

Determination 2022/012

Whether a building which is occasionally used for public accommodation falls within the classified use ‘detached dwellings’

1918 Nevis Road, Lower Nevis, RD 2, Cromwell

Summary

The determination concerns the classified use of a building that is let out on occasion for public accommodation. The determination considers whether the classified use falls within ‘Detached dwellings’ or ‘Community service’ under Building Code Clause A1 – *Classified uses*.



The legislation which is discussed in this determination is contained in Appendix A. In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (e.g., Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under Part 3 Subpart 1 of the Building Act 2004 (“the Act”), made under due authorisation by me, Peta Hird, Principal Advisor 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:
 - 1.2.1. The owners of the building, P and M Bramwell and D Schumack (“the owners”), who applied for the determination
 - 1.2.2. Central Otago District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The determination concerns the classified use of a building that is let out on occasion for public accommodation. The authority considers that there has been a change of Classified Use under clause A1 of the Building Code.
- 1.4. The authority has not taken any regulatory action regarding what they consider a change of use; instead, the owners have applied for a determination regarding the classified use of the building.
- 1.5. The matter to be determined¹ is whether the building can be classified as a ‘detached dwelling’ under Building Code Clause A1 – *Classified uses*.

Matters outside this determination

- 1.6. While there are references to resource consents in the parties’ submissions, I have not considered any issues under the Resource Management Act 1991 (RMA) when making this determination. I have no jurisdiction under other enactments and this determination only considers matters relating to the Building Act and its regulations. Reference to the RMA in this determination are for context only.

¹ Under section 177(1)(a) of the Act.

2. The building and background

- 2.1. The subject of this determination is a two-story building (“the Barn”), which is located to the east of a collection of buildings on the site. The Barn is part of a collection of buildings (“the station”), including a farm manager’s building, a timber cottage that accommodates two people, a historic house which is not in use, and a separate dining hall with a kitchen.
- 2.2. Level one of the Barn includes a laundry room, store room, living room (with a small kitchenette), and two bedrooms with ensuites. Level two contains two further bedrooms, also with ensuites, and a connecting bridge.
- 2.3. According to the owners, the laundry room is for staff use only and is not for “guest use individually or directly”.

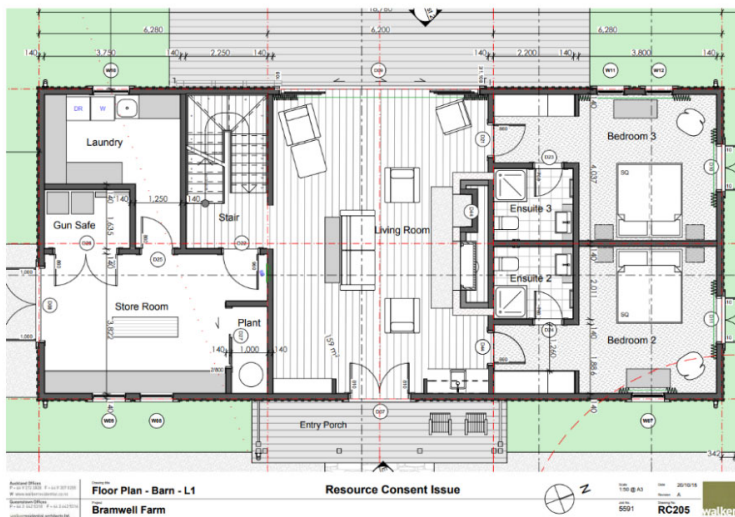


Figure 1: Floor plan for level one of the Barn (not to scale)

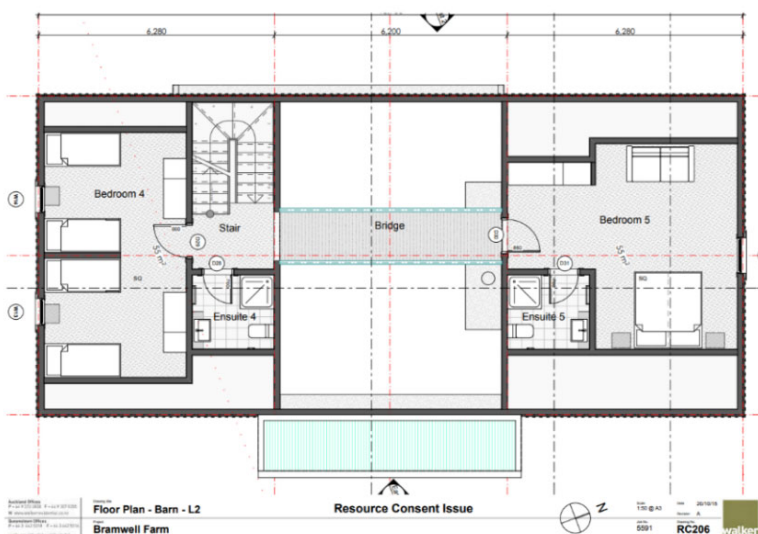


Figure 2: Floor plan for level two of the Barn (not to scale)

- 2.4. The Barn has been used by friends and family as well as by members of the public, meaning it has been used for both residential and commercial accommodation.
- 2.5. Guests who were “known to the owners” (which I assume to mean friends, family, and acquaintances), stayed 41 nights on average per year.
- 2.6. Members of the public wishing to use the Barn as accommodation can book through an online accommodation website. The Barn is occupied an average of six to seven nights per year by guests who were “not known to the owners” (i.e. members of the public).
- 2.7. Staff serve guests in the dining hall, and the kitchen is for staff use only. Guests do not prepare their own food. The guest meals are prepared by “contracted chefs of the lodge”.
- 2.8. In December 2015, a resource consent (RC 150296) was granted to construct two buildings: the timber cottage and the Barn. The original intended use was for these buildings to be residential as “lodging for the owners and their family”.
- 2.9. The owners have since obtained a resource consent (RC 180428) that authorises the Barn and cottage to be used for travellers’ accommodation. The resource consent authorises the maximum guests in the Barn and other buildings as follows:
 - The Barn – maximum of 12 guests
 - The cottage – maximum of two guests
 - The farm manager’s building – maximum of four staff members.
- 2.10. The authority issued a code compliance certificate dated 15 August 2019 for the Barn and the cottage, which had been granted building consent as separate residential household units. The code compliance certificate noted a resource consent was granted on 12 December 2018 to change the use of these buildings to “short stay visitor and staff accommodation.” It also stated that if the change of use² is to go ahead, a building consent needs to be lodged, specifically for the “cottage, bedroom block and potentially the cookhouse buildings to short stay accommodation use”.

² Regulation 5 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 sets out that a change of use occurs if the requirements for building code compliance under the new use are more onerous than under the old use. Building code compliance is assessed using the Classified Uses in Clause A1 of the Building Code, not the Specified Uses of Schedule 2 of the Regulations. Therefore, the applicable Classified Use of the building is an important consideration as it determines whether code compliance requirements are more onerous and in turn Regulation 5 is satisfied.

- 2.11. The authority was of the view a change of use from residential to sleeping accommodation³ had occurred, which raised obligations under section 115 of the Act. On 26 February 2020, the authority sought a fire evaluation from a fire engineering consultancy firm to assess whether the building complied with regard to means of escape from fire and fire-rating performance.⁴
- 2.12. The authority also provided a ‘proposed change of use: for discussion’ document, which included photographs of the site, as well as floor and electrical plans from the architectural studio (“the architect”) engaged by the owners.
- 2.13. On 31 March 2020, the architect submitted a proposal to the authority titled ‘Change of use: fire and accessibility for discussion’. This stated that the owners and their guests use the station as “managed accommodation for a single party” and the station “has been used privately for approximately 70 percent of the year historically”.
- 2.14. On 7 April 2020, the authority made several comments in regard to the architect’s proposal, particularly about accessibility features and fire safety.
- 2.15. On 11 February 2021, the Ministry received the application for determination from the owners.

3. Submissions

The owners’ submissions

- 3.1. The owners’ views are (in summary):
 - 3.1.1. The use of the barn remains fundamentally residential and meets the classified use of ‘Housing, Detached dwellings’ under clause A1. The building falls within the ‘Single Sleeping Home’⁵ (SH) risk group in *Acceptable Solution C/AS1 Buildings with Sleeping (residential) and Outbuildings*.
 - 3.1.2. The primary use of the developed property is for use as the owners’ own private holiday residence, with some limited use by friends and family of the owners, and even less use as public accommodation by paying guests.
 - 3.1.3. The station only allows one group to stay at any one time. Therefore, all guests will be known to each other – they will not be mixed with other guests who are not known to them. The cottage and barn cannot be booked separately.

³ As per regulation 5 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.

⁴ Section 115(b)(i)(A).

⁵ As defined in Schedule 2 of the Regulations.

- 3.2. The Ministry requested further information regarding how the accommodation was booked, as well as how much access guests had to the laundry and kitchen facilities. The owners confirmed:
- 3.2.1. The buildings cannot be booked out separately – they are booked out one at a time.
 - 3.2.2. The laundry facilities are “staff only” and are only accessible by staff.
 - 3.2.3. The kitchen in the separate dining hall is also “staff only” – all meals are prepared and provided by contracted chefs.

The authority’s submissions

- 3.3. The authority is of the view the use of the Barn falls within the classified use of ‘Communal residential’ under clause A1, and that it is used for ‘Sleeping Accommodation’⁶ (SA) for short stay transient accommodation rather than as a ‘Sleeping Single Home’.

The draft and submissions in response

- 3.4. A draft of the determination was issued to the parties for comment. The draft considered the classified uses under Housing and Communal Residential, and concluded the Barn, used as both public accommodation and by family and friends, is a detached dwelling.
- 3.5. On 1 December 2021, the authority accepted the findings of the draft determination without further comment.
- 3.6. On 7 December 2021, the owners accepted the findings of the draft determination without further comment.
- 3.7. Since the draft determination was issued some changes have been made to the analysis, in particular in relation to establishing the intended uses and clause A1.0.2. This did not change the outcome of the determination with regard to the classified use.

⁶ As defined in Schedule 2 of the Regulations.

4. Discussion

Establishing the classified use of the Barn

- 4.1. Clause 3(3) of the Building Regulations 1992 sets out how the classified use is established and states (my emphasis):

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.
- 4.2. Clause A1 sets out the various classified uses that a building may have. There are 11 classified uses, which are generally grouped into seven categories – Housing, Communal residential, Communal non-residential, Commercial, Industrial, Outbuildings, and Ancillary.
- 4.3. Under the title “Explanation”, clause A1.0.2 states (my emphasis) “[a] building with a given classified use may have one or more intended uses as defined in the Act.”
- 4.4. A previous determination⁷ stated the term “intended use”, as defined in section 7 of the Act, is not a subjective view based on an owner’s stated use of the building. While an owner’s proposed use is taken into account, the assessment of the intended use also requires an objective assessment of the use the building can be put to based on its physical layout and attributes (or the plans and drawings for a proposed building).
- 4.5. Further, section 7 of the Act, provides an expansion to the ordinary meaning of “intended use”:

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: ...
- 4.6. In this case, the building has two uses: one as the owners’ holiday house (shared with family, friends, and acquaintances) and the other as public accommodation.
- 4.7. In order to determine the correct classified use, taking into account the occasional use for public accommodation, I must first consider:

⁷ Determination 2011/069 Regarding conditions to a building consent and the use of a building. Issued 12 July 2011.

- 4.7.1. there is one intended use and the use as public accommodation is a “reasonably foreseeable occasional use that is not incompatible with the intended use”; or
- 4.7.2. whether there are two intended uses of the building.
- 4.8. Once I have reached a view on the intended use(s), I must then consider which classified use most closely corresponds to the intended use or uses.

Intended use

- 4.9. I have previously considered the expansion of intended use by including “reasonably foreseeable occasional use”. In my view, this allows for situations where a building is used occasionally for something that would not ordinarily be part of its intended use. This occasional use could be one that would otherwise require the building to meet different Building Code performance requirements. However, as the use is occasional, to impose a different compliance burden would be unnecessarily onerous.
- 4.10. For example, if a family house was used to hold an auction, ordinarily the use of a building as an auction house would fall under a different classified use (commercial) with different performance requirements. I am of the opinion that holding an auction on occasion, such as an estate auction or charity auction for example, is a “reasonably foreseeable” event at a dwelling and is “not incompatible with the intended use” as a family house. Instead of requiring changes to the building for the occasional auction, the expansion of the term “intended use” in section 7 allows the building to remain within its stated intended use, as a dwelling, because the occasional use is not incompatible.
- 4.11. I am of the view the use of the Barn as public accommodation cannot be considered a “reasonably foreseeable occasional use”. It is a use that is more than reasonably foreseeable; it is one that is explicitly sought. The owners have stated the building will be used for public accommodation, and this use is promoted with a website that allows the public to book accommodation. As I consider the use as public accommodation is not a “reasonably foreseeable occasional use”, I do not need to go further in considering whether it is incompatible with the intended use.
- 4.12. In my opinion the Barn has two intended uses – use by the family and friends, and use as public accommodation.
- 4.13. Section 3 of the Building Code sets out (my emphasis):
- (2) Except as otherwise provided by the Act, each building shall achieve the performance criteria specified in the building code for the classified use of that building, and, **if the building has more than 1 classified use, any part of it used for more than 1 classified use shall achieve the performance criteria for each such classified use.**

(3) 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.

- 4.14. There is no dispute that when the Barn is used by family and friends it would come under the “detached dwelling” classified use. I must now consider whether the intended use as public accommodation would also fall under the detached dwelling classified use, or a different classified use.
- 4.15. In this case, it is not immediately clear whether the use of the Barn as public accommodation will fall within Housing or Communal residential. In order to determine the classified use, these categories will be discussed in turn.
- 4.16. It is not always obvious what classified use a building will have, as the activities that occur within the building may not neatly fit into the examples given in clause A1. However, the principles on which the classified uses have been grouped into categories can assist to delineate the various use categories for buildings, and to interpret the examples given for those categories.

Residential categories of classified uses

- 4.17. Residential uses are separated into two categories – ‘Housing’ and ‘Communal residential’. Housing applies to buildings or uses where there is “self care and service (internal management)”, and Communal residential applies where “assistance or care is extended to the principal users”.

Housing

- 4.18. The Housing category consists of three different types of dwellings that relate to use by households or families (see Table 1). Within the Housing category, occupants are expected to practice “self care and service” by looking after themselves and each other. An example of this would be having the facilities available for them to carry out domestic activity within the house, such as cooking and hygiene fixtures. This is reinforced through the additional amenity related Building Code requirements for buildings that fall within the Housing category. For example, the requirement to contain a kitchen, which is not required for the Communal residential category.

Table 1: Classified uses – Housing

Classified use	Examples
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.	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

4.19. This concept of “self care and service” is also reinforced through the Building Code performance requirements that are applicable to the Housing category. In particular, the means to achieve compliance with those clauses that relate to life safety are significantly less onerous when compared with the Communal residential category or other classified uses. The expectation is that within a “household or family” an individual becoming aware of a life-safety event would naturally alert and assist others within the building to escape.

4.20. The Housing category places an emphasis on the occupants making up a household, family or a family-like arrangement, through the inclusion of the term “family” within the description of each subcategory (refer to Table 1). I consider the assumption that occupants of this classified use will exercise “self care and service” to be a reflection of the characteristics of a household or family.

What is a household or family?

4.21. For a building to fall within the Housing category, it must house people that live as a “household or family” as the characteristics of these groups of people demonstrate “self care and service (internal management)”. In order to decide whether the Barn falls within this category, it is necessary to consider what is meant by a “household or family”.

4.22. The term “household or family” is not defined in the Building Code or Act. However, section 7 of the Act defines a “household unit”⁸ as:

- (a) ...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

⁸ Clause A2 contains a similar definition for “household unit” with minor differences in wording.

- 4.23. It must be noted a household unit is not the same thing as a single household. The term household unit refers to the physical building or buildings that form the residence of the household. The definition of household unit does not elaborate on what a single household or family might be. However, this definition is useful in excluding certain types of accommodation, which by their nature cannot be considered to accommodate a household.
- 4.24. The meaning of the word “household” has been previously considered in the courts. The District Court in *Queenstown Lakes District Council v The Wanaka Gym Ltd*⁹ set out a list of factors it considered when deciding a commercial gym with a residential unit added to the back, which contained a large number of occupants, did not constitute a dwelling for a single household. The High Court in *The Wanaka Gym Ltd v Queenstown Lakes District Council*¹⁰ (“*Wanaka Gym*”) confirmed those factors set out by the judge in the earlier District Court decision, noting:¹¹

In determining that the company’s building could not be properly be described as a dwelling for use as a single household, [Judge Neave] said:

[27] It seems to me in this case the following factors are relevant:

- (a) There is considerable variance in the numbers at any given time;
- (b) There are large numbers of people involved in the occupation of the building;
- (c) 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;
- (d) The relatively short term of the residence;
- (e) The fact that there is no necessary connection with the others residing in the house;
- (f) There is no agreement of the residents to reside together;
- (g) The whole *raison d’être* of the building essentially is commercial rather than domestic.

- 4.25. The High Court also stated¹²:

... the issue of whether a building is used as a dwelling for a single household unit is a question of fact and degree. The ultimate conclusion is reached through an evaluative process that takes into account all the factual issues that are relevant to the case in question.

- 4.26. The meaning of ‘household’ was also considered by the District Court in *Jayashree Limited v Auckland Council*¹³ (“*Jayashree Limited*”), which was an appeal of

⁹ *Queenstown Lakes District Council v The Wanaka Gym Ltd* DC Christchurch CIV-2003-002-265, 18 November 2008.

¹⁰ *The Wanaka Gym Ltd v Queenstown Lakes District Council* [2012] NZHC 2662.

¹¹ *Wanaka Gym*, at [29].

¹² *Wanaka Gym*, at [34].

¹³ *Jayashree Limited v Auckland Council* [2019] NZDC 2407 at [7].

Determination 2018/015.¹⁴ The determination had considered whether occupants living in a three-storey building were a single household. The building occupancy was numbered between 15 and 28, and had separate cooking, sanitary, and laundering facilities on each level. The determination assessed the building against the factors used in *Wanaka Gym* and found it met the majority of those factors, which indicated a lack of “self care and service (internal management)” or “social cohesion”. The determination concluded the occupants could not be described as a “single household” due to the configuration of the building, the means by which the occupants came to occupy the building, and the lack of social cohesion between the occupants (among other things).

4.27. The Court stated:

While essentially an issue of fact, the meaning of the word ‘household’ has been considered in several decisions including *Hopper Nominees Limited v Rodney District Council*¹⁵ [“*Hopper*”] where Anderson J considered the meaning of the word as it appears in s 30 of the Rating Powers Act 1988, saying:

Such an intent is most consistent, I think, with the ordinary New Zealanders concept of a “household’ namely “an organised family, including servants or attendants dwelling in a house”...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 examples, persons sharing a dwelling-house such as students or friends. The essential connotation of the term is familial domesticity.

...I accept in terms of the meaning given to the word ‘household’ by Anderson J in *Hopper Nominees Limited* that the configuration of the dwelling-house as well as the means by which the occupants were obtained, namely by advertisements in public media, means that the concept of familial domesticity is missing and that the various occupants do not operate as a single household.

4.28. The District Court in *Jayashree Limited*¹⁶ also referenced the importance of social cohesion:

The very nature of the tenancy arrangements, their varied occupancy and absence of close familial relationships means that inevitably there would be less social cohesion in the event of an emergency such as a fire as would occur in a true organised family household.

4.29. The judgment reiterated the factors that can be used when assessing whether a building is a household, noting the list is not prescribed or exhaustive.

¹⁴ Regarding a notice to fix and the refusal to issue a certificate of acceptance for alterations to a house. Issued 20 April 2018.

¹⁵ *Hopper Nominees Limited v Rodney District Council* [1996] 1 NZLR 239.

¹⁶ *Jayashree Limited*, at [12].

- 4.30. The factors outlined in *Wanaka Gym, Jayashree Limited* and *Hopper* can help in considering whether there is “familial domesticity”, and therefore whether the occupants are living as a single household or family. These cases extend the concept of a single household or family beyond the traditional concept of the nuclear or extended family, to include arrangements based on how and why the occupants live together.
- 4.31. Previous determinations have also considered these terms and applied the courts’ approach. For example, Determination 2007/111¹⁷ found that a ‘flat’ can be considered a single household where there is a level of interaction and community between flatmates. The determination considered that 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 social cohesion, comfort and trust.
- 4.32. For a group of occupants to be described as a household or family they must display “self care and service (internal management)”. This is demonstrated by the configuration of the building and the occupants’ level of familial domesticity. I note that there is no one definitive list of characteristics a group of occupants must display to be considered a “single household or family”, and decisions must be made on a case-by-case basis.

Communal residential

- 4.33. Communal residential consists of residential buildings where “assistance or care is extended to the principal users”¹⁸ (see Table 2).

Table 2: Classified uses – Communal residential

Classified use	Examples
3.0 Housing	
3.0.1 Applies to buildings or use where assistance 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

¹⁷ Fire safety provisions for two relocated buildings to be used as staff accommodation. Issued 17 September 2001.

¹⁸ *Principal user* a member of the primary group for which a building was constructed, and therefore explicitly excludes persons or groups of persons providing care or control of that *principal user* group.

2.0.3 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 principal users are free to come and go.	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.	a borstal or drug rehabilitation centre, an old people's home where substantial care is extended, a prison or hospital

- 4.34. Within the Communal residential category, occupants consist of the principal users and those who provide them with assistance or care. The degree of assistance or care varies, particularly between Community service and Community care, as do the facilities and configuration of the buildings. Occupants do not live as a single household and are more likely to live independently of each other.
- 4.35. One common feature is the Building Code requires buildings in this category to have accessible spaces and facilities for people with disabilities, which is not a requirement for buildings in the Housing category. This reflects that the buildings accommodate members of the public.
- 4.36. In addition, the means of achieving compliance with Building Code performance requirements that relate to life safety are much more onerous than buildings in the Housing category. This reflects the fact that occupants in buildings that fall within the Communal residential category are less likely to be familiar with the building or to naturally alert and assist others within the building to escape, and the principal users may themselves require assistance in order to escape.

Does the Barn, when used for public accommodation, fall within the classified use 'detached dwellings'?

- 4.37. I consider first whether the intended use of the Barn as public accommodation could be considered to fall within the Housing category of Building Code Clause A1.
- 4.38. I note the building is clearly not a 'group dwelling' and does not have the physical configuration and attributes of a 'multi-unit dwelling'. Therefore, I have only considered whether the building meets the 'detached dwellings' classified use (refer to Table 1).

- 4.39. To determine whether the building in its intended use as public accommodation falls within the ‘detached dwellings’ classified use, I will consider the physical configuration of the building; whether the occupants can be considered a single household; the level of self-care and service, and finally a comparison against the classified use examples.
- 4.40. Turning first to the configuration of the Barn. There are two bedrooms on the ground floor, and two bedrooms on the first level. Three of the bedrooms have ensembles and the guests in the other bedroom share a bathroom. The layout provides for a central living area, with additional deck areas that allow for the occupants to gather. The size of the living area seems appropriate for all the occupants to gather.
- 4.41. The Barn does not include a kitchen but does have a kitchenette with a sink, and coffee and tea facilities. Guests do not prepare their own food as the accommodation at the Barn includes meals prepared for them and served in the dining hall. The kitchen is located in the dining hall and is for staff use only. The Barn does contain a laundry, but this is not intended to be accessed by the guests.
- 4.42. The Barn’s configuration is similar to a large family home in terms of sleeping, personal hygiene and living spaces, with the exception that food preparation and laundering are provided for as part of the service and meals are taken in a different building.
- 4.43. Turning now to whether the occupants using the Barn as public accommodation can be considered a single household. The ‘detached dwellings’ classified use is limited to “where a group of people live as a single household or family”. Accordingly, to determine whether the occupants could be described as a ‘single household’, I have considered the present case against the factors outlined in *Wanaka Gym* (see Table 3) and applied in Determination 2018/015.

Table 3: Consideration of the Barn, when used as public accommodation, against factors outlined in *Wanaka Gym*

<i>Wanaka Gym</i>	The Barn
Varying numbers of people who are unknown to each other at any given time	Only one group is permitted to stay in the Barn at any time.
Up to 19 people unknown to each other involved in the occupation of the building	The Barn can accommodate a maximum of 12 people, and the occupants are known to each other.
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	Restricted access to the wine store and stock room.

Relatively short term of the residence	Short term stays when let as public accommodation.
There is no connection with the others residing in the house	Only bookable by one group at any time, and for that reason it is reasonable to assume the occupants will display social cohesion.
No agreement of the residents to stay together	There is agreement of the occupants when let as public accommodation to stay together because the building is only bookable by one group at a time.
The main purpose of the building essentially is commercial rather than domestic	Based on the occupancy rates, the building is mainly used as a holiday house by the owners and their family, friends and acquaintances. On average per year, there has been 41 nights of use by guests “known to the owners” (appears to be friends and family) compared to six to seven nights of use as public accommodation.

- 4.44. The occupancy of the Barn, when let out as public accommodation, is more like a single household when compared to the occupancy of the buildings in Determination 2018/015 and *Wanaka Gym*. However, the Barn is used for short term stays, and has a commercial element in this use, which is not typically characteristic of dwellings occupied by a single household or family.
- 4.45. Some level of permanence would appear to be a key characteristic of a “single household”. Determination 2014/026¹⁹, which concerned several small units with shared cooking facilities, discussed that permanence is not only a matter of how long people stay in a place but also how they view their residence. 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 the escape routes.
- 4.46. I have taken into account the principles that underly the Housing category, which are the requirements for self-care and service, and the occupants being a household, family or family-like arrangement. I note social cohesion is an important factor in light of the lower fire safety performance requirements for detached dwellings. In this context, it would appear that social cohesion between the occupants, which a household or family would demonstrate, appears to underpin the classified uses in the Housing category.
- 4.47. The following examples do not seem to fit within those principles yet are included as detached dwellings – boarding houses accommodating fewer than six people, huts, and holiday cottages. The occupants in these examples of detached

¹⁹ Regarding which fire risk group should be used in determining compliance of proposed accommodation. Issued 21 May 2014.

dwellings would not necessarily be described as a single household or family or have the social cohesion due to factors such as their transient occupancy, potential lack connection to each other, and a commercial element of the use.

- 4.48. However, based on these uses being included as examples of ‘detached dwellings’, the Building Code seems to allow within the detached dwellings category uses where occupants who would not be described as a single household or family could stay short term, provided the number of occupants is low.
- 4.49. A “holiday cottage” could describe a self-contained unit that is used for public accommodation. Alternatively, this example could describe a building that is not the primary residence of an owner but a second house, such as a weekend bach. While not the permanent residence of the occupants, and used for short stays, the occupants are likely to be familiar with the building layout.
- 4.50. A holiday cottage is more likely to be located on private land, self-contained. In contrast, a holiday cabin, which is included in the community service category, is likely to be larger with a corresponding larger number of occupants, may be part of a campsite, and have shared sanitary facilities. I acknowledge these two examples can be very similar, so a building would need to be assessed on a case-by-case basis to determine whether it was a holiday cottage or a holiday cabin.
- 4.51. A “hut” is an other example of a detached dwelling, while a “backcountry hut” is an example in the community service classified use. Similar to a holiday cottage, a hut is more likely to be small and only contain a low number of people. In contrast, a backcountry hut, as defined in the Building Code, can sleep up to 20 people in the sleeping area and up to 40 people in total.
- 4.52. I also note that the inclusion of a “boarding house accommodating fewer than 6 people” appears to allow for uses in detached dwellings that are transient, at least when the occupant numbers are restricted. The level of transience and social cohesion vary, but there is generally no agreement to reside together, there is a commercial element to the building’s use, and occupants often share communal facilities.
- 4.53. Occupants in a boarding house where there are less than six people, may have some degree of permanence and develop some form of social cohesion if there are minimum stay periods, smaller numbers, or if a boarding tenancy agreement is required. The decision in *Jayashree Limited* noted that a collection of unconnected occupants may, over time, learn to cooperate to some extent but this would not translate to the social cohesion of a “true organised family household” in the event of a fire. In my opinion, the large and varying numbers of occupants and the configuration of separate levels and bedrooms in that case lead to those comments by the court.
- 4.54. The reliance on social cohesion in determining occupation as a single household or family would seem to be missing in the boarding house example, which indicates it

is not a determinative factor of itself. Instead, the Building Code has permitted a lower fire safety standard within these types of buildings, and the lack of social cohesion has been mitigated by restricting the numbers of occupants. In a boarding house, where the occupants may be unknown to each other, the limit is “fewer than six people” (not including the residing family).

- 4.55. Occupants in a holiday cottage or a hut are more likely to know each other and practice “self care and service”, and in those examples the occupancy limit is less explicit. The inclusion as a detached dwelling appears to rely instead on the fact that these types of buildings are unlikely to hold large numbers of people. In the case of a holiday cottage, and also in the case of the Barn, guests are likely to be known to each other. I acknowledge that this will be a case-by-case assessment.
- 4.56. I am of the view the occupants of the Barn in its use as public accommodation are likely to demonstrate social cohesion.²⁰ The fact that there are short stays and a commercial element to its use does not, in my opinion, outweigh the fact the occupants will know each other and have agreed to stay together. When used as public accommodation, the guests at the Barn book the whole premises, even if they only sleep in the Barn itself. This aligns with the principle of internal management.

Does the Barn, when used for public accommodation, fall within the classified use ‘communal residential’?

- 4.57. I have also considered whether the building, when used as public accommodation, could also fall within a classified use in the ‘communal residential’ category of clause A1.
- 4.58. The ‘communal residential’ category is divided into two further subcategories; ‘community care’ and ‘community service’. These subcategories are grouped together based on the degree of ‘assistance or care’ extended to the principal users of the building.
- 4.59. The ‘community care’ classified use applies to residential buildings where the occupants receive ‘a large degree of assistance or care’. The examples given in clause A1 include buildings such as hospitals, old people’s homes and prisons. All of these examples are institutional in their nature, and the large degree of care provided to occupants is associated with the institution’s purpose. I consider it clear that the Barn does not come within this classified use.
- 4.60. The ‘community service’ classified use applies to a residential building or use where ‘limited care or assistance is extended to the principal users’. A number of

²⁰ In contrast with buildings outside the ‘detached dwellings’ classified use, e.g. Determination 2018/015, Determination 2018/044 Regarding the classified use of a main house which is let out as accommodation (issued 7 September 2018) and Determination 2018/045 Regarding the classified use of a building let out as accommodation (issued 11 September 2018).

examples are given in clause A1, including a boarding house, backcountry hut, hotel, retirement village and camping ground (amongst others). In considering what may constitute “limited” assistance or care, I have compared the examples against those in ‘community care’.

- 4.61. It is apparent that the ‘community care’ category is intended to cover situations where occupants are almost completely dependent on another person (the person offering assistance), whereas occupants in the ‘community service’ category are largely independent.
- 4.62. The term “assistance or care” is not defined in the Act or Building Code. It is not clear whether assistance or care is referring to assistance arising from Building Code requirements, for example building features that provide assistance in escaping the building, or the ordinary meaning suggesting the level of comfort provided to the occupants.
- 4.63. Despite this, there is a varying range of what “limited assistance or care” can manifest as within the examples provided for that classified use. For example, back country huts offer minimal services to occupants – there may be no one present to manage the hut, and the amenities provided are limited. In contrast, hotels offer a higher level and wider range of assistance, with staff present on site and a wide range of amenities available to the hotel guests.
- 4.64. The use of the Barn as public accommodation has a higher level and wider range of assistance, especially when it comes to the kitchen and laundry facilities. The services offered to guests at the Barn include all meals prepared by contracted chefs; laundry done by in-house staff; assistance of the onsite farm manager; and various outdoor activities and experiences.
- 4.65. I have considered the nature and degree of assistance or care provided onsite. The services in this case are primarily for the comfort and enjoyment of the occupants. If removed, this would not affect how the occupants operated within the building.
- 4.66. Even when a building has considerable assistance or care, that doesn’t necessarily mean a building falls within community service where there is clearly a single household of people known to each other. Similarly, where there is a lesser degree of assistance or care but a weak or non-existent single household, this may fall within community service.
- 4.67. In this case there is a level of assistance or care offered to the guests that is similar to some of the examples of buildings or uses in the Community care classified use. However, I am of the view this factor alone is not determinative.

5. Conclusion

- 5.1. On balance I consider the use as public accommodation, as described in this determination, leads to the Barn more closely resembling the description and examples of 'detached dwellings' than 'community service'.
- 5.2. I acknowledge that the Barn in its intended use as public accommodation has a commercial element, and with the services offered to guests would seem to align more with the examples in community service, such as a hotel. However, a building that offers public accommodation in some forms is allowed for in detached dwellings, and taking into account the facts in this case I consider the use as public accommodation more closely aligns with 'detached dwelling'.
- 5.3. In conclusion, I consider the Barn, which has more than one intended use, most closely corresponds with the classified use 'detached dwelling'.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I determine that the Barn, with its two intended uses, has the classified use of 'detached dwellings' as defined in Building Code Clause A1.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 4 July 2022.

Peta Hird

Principal Advisor Determinations

Appendix A

Building Regulations 1992 - Schedule 1: The Building Code

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.

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.

Schedule 1 clause A1 3.0.2: amended, on 31 October 2008, by regulation 4 of the Building (Building Code: Backcountry Huts) Amendment Regulations 2008 (SR 2008/358).