



## Determination 2018/050

### Regarding a notice to fix issued for the change of use of a house at 139 Highsted Road, Casebrook, Christchurch

#### Summary

This determination considers whether the building has undergone a change of use and the exercise of the authority's powers in issuing a notice to fix for failure to notify a change of use. The building was originally constructed and used as a dwelling and is now occupied by a small curtain-making business.

#### 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 owners of the building, W Glasson and M Glasson ("the applicants"), acting through an agent ("the applicants' agent")
  - Christchurch City Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.
- 1.3 The application for this determination arises from the authority's decision to issue a notice to fix in respect of a building on the applicants' property. The notice to fix was issued on the grounds that the applicant had changed the use of the building, without notifying the authority as required by section 114 of the Act<sup>2</sup>.
- 1.4 The matter to be determined<sup>3</sup> is therefore the authority's exercise of its power of decision in issuing the notice to fix. In making my decision I must consider whether the building has undergone a change of use under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 ("the Regulations").
- 1.5 In making my decision, I have considered the submissions of the parties, the report of the independent expert commissioned by the Ministry to advise on this dispute ("the expert") and the other evidence in this matter.
- 1.6 I have not considered any other aspects of the Act or Building Code (First Schedule, Building Regulations 1992) beyond those required to decide on the matter to be determined.

<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, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code. Relevant sections of the Act and clauses of the Building Code are set out in Appendix A.

<sup>3</sup> Under sections 177(1)(b), 177(3)(e) and 177(3)(f) of the Act.

## 2. The building and background

- 2.1 The applicants' building was originally constructed in a residential suburb in Christchurch in the early 1960s as a single-story three-bedroom dwelling, with a floor area of 135m<sup>2</sup>. It has a concrete perimeter foundation, timber framing, weatherboard cladding, aluminium joinery, plasterboard internal linings and a medium-pitched corrugated iron roof.
- 2.2 The applicants purchased the property sometime in the mid-1960s, and lived in the building as their family home. They subsequently made several additions to the building and property that required building consents to be obtained, including for the construction of a garage (in 1973), caravan-port (1976), extension to the building (1976) and installation of a wood-burner (1985 and 2003).
- 2.3 In the early 1970s, one of the applicants started running a curtain-making business from the building along with two family members who at that time lived at the property. Initially, the business was run in the living areas of the house, and the equipment required to make the curtains was taken out and packed away again at the beginning and end of each day.
- 2.4 In 2014, the applicants obtained a building consent to construct a new smaller dwelling, with a floor area of 106m<sup>2</sup>, on the rear of the property ("the new dwelling"). The new dwelling was built over 2014 and 2015, and the applicants moved into this as their new home. At this stage the original building was given over completely to the curtain making business and the other two family members were no longer living at the property.
- 2.5 In 2016, the parties entered into discussions around resource consent requirements relating to the applicants' property. As a result of these discussions, the applicants removed, at the authority's request, the kitchen facilities from the building so that it would no longer be classed as an independent dwelling for the purpose of the Resource Management Act. I understand that following this, the resource consent issues were resolved and the applicants continued to use the building as their business premises.
- 2.6 At a meeting held on 2 December 2016, in relation to the resource consent matters, the authority raised the question of the change of use of the house and the impact this would have on Building Code compliance. I am not sure whether the applicants were present at this meeting, but it would appear that a representative of the applicants was.
- 2.7 On 16 May 2017, the authority issued a notice to fix in respect of the use of the building. The notice gave the following particulars of contravention.

### PARTICULARS OF CONTRAVENTION OR NON-COMPLIANCE

Changing the use of a building (at 139 Highsted Road, Casebrook, Christchurch) and failing to notify the [authority]. This is a breach of section 114 and 115 of the Building Act 2004 –

### Section 114

(2) (a) states that an owner of a building must give written notice to the territorial authority if the owner proposes the change the use of the building.

### **Section 115**

(b) states that an owner of a building must not change the use of the building 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 –

(i) will comply, as nearly as reasonably practicable, with every provision of the building code that relates to the following:

- Means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire rating performance.

- Access and facilities for people with disabilities.

### **TO REMEDY THE CONTRAVENTION OR NON-COMPLIANCE YOU MUST**

Revert to the original consented use of the building (“Sleeping Single home” purpose group only).

Or

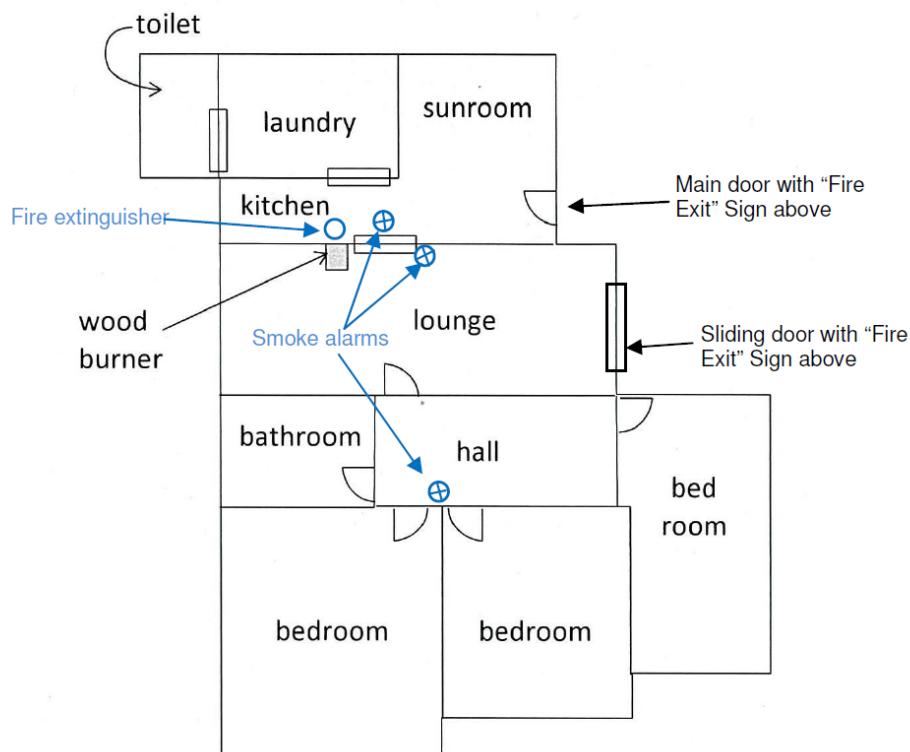
Submit form B005 (Notification of proposed Change of Use) to the [authority], to include the current activity.

- 2.8 Correspondence passed between the parties about the notice to fix, with the authority maintaining that a change of use had occurred.
- 2.9 The applicants applied for a determination on the matter and this was received by the Ministry on 18 June 2018.
- 2.10 The Ministry wrote to the parties on 20 June 2018 seeking further information and clarifying that this determination would be limited to the issue of the notice to fix under the Act, as I have no jurisdiction relating to the resource management and planning matters that had been raised in the application.

### **3. The expert’s report**

- 3.1 As mentioned in paragraph 1.5, I engaged an independent expert to assist me in this matter (“the expert”). The expert is a registered building surveyor and was engaged to visit the applicants’ property in order to verify the features of the building and how it is presently being used.
- 3.2 The expert carried out a site visit of the applicants’ property on 8 August 2018, where he examined and took photos of the inside and outside of the building. The applicant was present at this visit.
- 3.3 The expert provided a report dated 16 August 2018, a copy of which was supplied to the parties on 20 August 2018.
- 3.4 In his report, the expert confirmed that the stove and kitchen sink had been removed and there were no sleeping facilities left in the building, and the bathroom and toilet remained in place. He provided a floor plan of the building, with the placement of smoke alarms, the fire extinguisher and ‘Fire Exit’ door signs marked on it (see figure 1).
- 3.5 From his observations, the expert confirmed that:
  - there were six sewing machines set up in various rooms in the building, and that several of them looked like they were ‘intended for specific purposes’
  - the ‘set up’ looked as if it was intended for two or three workers
  - there was a total of approximately 6m<sup>3</sup> of cloth stored in various places around the building at the time of the expert’s site visit

- the former lounge was now being used as a cutting room, and had fabric stored in it
- the hall and former bathroom (now a cupboard) were also being used to store cloth
- one former bedroom was being used as a sample storage room
- one of the remaining former bedrooms was being used for general storage, and the other was largely empty
- the former laundry space was currently being used as a kitchenette for staff and had portable food preparation appliances in it
- the two exterior doors to the building had ‘Fire Exit’ signs placed above them
- there was a fire extinguisher in the former kitchen, and smoke alarms in the sunroom, cutting room and hall. The expert commented that ‘all three smoke alarms were old and not up to the current standards’ and recommended that they should be replaced.



**Figure 1: Floor plan (not to scale)**

- 3.6 From his discussions with the applicant during the site visit, the expert noted that:
- the applicant and two family members work in the building
  - ‘customers very rarely came to the workshop’, usually staff visited the clients to show them samples and hang curtains.

## 4. The submissions

### 4.1 The applicants' submission

4.1.1 The applicants made a submission dated 14 June 2018 with their application for a determination. In their submission they stated that:

- the applicant has operated the 'home based business' from the house for the past 45 years, with the two family members working in the business for the past 27 years (approximately), and over that time the nature of the business has not changed
- the use had not changed: the applicants still reside on the property and operate the business out of the original house
- all that has changed is the construction of the new dwelling, which the applicants now live in.

4.1.2 With their submission the applicants enclosed copies of:

- plans relating to the construction of the new dwelling, and the business-related activities that occur within each room of the original house
- photos of the interior and exterior of the building
- email correspondence between the parties
- documents about resource consent matters related to the building.

### 4.2 The authority's submission

4.2.1 The authority made a submission dated 6 July 2018. In its submission, it stated that:

- it held records relating to all the building consents issued in respect of the applicants' property, including for the construction of the original house and new dwelling, and none of these 'indicates that the building is used for anything other than a residential dwelling'
- the new dwelling was described on the building consent application as a 'Transportable single level dwelling' and is clearly independent of the existing building
- the kitchen in the existing building was removed so that it is not considered to be a separate dwelling for purpose of the Resource Management Act
- 'the existing building is now being used for manufacturing purposes and employs people who do not live on the site. We do not accept that it has been approved for this use under the Building Act or previous Building Bylaws. Therefore it is a change of use of the building'.

4.2.2 The authority concluded that:

Our assessment of the use under the Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 is that the building has changed from SH (Single Sleeping Home) to WL (Working Low), or arguably WM (Working Medium) as the manufacturing includes combustible materials. The Building Code requirements for this new use are more onerous than for a single house, in particular in regard to fire, therefore the use has changed as per Section 5 of the above regulations, and Section 115 of the Building Act applies...

In conclusion, we consider that it was appropriate for a notice to fix to be issued as the use of the building has been changed without first receiving written approval from the [authority], as required by Section 115(b) of the Building Act 2004.

- 4.2.3 With its submission the authority enclosed copies of floor plans relating to the various building consents issued over the years.
- 4.2.4 In addition, the parties responded to the Ministry's request for further information in emails dated 22 June 2016. Nothing additional of relevance to this determination was raised in these emails.

### **4.3 The draft determination and submissions in response**

- 4.3.1 A draft of this determination was issued to the parties on 20 September 2018. The draft concluded that the building had undergone a change of use under the Regulations and that the applicants were obliged to notify the authority.
- 4.3.2 The authority responded on 26 September 2018, accepting the conclusions and requesting advice on how the provisions relating to access and facilities for people with disabilities would apply.
- 4.3.3 The agent responded by email on 1 October 2018, and did not accept the conclusion reached in the draft. The agent maintained the view that continuation of the "home based business", which had been operating for over 45 years, did not constitute a change of use of the building. The agent raised a number of matters relating to town planning and existing use rights, which I note are matters that concern the application of the Resource Management Act not the Building Act and so are outside the ambit of this determination.

## **5. Discussion**

- 5.1 The matter in dispute is whether the authority correctly exercised its powers of decision in issuing the notice to fix in regards to the use of the building. The authority has issued the notice on the grounds that there has been a change of use, and the applicants failed to notify the authority of this change, as required by section 114 of the Act.
- 5.2 Accordingly, I must consider whether there has in fact been a change of use under the Regulations such that sections 114 and 115 of the Act apply.

### **5.3 The change of use legislation**

- 5.3.1 The legislation relating to change of use can be found in sections 114 and 115 of the Act, and the Regulations (refer paragraph 1.4).
- 5.3.2 Under section 114, if an owner is planning to change the use of a building, as defined in Schedule 2 of the Regulations, the owner must provide written notice to the authority. An owner must not change the use of the building unless the authority has given written notice that the building in its new use will comply to the extent required by section 115.
- 5.3.3 Section 5 of the 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.

- 5.3.4 Accordingly, for the provisions in sections 114 and 115 to apply in the current case, I must first establish that there has been a change of use of the applicants' building in terms of Schedule 2 of the Regulations. If there has been a change of use, I must then establish whether the Building Code requirements relating to the new use are additional to or more onerous than those that related to the old use. This second step of the process will require me to consider what the correct classified use of the building is under Clause A1 of the Building Code.
- 5.3.5 Turning first to Schedule 2 of the Regulations, the building as originally constructed as a dwelling would have fallen within the use category SH (Sleeping Single Home). However as the business was operating from the building from the 1970s, which was prior to the introduction of the Building Act, it could be argued, as the applicants contend, that the use has not changed. The authority on the other hand considers that as the building is now being used solely for operating a business its use has changed to either WL (Working Low) or WM (Working Medium).
- 5.3.6 These uses are defined in Schedule 2 as follows:

**Table 1: Use categories defined in Schedule 2 of the Regulations**

Use	Spaces or dwellings	Examples
<b><i>Uses related to sleeping activities</i></b>		
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
<b><i>Uses related to working, business or storage activities</i></b>		
WL (Working Low)	spaces used for working, business, or storage—low fire load	places for manufacturing, processing, or storage of non-combustible materials or materials having a slow heat release rate, [...]various examples of buildings are provided here including: laundries (self-service) and business or other offices.]
WM (Working Medium)	spaces used for working, business, or storage—medium fire load and slow, medium, or fast fire growth rates	places for manufacturing and processing of combustible materials not listed in the rows relating to WL, WH, or WF, including bulk storage up to 3 m high (excluding foamed plastics)

- 5.3.7 The building, either in its entirety or in part, fell within the use category SH while it was occupied as a dwelling. I consider it clear that the building is no longer being used as a dwelling, as no-one is living in or occupying it, and there are no longer any facilities or furnishings in it to enable people to sleep or otherwise reside in it. The building is set up purely as a workspace and the applicants have confirmed that this

is how it is used. This means that no part of the building now comes within the SH use under the Regulations, and instead will come within one of the uses associated with work and running a business.

- 5.3.8 The question therefore becomes whether the current use of the building falls within WL (Working Low) or WM (Working Medium), and this in turn depends on the fire load of the work, business or storage activities that occur within the building and whether the manufacturing involves “combustible” materials.
- 5.3.9 The term “fire load” has the meaning given to it by clause A2 of the Building Code:
- fire load** the sum of the net calorific values of the combustible contents which can reasonably be expected to burn within a *firecell*, including furnishings, built-in and removable materials, and *building elements*. The calorific values shall be determined at the ambient moisture content or humidity. (The unit of measurement is MJ or TJ).
- 5.3.10 Schedule 2 of the Regulations gives examples of the type of work, business and storage activities that are likely to fall within the low and medium fire load categories. The WM (Working Medium) category is described as “spaces used for working, business, or storage – medium fire load and slow, medium, or fast fire growth rates”, and an extended description under “examples” is given as “places for manufacturing and processing of combustible materials not listed in the rows relating to WL, WH, or WF, including bulk storage up to 3 m high (excluding foamed plastics)”.
- 5.3.11 The WL (Working Low) category is described as “spaces used for working, business, or storage—low fire load”, and has an extended description as being “places for manufacturing, processing, or storage of non-combustible materials or materials having a slow heat release rate”. Examples provided of spaces in the WL category include hair dressing shops, beauty parlours, laundries (self-service), and business or other offices.
- 5.3.12 The remaining two uses related to working, business or storage activities – WH (Working High) and WF (Working Fast) – both relate to uses where highly combustible materials are used and are not relevant in this case.
- 5.3.13 I do not consider that the applicants’ business, which deals predominantly with curtain-making, would come within the WM category. While curtain fabric can be flammable, given the limited storage of materials within the building the fire load would be low rather than medium. I note that many of the occupations listed as examples in the WL (Working Low) category involve quantities of materials that would be combustible in the event of a fire, for example, offices and wineries may use and store paper and cardboard, and hair dressing salons and beauty parlours may store flammable chemicals.
- 5.3.14 I note also that in the ‘Intermittent activities’ category of uses in Schedule 2 of the Regulations, ‘linen rooms’ are given as an example of an intermittently used space that has a low fire load. In my opinion, a linen room would have a similar fire load to this building in terms of it being a place where fabric material is stored.
- 5.3.15** In my opinion, the building has undergone a change of use, and its new use under Schedule 2 of the regulations is WL (Working Low). The question therefore becomes whether the Building Code requirements relating to this new use are additional to or more onerous than those that related to the old use (refer paragraphs 5.3.3 and 5.3.4). It is only if there are additional or more onerous compliance requirements in the new use that the provisions in sections 114 and 115 of the Act apply, and the applicants were obliged to notify the authority of the change of use.

## 5.4 Classified use

- 5.4.1 To determine which Building Code requirements apply to the building in its new use, I must first establish what the building's new classified use is.
- 5.4.2 The various classified uses that a building, or part of a building, may have are set out in Clause A1 of the Building Code. It is important to note that although there are some correlations, a building's classified use is not the same as its use under Schedule 2 of the Regulations.
- 5.4.3 The classified use of a building derives from its intended use. In the current case, the applicants' intended use of the building is as a premises and workshop from which to run the curtain-making business, and this is consistent with the current configuration and attributes of the building.
- 5.4.4 Turning to Clause A1, there are 11 classified uses that a building, or part of a building, may have. In its original use as a house, the building would have been classed as a "detached dwelling" as a building where a group of people live as a single household or family. The classified uses that I have considered in relation to the building's use as a business are Commercial and Industrial, which are defined as follows:

<b>5.0 Commercial</b>
<b>5.0.1</b> Applies to a <i>building</i> 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.
<b>6.0 Industrial</b>
<b>6.0.1</b> Applies to a <i>building</i> 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.

- 5.4.5 Part of the building is used for office, shop and showroom type activities associated with selecting and selling curtains, however its use in this respect is limited to "very rare" visits from clients which I consider no different to a wide range of manufacturing operations under the classified use "Industrial" that may have occasional visitors. The building in this case is used for producing goods (curtains) from converted resources (fabric), and for storing the goods associated with this process. Therefore, I consider the building falls within the classified use "Industrial".
- 5.4.6 Having established the new classified use that applies, I must now consider the performance criteria that apply and whether they are more onerous. However, before I do this, I wish to mention the classified use Outbuildings (Clause A1 7.0).
- 5.4.7 In their submissions and the documents provided with it, the applicants have referred to the building having the status of an ancillary building that is used in association with the new dwelling. In the applicants' view, the current use of the building is just a continuation of the use that it had when they simultaneously lived in and ran the

business out of it. They consider this situation has continued, except that they are now living next door in the new dwelling and so the building in which the business now operates is an ancillary building associated with the new dwelling.

- 5.4.8 I note the applicants are using the term ancillary in a resource management or planning context, and not as it is defined in Clause A1 8.0 of the Building Code, where Ancillary is used to refer to buildings or uses not intended for human habitation such as a platform, pylon, bridge etc. However, I have considered whether the building is an “Outbuilding”, which is defined in Clause A1 7.0.1 as applying 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 given in the definition are: a carport, farm building, garage, greenhouse, machinery room, private swimming pool, public toilet, or shed.
- 5.4.9 There is no relationship between the function of the building from which the business operates and the new dwelling in the way that a garage, carport or farm building would have a functional relationship with associated buildings. The activities that occur in the two buildings are quite distinct, and I am of the view that the business activities that occur in the building cannot be considered to be ‘accessory to the principal use’ of the new dwelling simply on the basis that they are close in proximity and at least one of the staff resides in the dwelling on site. Accordingly, I conclude that the building is not an “Outbuilding” under section A1 7.0.1.

## **5.5 The Building Code performance criteria that apply**

- 5.5.1 Turning now to the Building Code performance criteria that will apply to the building in its new classified uses, some of these will be additional or more onerous than they were for the Detached Dwelling classified use.
- 5.5.2 For example some of the provisions in Clauses C5.3 to C5.8 (concerning access and safety for firefighting operations) apply to the Industrial classified use, but not the Detached Dwelling classified use. Likewise Clauses D1.3.3(i), F2.3.2, and F8 apply to industrial buildings and not to housing.
- 5.5.3 Accordingly both the requirements relating to a change of use under the Regulations for the applications of sections 114 and 115 have been met – there has been a change of use under Schedule 2 of the Regulations and the change of use has resulted in some of the performance criteria that relate to its new use being additional or more onerous. As a result, sections 114 and 115 of the Act apply: the applicants were obliged to notify the authority to the change of use so that it could assess whether the requirements in section 115(b) have been met.
- 5.5.4 The authority has requested advice on whether the provisions relating to access and facilities for people with disabilities would apply in this case. In response I offer the following comments:
- Section 115 of the Act requires the building in its new use comply as nearly as is reasonably practicable in relation to specific provisions. More information on this can be found on the Ministry’s website<sup>4</sup>.
  - For a number of clauses of the Building Code that relate to access and facilities for people with disabilities, the limit on application relating to industrial buildings where no more than 10 people are employed will apply.

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<sup>4</sup> See “Identifying what you need to upgrade” and “Defining ‘as nearly as is reasonably practicable’” at <https://www.building.govt.nz/managing-buildings/change-of-use-and-alterations/>

## 5.6 Conclusion

5.6.1 As I have found that the applicants were obliged to notify the authority of the change of use of the building under section 114, and the applicants have not done this, it follows that the authority was correct to issue the notice to fix requiring the applicants to notify the authority about the change.

## 5.7 What is to be done

5.7.1 The notice to fix gives the applicants two options, namely to revert to the original consented classified use or notify the authority of the change of use.

5.7.2 Assuming the applicants wish to continue using the building as their business premises, it is now up to them to notify the authority of the change of use. They must provide sufficient information to the authority for it to be able to be satisfied the building, in its new use, will comply under section 115:

- as nearly as reasonably practicable with the Building Code provisions relating to means of escape from fire, protection of other property, sanitary facilities, structural performance, fire-rating performance and access and facilities for people with disabilities
- to at least the same extent as before the change of use occurred in respect of the remaining Building Code provisions.

5.7.3 I note here that the Building Code clauses that apply to the building in its new use that are additional to or more onerous than its prior use are limited in number, and given the extent of compliance required by section 115, it may be that no building work or limited work is required to achieve the necessary level of compliance. I have not assessed the building in its new use in this respect, and I leave this for the parties to resolve in due course.

## 6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority correctly exercised its powers of decision in issuing the notice to fix, and I confirm that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 10 October 2018.

Katie Gordon  
**Manager Determinations**

## Appendix A

### A.1 Relevant sections of the Act

**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; or...

**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
- (b) in any other case, 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,—
  - (i) will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to the following:
    - (A) means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance;
    - (B) access and facilities for people with disabilities (if this is a requirement under section 118); and
  - (ii) will,—
    - (A) if it complied with the other provisions of the building code immediately before the change of use, continue to comply with those provisions; or
    - (B) if it did not comply with the other provisions of the building code immediately before the change of use, continue to comply at least to the same extent as it did then comply.

### A.2 Relevant clauses of the Building Code

**Clause A1 – Classified Uses 2.0 Housing**

**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.

**Clause A1 – Classified Uses 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.

**Clause A1 – Classified Uses 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.

**Clause A1 – Classified Uses 7.0 Outbuilding**

- 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.

**A.3 Relevant clauses of the Regulations<sup>5</sup>****5 Change the use: what it means**

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.

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<sup>5</sup> The Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005