

Determination 2025/008

An authority's decisions to issue two notices to fix for a change of use and construction of tents without building consent

102 New Renwick Road, Burleigh, Blenheim, Marlborough

Summary

This determination considers an authority's decisions to issue two notices to fix. The determination considers whether the owner's house had undergone a change of use in contravention of sections 114 and 115 of the Building Act 2004. It also considers whether two tents installed on the property were exempt from the requirement to obtain a building consent under Schedule 1 of the Building Act.



Figure 1: Satellite image showing layout of owner's properties¹

¹ Image reproduced from Google Maps, accessed 4 February 2024.

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 (eg 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 due authorisation by me, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).²
- 1.2. The parties to the determination are:
 - 1.2.1. the owner of the property, J Ingram (“the owner”), who has applied for this determination
 - 1.2.2. Marlborough District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination arises from the authority’s decisions to issue two notices to fix in respect of the owner’s property. The notice to fix dated 25 March 2024 was in relation to an alleged contravention of sections 114 and 115 regarding a change of use of the owner’s house. The notice to fix dated 30 September 2024 was for an alleged contravention of section 40 relating to two large tents erected on the property.
- 1.4. The matters to be determined, under sections 177(1)(b) and 177(3)(e), are the authority’s decisions to issue the notices to fix dated 25 March 2024 and 30 September 2024 under section 164 of the Act.
- 1.5. In determining this matter, I consider:
 - 1.5.1. whether there has been a change of use of the owner’s house, in terms of sections 114 and 115 of the Act
 - 1.5.2. whether there was a contravention of section 40, which turns on whether the construction of two tents on the property is exempt building work under Schedule 1 of the Act.

² The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

2. The background

- 2.1. The owner's property is a large (3,285m²) flat section in a residential area of Blenheim, with an existing house constructed on it. The house was constructed in the 1950s, and the authority states it originally comprised three bedrooms, office, lounge, family room, kitchen and dining room, and two bathrooms.
- 2.2. The office, lounge and family room have since been repurposed as bedrooms, and there are now five bedrooms in the house. An additional toilet has been added by the owner.³ There is a free-standing garage constructed next to the house. Locks had been installed on all the bedroom doors.
- 2.3. The property incorporates a large paddock behind the house, where the owner had (at the time of the 25 March 2024 notice to fix) installed four large 'glamping' tents. The owner described the five tents as 'large ... family sized tents have been erected & furnished as glamping tents for short & long term guests'. The tents each have three rooms and an awning, and 'sit on specially prepared ground which is then covered in synthetic carpet trimmed to the footprint of the tent. The tents are pitched on top of this carpet & a thermal underlay & new 100% woollen carpet is laid within the tent' for thermal insulation. The tents are furnished with beds, bedding, chests of drawers, wardrobes and couches.
- 2.4. The owner also owns an adjacent property (106B New Renwick Road) where they park their van, which they use to sleep in. There is also a shipping container on 106B which is used as an 'office & storage area'. There was also a fifth tent installed at 106B at the time of the 25 March 2024 notice to fix. The owner considers that 'to all intents & purposes' the two properties are 'a single entity' and that they reside at the house, which they share with the other occupants.
- 2.5. The authority received a complaint about the use of the owner's property and carried out an inspection on 6 March 2024.
- 2.6. Following this inspection, the authority issued a notice to fix dated 8 March 2024 ("the initial notice"). The initial notice stated a change of use of the owner's house had occurred in contravention of sections 114 and 115(b), and that tents had been constructed in contravention of section 40. This initial notice has been superseded and is not considered further in this determination.
- 2.7. The authority undertook a further inspection on 21 March 2024 to confirm whether compliance with the initial notice to fix had been achieved. The authority noted there were five tents set up on the owner's two properties (refer to Figure 1), one of which was being used for storage and was not occupied.

³ This configuration is as described by the owner. I note that a site plan provided by the authority shows the house as having two toilets and six bedrooms.

- 2.8. The cover letter of notice to fix issued 25 March 2024 states “At the inspection it was confirmed by the owner... that there were now 11 people paying to occupy the property. The four tents that had been installed for a period of longer than 1 month were still in place and a fifth tent also installed. One of the tents currently has no one occupying it. There is also now a van which is being occupied”.
- 2.9. Following this inspection, the authority issued a further notice to fix on 25 March 2024 (“the March notice”). This notice alleged the following particulars of contravention or non-compliance:

Details of failure or error: Contrary to section 114 and 115(b) of the Building Act 2004, no written notice was received from the owners regarding changing the use of the existing residential dwelling to communal residential accommodation as follows: -

The change of use from SH (Sleeping Single Home) to SA (Sleeping Accommodation).

...^[4]

- 2.10. The notice also gave the following means of remedying the contravention or non-compliance relating to the change of use:

Details of building work that must be carried out: Immediately cease using the residential dwelling as communal residential accommodation **and**

Revert to the original intended use of the building ie a single-family household unit

OR

Inform [the authority] of the change of use of the building as per section 114 of the Building Act 2004. This change of use may trigger the need for a new building consent for remedial works to ensure that the building now complies with its new designated use as per the Building Act and Regulations; ...

- 2.11. The March notice to fix had a timeframe for compliance of 2 April 2024.
- 2.12. In May 2024, the owner applied for a determination about the authority’s decision to issue the March notice. Following discussions with the authority, the owner advised they would remove the tents from their property, and accordingly the section 40 contravention alleged under the March notice was excluded from the matters to be determined.
- 2.13. On 25 September 2024, the authority undertook a further inspection, with the purpose of verifying whether the March notice had been complied with and the

⁴ Although a section 40 contravention relating to the construction of the tents without building consent was included in the March notice, it was excluded from the determination application at the agreement of the parties (see paragraph 2.12).

tents dismantled. The inspection noted that two tents remained erected on the owner's property and had been in place for over 1 month. One tent was being used for accommodation; it had been erected in the same place since 2023 and occupied by the same long-term resident since January 2024. The other tent was being used for storage.

- 2.14. The authority issued a further notice to fix dated 30 September 2024 ("the September notice"). This notice alleged the following particulars of contravention or non-compliance:

Details of failure or error: Contrary to Section 40 of the Building Act, the following building works have been undertaken without first obtaining a building consent:

The construction of tents (2) on site for the purpose of rental accommodation and storage for a period exceeding 1 month

- 2.15. The notice also gave the following means of remedying the contravention or non-compliance:

Details of building work that must be carried out: Remove the unauthorised building works (tents) **or**

Pursue any other option/s required to make the building works comply with the Building Act 2004 and Regulations

This option may include applying for and receiving a Certificate of Acceptance (for the existing unauthorised building works) pursuant to section 97 of the Building Act 2004; and

If a Certificate of Acceptance is applied for, and remedial building works are required to be undertaken to achieve compliance with the Building Act 2004 and regulations, an application for building consent for the proposed remedial building works may also be required pursuant to section 44 of the Building Act 2004. Or Both

- 2.16. The September notice had a timeframe for compliance of 4 October 2024.
- 2.17. In late September/early October 2024, the owner notified the authority that the remaining tents had been removed then reinstated, and the owner provided photographs of the partially dismantled tents. On 14 October, the authority received a notification from a third party that all five tents had been reinstated on the owner's property.
- 2.18. The owner applied for a further determination, and on 16 October 2024 the Ministry advised the owner's two applications would be merged and the scope of the determination would then include the authority's decisions to issue both the March and September notices to fix.

- 2.19. In regard to these two tents, the owner confirmed in a submission on 30 October 2024:

[One] tent was first erected about December 2022 the second tent erected about Dec [2023]. [The first] tent is now used as storage & the second tent has one occupant. Both tents were taken down recently ...

3. Submissions

The owner

- 3.1. The owner submitted:

[W]e are not a hostel or boarding house & have never intended to be. As previously stated, we offer a more enhanced homelife experience which is modelled on all that's good about a familial environment where permanent residents are involved in the day to day operation of the household which functions as a single cohesive unit with an emphasis on healthy home grown food, good sleep, nurturing our gardens & their wildlife.

- 3.2. The house operated as a Single Sleeping Home, 'providing a far more enriching living experience for its 7 residents⁵ than that available within a boarding house or hostel etc. & we live as a cohesive unit.'
- 3.3. With respect to the classified uses in clause A1 of the Building Code, they contended the characteristics of his house 'align best with that of a Detached Dwelling' under the Housing classified use, where a group of people live as a single household or family.
- 3.4. With respect to the definition of a household unit in section 7 of the Act, the owner submitted the accommodation arrangements in their house came 'comfortably within' this, as 'we are not a hostel or boarding house & have never intended to be'.
- 3.5. The owner emphasised that the house was run as a flatmate arrangement, with a focus on 'creating a supportive familial environment that prioritizes nutrition, social interaction, good sleep and altruism'. To support this, the owner highlighted aspects of how the household arrangements operated:
- 3.5.1. Residents had access to a large organic vegetable garden and orchard, which they collaborated to maintain.
- 3.5.2. There had never been any 'house rules' but instead there was a list of chores, which residents could put their names next to if they wanted to help out.

⁵ The owner refers to 7 residents as several residents occupying the tents had moved out at the time the submission was made (30 October 2024). However, there were 12 residents at the time the March notice was issued.

- 3.5.3. Residents were encouraged to have friends and family to stay and visit.
- 3.5.4. Social gatherings and shared evening meals were organised, with residents gathering in the kitchen and dining area to socialise.
- 3.5.5. Residents supported each other as far as they were able and collaborated to pay utility bills (as part of their rent payments).
- 3.5.6. Extended stays were preferred over short-stay options to 'promote stability and cohesion' and when a resident left the remaining residents were encouraged to help select a replacement.
- 3.6. The owner advised that occupants of the tents use the kitchen and bathroom facilities in the house, and that the tents appeal to people who seek a 'holiday type vibe' and want to be closer to nature.
- 3.7. The owner provided a copy of a 'Flatmate Agreement', detailing the arrangements for paying the rent and bond, the 14-day notice period required to terminate the agreement, the arrangements for maintaining and cleaning the house (with an option to make an additional payment to opt out of chores), and a dispute resolution process. They also supplied the list of communal chores. Occupants are required to give 2 weeks' notice to end their stay, as per the flatmate agreement.
- 3.8. The owner submitted these documents constituted part of the internal management of the household, and were:
- Intended to inform & remind people of what their homelife is about & they represent a snapshot of an evolving process, current priorities & values we agree upon. They also serve to inform prospective new residents that we operate as a single household unit rather than a boarding house etc. so they're aware of this in advance.
- 3.9. The owner also provided several testimonials from residents who expressed their positive experiences of living at the property.
- 3.10. The owner saw themselves as the 'head of the household', with dual responsibilities: 'One as a flatmate in matters such as cohabitation & the other as property owner, responsible for building safety & maintenance.' They had not notified the authority of a change of use because they believe 'no change of use occurred'.
- 3.11. By comparison, the owner stated that use group SA (Sleeping Accommodation) was for transient accommodation. They referred to the list of accommodation types in Acceptable Solutions C/AS1 to C/AS7⁶ and provided a list of residents and their term

⁶ Acceptable Solutions are a means by which compliance with the performance clauses of the Building Code. The Acceptable Solutions for Clauses C1 to C7, which relate to fire safety, categorise buildings by 'Risk groups'. The risk groups do not directly align with use groups for the purposes of the change of use regulations.

of tenure, which ranged from 189 days to 3.8 years, stating all seven occupants⁷ ‘comfortably meet the definition of permanent residents’.

- 3.12. With respect to whether the house was a commercial venture, the owner stated that while income was important for the venture’s success, it was not the main focus.
- 3.13. Regarding locking arrangements, the owner commented on the reasons for the bedroom locks, noting they consider the bedroom locks to be a practical and safe arrangement in terms of the overall security at the property. The owner also advised there is a ‘fire door’ at the northern end of the house, separating the two sets of bedrooms, which has an automatic closing mechanism. Residents are briefed on fire safety, and an evacuation plan is regularly rehearsed. Because the residents are long-term, they are ‘more likely to alert others to an emergency’.
- 3.14. The owner claims that FENZ⁸ has confirmed these locks are ‘satisfactory’ and that there are adequate smoke alarms in place, and that FENZ advised the authority in writing that the building is safe.
- 3.15. The owner also stated that FENZ “confirmed [it’s] earlier assessment that the house had appropriate smoke alarms & the door locks were compliant. [It] made a number of recommendations about installing non mandatory signage and additional alarms as an extra precaution & these have been implemented”.
- 3.16. The owner provided information (in a submission received on 30 October 2024) that the seven occupants at that time have been relatively long-term, with stays of between 189 to 511 days (and 3.8 years for the owner).⁹
- 3.17. The owner also stated that authority had only interviewed one resident during its inspections and based its conclusions as to the house’s use on this.

The authority

- 3.18. The authority set out its view that the use of the owner’s house had changed from ‘a single sleeping home to sleeping accommodation’ in terms of the use groups in the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations, and from ‘detached dwelling to community service’ in terms of the classified uses in Clause A1 of the Building Code.

- 3.19. The authority considers:

It was assessed that with the lack of social cohesion and the individual manner in which occupants use the dwelling that the home is not being lived in as a single

⁷ At the time of the owner’s submission.

⁸ Fire and Emergency New Zealand.

⁹ In an email from the owner on 31 January 2015, the owner confirmed there were now five occupants, and “it can comfortably accommodate 12”.

household, but more lends to being operated as a boarding house. There is a level of assistance provided by the property owner in relation to the organising of the utilities for the occupants as well as ensuring the dwelling is maintained appropriately. The property owner advertises and selects the occupants – the occupants are not involved in the process. The property owner does not live in the dwelling with occupants but oversees the activities on site including the cleaning of the dwelling.

3.20. The authority had reached this view based on the following factors:

3.20.1. The owner makes the rules for the dwelling, and the occupants are on ‘a board arrangement which covers everything except food’.

3.20.2. New occupants were found via social media.

3.20.3. The occupants don’t work together.

3.20.4. All the bedrooms have locks on the doors, and there is a lock on the door between the house’s two halves. The only communal space is the kitchen and dining room.

3.20.5. The ‘lack of social cohesion and the individual manner in which occupants use the dwelling’ mean the house ‘is not being lived in as a single household, but more lends to being operated as a boarding house’.

3.20.6. The owner provides a ‘level of assistance’ by organising the utilities, maintaining the house, and advertising for and selecting occupants. The owner does not live in the house ‘but oversees the activities on site including the cleaning’.

3.20.7. An interview with an occupant at one of the inspections confirmed the lack of social cohesion. The occupant had lived at the house since July 2023 but did not know the other occupants or how many people lived there and was unaware of any fire evacuation scheme. ‘Some people did not know how many people lived at the property as “people come and go”’.

3.21. The authority outlined the background to its decision to issue the notice to fix for the two remaining tents, and stated that although the number of tents on the owner’s property reduced following the March notice ‘at no point were the tents removed to comply with the Building Act 2004, Schedule 1 Exemption 5, which allows tents to be used for a period of not more than one month’.

3.22. With its submissions, the authority provided satellite imagery and photographs showing the locations of the tents at the date of the inspections and notices to fix. Photos were also provided of the inside of the tents, with one photo showing a cooking area set up in the entrance to a tent.

4. Discussion

- 4.1. The determination considers the authority's decision to issue two notices to fix:
- the March notice to fix for an alleged contravention of sections 114 and 115 – this turns on whether, at the time the notice was issued, there had been a change of use of the owner's house for the purposes of the Act
 - the September notice to fix for an alleged contravention of section 40 – this turns on whether the construction of the two tents on the owner's property was exempt building work in terms of clause 5 of Schedule 1 of the Act.
- 4.2. Section 164(1)(a) provides for an authority to issue a notice to fix if it considers on reasonable grounds that a specified person is contravening or failing to comply with the Act or its regulations.¹⁰
- 4.3. Accordingly, I will now consider each of the two notices to fix and whether the authority had reasonable grounds for issuing them.

The March notice regarding the change of use

The change of use provisions

- 4.4. Under section 114, if an owner of a building proposes to change the use of that building (or part of it) they must provide written notice to the relevant territorial authority. The owner must not change the use unless they have been notified that the territorial authority is satisfied the building in its new use will comply to the extent required under section 115.
- 4.5. A change of use is determined according to regulations 5 and 6 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (the "change of use regulations"), which state:

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.

¹⁰ Section 163 defines a 'specified person' to whom a notice can be issued, and this includes the owner of the building and the person carrying out the building work if the notice relates to the building work being carried out.

6 Uses of buildings for purposes of regulation 5

- (1) For the purposes of regulation 5, every building or part of a building has a use specified in the table in Schedule 2.
 - (2) A building or part of a building has a use in column 1 of the table if (taking into account the primary group for whom it was constructed, and no other users of the building or part) the building or part is only or mainly a space, or it is a dwelling, of the kind described opposite that use in column 2 of the table.
- 4.6. To decide this matter, I must first consider whether the buildings have changed from one use group specified in the table in Schedule 2 of the regulations to another (“the first criterion”). If it has, I must then consider whether the new use gives rise to Building Code requirements that are additional or more onerous than the requirements under the old use (“the second criterion”). To assess this second criterion, I must consider the classified use for both the old and new use groups, as this step is necessary to identify the relevant Building Code requirements that apply.
- 4.7. Both criteria above must be satisfied for there to be a change of use for the purposes of the Act.
- 4.8. A preliminary issue to address is whether the occupation of the tents and the van need to be considered when assessing whether the house had undergone a change of use.
- 4.9. At the time the March notice was issued, there were 11 occupants at the property, made up of seven people residing in the house and four in the tents. In addition, the owner, while sleeping at the adjacent property, also used the house facilities.
- 4.10. Photos show that one tent had its own camping stove and mini fridge. However, there is no evidence that the other tents have kitchen facilities, or that there is any separate bathroom or laundry facilities for the tent occupants or the owner. For the most part, the tent occupants and owner rely on the kitchen, laundry and bathroom facilities in the house. The owner clarified that while their van may be parked on both properties, they share the facilities of the house¹¹ with the other occupants and consider that they live at 102.
- 4.11. I consider the fact that the owner and occupants of the tents use the house facilities is relevant when considering whether there has been a change of use of the house.

The use groups

- 4.12. Table 1 sets out the SA and SH use groups as they appear in Schedule 2 of the change of use regulations.

¹¹ ‘Facilities’ being water, power, wi-fi, bathrooms, kitchen, dining area, laundry, garage & gardens at 102.

Table 1: SH and SA use groups in Schedule 2 of the change of use regulations

Use	Spaces or dwellings	Examples
Uses relating to sleeping activities		
SA (Sleeping Accommodation)	spaces providing transient accommodation, or where limited assistance or care is provided for people	motels, hotels, hostels, boarding houses, clubs (residential), boarding schools, dormitories, halls, wharehau
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

4.13. Turning first to SH (Sleeping Single Home), which is described as “detached dwellings where people live as a single household or family”. Neither the Act nor the Change of Use Regulations provide definitions or expand on the meanings for ‘single household’¹² or ‘family’.

4.14. In *Queenstown-Lakes District Council v The Wanaka Gym Limited* (“Wanaka Gym”), the court identified a number of factors that may be relevant when assessing whether occupants form a ‘single household or family’:¹³

4.14.1. The number of occupants.

4.14.2. The degree of restrictions to the freedoms of the occupants.

4.14.3. Length of residencies.

4.14.4. Familial connections.

4.14.5. Agreement of occupants to reside together.

4.14.6. Commercial or domestic purpose of the building.

4.15. In *Wanaka Gym*, the court also noted:

[26] I think it is important to note that the phrase is a single household. This betokens in my view a combination of considerations including a degree of permanence in the residents, a connection with the other residents other than simple proximity, and an element of living together jointly...

¹² A similar term, ‘household unit’, is defined in the Act and Building Code Clause A2.

¹³ *Queenstown-Lakes District Council v The Wanaka Gym Limited* DC Christchurch CIV-2003-002-000265, 18 November 2008 at [27].

- 4.16. Two subsequent High Court cases adopted the same approach.¹⁴
- 4.17. In my view it is appropriate to consider those factors identified in *Wanaka Gym* as well as any other features that are relevant to the particular circumstances in this determination, and to consider those features in terms of their consistency or inconsistency with the connotations of a group living as a single household or family.¹⁵

Whether the use group has changed

- 4.18. Common features of occupants residing together as a single household or family include long term or indefinite stays, connection with others (familial domesticity) and agreement to reside together. The parties do not dispute that the use group was previously SH.
- 4.19. The numbers of occupants at the property fluctuates, largely due to whether the tents are in use, and occupants stay for varying lengths of time. Although there is a reasonable level of permanence of seven occupants (as at October 2024)¹⁶ the tents were intended to be shorter term arrangements and there were varying degrees of permanence in the occupants.
- 4.20. At the time the March notice was issued, there were 12 people residing at the property and using the facilities of the house (including the owner). Although the property has a large amount of outdoor space, the number of occupants using the facilities in the house is high.
- 4.21. I have received conflicting information about the level of connection of the residents during their stay. I note that the shorter-term nature of the tent arrangements means a higher turnover of occupants which I consider is likely to result in a lesser level of social cohesion than circumstances where people reside permanently or indefinitely.
- 4.22. Further, individual flatmate agreements are signed with the owner, rather than the lease of the property being taken on as a group. This indicates occupants are generally unlikely to know each other before residing together and there is no agreement between all occupants to reside together.
- 4.23. I do not consider there is a 'significant degree of restriction as a matter of contract on the freedoms of the occupant[s]'; unlike in *Wanaka Gym*, occupants are encouraged to have people stay and often do. However, there is a 'flatmate agreement' and list of tasks that are set by the owner. Occupants are able to 'opt out' of the responsibility to contribute to the set tasks by paying an extra fee.

¹⁴ *The Wanaka Gym Ltd v Queenstown Lakes District Council* [2012] NZHC 284; *The Wanaka Gym Ltd v Queenstown Lakes District Council* [2012] NZHC 2662.

¹⁵ *Hopper Nominees Ltd v Rodney District Council*, obiter dicta at pages 7 and 8.

¹⁶ At the time of the owner's submission received on 30 October 2024.

- 4.24. In my view, when considered together the factors described above that are inconsistent with a 'single household or family' outweigh those factors that are consistent.
- 4.25. The authority contends that the house comes within the SA (Sleeping Accommodation) use group.
- 4.26. The SA use group applies to "spaces providing transient accommodation, **or** where limited assistance or care is provided for people" (my emphasis). As noted above, there were varying degrees of permanence of the occupants at the property, however the degree of transience is not the sole factor in deciding whether the use is SA.
- 4.27. I note the phrase 'limited assistance or care' is not defined in the Act or the change of use Regulations. In my view, it should be interpreted in the context of the other use groups in the Change of Use Regulations, particularly the uses related to sleeping activities. I note use group SC (Sleeping Care) covers situations where occupants are almost completely dependent on others. By comparison, the use group SA covers situations where occupants do not require as much assistance or care. Examples for these uses suggest the nature and degree of 'limited assistance or care' can vary according to type of occupancy. For example, a boarding school would provide a higher degree of assistance or care to its boarders than would a university hall of residence, but both would usually be SA by virtue of the provision of limited assistance or care. That being so, what amounts to 'limited assistance or care' depends on the particular circumstances.
- 4.28. In this case I am of the view the owner provides limited assistance or care to the occupants of the property. The owner advertises for and finds new occupants, sets the terms of the flatmate agreement and tasks to be undertaken around the property, and arranges the utilities and pays the bills. The owner is responsible for maintaining the property and grounds, and for rearranging the living and camping spaces to suit. The owner also makes available activities, such as brewing and preserving, that occupants can engage in if they wish.
- 4.29. In my view, given this limited care and assistance and the factors that are inconsistent with the use of the property to house a single household or family, I conclude that at the time the authority issued the March notice the use group had changed from SH to SA.

The second criterion

- 4.30. I now consider whether the new use results in additional or more onerous Building Code requirements.¹⁷ If this second criterion is met, the requirements in sections 114 and 115 are triggered.
- 4.31. The Building Code requirements apply according to a building’s classified use (not according to its use group in the change of use regulations). Therefore, in order to determine whether there are additional or more onerous Building Code requirements, I must ascertain the classified use of the house.¹⁸
- 4.32. Residential uses are separated into groups, including ‘Housing’ and ‘Communal residential’. I consider the most relevant uses to consider in this case are ‘Detached dwellings’ and ‘Community service’. Table 3 sets out these classified uses as described in clause A1 of the Building Code.

Table 3: Relevant classified uses in clause A1 of the Building Code

<p>2.0 Housing</p> <p>2.0.1 Applies to buildings or use where there is self care and service (internal management). There are three types:</p> <p>2.0.2 Detached dwellings</p> <p>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.</p> <p>...</p>	<p>3.0 Communal residential</p> <p>3.0.1 Applies to buildings or use where assistance or care is extended to the principal users. There are two types:</p> <p>3.0.2 Community service</p> <p>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, motel, nurses’ home, retirement village, time-share accommodation, a work camp, or camping ground.</p> <p>...</p>
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- 4.33. For the reasons discussed above in paragraphs 4.13 to 4.24, I do not consider the owner’s house is “a building or use where a group of people live as a single household or family”, and therefore does not fall within the Detached Dwelling classified use.
- 4.34. The Community Service classified use applies to “a residential building or use where limited care is extended to the principal users”.

¹⁷ Building Code requirements for buildings or parts of buildings vary according to their classified use. As a result, some buildings or parts of buildings are required to meet Building Code requirements that others are not.

¹⁸ For all of the classified uses, see clause A1 of the Building Code.

4.35. Determination 2018/045¹⁹ noted the differing forms that limited care in this context can take:

[6.7.10] The larger degree of independence in community service [as opposed to 'Community care'] explains the 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, whereas hotels offer a higher level and wider range of assistance.

4.36. For the reasons discussed in paragraphs 4.26 to 4.29, I consider that there is limited assistance or care provided to the occupants and the house falls under the Community Service classified use.

4.37. Having established that there has also been a change in the classified use of the owner's house, I must also determine whether "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", as required by regulation 5 of the change of use regulations.

4.38. It is clear that under the Community Service classified use there are additional or more onerous Building Code requirements when compared with the requirements for the Detached Dwelling classified use. For example, clause F8.2 (relating to the signs that must be displayed in and about buildings) did not apply to the owner's house when its use group was SH. At that time, the house had the classified use of Detached Dwelling and the limits on application for clause F8.2 mean that clause did not apply.

4.39. In conclusion, the owner's house had, as at the date of the March notice to fix, undergone a change of use for the purposes of sections 114 and 115. This is because the use group had changed from SH to SA, and the new use resulted in more onerous or additional Building Code requirements.

4.40. The owner did not provide the authority with written notice of the change of use as required by section 114(2)(a) or receive prior approval from the authority for the change of use as required by section 115. Therefore, there was a contravention of the Act, and grounds for the authority to issue a notice to fix under section 164.

The September notice regarding the construction of two tents

4.41. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent.

4.42. "Building work" is defined in section 7 of the Act as:

building work—

(a) means work that is either of the following:

¹⁹ Determination 2018/045 *Classified use of a building let out as accommodation* (11 September 2018).

(i) for, or in connection with, the construction, alteration, demolition, or removal of a building:

4.43. Section 8 defines what is meant by a building for the purposes of the Act:

8 Building: what it means and includes

(1) In this Act, unless the context otherwise requires, building—

(a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels);

4.44. The owner's tents come within the definition as a temporary or permanent movable structure intended for occupation by people or chattels. The owner has talked of the steps involved in erecting or constructing the tents, including the groundwork involved, and of the difficulties involved in periodically shifting them. It is also not disputed that the tents are intended to be occupied as accommodation for people and storage for chattels.

4.45. The fact that tents are included in clause 5 in Schedule 1 of the Act, which exempts certain tents from the requirement to obtain building consent, confirms these types of structures are regulated under the Act as buildings.

4.46. Section 41(1)(b) states that a building consent is not required if the building work falls within one of the exemptions under Schedule 1. Therefore, whether there has been a contravention of section 40 in this case turns on whether the building work to construct the two tents remaining on the owner's property was exempt under Schedule 1 from the requirement to obtain building consent.

4.47. Clause 5 of Schedule 1 provides an exemption from the requirement to obtain building consent for building work in connection with a tent, subject to two criteria being met:

Building work in connection with any tent or marquee, or any similar lightweight structure (for example, a stall, booth, or compartment used at fairs, exhibitions, or markets) that –

(a) Does not exceed 100 square metres in floor area; **and**

(b) Is to be, or has been, used for a period of not more than 1 month.

4.48. For the building work to construct the two tents to be exempt under this clause, they must meet both the size and use criteria in clause 5.

4.49. The applicant has described the tents generally as "large" and "family sized" but has not confirmed the size of the floor area of these two tents.

4.50. However, in regard to the period of time that the tents were in use, the tents were being set up for and being used as rented accommodation and for storage since December 2022 and December 2023. As such, it is clear the use was for more than one month. Accordingly, the criteria in clause 5 is not met and the building work was

not exempt from the requirement to obtain building consent, and the authority had grounds to issue the September notice to fix.

4.51. The owner has submitted:

Enforcing the 30 day rule is a big problem however. This means I'm required to remove the contents of the tents and disassemble the structures every 30 days which is a big job & provides no obvious benefit for me or my guests. In fact this process is very disruptive & risks the integrity of the whole system.

4.52. I do not agree with the owner's view that the dismantling and reconstruction every 30 days would make this building work exempt. In my opinion the whole *raison d'être* of the tents, being to let as accommodation and to use as storage, is a relevant consideration in this case.

Conclusion

4.53. In conclusion:

4.53.1. The use of the owner's house changed from Sleeping Single Home to Sleeping Accommodation, and as the owner had not notified the authority there was a contravention of section 114.

4.53.2. The tents were used for more than 1 month, and therefore the exemption in clause 5 of Schedule 1 does not apply to the construction of the tents, and as the owner had not obtained building consent for the building work there was a contravention of section 40.

Comment

4.54. Section 165(1)(c)-(g) sets out remedies that may be prescribed in particular situations. Section 165(1)(c) states that if a notice to fix "relates to building work that is being or has been carried out without a building consent, it may require the **making of an application** for a certificate of acceptance for the work" [my emphasis]. I note the March and September notices incorrectly referred to "applying for **and receiving**" a certificate of acceptance, rather than simply "applying" for one.

4.55. The March and September notices stated "If you do not comply with this notice you commit an offence under section 168 of the Building Act 2004 and may be liable to a fine of up to **\$1,500,000** and further fines of up to \$20,000 for each day or part day that you fail to comply with this notice" [my emphasis].

4.56. Section 168(1) provides that it is an offence to fail to comply with a notice to fix. Section 168(2) sets out the penalty (on conviction) of "a fine not exceeding **\$200,000** and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued" [my

emphasis].²⁰ This is reflected in the form for a notice to fix, Form 13 (Schedule 2 of the Building (Forms) Regulations 2004).

4.57. There are some offences in the Building Act for which building owners may be liable to a fine of up to \$1,500,000, such as those relating to dangerous, insanitary and earthquake-prone buildings. However, the potential liability stated on the notices is clearly incorrect in regard to the particulars of the contravention. It is unclear what has given rise to this error, and I leave that matter for the authority to address.

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I confirm the authority's decisions to issue the notices to fix dated 25 March 2024 and 30 September 2024.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 10 February 2025.

Peta Hird

Lead Determinations Specialist

²⁰ For all offences other than those concerning the means of restricting access to residential pools.