



Determination 2016/042

Regarding the compliance of a detached building containing two self-contained units at 36A McDougall Street, Manurewa East, Auckland

Summary

This determination considers whether in its proposed use the building consisting of two self-contained units will comply with the Building Code in regards to fire safety, laundering, and food preparation. The determination discusses the proposed use of the building and whether there will be a change of use under the Regulations.

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the *Building Act 2004*¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to this determination are:

- the owner of the building, JB Shane Jones (“the applicant”), acting through a designer as an agent
- Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.3 This determination arises from additional building work carried out without approval to a consented sleepout, resulting in it being converted to two self-contained units. The authority issued a notice to fix, and the determination has been sought as a means to clarify the regulations as they apply in the circumstances and for the proposed intended use.

1.4 The matter for determination² is whether the building in its proposed intended use will comply with the relevant clauses of the Building Code (First Schedule, Building Regulations 1992)³ with regard to fire safety, laundering, and food preparation. In making this decision I must consider the building’s use under the *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005* (“the Change of Use Regulations”) and whether the proposed intended use would constitute a change of use⁴.

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.

² Under section 177(1)(a) of the Act

³ In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

⁴ In this determination unless otherwise stated, the term “change of use” means a change of use as per section 5 of the *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005*

- 1.5 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I have not considered compliance of the building work as constructed other than in regards to the application of the specified regulations.
- 1.6 I have forwarded a copy of this draft determination to the New Zealand Fire Service Commission (“NZFS”) by way of consultation under section 170 of the Act.
- 1.7 The relevant sections of the Act and clauses of the Building Code discussed in this determination are set out in Appendix A.

1.8 Matters outside this determination

- 1.8.1 In the covering letter to the application the designer noted that the issues also involved matters concerning the *Resource Management Act 1991* (“the RMA”) and the *Residential Tenancies Act 1986*. Those matters are outside my jurisdiction, and this determination considers only matters that fall under section 177 of the *Building Act 2004*.

2. The building work

2.1 The consented building work

- 2.2 The subject building was approved as a sleepout to replace an existing garage on a residential site with an existing dwelling.

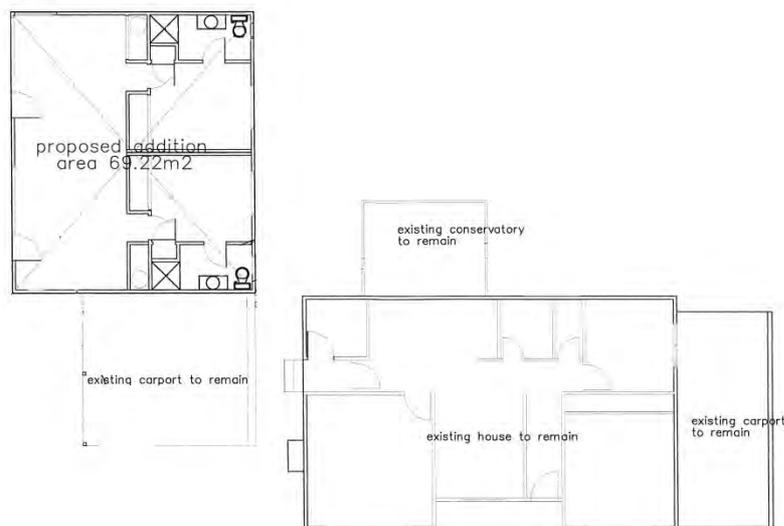


Figure 1: Site plan (not to scale)

- 2.2.1 The consented plans show the sleepout as containing a shared living space, two bedrooms, two bathrooms and two hot water cylinders. No kitchen facilities were indicated on the drawings.

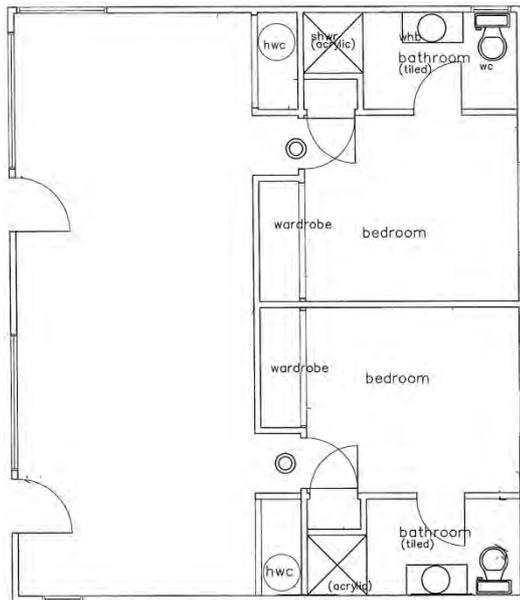


Figure 2: Floor plan as consented (not to scale)

- 2.2.2 An amendment to the consent was sought and granted in April 2011 for a change of cladding.

2.3 The building work carried out without approval

- 2.3.1 During construction a number of changes were made to the building work without approval being sought by way of an amendment to the consent (“the building work as constructed”). In summary:

- An internal wall was constructed in the living area which had the effect of dividing the building into two units.
- Kitchens were installed in each unit comprising of a bench, sink, and freestanding stove.
- Drainage and plumbing was installed, with each sink running to separate gully traps.
- The two hot water cylinders were either not installed or were removed, and were replaced with two externally mounted instantaneous hot water heaters.

(see Figure 3 over page)

- 2.3.2 The two self-contained units were then rented out under two separate tenancies.

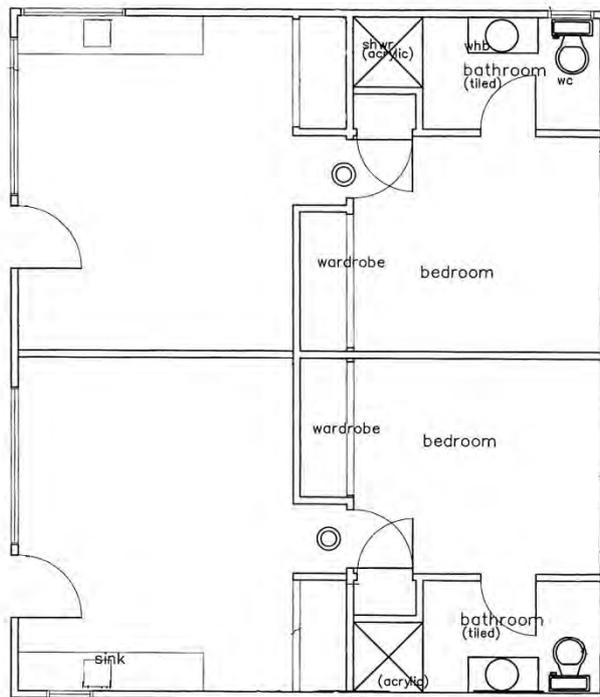


Figure 3: Floor plan as constructed (not to scale)

2.4 The remedial building work

2.4.1 It is my understanding that further building work was carried out in 2015 (“the remedial building work”) that consisted of the following work to each of the units:

- removal of the kitchen bench and sink, and replacement with a laundry bench and laundry tub
- the addition of a washing machine in the location where the hot water cylinder was previously indicated on the consent plans
- the addition of domestic smoke alarms to each unit.

2.4.2 As part of the application for determination, the applicant proposed to operate the tenancies as one single tenancy for the main dwelling and the two units. The two units would contain sleeping accommodation and the personal hygiene and laundry facilities. The applicant proposes to let the two units and the adjacent dwelling to one extended family, with the intention that the occupants of the two units would use the kitchen facilities in the dwelling. (I note here that other than the designer’s statement of the applicant’s intention, I have seen no other evidence supporting the proposed tenancy arrangement or occupation.)

2.4.3 The designer has sought clarification by way of a determination on how the regulations would apply in respect of ‘light duty’ kitchen facilities being provided in the two units, similar to those in hotel rooms that would include the ability to make hot drinks and microwave food.

3. Background

- 3.1 On 16 February 2011 the authority granted building consent no. 20110065 for the demolition of the existing garage and construction of the sleepout. An amendment to the consent was sought and granted in April 2011 for a change of cladding. (I have not seen a copy of the consent, nor the amendment).
- 3.2 During an inspection by the authority on 31 October 2011, it was noted that building work had been undertaken that was not in accordance with the consent (refer paragraph 2.3.1) and some discussion followed between the parties regarding an application for a certificate of acceptance.
- 3.3 It is unclear why the situation remained unresolved for four years. However, on 15 March 2015 the designer advised the authority that an amendment to the consent would be sought for the addition of the laundry tub and washing machine to each unit. In describing the background to the dispute the designer has indicated that an amendment to the consent had been applied for on 4 September 2015 for ‘two sink units and removal of internal hot water cylinders (for external instantaneous gas heaters). I note that I have not been provided with a copy of the amendment applications and it is unclear whether the construction of the internal wall was to be included as part of that amendment.
- 3.4 On 23 November 2015 the authority emailed the designer, referring to an extension of time that had been requested in respect of the completion of work under the building consent and requesting an update on progress. In a further email to the designer the following day, the authority noted that the installation of the wall between the units was not exempt under Schedule 1 (11) from the requirement to obtain building consent because, as a consequence of its construction, the intended use of the building had changed, i.e. the installed wall now formed an inter-tenancy wall which is specifically excluded under Schedule 1 (11)(c). The authority advised that the work done without building consent would require a certificate of acceptance and that it was reviewing whether the building in its new use would meet District Plan requirements.
- 3.5 In an email on 1 December 2015, the designer noted that the applicant proposed to remove the sink units and ‘install new sink units that comply with laundry tub requirements’. The plumbing would remain and be tested, and a gas certificate provided for the installed gas system.
- 3.6 In correspondence to the authority on 7 December 2015, the designer confirmed details regarding the gas hot water heaters installed and laundry tub, and stated that his understanding of the intended use as: ‘two suites are as rentals. They each have their own bathroom and laundry facility. The intention is that cooking will be done in the main house kitchen.’
- 3.7 In applying for the consent amendment, the designer maintained the view that the intended use of the building had not changed; it was still a “sleepout” because the occupants would use the kitchen in the main dwelling. The authority responded by email on 1 December, stating that it did not consider the two units could be considered as a sleepout, particularly as they each had separate laundry facilities.

- 3.8 In emails on 9 December 2015 the authority advised the designer that:
- using the two units as rentals would require the intertenancy wall to be fire rated
 - the use of the building would need to be assessed for the purpose of District Plan requirements
 - the description on the amendment application would need to be altered to include the change of use and the upgrade of the internal wall between the units to a fire-rated system
 - if a certificate of acceptance was not going to be applied for in respect of the building work carried out without consent (refer paragraph 2.3), the kitchen sinks would need to be removed
 - an assessment would be required of how the building would meet the requirements of the Building Code in respect of the C clauses, and that this should include an assessment of protection from fire between the main dwelling and the “accessory building”.
- 3.9 The designer provided a fire report dated 29 February 2016, to the authority in respect of the separation distance between what was described as “the sleepout” and the main dwelling. The fire report noted
- The Building Code in 2012 allowed a minimum separation distance of 1m between the new sleepout and existing house, and hence a separation distance of 1.51m was designed for when constructing the new sleepout unit.
- A [code compliance certificate] is now applied for, however the current 2015 Building Code has increased the building separation distance from 1m to 2m, but it is not feasible for [the applicant] to either move the existing sleepout another 0.49m ... to undertaken remediation works to fire protect parts of the sleepout unit.
- 3.10 The fire report listed three options, noting that the applicant had chosen a “fire engineering solution”; namely the installation of Type 1 domestic smoke alarms throughout the main dwelling to be interconnected to the alarms within the two units. I have not seen any further correspondence relating to the as-built separation distance between the two units and the main dwelling, and this issue is not considered further in this determination.
- 3.11 On 21 April 2016 the authority issued notice to fix no 6559 to the applicant for building work carried out in contravention of sections 17 and 40 of the Act. The notice identified the contravention of section 17 as being the construction of an internal wall between the units other than in compliance with clauses C1 – C6 of the Building Code, and the non-compliance of surface water disposal from the main dwelling’s conservatory discharging to a sanitary sewer, notwithstanding that this latter item did not relate to the current building consent. The following was listed as work carried out without building consent when consent was required:
- Internal wall in the sleepout, to form two separate units with no Fire Rating between the units.
- Addition of two Kitchen sink benches with associated plumbing and drainage.
- The notice also referred to a breach of sections 114 and 115 in regards to the applicant not giving written notice to the authority of the change of use of the building.

- 3.12 The authority and the designer met on site on 24 May 2016. The authority then wrote to the designer stating that the sleepout had undergone a change of use from SH – Sleeping Home to SR – Sleeping Residential (refer Appendix A.2). The authority provided two determinations that discuss changes of use⁵, and recommended the designer alter the amendment application to identify the two units as being a multi-unit dwelling. (I note here “multi-unit dwellings” are a Classified Use that would fall under the use category SR in the Change of Use Regulations.)
- 3.13 The designer responded in an email on the following day that he considered the Acceptable Solution C/AS2 allowed ‘an exception’, referring to Paragraph 2.2.9 of C/AS2 and 1.1.1(c) of C/AS1.
- 3.14 An application for a determination was received by the Ministry on 20 June 2016.

4. Submissions

- 4.1 In a covering letter to the determination application, the designer queried the regulations as they apply in the circumstances, specifically in regards to laundry and kitchen facilities and which Risk Group would apply. The designer described the intended future use of the property, being the main dwelling and the two units, as being rented out as a single tenancy to one extended family.
- 4.2 The designer set out some of the background to the events and provided copies of:
- some relevant correspondence between the parties
 - the fire report dated 29 February 2016
 - a set of drawings.
- 4.3 The authority acknowledged the application for determination, and provided copies of:
- email correspondence between the authority and the designer
 - photographs of separate tenancy agreements and letter boxes
 - photographs from an inspection or site visit on 26 May 2016, one of which shows a bench and sink in use as kitchen facilities
 - excerpts from the Acceptable Solutions C/AS1 and C/AS2.
- 4.4 In a covering letter, the authority noted that the building was originally consented as a sleepout to be used in conjunction with the adjacent dwelling. During the final inspection and processing of an application for amendment to the consent it was established that the building, which had been divided into two units, was being occupied by two separate tenants who were paying separately for the accommodation, and that the building was not being used in association with the adjacent dwelling.
- 4.5 The authority noted
- There is no social cohesion between the occupants of all three buildings on the site. Photographic evidence clearly shows the intentions of the owner, with a separate gas hot water, separate water meters, split electrical meters, even separate letter boxes.

⁵ Determinations 2014/026 and 2016/008

- 4.6 A draft determination was issued to the parties and NZFS for comment on 11 August 2016.
- 4.7 The NZFS responded on 17 August 2016, noting it ‘is comfortable with the analysis and discussion’ and had no particular comment on the draft.
- 4.8 The authority responded on 19 August 2016, accepting the draft without further comment.
- 4.9 The designer responded on 11 and 12 August 2016, seeking further clarification regarding the provision of laundering facilities in relation to the proposed intended use and the use category under the regulations. After receiving clarification on these issues the designer accepted the draft determination without further comment in a response received on 23 August 2016.

5. Discussion

5.1 The legislation

- 5.1.1 Central to the request for a determination on this matter is how the various use categories under the legislation and in the Acceptable Solutions apply in the circumstances, and what the “intended use” of the building is.
- 5.1.2 There are a number of different categorisations of buildings used in or for the purposes of the Act, the Regulations, the Building Code, and Acceptable Solutions.
- 5.1.3 There are also definitions in section 7 of the Act and Clause A2 of the Building Code that are relevant in understanding the regulatory obligations in respect of the buildings’ use and occupation (refer Appendix A.1 & A.3). I discuss those that are relevant to the issues considered in this determination in the paragraphs below.

The intended use and occupation

- 5.1.4 Section 16 of the Act provides: ‘The building code prescribes functional requirements for buildings and the performance criteria with which buildings must comply in their intended use’ (my emphasis).
- 5.1.5 The term “intended use”, as defined in both the Act and the Building Code, includes ‘any reasonably foreseeable occasional use that is not incompatible with the intended use’.
- 5.1.6 In this case some of the questions that have arisen concern the occupation of the two units and whether they fall within what would be considered a “single household unit”. The term “household unit” shares a common definition in Act, the Building Code and the Acceptable Solutions C/AS1 to C/AS7 (refer Appendix A.1, A.3 & A.4), being that it is a building or group of buildings used for residential purposes and occupied by not more than one household. Hostels, boarding houses and other specialised accommodation are expressly excluded from the definition of a household unit.

Classified Use

- 5.1.7 Classified uses are defined in Clause A1 of the Building Code and are for the purpose of applying the performance requirements of the Building Code, with the limits on application referring to specific classified uses. A building’s classified use is established at the time of its construction, and a building may have more than one classified use. A building’s classified use may also change during the building’s life time.

- 5.1.8 In this case, the consent approved the construction of a two-bedroom sleepout associated with a detached dwelling. Given that the use of the building was as an extension of the habitable space provided by the main dwelling for a single household or family, the sleepout fell within the Classified Use “Detached dwellings”.
- 5.1.9 As a result of the building work that was carried out without approval with the resulting effect of dividing the sleepout into two separate units, and its occupation by two separate household units as evidenced by the separate tenancies, the building then fell under the Classified Use “multi-unit dwelling”. There are Building Code obligations that applied in respect of each of the household units within the multi-unit dwelling; for example: Clause C6.1(c) which concerns damage to adjacent household units as a result of fire, and Clause F7.3.2 with regard to warning systems being provided within each household unit.

Risk Groups

- 5.1.10 Acceptable Solutions are one means, but not the only means, of achieving compliance with the Building Code. The Acceptable Solutions for the C Clauses are based around the concept of different buildings, or parts of buildings, belonging to different Risk Groups⁶. Risk Groups are allocated depending on the activities that will occur within the building or part of the building.
- 5.1.11 There are seven Risk Groups, each with a corresponding Acceptable Solution (C/AS1 to C/AS7). All of the Acceptable Solutions have in common Table 1.1, which sets out the seven Risk Groups and their Acceptable Solutions. I have included the relevant parts of Table 1.1 in Appendix A.4.
- 5.1.12 In the current case, one of the issues is whether the building in its intended use falls within Risk Group SH (Buildings with sleeping (residential) and outbuildings) or SM (Sleeping (non institutional)) under the Acceptable Solution.
- 5.1.13 The scope of the Acceptable Solution C/AS1 is restricted to Risk Group SH, which covers buildings where people sleep and includes single household units. It also covers detached dwellings used as boarding houses and multi-unit residential buildings under the following circumstances (refer paragraph 1.1.1 of C/AS1)
- b) Multi-unit dwellings with no more than one unit above another (see Figure 1.1) and where each unit has an escape route independent of all other units, and including associated garages or carports whether or not they are part of the same building
 - c) Detached dwellings used as boarding houses for fewer than six people (not including members of the residing family)
- 5.1.14 Accordingly, for the purposes of using the Acceptable Solution C/AS1 as a means of compliance, the subject building (consisting of the two units) would fall under the Risk Group SH if the two units are used as part of a boarding house or used by members of the same family or household group as the main dwelling. If the two units were rented out to be occupied by two separate household groups, the building would consist of two parts and C/AS1 could still be used as a means of compliance by way of paragraph 1.1.1 as noted above.

⁶ The term “purpose groups” was used in the previous edition of the Acceptable Solution, and those purpose groups were aligned with the uses set out in Schedule 2 of the *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005*. However, in the Acceptable Solutions C/AS1 to C/AS7 effective from 10 April 2012 there is no longer a direct correlation between the Risk Groups and the uses set out the Regulations.

- 5.1.15 The difference in the means of achieving compliance depends on the occupancy. For example: two units occupied by two separate household units would require fire separation of no less than 30/30/30 from the other household unit if the means of compliance was by way of C/AS1.

The use under the Change of Use Regulations

- 5.1.16 The uses set out in Schedule 2 of the Change of Use Regulations are for the purposes of sections 114 and 115 of the Act which relate to upgrade work that may be required when the uses of buildings are changed. Where an owner intends to change the use of a building, as defined in Schedule 2 of the Regulations, the owner must inform the authority (section 114) and ensure that the building in its new use will comply with the requirements of the Building Code to the extent set out in section 115.

- 5.1.17 Section 5 of the Change of Use Regulations provides

For the purposes of sections 114 and 115 of the Act, change the use, in relation to a building, means to change the use (determined in accordance with regulation 6) of all or a part of the building from one use (the old use) to another (the new use) and with the result that the requirements for compliance with the building code in relation to the new use are additional to, or more onerous than, the requirements for compliance with the building code in relation to the old use.

- 5.1.18 The use category SH (Sleeping Single Home) is defined in Schedule 2 as ‘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...’. The sleepout, as approved in the building consent, would fall within this use.
- 5.1.19 The use category SR (Sleeping Residential) is defined as ‘attached and multi-unit residential dwellings...’. The building work carried out without approval provided for two separate self-contained units and the two units were occupied under separate tenancies. The two units as occupied at that time would fall within the use SR. The notice to fix issued to the applicant refers to a breach of sections 114 and 115 in respect of this change of use of the building (refer paragraph 3.11).
- 5.1.20 At issue in this determination is whether the building as constructed, but let out in association with the main dwelling for the use of a single household or family, will have undergone a change of use.

5.2 The intended use

- 5.2.1 The building was consented in 2011 as a two bedroom sleepout to be used in association with the main dwelling. As proposed in the consent application, the bedrooms had separate bathroom facilities, and there was a shared living space. No kitchen or laundry facilities were included in the initial application for consent.
- 5.2.2 Subsequent to building consent being granted, the building was constructed as two self-contained units with separate water and electricity meters, hot water supply, and kitchen facilities. The two units were then rented out as separate tenancies.
- 5.2.3 The applicant now proposes to rent out the building in conjunction with the main dwelling as a single tenancy and has stated an intention that it be let to an extended family. I have seen no evidence of a proposed letting agreement that would support this statement; I note also that even with a single tenancy agreement as proposed there remains, in my opinion, a high likelihood of the units being sublet.

5.2.4 In my view, based on the physical configuration and amenities provided, along with past use of the building in its previous tenancy by two separate household groups, I consider the subject building has a classified use “multi-unit dwelling” and has undergone a change of use under the Change of Use Regulations from SH to SR.

5.3 Compliance of the building in its intended use

Food preparation and laundering

5.3.1 The designer has queried how the legislation applies in respect of laundry facilities and whether they are ‘allowed in each suite’, and whether the bench and tub can be used to provide kitchen facilities with the likes of a jug and microwave.

5.3.2 The various obligations under the Building Code are expressed in terms of:

- the building in its intended use,
- household units
- building elements, systems and materials,
- spaces and surfaces
- amenities, user facilities and features.

5.3.3 Clause G3 sets out the obligations in regards to food preparation and prevention of contamination. The functional requirement Clause G3.2.1, which applies to housing, requires:

Buildings shall be provided with space and facilities for the hygienic storage, preparation and cooking of food, that are adequate for the intended use of the building.

In determining compliance with the Building Code in regards to kitchen facilities, it must therefore be established what the building’s intended use is in order to ascertain whether the space and facilities provided for preparation and cooking of food is “adequate”. The use of the building is “housing” and accordingly the following performance requirements apply:

5.3.4 The performance requirements in G3.3.1 and G3.3.2 are, in summary, that the facilities are hygienic and provision is made for:

- refrigeration/storage of perishable food;
- a means of food rinsing;
- utensil washing and waste water disposal;
- cooking of food;
- space and surface for food preparation.

There are specific requirements relating to the building materials, linings, work surfaces, and energy supply, along with Clause G12.3.1 which relates to the provision potable water.

5.3.5 The two units have retained the capacity to be used as self-contained units. While the bench and sink are described as a “laundry bench” and “laundry tub”, the photographs provided by the authority dated 26 May 2016 clearly show these in use as kitchen facilities. The question then becomes whether these facilities are “adequate” in terms of food preparation.

- 5.3.6 I am of the view that the bench top, cabinets and sink described as a “laundry bench” and “laundry tub” are adequate in terms of their functionality to meet the performance requirements of Clauses G3.3.1 and G3.3.2. I note that there are a number of bench-top cooking appliances available that would meet the requirement in respect of cooking food (Clause G3.3.1(c)) and that an absence of a traditional stove top/oven does not necessarily equate to the absence of kitchen facilities.
- 5.3.7 Performance clause G3.3.4 requires ‘Space and facilities shall be provided within each household unit, or grouped elsewhere in a convenient location.’ The obligation for the provision of food preparation space and facilities is linked to the household unit rather than to the building. Accordingly, if the building contains two separate household units, the obligation under the Building Code is that either each unit has space and facilities for food preparation or that the space and facilities provided elsewhere is ‘in a convenient location’. If compliance with Clause G3.3.4 was on the basis of the space and facilities for the two units being provided in the main dwelling, the space and facilities would need to be adequate for use by the occupants of both the main dwelling and the two units.
- 5.3.8 Likewise the objective and functional requirements for laundering, Clause G2 is that buildings used for housing include adequate amenities (space and facilities) for laundering, and performance Clause G2.3.1 requires the facilities have capacity for the intended use. Clause G2.3.3 also requires space and facilities be provided ‘within each accommodation unit or may be grouped elsewhere in a convenient location’. I am of the view that a similar approach can be taken as to that applied to Clause G3.3.4; in that either each unit would require space and facilities for laundering or if use of facilities in the main dwelling was proposed to meet the performance requirements the space and facilities would need to be adequate for use by the occupants of both the main dwelling and the two units.
- 5.3.9 Given that each of the units has laundering facilities, and that I conclude that the space and facilities provided in regards to food preparation would be adequate in terms of each unit being used by a separate household, I conclude that the building would comply with the relevant clauses G2 and G3 if the units were occupied by two separate household units.

Compliance with Clause C4 – Movement to a place of safety

- 5.3.10 From the information provided to this determination, it is my understanding that compliance with Clause C4.3 has not been achieved. The authority is of the view that the intertenancy wall requires fire rating. The applicant’s fire report proposes interconnected Type 1 smoke alarms in the main dwelling and two units.
- 5.3.11 Clause C4.3 essentially requires all occupants have sufficient protection to allow a safe means of escape in the event of a fire. Fire separation between household units, as provided for in C/AS1, is a means of safeguarding people where evacuation times are longer due to occupants being asleep.
- 5.3.12 A household unit relies on social cohesion to assist in escape in the event of a fire, and the open pathways within a house allow for migration of smoke to trigger the smoke alarm and serve as a warning of fire. A wall between the two units and locked external doors removes the ability to assist each other to evacuate and does not allow for a smoke alarm in the adjacent unit to be triggered.
- 5.3.13 Without a fire wall, fire can building up a significant amount of smoke and heat without warning and cause a wall to fail, quickly overcoming the neighbouring household unit.

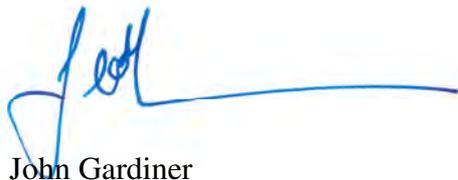
5.3.14 As an alternative solution, an interconnected smoke alarm fully compliant with Clause F7/AS1 would provide the warning required to the adjacent household unit to wake sleeping occupants and allow time for them to escape. Full coverage to NZS 4514⁷ is recommended. Verification of the installation of the interconnected alarm is required in order to conclude that the building complies with Clause C4.3.

6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- the two units within the subject building and in their proposed intended use comply with the relevant clauses G2 and G3 with regard to the provision of laundering and food preparation facilities within each unit
- there is insufficient evidence available to me to determine whether the subject building in its proposed intended use complies with Clause C4.3.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 13 September 2016.



John Gardiner
Manager Determinations and Assurance

⁷ New Zealand Standard NZS 4514:2009 Interconnected smoke alarms for houses

Appendix A

A.1 The relevant sections of the Act discussed in this determination

7 Interpretation

household unit—

(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, boardinghouse, or other specialised accommodation

intended use, in relation to a building,—

(a) includes any or all of the following:

- (i) any reasonably foreseeable occasional use that is not incompatible with the intended use:
- (ii) normal maintenance:
- (iii) activities undertaken in response to fire or any other reasonably foreseeable emergency; but

(b) does not include any other maintenance and repairs or rebuilding

16 Building code: purpose

The building code prescribes functional requirements for buildings and the performance criteria with which buildings must comply in their intended use.

17 All building work must comply with building code

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

114 Owner must give notice of change of use, extension of life, or subdivision of buildings

- (1) In this section and section 115, change the use, in relation to a building, means to change the use of the building in a manner described in the regulations.
- (2) An owner of a building must give written notice to the territorial authority if the owner proposes—
 - (a) to change the use of a building; ...
- (3) A person commits an offence if the person fails to comply with subsection (2).
- (4) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$5,000.

115 Code compliance requirements: change of use

An owner of a building must not change the use of the building,—

- (a) in a case where the change involves the incorporation in the building of 1 or more household units where household units did not exist before, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, will comply, as nearly as is reasonably practicable, with the building code in all respects; and

A.2 The uses as set out Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 relating to sleeping activities

Uses related to sleeping activities		
<i>Use</i>	<i>Spaces or dwellings</i>	<i>Examples</i>
SA (Sleeping Accommodation)	spaces providing transient accommodation, or where limited assistance or care is provided for people	motels, hotels, hostels, boarding houses, clubs (residential), boarding schools, dormitories, halls, wharehousi
SR (Sleeping Residential)	attached and multi-unit residential dwellings, including household units attached to spaces or dwellings with the same or other uses, such as caretakers' flats, and residential accommodation above a shop	multi-unit dwellings, flats, or apartments
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.3 Relevant provisions of the Building Code discussed in this determination:

Clause A1—Classified Uses

1.0 Explanation

1.0.1 For the purposes of this building code buildings are classified according to type, under seven categories.

1.0.2 A building with a given classified use may have one or more intended uses as defined in the Act.

2.0 Housing

2.0.1 Applies to buildings or use where there is self care and service (internal management). There are three types:

2.0.2 Detached dwellings

Applies to a building or use where a group of people live as a single household or family. Examples: a holiday cottage, boarding house accommodating fewer than 6 people, dwelling or hut.

2.0.3 Multi-unit dwelling

Applies to a building or use which contains more than one separate household or family. Examples: an attached dwelling, flat or multi-unit apartment.

...

Clause A2—Interpretation

habitable space a space used for activities normally associated with domestic living, but excludes any bathroom, laundry, water-closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes-drying room, or other space of a specialised nature occupied neither frequently nor for extended periods

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; but does not include a hostel or boardinghouse or other specialised accommodation

intended use of a building includes—

- (a) any reasonably foreseeable occasional other use that is not incompatible with the intended use; and
- (b) normal maintenance; and
- (c) activities taken in response to fire or any other reasonably foreseeable emergency—but does not include any other maintenance and repairs or rebuilding

Clause C4 – Movement to a place of safety

Functional requirement

C4.1 *Buildings* must be provided with:

- (a) effective means of giving warning of *fire*, and
- (b) visibility in *escape routes* complying with clause F6.

C4.2 *Buildings* must be provided with means of escape to ensure that there is a low probability of occupants of those *buildings* being unreasonably delayed or impeded from moving to a place of safety and that those occupants will not suffer injury or illness as a result

Performance requirement

C4.3 The evacuation time must allow occupants of a building to move to a place of safety in the event of a fire so that occupants are not exposed to any of the following:

- (a) fractional effective dose of carbon monoxide greater than 0.3;
- (b) a fractional effective dose of thermal effects greater than 0.3;
- (c) conditions where, due to smoke obscuration, visibility is less than 10 m except in rooms of less than 100 m² where visibility may fall to 5 m.

A.4 As discussed in this determination, relevant paragraphs of *C/AS1: Acceptable Solution for Buildings with Sleeping (residential) and Outbuildings (Risk Group SH) For New Zealand Building Code Clauses C1-C6 Protection from Fire*

Definitions

Household unit

- (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.

Multi-unit dwelling

Applies to a building or use which contains more than one separate household or family.

Table 1.1	Risk groups and Acceptable Solutions		
	<i>Acceptable Solution</i>	<i>Risk Group</i>	<i>Applies to</i>
C/AS1	Buildings with sleeping (residential) and outbuildings	SH	Houses, townhouses and small multi-unit dwellings Outbuildings
C/AS2	Sleeping (non institutional)	SM	Permanent accommodation eg. apartments Transient accommodation eg. hotels, motels, hostels, backpackers, refuge shelters Education accommodation

Scope

1.1.1 The scope of this Acceptable Solution is restricted to risk group SH. This covers buildings where people sleep including multi-unit residential with some restrictions on height and outbuildings (as described in Clause A1 7.0 of NZBC).

This includes the following:

- a) Single household units
- b) Multi-unit dwellings with no more than one unit above another (see Figure 1.1) and where each unit has an escape route independent of all other units, and including associated garages or carports whether or not they are part of the same building
- c) Detached dwellings used as boarding houses for fewer than six people (not including members of the residing family)