



## **Determination 2018/044**

# **Regarding the classified use of a main house, which is let out as accommodation, at 11 Abel Tasman Avenue, Henderson, Auckland**

### **Summary**

This determination considers the classified use of a building under Clause A1. The determination also considers the interpretation of intended use, and what constitutes a single household.

### **1. The matter to be determined**

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
  - the owner of the buildings, Bamford Homes Limited (“the owner”), who applied for this determination, acting through an agent (“the agent”)
  - Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the decision of the authority to issue a notice to fix (“the notice to fix”) for a change of use under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (“the Regulations”). The authority issued the notice to fix because it is not satisfied the building complies with certain clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992) in its new use; in particular in regard to spread of fire and sanitary facilities.
- 1.4 The matter to be determined<sup>3</sup> is whether the intended use of the building complies with the Building Code classified use in Clause A1 2.0 Housing and 2.0.2 Detached dwellings. In deciding this matter, I must consider whether the occupants of the building operate as a single household.
- 1.5 In making my decision, I have considered the submissions of the parties and other evidence in this matter.
- 1.6 I note there are issues raised by the parties regarding the Resource Management Act 1991 (“RMA”). This determination does not determine whether the building is a boarding house under the RMA.

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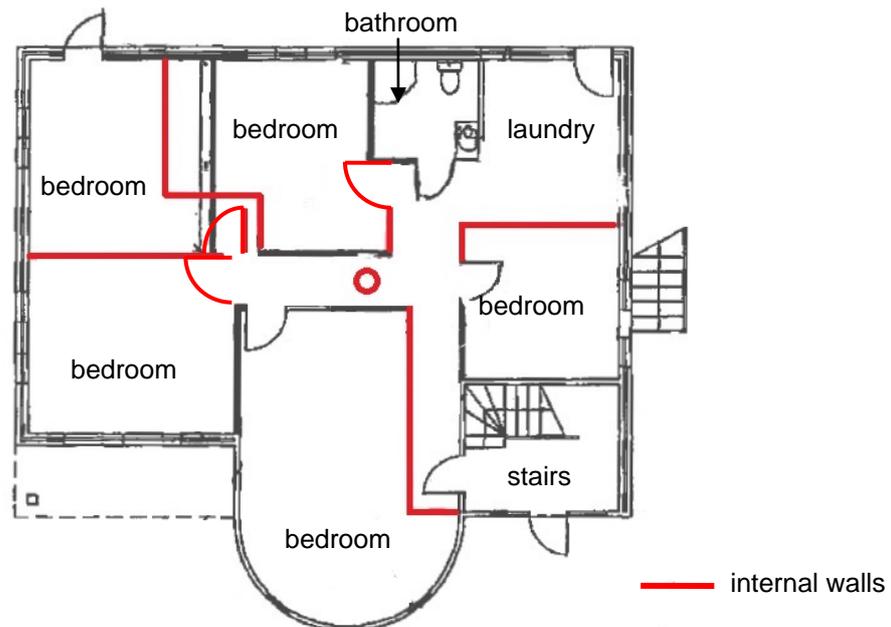
<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.building.govt.nz](http://www.building.govt.nz) or by contacting the Ministry on 0800 242 243.

<sup>2</sup> In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

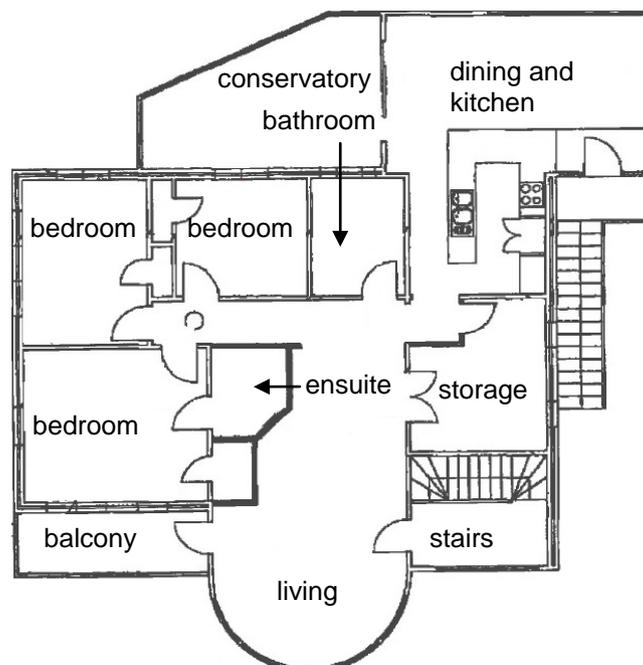
<sup>3</sup> Under section 177(1)(a) of the Act.

## 2. The building work

- 2.1 The site contains three separate buildings: a two-storey building (“the main house”), and two single-storey buildings (“the minor unit” and “the sleep-out”). This determination only concerns the main house; information provided regarding the other two buildings is included to provide context.
- 2.2 The main house has five bedrooms and a laundry on the ground floor, and three bedrooms, kitchen, dining and lounge on the upper level. When the authority inspected the main house an additional room on the upper level was being used as storage.



**Figure 1: Main house ground floor plan (not to scale)**



**Figure 2: Main house upper floor plan (not to scale)**

- 2.3 Building consent plans show the minor unit contains a lounge, kitchen/dining/laundry and two bedrooms each with ensuite. However, I note the room labelled “lounge” on the plans also has a wardrobe and ensuite; this indicates that the room has the capacity to be used as a third bedroom.
- 2.4 The sleep-out contains one bedroom, a bathroom and a living space. Building consent plans do not include a kitchen or laundry, presumably on the basis the occupants will rely on the facilities in the main house.

### 3. Background

- 3.1 The main house was originally constructed under a building permit issued in 1959, with a garage added under a permit issued in 1980, and number of other additions and alterations permitted after that time.
- 3.2 The minor unit and sleep-out were constructed under building consent ABA 2015/710<sup>4</sup> issued on 14 September 2015. It appears the construction was carried out in 2016, but it is unclear from the information provided whether those buildings are substantially completed, and whether a final inspection has been carried out and a code compliance certificate issued.
- 3.3 The authority visited the property on 21 November 2016, and wrote to the owner on 23 November 2016 regarding the Unitary Plan and ‘the use of the existing dwelling [the main house] as a boarding house or short-term temporary accommodation’. The authority stated it viewed ‘the use of the existing dwelling has changed from a dwelling house to a boarding house’.
- 3.4 The authority issued a notice to fix under the Act dated 18 January 2017 for the ‘unauthorised use of the dwelling as a boarding house’. In a letter attached to the notice to fix, the authority stated ‘investigation has found that the dwelling house at the above address is being used as a boarding house and the building has not been upgraded...’.
- 3.5 Correspondence ensued between the agent and the authority, with the agent setting out his view the building was to be occupied as a single household unit and not a boarding house and there had been no change of use under the Regulations. The authority maintained the building was being used as a boarding house and it did not comply with regard to fire separations. I have summarised the matters raised in this correspondence in Table 1 (see paragraph 4).
- 3.6 In a letter dated 12 June 2017 the agent responded to the request from the authority for a statement from the owner regarding the intended use of the main house. The letter stated there are individual tenancy agreements in place but it is a shared tenancy and the occupants live in a “shared single household arrangement”. It also stated the tenants are not transient, do not receive any external care, and are responsible for the care of the communal areas. The letter also enclosed a template tenancy agreement and the house rules “formulated” by the tenants, which appear to be only for the main house. (I note the house rules provided are for this building and one other, on a different site but owned by the same owner, and which is the subject of a separate determination application).
- 3.7 In a letter dated 19 June 2017 the agent requested the authority confirm why it would not withdraw the notice to fix. Further correspondence between the parties regarding

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<sup>4</sup> The building consent was subject to a certificate issued under section 37 of the Act, which advised the building owner a resource consent was required.

the Residential Tenancies Act 1986 and the regulatory requirements for boarding houses followed.

3.8 The Ministry received an application for determination on 29 June 2017.

### 3.9 The draft determinations

3.9.1 The application was initially made under section 177(1)(b) in respect of the authority's exercise of its powers of decision in issuing the notice to fix and its refusal to withdraw that notice.

3.9.2 A draft determination was issued to the parties on 11 September 2017. The matter to be determined was whether the authority was correct in issuing the notice to fix and in refusing to withdraw it. The draft determination considered the intended use of the main house, whether the building work required building consent and whether there had been a change of use, and concluded the authority was correct to refuse to withdraw the notice requiring notification of a change of use under section 114.

3.9.3 Subsequently, the agent sought to narrow the matters to be determined to whether the building complied with the "Detached dwelling" classification under Clause A1 2.0 Housing.

3.9.4 Another draft determination was issued to the parties on 27 March 2018. The draft determination considered the building did not comply with the "Detached dwelling" classification under Clause A1 2.0 Housing.

## 4. The submissions

4.1 The following table summarises the parties' views on the matter for determination based on the information provided throughout the course of the determination process.

**Table 1**

<b>Occupation and operation</b>	
Agent	<p>While the main house is currently tenanted as a "shared house with 5 tenants" the intention is to occupy the remaining 3 bedrooms once the notice to fix has been resolved.</p> <p>The main house is intended to be occupied in a single shared household arrangement. The doors to the bedrooms are able to be locked for privacy and personal security, but this is not intended to create a tenanted room. Locks can be found in family homes.</p> <p>The owner has stated the intended use is a single home/shared household where the tenants are jointly responsible for their own self care and service (internal management) of the house consistent with the detached dwelling classified use. The household members are required to socialise and "practice caring and cooperative relationships". The house rules require respect and cooperation between household members and it is assumed that all members will look out for each other.</p> <p>There is no intention to accommodate "casual itinerants or transient tenants" or establish a boarding house. The shared tenancy is intended to be more than 28 days, and a minimum of 90 days is more likely. The 90 days represented the threshold previously between transient and permanent occupancy.</p> <p>There is social cohesion between the occupants, which is demonstrated by the "tenure of the tenancy agreements...shared household living arrangements and shared tenancy agreements". The tenants are expected to demonstrate social cohesion.</p> <p>The rent of \$275 per week is part of the "normal shared tenancy arrangement",</p>

	and is inclusive of water, power and utilities. If an occupant does not intend to live as a shared household, the agent assumes they would be asked to leave by the other tenants. The 'house rules' require co-operation, mutual sharing and consideration.
Authority	During the November 2016 inspection the authority observed that the building was configured into eight separate sleeping rooms. The owner informed the officer of the authority that it was his intention to tenant each room separately and the tenants said they had individual tenancy agreements. A tenant informed the authority that he "had no relationship" with the other tenants. The authority's officer observed the tenants "did not live nor did they intend to live, as a single household". The main house is being used as a boarding house.
<b>Intended use</b>	
Agent	The main house was originally constructed as a detached dwelling; it contains an arrangement of rooms that is the same as a "normal home". The building is occupied by a "single shared household" and its use is consistent with the classified use detached dwelling.  The use more closely corresponds to the classified use detached dwelling rather than community service as there is no "limited care"; the tenants organise themselves as a household with no supervisor or manager as would be expected if care or service was provided on a limited basis.  The intended use remains as the owners' stated intention and is not subjective to the authority's perception.
Authority	The classified use or uses is the one that most closely corresponds to the intended use or uses of that building. The authority's view is that a dwelling used by individual tenants who have the right to use the common facilities does not closely correspond to a detached dwelling.

## 5. The hearing

5.1 On 31 May 2018, a hearing was held in Auckland at the applicant's request. This was attended by the following people:

- the applicant and the applicant's agent
- the authority's solicitor and one officer of the authority
- myself, accompanied by three officers of the Ministry.

5.2 Both parties spoke at the hearing and were of assistance to me in preparing this determination. Their views are summarised below (for simplicity these are ascribed to "the applicant" and "the authority", unless otherwise noted).

### 5.3 The applicant's view

5.3.1 The agent for the applicant considered the intended use of the building was the decision of the owner. It was not a decision for the authority. The agent discussed his interpretation of how the intended use and classified use should be applied to the building. He provided comments regarding how the term "occasional use" could be interpreted within the intended use definition. He did not consider a building had to anticipate every conceivable use the building may be subject to.

5.3.2 The agent considered the intended use must be stated, then the classified use determined, and only then the owner needed to consider how the building would comply. He was of the view the building's layout (whether proposed or built) did not inform the intended use. He referred to the notice to fix, where he stated the authority

should have informed the applicant how to get the building to “conform” to a detached dwelling classified use.

- 5.3.3 The agent provided comment on his interpretation regarding the process of deciding the classified use. He is of the view the building must be first placed in either Housing or Community Residential use categories, depending on whether there is self care or there is limited assistance or care provided. The agent described how in this building the occupants arrange themselves and have agreed to live as a social group. The agent outlined how vacancies were filled, with only men accepted into the vacancies, the occupants paying a fixed fee to the applicant (with all the utilities in his name), and the occupants on separate periodic tenancies. The occupants can be asked to leave by either the other occupants or by the applicant as the landlord.
- 5.3.4 In regard to the house rules, the applicant stated the rules are associated with the building. The house rules are pre-existing but the occupants can choose to change the rules if they wish to. However, the applicant has the final approval of the rules as owner and landlord of the building. The agent stated the house rules indicate there is internal management; outlining the acceptable behaviour and how tenants are going to operate rather than having a manager come in and dictate matters such as cleaning schedules.
- 5.3.5 The agent discussed the classified use, noting the draft determination did not state whether the building fell into another Housing subcategory outside of “Detached dwelling”. He considered the building is not a multi-unit dwelling because it does not have multiple kitchen facilities, and the applicant did not want to have a group dwelling classified use so the building had to satisfy the single household arrangement.
- 5.3.6 The agent raised his concern the authority issued the notice to fix because of the District Plan (and therefore under the RMA), and not because of the Building Act.
- 5.3.7 The agent discussed the use of locked doors by the occupants and the application of the Acceptable Solutions for Clause C Protection from Fire.
- 5.3.8 The agent provided comments regarding the nature of a household and the definition of a household unit.

## **5.4 The authority’s view**

- 5.4.1 The authority provided limited verbal submissions. The authority stated it accepted the draft determination and the reasoning behind the decision. An officer of the authority, who had visited the site, explained the notice to fix was issued under the Building Act and confirmed the RMA was not a factor.

## **6. Discussion**

### **6.1 Intended use**

- 6.1.1 Section 7 of the Act defines “intended use” as including:
- (i) any reasonably foreseeable occasional use that is not incompatible with the intended use
- 6.1.2 The agent has stated the intended use of the building is as a “single home/shared household”, and the decision regarding the intended use is the owner’s. He has refuted the authority’s view the building is a boarding house.

- 6.1.3 In a previous determination<sup>5</sup> I stated the term “intended use”, as defined in section 7 of the Act, is not a subjective view of the owner of the building. While the owner’s proposed intent is taken into account, it is an objective assessment of the use to which the building can be put based on its physical design and attributes (or the plans and drawings).
- 6.1.4 For example, an owner could propose a building to be used as a family house, so the drawings show bedrooms, one kitchen and laundry, and two bathrooms. Taking the stated intent from the owner and the drawings, it would be clear the intended use is a family house and would be classified as a “detached dwelling”. However, if an owner said they intended to use the building as a family house but the drawings showed two kitchens and laundries, as well as bedrooms and bathrooms, despite the owner’s stated intent, the building could house multiple households and be classified as a “multi-unit dwelling”. An authority on receiving those drawings could inquire further regarding the use of the building to ensure it would comply with the performance requirements.
- 6.1.5 There was much discussion during the hearing regarding “reasonably foreseeable occasional use” and the notion that all future uses must be catered for in the design of a building. I am of the view the intended use includes “reasonably foreseeable occasional use” because there will be situations where the building will be used occasionally for something that is not the intended use but it would impose too high a compliance burden to achieve that standard all the time. For example, if a family house was used occasionally to hold a large catered party it could fall within a different classified use, and consequently have higher performance requirements. Holding a party within a house is a “reasonably foreseeable occasional use” that is “not incompatible with the intended use” as a family house. So, instead of requiring a higher level of compliance for the occasional party, the intended use definition allows it to remain within its stated intended use as a house because the occasional use can be accommodated.
- 6.1.6 The Building Code sets out the functional requirements and performance criteria that buildings must meet in their “intended use” (section 16 of the Act). The “intended use” of a building must be matched to its classified use. Clause A1 of the Building Code classifies buildings under seven categories called classified uses. Therefore, the performance criteria that a building must meet, depends on its classified use. The classified uses are attached as Appendix A and discussed further below.

## **6.2 Classified use**

- 6.2.1 Establishing the correct classified use is central to the dispute between the parties as this determines the performance requirements that are relevant to the building. The agent is of the view the main house is operating as a “detached dwelling”. The authority is of the view the building is operating as a boarding house and falls within “community service”.
- 6.2.2 Clause 3(3) of the Building Regulations 1992 states how the intended use informs the classified use:

the classified use or uses of a building or part of a building shall be the ones that most closely correspond to the intended use or uses of that building or part of that building.

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<sup>5</sup> Determination 2011/069 Regarding conditions to a building consent and the use of a building (12 July 2011).

- 6.2.3 It is not always obvious which classified use a building will come under, as the activities that occur within the building may not neatly fit into those described or given as examples. However, I consider the principles on which the categorisations have been grouped are relevant and can be used to establish the various use categories for buildings and in interpreting the examples given for those categories.
- 6.2.4 The classified uses are split into seven categories – Housing, Communal residential, Communal non-residential, Commercial, Industrial, Outbuildings, and Ancillary. The uses are grouped together based on the activity or use that will be carried out in the building.
- 6.2.5 Residential uses are separated into two categories – Housing and Communal residential. I note in some cases it will be clear a building falls within a category and it's then only a matter of assigning which subcategory it falls within. However, in this situation it is not immediately clear which category the main house falls into, so I discuss each of these categories in turn.

### 6.3 Housing

- 6.3.1 The uses grouped under Housing are those that place an emphasis on a family or family-like arrangement. This is clear from the inclusion of the term “household” or “family” within each description of the uses. The emphasis on a family or family-like grouping reflects the idea occupants consider the building to be their principal place of residence and suggests a level of social cohesion, comfort and trust a family would experience.
- 6.3.2 The ‘Housing’ category contains three types of dwelling where there is “self care and service (internal management)”:

**Table 2: Extract from Clause A1**

Classified use	Examples
<b>2.0 Housing</b>	
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.	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.	an attached dwelling, flat or multi-unit apartment
2.0.4 Group dwelling Applies to a building or use where groups of people live as one large extended family.	within a commune or marae

- 6.3.3 Within these classified uses occupants will mainly look after themselves and each other. This idea is reinforced through the performance requirements that are applicable to ‘Housing’, particularly those related to life safety, which are significantly less onerous when compared with communal residential requirements.
- 6.3.4 There is also a clear distinction made in the Building Code around the risks in relation to the number of occupants, which is reflected in different subcategories of Housing based on whether there is a single household, multiple households, or several groups of people. There are higher performance requirements for the latter two, with increased life safety obligations due to the number of occupants.

- 6.3.5 For a building to fall within “Housing” the building must house people that live as a single household or family and where there is “self care and service”. Whether the occupants in the main house live as a “single household” is in dispute in this case. A “household” is not defined in the Building Act or in the Building Code. However, a “household unit” is defined in section 7 of the Act, and this definition can inform the interpretation of household.
- 6.3.6 A household unit is defined in section 7 of the Act:
- (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
- 6.3.7 The definition of “household” is furthered by previous judgements and determinations that provide guidance regarding the characteristics of a “single household” and “family”.
- 6.3.8 In *Queenstown-Lakes District Council v Wanaka Gym Ltd*, the Judge considered the following characteristics of a single household, noting it is not an exhaustive list:
- degree of permanence in the residents
  - connection with other residents other than simple proximity
  - an element of living together jointly.
- 6.3.9 The case cited *Hopper Nominees v Rodney District Council*<sup>6</sup> where it stated:
- The word ‘family’ has a wide meaning adequate in modern use to connote relationships of blood or marriage or other intimate relationships of a domestic nature, including, for example, persons sharing a dwelling such as students or friends. The essential connotation of the term is familial domesticity.
- 6.3.10 In a previous determination<sup>7</sup> I have considered a “flat” can lend itself to being considered a single household where there is a level of interaction and community between flatmates. I have considered a “flat” means a residence of a group of people who have chosen to live together in a “family-like arrangement” with a similar atmosphere of trust, harmony, and affection.
- 6.3.11 Therefore, for a group of people living within this building to be considered a “single household” there must be evidence they live like a family with an atmosphere of trust and harmony which would lead to social cohesion.

## 6.4 Is this building a detached dwelling?

- 6.4.1 In this instance, the building is not solely occupied by one family, so the question is whether the occupants can be considered a “single household”.
- 6.4.2 The agent has made the following statements regarding the eight men who will reside in the main house:
- occupants will have a “shared tenancy agreement” that allows for individual tenancy agreements relating to the main house (I have not seen this shared tenancy agreement)

<sup>6</sup> *Hopper Nominees Ltd v Rodney District Council* [1996] 1 NZLR 239.

<sup>7</sup> Determination 2007/111 Fire safety provisions for two relocated buildings to be used as staff accommodation (17 September 2007).

- occupants do their own cooking, cleaning and are responsible for the whole dwelling
- occupants will organise themselves as a household
- house rules require respect and cooperation
- occupants will demonstrate the same social cohesion as in a single household, and this is the owner's intention and expectation.

6.4.3 Using the criteria established previously and the information provided in submissions from both parties, I have assessed whether the occupants are a "single household" for the purpose of establishing the classified use. When considering the degree of permanence of the residents, I consider the following factors are relevant:

- each occupant has an individual tenancy agreement, regardless of the shared tenancy agreement<sup>8</sup>
- an occupant can vacate the house without consulting or informing the other occupants
- the occupants are signed to separate periodic tenancies and can give 21 days' notice of intent to leave
- the authority reported a tenant advised they lead separate lives from the other occupants.

6.4.4 As discussed in Determination 2014/026<sup>9</sup>, permanence is not only a matter of how long people stay in a place, but it is also how they view their residence and relate to the other occupants. An occupant who does not consider their accommodation to be permanent is considered more at risk in a fire event and is less likely to be familiar with escape routes.

6.4.5 In regard to the operation of the main house, I consider it relevant to acknowledge the house rules in place as being one indicator of the building's use. I am of the view the house rules restrict the occupants from occupying the building as an autonomous household.

6.4.6 The use of agreements was considered in *Queenstown-Lakes District Council v Wanaka Gym Ltd*<sup>10</sup> and the following factors were identified as relevant in that case:

...There is a significant degree of restriction as a matter of contract on the freedoms of the occupant which is inconsistent with people being resident in a household;...

The fact that there is no necessary connection with the others residing in the house;

There is no agreement of the residents to reside together

I note that the judgement also considered it significant the occupants were "not even allowed visitors to stay overnight"<sup>11</sup>.

6.4.7 I am of the view the approach taken by the court applies to the circumstances in this case.

6.4.8 The house rules, provided in the agent's submission and set by the applicant as the landlord, place a number of restrictions upon the occupants; they sets out

<sup>8</sup> A shared tenancy agreement as described by the agent is not legally binding under the Residential Tenancies Act 1986. It may have legal standing if used in the Disputes Tribunal.

<sup>9</sup> Determination 2014/026 Regarding which fire risk group should be used in determining the compliance of proposed accommodation (21 May 2014).

<sup>10</sup> *Queenstown-Lakes District Council v Wanaka Gym Ltd*, CIV-2003-002-265 (21 May 2014).

<sup>11</sup> The house rules in this case do not permit visitors to stay overnight.

expectations in terms of conduct and behaviour and state that one occupant is appointed the “house manager”. The occupants can request to change a house rule, but the final decision lies with the applicant as the owner and landlord. The house manager acts as the fire warden, periodically inspects the bedrooms, and gives written approval for tenants to enter another tenants room ‘to remove or replace content’.

- 6.4.9 I consider the need to formalise the living arrangement in this way is not typical of a flat; the rules are prescriptive and restrictive, ranging from ensuring no door is slammed, to restricting the number of visitors and the hours visitors are allowed to be present<sup>12</sup>, banning alcohol, and requiring written permission to enter another occupant’s bedroom. In this case the rules and restrictions on the occupants are more aligned with commercial accommodation than a domestic dwelling.
- 6.4.10 The occupants are also required to lock their bedroom doors whenever they leave the building, with the house rules stating the ‘house’ is not responsible for missing belongings. This rule indicates a lower level of trust present between the occupants than what would be expected where people live as a single household.
- 6.4.11 Another factor in determining whether a building houses a single household is the layout of the building. In this instance, the layout of the building, as shown in the authority’s as-built plan, appears to have common space for the occupants to socialise. However, due to the factors noted in paragraph 6.4.3 and when the house rules are taken into account, I do not consider the living arrangement will encourage family-like relationships to form between the occupants and there will be a lower level of social cohesion.
- 6.4.12 There is an emphasis on occupants in buildings that fall within Housing to have a high level of social cohesion. This is clear from the inclusion of family or family-like groupings within each subcategory. There is a lower compliance burden in respect of the fire performance requirements that fall within Housing, which is balanced against the knowledge the groups of people will have a high degree of social cohesion and mutual responsibility. This is necessary to ensure they assist each other in a fire event. A high degree of social cohesion is justification for the lower fire protection requirements for household units to satisfy the Acceptable Solutions; relying on occupants warning each other, being aware of the building and its escape routes and quickly evacuating.
- 6.4.13 Given the various factors discussed above, I am of the view the occupants are more likely to live independently of each other and be less aware of fellow occupants’ presence and movements than those in a single household. There is a lower expected level of familiarity between the occupants, and less social cohesion that would ensure any individual becoming aware of fire would naturally alert and assist others within the building to escape.
- 6.4.14 Overall, I consider the evidence does not lead to the conclusion the occupants will live as a single household. I do not believe the owner can enforce social cohesion between the occupants who are proposed to reside in the building.

## **6.5 Is the building considered a multi-unit dwelling?**

- 6.5.1 The performance requirements for multi-unit dwellings are similar to detached dwellings, but with more onerous performance requirements of the Building Code

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<sup>12</sup> See also Determination 2017/036 for further discussion regarding visitors.

relating to fire and noise separation between household units and protection of other property.

6.5.2 If this building contained two or more households, it would fall under the classified use of “multi-unit dwelling”. Each household unit would typically contain food preparation and sanitary facilities, and each flat or group of flatmates live independently of the other groups within the building.

6.5.3 In this instance, the building does not appear to provide for a series of individual household units; there is only one kitchen and one laundry. Therefore, I am of the view the building cannot be described as containing multiple units and does not fall within the classified use “multi-unit dwelling”.

## **6.6 Is the building considered a group dwelling?**

6.6.1 I have considered whether the use of the building would fit in the classified use “group dwelling”. There are higher performance requirements related to this classified use because of the increased number of people and the effect this has on escape times in fire events, amongst other aspects of the Building Code.

6.6.2 While, a minimum number of occupants is not stated in the classified use description, a marae or commune are given as examples of a group dwelling. In both situations there is likely to be a large number of people sleeping in one room or in a collection of rooms. This is an indication of the numbers, concentration and relationship between occupants likely to be expected in a group dwelling who live as “one large extended family”.

6.6.3 The applicant’s proposal is for the building to house eight men. The number and concentration of occupants is much lower than one would expect to find on a marae or in a commune. I note each occupant has their own bedroom, there are not multiple people sleeping in one bedroom, or in a collection of rooms. This is not say having one bedroom per occupant automatically excludes a building from this classification. However, I do not consider the situation is comparable to a marae or a commune.

6.6.4 I am of the view the building with eight occupants does not meet the threshold to fall within the group dwelling subcategory.

## **6.7 Communal residential**

6.7.1 Communal residential uses are those where assistance or care is extended to the occupants. Unlike the uses within Housing, there is no emphasis placed upon the requirement for a family (or single household) and the occupants are less likely to know each other before occupying the building. The Communal residential category covers residential activities where occupants generally receive more care and support than the Housing category, and where the building contains a disparate group of occupants.

6.7.2 There are two uses within this category – community service and community care.

<b>3.0 Communal residential</b>	
3.0.1 Applies to buildings or use where assistance or care is extended to the principal users. There are two types:	
3.0.2 Community service Applies to a residential building or use where limited assistance or care is extended to the principal users.	a boarding house, hall of residence, holiday cabin, backcountry hut, hostel, hotel, motel, nurses' home, retirement village, time-share accommodation, a work camp, or camping ground.
3.0.3 Community care Applies to a residential building or use where a large degree of assistance or care is extended to the principal users. There are two types: (a) Unrestrained; where the principal users are free to come and go. (b) Restrained; where the principal users are legally or physically constrained in their movements.	(a) hospital, an old people's home or a health camp. (b) a borstal or drug rehabilitation centre, an old people's home where substantial care is extended, a prison or hospital.

6.7.3 It is clear the main house does not fall within the Community care subcategory.

6.7.4 One of the examples given for the Community service subcategory is a boarding house; however the agent has stated the owner is not operating a boarding house.

6.7.5 The term 'boarding house' has no definition under the Act or Building Code. The *Oxford English Dictionary* defines "boarding house" as "a private house providing food and lodging for paying guests". I consider the ordinary and natural meaning of a boarding house as a place that provides accommodation and some level of service higher than for example a hostel to individual occupants. Taking the ordinary and natural meaning of the word, I agree the 'boarding house' label is incorrect in this situation.

6.7.6 However, the term "boarding house" is only an example to illustrate the types of uses that fall under the classified use Community service, and the examples within Clause A1 are not exhaustive. Just because the building is not a 'boarding house' in the ordinary and natural meaning of the term does not necessarily mean it does not fall within the classified use Community service.

6.7.7 Accommodation in New Zealand has evolved and the ways people are living together is changing. There is a growing rise in "room rentals" or share houses", where occupants rent a room (often with provision to lock the door for privacy and security) and have access to communal facilities. Often these "room rentals" or "share houses" will have some of the following characteristics (this list is not exhaustive):

- house rules
- let room by room (individual tenancy agreements)
- requirement to lock doors
- high number of occupants in regard to size of the building
- large number of rooms

- small communal spaces
  - payment of utilities made by the landlord
  - cleaners engaged by the landlord
  - dispute resolution services offered by the landlord.
- 6.7.8 To determine whether the building falls within the classified use community service, I have assessed the examples to understand the services expected in relation to “limited assistance or care”. There is a varying degree of what constitutes “care or assistance” provided to the occupants, and in some cases this could be considerably minor. Some examples of care or assistance include the provision of meals, cleaning, day-to-day upkeep, onsite management etc.
- 6.7.9 In considering what may constitute “limited” assistance or care, I compared the examples against those in “community care”, which applies to residential buildings where a “large degree” of assistance is provided. It is then apparent community care is intended to cover situations where occupants are largely dependent on another person (the person offering assistance), whereas occupants in community service are largely independent of other people.
- 6.7.10 The larger degree of independence in community service explains the varying range of what “limited assistance or care” can manifest as within in the examples provided for that classified use. For example, back country huts offer minimal services to occupants, whereas hotels offer a higher level and wider range of assistance.
- 6.7.11 In this situation, I consider there are examples of “limited assistance or care” offered to the occupants.
- 6.7.12 Firstly, the tenants pay a flat rate which is inclusive of “water, power and utilities”. In a flatting situation the tenants usually:
- arrange for the set up of power and utilities to the property they are renting
  - are in charge of paying the utilities directly
  - are responsible for either cancelling or transferring the account once they leave.
- 6.7.13 In this building occupants do not need to setup, pay directly, or cancel the utility accounts. The landlord is responsible for the payment and administration of the accounts. In this respect, I consider the fact the landlord is responsible for the payments and administration of the accounts constitutes the provision of “limited” assistance to the occupants.
- 6.7.14 Additionally, stated in the house rules under “Meetings, reviews, Concerns and Complaints”:
- In the event that disagreement or discord cannot be resolved by the tenants the landlord will act as arbitrator and is authorised to make any decisions to restore harmony and good order. Failure to follow decisions could lead to request to vacate the premises.
- 6.7.15 The landlord provides dispute resolution for internal issues between occupants. I am of the view a landlord acting as an escalation point and mediator for issues between the occupants is a form of assistance, which exceeds the requirements of a tenant and landlord relationship. The relationship is more akin to management of commercial accommodation than the typical tenant and landlord relationship, which in this respect makes it less like a household and more aligned with community care.

- 6.7.16 I have also considered the performance requirements as they apply to the examples of Community service buildings. Overall, buildings or uses that fall within Community service can have more onerous fire and accessibility performance requirements when compared to uses within Housing.
- 6.7.17 The performance requirements reflect the occupants may be in an unfamiliar sleeping environment, and the occupants are exposed to higher risks in the event of an emergency than someone who is in a dwelling with members of their family or living in a family-like arrangement.
- 6.7.18 Whether or not the main house is considered as a 'boarding house' in terms of its ordinary and natural meaning of the term is not relevant to whether it belongs within the classified use Community service. Accordingly, I consider the correct classified use for the main house is Community service.

## **6.8 Conclusion**

- 6.8.1 I am of the view the occupants do not live as a single household in a detached dwelling because of the individual tenancy agreements, house rules and the assistance offered to the occupants. I conclude the building does not fall within the Housing category, and falls within Communal Residential under Community service.
- 6.8.2 Taking into account the discussion, I conclude the main house does not contain a single household, and therefore does not comply with Clause A1 2.0.2 Detached dwelling.

## **7. The decision**

- 7.1 In accordance with section 188 of the Building Act 2004, I hereby determine the building's use does not comply with Clause A1 2.0.2 Detached dwelling.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 7 September 2018.

Katie Gordon  
**Manager Determinations**

## Appendix A – Classified use

### A.1 Clauses A1 from the Building Code:

#### 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.

##### 2.0.4 Group dwelling

Applies to a building or use where groups of people live as one large extended family. Examples: within a commune or marae.

#### 3.0 Communal residential

##### 3.0.1

Applies to buildings or use where assistance or care is extended to the principal users. There are two types:

##### 3.0.2 Community service

Applies to a residential building or use where limited assistance or care is extended to the principal users. Examples: a boarding house, hall of residence, holiday cabin, backcountry hut, hostel, hotel, motel, nurses' home, retirement village, time-share accommodation, a work camp, or camping ground.

##### 3.0.3 Community care

Applies to a residential building or use where a large degree of assistance or care is extended to the principal users. There are two types:

(a) Unrestrained; where the principal users are free to come and go. Examples: a hospital, an old people's home or a health camp.

(b) Restrained; where the principal users are legally or physically constrained in their movements. Examples: a borstal or drug rehabilitation centre, an old people's home where substantial care is extended, a prison or hospital.

#### 4.0 Communal non-residential

##### 4.0.1

Applies to a building or use being a meeting place for people where care and service is provided by people other than the principal users. There are two types:

##### 4.0.2 Assembly service

Applies to a building or use where limited care and service is provided. Examples: a church, cinema, clubroom, hall, museum, public swimming pool, stadium, theatre, or whare runanga (the assembly house).

##### 4.0.3 Assembly care

Applies to a building or use where a large degree of care and service is provided. Examples: an early childhood education and care centre, college, day care institution, centre for handicapped persons, kindergarten, school or university.

**5.0 Commercial**

## 5.0.1

Applies to a building or use in which any natural resources, goods, services or money are either developed, sold, exchanged or stored. Examples: an amusement park, auction room, bank, car-park, catering facility, coffee bar, computer centre, fire station, funeral parlour, hairdresser, library, office (commercial or government), Police station, post office, public laundry, radio station, restaurant, service station, shop, showroom, storage facility, television station or transport terminal.

**6.0 Industrial**

## 6.0.1

Applies to a building or use where people use material and physical effort to:

- (a) extract or convert natural resources,
- (b) produce goods or energy from natural or converted resources,
- (c) repair goods, or
- (d) store goods (ensuing from the industrial process).

Examples: an agricultural building, agricultural processing facility, aircraft hangar, factory, power station, sewage treatment works, warehouse or utility.

**7.0 Outbuildings**

## 7.0.1

Applies to a building or use which may be included within each classified use but are not intended for human habitation, and are accessory to the principal use of associated buildings. Examples: a carport, farm building, garage, greenhouse, machinery room, private swimming pool, public toilet, or shed.

**8.0 Ancillary**

## 8.0.1

Applies to a building or use not for human habitation and which may be exempted from some amenity provisions, but which are required to comply with structural and safety-related aspects of the building code. Examples: a bridge, derrick, fence, free-standing outdoor fireplace, jetty, mast, path, platform, pylon, retaining wall, tank, tunnel or dam.