and will include adequate storage.

The minimum floor areas allowed are:

- Studio apartment: Minimum 40 sq. m
- 1 bedroom apartment: Minimum 45 sq. m
- 2 bedroom apartment: Minimum 73 sq. m
- 3 bedroom apartment: Minimum 90 sq. m

The minimum storage space requirements are:

- Studio apartment: Minimum 3 sq. m
- 1 bedroom apartment: Minimum 3 sq. m
- 2 bedroom apartment: Minimum 6 sq. m
- 3 bedroom apartment: Minimum 9 sq. m

[* Note: These 2015 Guidelines are under review at present. The provisions of any new or revised Guidelines regarding minimum floor areas and storage space will apply to the exemption].

- Rooms for use or intended for use as habitable rooms such as rooms for living or sleeping must have adequate natural light through the provision of windows. It is important to note this condition must be met, within the provisions stated in the Regulations that works undertaken should affect the interior of the structure and not materially affect the external appearance of the structure, and permitted works must be consistent with the character of the structure and of neighbouring properties.

Requirements under other codes

It is important to note that these proposed exemptions relate to the planning system only. Therefore development works to vacant commercial buildings which are being converted to residential use will also need to comply with the requirements of the Building Control Regulations in respect of fire safety, structural stability, ventilation etc. As mentioned above (page 5), it is intended that the Department’s Working Group on the Re-Use of Existing Buildings will produce guidance in the coming months to advise on how best to facilitate the re-use or development of under-used older buildings in the context of the parallel regulatory requirements of planning, fire safety, accessibility, building control, and building conservation. The forthcoming guidance will supplement these exempted development planning regulations.

Restrictions for Protected Structures

- Exempted development works to a protected structure, as specified in the Regulations, are not allowed unless a section 57 declaration is received from the relevant planning authority which confirms that the proposed would not materially affect the character of the structure or any

element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Restricted Areas where the exemption will not apply

The exemption will not apply to development in a building in the following areas:

- An area to which a special amenity area order relates. A special amenity area order is made for areas of outstanding natural beauty or special recreational value and has regard to any benefits for nature conservation. For example there is a Special Amenity Area Order in place for Howth.
- An area of special planning control. Areas of special planning control allow the planning authority to specify development objectives for the preservation or enhancement of an area considered to be of special architectural importance. Examples include Grafton Street and O’Connell Street, Dublin. The purpose of the Grafton Street designation is the creation of a busy thriving commercial area. O’Connell Street is designated because of its special architectural importance, as well as its historical and civic importance.
- Within the relevant perimeter distance set out in Table 2 of Schedule 8 of the Principal Regulations of any establishment to which the major accident regulations apply – Extract below. The perimeter distances are within a range of 100 to 2000 metres depending on the type of establishment. Establishments listed in the below table include establishments where flammable/ toxic or chemical substances are stored. This will prevent new residential units being developed in close proximity to such establishments, by way of these exempted development regulations.

Table 2
Distances from establishments

Column 1 Type of establishment	Column 2 <i>Distance from establishment perimeter (metres)</i>
Establishment where pressurised flammable substances (including liquefied petroleum gas) are stored in bulk –	
- above ground	600
- mounded/underground	100
< or = 100 tonnes	200
> 100 tonnes.	
Establishment where pressurised or refrigerated toxic substances (including ammonia) are present –	
- in bulk storage	2,000
- in cylinder or drum storage.	700
Establishment consisting of or comprising a warehouse where chemicals are present.	700
Establishment where non-pressurised flammable substances are stored in bulk.	300
Establishment where chemical processing involving	1,000

flammable or toxic substances takes place.	
Establishment where chemical processing, which involves the risk of dust explosion, takes place.	300
Establishment where explosives are manufactured.	1,000

General Restrictions on Exemptions (Article 9 provisions)

Article 9 of the Principal Regulations places certain restrictions on exempted development under Article 6 and Schedule 2 to the Regulations. These restrictions outline a number of forms of development that would not be considered exempted development, e.g. works to archaeological sites, natural heritage areas, an unauthorised structure and works that would require an EIA. Also under Article 9, development cannot contravene a condition attached to permission under the Act or be inconsistent with any use specified or included in such permission.

Article 9 does not automatically apply to Article 10 exemptions relating to change of use. In order to ensure that appropriate controls are in place for the current exemption which relates to change of use and associated works, the Regulations apply certain Article 9 restrictions to the exemption.

The Article 9 restrictions applied are the restrictions set out in subparagraphs (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraphs (c) or (d) of article (9)(1). The Principal Regulations should be consulted for the full text of the restrictions that apply to the exemptions. In summary, these provisions state that development is not exempted development if it consists of:

- except for a porch, bringing a building forward beyond the front wall of the building on either side or the building line determined in the development plan,
- works to places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan,
- the excavation, alteration or demolition of any archaeological monuments included in the Record of Monument and Places,
- works requiring an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- would be likely to have an adverse impact on an area designated as a natural heritage area,
- works to an unauthorised structure or a structure with an unauthorised use,
- the alteration of a building as would restrict the continuance of an existing use where it is an objective of the planning authority to ensure that the building would remain available for such use,
- development to which Part 10 of the Regulations relating to Environmental Impact Assessment applies, and
- the provision of, or modifications to, an establishment to which the Major Accident Regulations apply, and which could have significant repercussions on major accident hazards.

In addition, no development shall contravene a condition attached to a permission issued under the Act, in line with a similar provision in Article 9(1)(a)(i).

Notification Process Provision

A notification provision is included in the Regulations, as follows:

- A person undertaking development under these exemptions must notify the planning authority 2 weeks prior to commencing development. The notification should detail the location of the

structure, the number of residential units involved, the unit sizes and the number of bedrooms in each unit.

- The planning authority must keep a record of all notifications and have it available for inspection at their offices and on their website.
- The planning authority must return annual statistics to the Minister with details of the notifications.

This notification provision has a threefold purpose:

- to ensure that planning authorities are informed and aware of change of uses occurring and the delivery of residential units in their functional area,
- to monitor the effectiveness of the exemption, as indicated by its uptake,
- to facilitate the collation of important information in relation to the amount of additional housing units being provided in this way.