

Determination 2026/026

An authority's decision to issue a notice to fix for a change of use of a unit

G04/205 Gloucester Street, Christchurch

Summary

This determination considers an authority's decision to issue a notice to fix, for a contravention of sections 114 and 115 of the Act, to the owners of a unit in a multi-unit residential building complex being let as short-term holiday accommodation. The determination considers whether a change of use has occurred, in particular whether the unit's classified use under Building Code Cause A1 *Classified Uses* has changed from 'Multi-unit dwelling' to 'Community service'.

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. References to “the change of use regulations” are to the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.

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, Rebecca Mackie, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).¹
- 1.2. The parties to the determination are:
 - 1.2.1. Christchurch City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority and the applicant for the determination.
 - 1.2.2. T Denman and K Suter, the owners of the unit (“the owners”) and the recipients of the notice to fix.
- 1.3. The determination relates to a unit (“the unit”) located in a multi-unit residential building complex in central Christchurch. This determination arises from the authority’s view that the owners have changed the use of the unit from its consented use as a household unit by making it available as short-term accommodation.
- 1.4. The matter to be determined, under section sections 177(1)(b) and 3(e) of the Building Act 2004 (“the Act”), is the authority’s decision to issue a notice to fix to the owners (NTF number: 001 Hybris Ticket Number ENF1542012) dated 11 March 2026 (“the notice”) for a contravention of section 114 of the Act, in that the owners did not provide written notice to the authority of a change of use, and section 115, in that the owners changed the use without written notice from the authority that the building, in its new use, complies to the extent required.

2. Background

- 2.1. The multi-unit residential complex was granted building consent BCN/2023/2514 as a multi-unit residential (or apartment) building with the classified use ‘Multi-unit

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

dwelling'. On 8 May 2025, the code compliance certificate was issued for the same classified use.

- 2.2. The unit is located on the ground floor of the building, with a separate household unit above. Each unit has its own direct access to outdoor circulation routes. The unit in this case comprises an open-plan kitchen and living area, laundry, one bedroom, one bathroom, and an outdoor patio.
- 2.3. The authority states it does not have evidence that the owners' unit has ever been used for the building's consented use, and notes that it is instead advertised online as visitor accommodation.
- 2.4. The advertising shows facilities necessary for independent domestic living, including a kitchen, bathroom, laundry and living space.² The unit can only be booked by one group at a time, and can be booked for one night or for longer stays. Linen is provided and a cleaning fee is added.
- 2.5. On 11 March 2026, the authority issued the notice to fix to the owners, for a contravention of sections 114 and 115 of the Act. The authority considered the use of the unit has changed from Sleeping Residential ("SR") to Sleeping Accommodation ("SA"), as set out in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 ("change of use regulations").
- 2.6. The "particulars of contravention or non-compliance" given in the notice state:

[The authority] considers on reasonable grounds that the specified person(s) identified in this Notice to Fix are contravening or failing to comply with the Building Act 2004 ("The Act") or the regulations. In particular:

- Pursuant to s114 of the Act, an owner must give notice of change of use, extension of life, or subdivision of buildings, and
- Pursuant to s115 of the Act, 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 will comply as nearly as is reasonably practicable, with every provision of the building code that relates to means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance for access and facilities for persons with disabilities (if this is a requirement under s118) and will if it complied with the other provisions of the building code immediately before the change of use, continue to comply with those provisions or 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.

² <https://ohanastays.co.nz/stays/central-1br-apartment-with-kitchen-patio/>, accessed 30 April 2026.

The building was approved under building consent BCN/2023/2514 as an apartment building with the classified use under Building Code clause A1 being Housing – Multi-unit dwelling. A code compliance certificate was issued on 8 May 2025 for the building work.

We do not have evidence to support that unit has ever been used for the consented use, and is instead advertised as visitor accommodation on ...

The building is currently being used for transient accommodation, which has the classified use under Building Code clause A1 being Communal Residential – Community Service.

Although the approved use was never established by people using the unit as a household unit, we have considered this to be a change of use under Section 5 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.

We have considered Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005, and this has changed from SR (Sleeping Residential) to SA (Sleeping Accommodation).

There are more onerous requirements for the new use than the approved use, in particular that the new use is subject to section 118 of the Building Act - Access and facilities for people with disabilities to and within buildings. It is not necessary to assess other building code provisions to determine if other more onerous provisions apply.

This is deemed a breach of s114 and s115 of the Act in relation to the change of use of the Building from Sleeping Residential (SR) to Sleeping Accommodation (SA) without having notified the Territorial Authority of the change of use, and without having received written notice from the Council that it is satisfied, on reasonable grounds, that the building, in its new use, will comply as required by section 115 of the Act.

2.7. The notice set out the following remedies:

Pursue any legal option available to you to achieve compliance with the Building Act 2004 and the New Zealand Building Code, this may include the following:

- Notify a change of use to the Territorial Authority and supply required documentation as advised by Council during the process and ensure that you receive written notice that the Territorial Authority is satisfied, on reasonable grounds that the building, in its new use, will comply as required by section 115.

(Please note: A building consent may be required in order to comply with this option should building work be required in order to comply with NZ Building Code requirements.)

Or,

- Cease the use of the building for Sleeping Accommodation (SA) and return the building to the original consented use being Sleeping Residential (SR).

3. Submissions

The authority

- 3.1. The authority submits that it was appropriate to issue the notice as a change of use had occurred without the authority being notified under section 114, and without written notification from the authority that the building, in its new use, complies with the Building Code to the extent required under section 115.
- 3.2. The authority considers (in summary):
 - 3.2.1. The unit is used as transient accommodation, which has resulted in a change of use from SR to SA under Schedule 2 of the change of use regulations.
 - 3.2.2. The classified use of the unit has changed from Multi-unit dwelling to Community service, as set out in Building Code Clause A1 *Classified uses*.
 - 3.2.3. There are more onerous requirements in the new use, particularly that it is subject to section 118 (regarding access and facilities for persons with disabilities) and Schedule 2 of the Building Act.³ As it is a new building that had not been used for its approved use, the authority's expectation is that full compliance would be achieved.
 - 3.2.4. Services provided at the unit (including the provision of linen and towels, and cleaning and laundry on leaving) are more than what are provided at a back country hut, which is one of the examples which falls under Community service.
- 3.3. The authority noted the owners' reliance on Determination 2019/050, which also related to a building let for public accommodation.⁴ However, the authority notes that in that case the use was changed from a classified use of 'Detached dwelling', rather than 'Multi-unit dwelling'. The examples given for these classified uses are different, eg Detached dwelling includes 'holiday cottage' while Multi-unit dwelling does not.

The owners

- 3.4. The owners submit they sought advice from the authority prior to letting their unit as short term accommodation and were advised at that stage that it would not constitute a change of use. In emails between the owners and the authority, the

³ Which sets out buildings in respect of which the requirement for provision of access and facilities for persons with disabilities applies.

⁴ Determination 2019/050 *Regarding the issue of notices to fix in respect of building work to convert an existing shed and sleep-out to a self-contained unit* (15 October 2019).

owners stated that they wished to make the property a short-term rental so they can keep their unit available for their own use as a holiday home when they return to visit family and friends.

3.5. The owners consider (in summary):

3.5.1. The unit is built to the specifications of the Building Code and the authority has agreed that no additional fire safety or structural remediation is required.

3.5.2. There has been no change of use, and the owners refute that they are in breach of section 114 or 115. Two key determinative factors are that:

- The unit is only one bedroom and therefore it can only be occupied by 1 or 2 persons sharing that one room, which are by definition a “family” or “household”.
- No form of “assistance” is provided to the family/household while on the property. There are no services extended, no staffed reception for bookings/check in or wayfinding, no luggage services or optional housekeeping or laundry service.

3.5.3. Some forms of transient accommodation are expressly provided for under the three Housing categories in Clause A1 *Classified uses*. The key question to ask is whether the occupants are a family or household, and whether the accommodation comes with sufficient care and assistance to convert it from being “self-care and service” to “limited assistance”.

3.5.4. The factors outlined in *The Wanaka Gym Limited & Fiona Caroline Graham v Queenstown Lake Districts Council* (“the Wanaka Gym decision”)⁵ indicate there has been no change of use as, being a one bed unit, it is not possible to rent the unit out to more than one household at a time.

3.5.5. Determination 2019/050 also considered a one-bedroom sleep-out, which was advertised on similar online booking platforms, and found it was reasonable to assume the occupants would display the “social cohesion” of a family or household.

⁵ [2013] NZHC 2662.

4. Discussion

Legislation

- 4.1. Notices to fix are governed by sections 163 to 168 of the Act. Section 164(1)(a) provides for an authority to issue a notice to fix if it considers, on reasonable grounds, that a specified person⁶ is contravening or failing to comply with the Act or its regulations. The issued notice to fix in this case alleges the owners have contravened sections 114 and 115 of the Act.
- 4.2. Section 114 provides that an owner of a building must give written notice to the relevant authority if the owner proposes to change the use of a building. Section 115 provides that an owner must not change the use of the building unless the authority gives the owner written notice that it is satisfied the building, in its new use, will comply with the Building Code to the extent required.
- 4.3. There is no dispute that written notice has not been provided in accordance with sections 114 and 115. The dispute centres on whether or not a change of use has occurred.

Change of use regulations

- 4.4. Whether a change of use has occurred is determined according to Regulations 5 and 6 of 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.

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.

...

- 4.5. The change of use framework has been set out in several previous determinations.⁷ To decide whether or not a change of use has occurred I must first consider whether the building has changed from one use group in Schedule 2 of the regulations to another. If it has, I must go on to consider whether the classified use

⁶ Section 163 defines a 'specified person' to whom a notice can be issued, and this includes the owner of the building.

⁷ For example, Determination 2023/034 *An authority's decision to issue a notice to fix for a change of use of a building* (15 November 2023) and Determination 2024/038 *An authority's decisions to issue a notice to fix and a dangerous and insanitary building notice* (9 August 2024).

under Clause A1 has also changed, in order to determine whether there are additional or more onerous Building Code requirements in the new use.

Has the use group in the change of use regulations changed?

- 4.6. There is no dispute between the parties that the multi-unit residential building complex was consented as SR (Sleeping Residential) as defined in Schedule 2 of the change of use regulations. The dispute centres on whether or not the use of the owners' unit has changed from SR to SA (Sleeping Accommodation) (see Table 1).

Table 1: SA and SR use groups as set out in Schedule 2 of the change of use regulations

Use	Spaces or dwellings	Examples
Uses related 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, wharehenui
SR (Sleeping Residential)	attached and multi-unit residential dwellings, including household units attached to spaces or dwellings with the same or other uses, such as caretakers' flats, and residential accommodation above a shop	multi-unit dwellings, flats, or apartments

- 4.7. Use group SR applies to attached and multi-unit residential dwellings, including household units attached to spaces or dwellings with the same or other uses. The change of use regulations make use of definitions from the Act. A 'household unit' is defined in section 7 of the Act as:

household unit—

(a) means a building or group of buildings, or part of a building or group of buildings, that is—

(i) used, or intended to be used, only or mainly for residential purposes; and

(ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but

(b) does not include a hostel, boardinghouse, or other specialised accommodation.

- 4.8. In my view, while the unit has the physical features of a multi-unit dwelling or apartment, it is not currently used as a 'household unit'. Although it can only be let by one or two occupants at any time and it is reasonable to expect they will have a relationship similar to a single household or family, it is not occupied as the 'home or residence' of any household.
- 4.9. Rather, the unit is available to the public for short-stay accommodation and is advertised at a nightly rate on at least one accommodation website. There is no

dispute that the unit provides transient accommodation, and for this reason I consider that the unit fits more appropriately in SA (Sleeping Accommodation).

- 4.10. Accordingly, the unit's use has changed from one use group to another as per the uses set out in Schedule 2 of the change of use regulations.

Has the classified use changed?

- 4.11. I must now consider whether the classified use, as set out in Building Code Clause A1 *Classified Uses*, has changed, in order to determine whether there are additional or more onerous Building Code requirements triggered by the new use group in the change of use regulations (that is, SA (Sleeping Accommodation)).
- 4.12. Clause A1 provides that, for the purposes of the Building Code, buildings are classified according to type under seven categories. Regulation 3(3) of the Building Regulations 1992 provides that the classified use of a part of a building is the 'one that most closely corresponds to the intended use of that part of that building'.
- 4.13. Clause A1 also recognises that a building with a given classified use may have one or more intended uses as defined in the Act, which includes any 'reasonably foreseeable occasional use that is not incompatible with the intended use'.
- 4.14. Previous determinations have noted the intended use is not a subjective view of an owner's stated or proposed use.⁸ While this is taken into account, the assessment of the use also requires an objective assessment of the use the building can be put to, based on its physical layout and attributes. This approach is supported by *Singh v Auckland City Council* ("*Singh*"),⁹ where the Judge established the use in that case "by focusing on the features and actual use of the property".¹⁰ Likewise, *Jayashree Limited v Auckland Council* ("*Jayashree*")¹¹ held "each situation needs to be approached on its own facts". In the *Wanaka Gym* decision,¹² Lang J stated:

[T]he issue of whether or not 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.

- 4.15. The classified use is therefore not determined solely by the physical form and attributes of a building, but also by the intended and actual use of the building. The classified use is the classified use that most closely corresponds to the combination of features of the building and how it is used.

⁸ Determination 2022/012 *Whether a building which is occasionally used for public accommodation falls within the classified use "detached dwellings"* (4 July 2022), paragraph [4.4].

⁹ [2026] NZDC 775, at paragraphs [64 – 65].

¹⁰ [2026] NZDC 775, at paragraph [56].

¹¹ [2019] NZDC 2407, para [9].

¹² [2012] NZHC 2662 at [34].

- 4.16. Turning to the present case, I must establish the classified use of the unit, considering both its features and its intended and actual use of the unit. Table 2 sets out the relevant classified uses as described in clause A1 of the Building Code.

Table 2: Relevant classified uses in Clause A1 *Classified uses*

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. 2.0.4 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. [...]
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, motel, nurses' home, retirement village, time-share accommodation, a work camp, or camping ground. [...]

- 4.17. Sleeping uses are separated into two categories – Housing and Communal residential. Housing applies to buildings or uses whether there is “self care and service (internal management)”, and Communal residential applies where “assistance or care is extended to the principal users”.
- 4.18. Within the Housing category, occupants are expected to practice “self care and service” by looking after themselves and each other, as a household or family would. In my view, the Housing category is underpinned by the phrase, given in the description of ‘Detached dwelling’, “where people live as a single household or family”. The other housing categories build on this as they include the phrase ‘household or family’ or ‘live as one large extended family’ in their descriptions.
- 4.19. As discussed above, a ‘household unit’ is defined in section 7 of the Act. The relevant part of that term in this case is that it describes buildings that are “used ... only or mainly for residential purposes” and “occupied ... exclusively as the home or residence of not more than 1 household”. As Lang J observed at [24] of the *Wanaka Gym* decision:

The important feature of the definition for present purposes is that the building in question must be occupied, or intended to be occupied, exclusively as the home or residence of not more than one household.

4.20. Lang J then referred to a number of authorities.¹³ In the first, Anderson J in *Hopper Nominees v Rodney District Council*¹⁴ considered the meaning of the term “household” used in the Rating Powers Act 1988 where he stated at [242]:

The ordinary New Zealander would not regard as a “household” an institution which provides board as a commercial activity or as a community facility or service, such as a hotel, hospital or rest home.

4.21. The second decision was *Simmons v Pizzey*,¹⁵ where the House of Lords concluded a women’s refuge was not a single household for the purposes of section 19 of the Housing Act 1961 (UK) and Lord Hailsham stated:

I do not find any of these references particularly helpful except to make clear to me that I would have supposed in any case that both the expression ‘household’ and membership of it is a question of fact and degree, there being no certain indicia the presence or absence of any of which by itself is conclusive.

4.22. In *Queenstown-Lakes District Council v The Wanaka Gym Limited* (“Wanaka Gym (DC)”) ¹⁶ Judge Neave summarised the approach of the two cases above in the following way at [26]:

Consistent with the approach in these cases I doubt it is possible to list exhaustively the characteristics of a household. It will depend on each individual case as to whether or not it fits the statutory description. In most cases it would be easier to say why something is not a household rather than why it is. However, I think it is important to note that the phrase is 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. [*Emphasis added*]

4.23. Conversely, Communal residential, and in particular Community service, describe a use where assistance is provided to users, and includes both permanent and temporary or transient accommodation.

4.24. In my view, the distinction between Housing and Communal residential is not accurately summarised by the terms “self care and service (internal management)” compared with “assistance or care is extended to the principal users”. As discussed in *Singh*, the “basis on which lines of classification can be drawn” emerges from the text, structure and examples, when read together.¹⁷ The distinction is better understood as one about the nature of occupation and the management of living arrangements, rather than a simple distinction between ‘care’ and ‘no care’.

¹³ Lang J referred at [25] to [27] of the *Wanaka Gym* decision to an earlier District Court decision of *Queenstown-Lakes District Council v The Wanaka Gym Limited* DC Christchurch CIV-2003-002-000265, 18 November 2008, which in turn had referred to two earlier authorities.

¹⁴ [1996] 1 NZLR 239 (HC).

¹⁵ [1977] 2 All ER 432.

¹⁶ DC Christchurch CIV-2003-002-000265, 18 November 2008.

¹⁷ At [61].

- 4.25. In my view, the underlaying basis of the Housing category is focused on a building or use that is mainly or exclusively the residence of a household or family. As noted by Judge Neave in *Wanaka Gym* (DC), the term ‘household’ carries with it “a degree of permanence in the residents”.
- 4.26. The Housing category is characterised by the use of the term “household” in both subcategories of Detached dwellings and Multi-unit dwelling and as noted above, ‘household unit’ is defined in section 7 of the Act. The overarching description in clause 2.0.1 of “self care and service” does little to further the understanding of the category. In contrast, the Communal residential category is characterised by reference to “principal users” and there is no reference to “household” anywhere in the provision.
- 4.27. I also consider the examples do not align very well with the overarching descriptions of “self care and service” versus “assistance or care”, and *Singh* cautions against placing too much weight on the examples.¹⁸ For example, within the ‘self-care’ category of Housing, considerable assistance and care may be provided to boarders in a boarding house with fewer than 6 people, while within the ‘assistance or care’ category of Communal residential there is likely to be little or no assistance or care provided to the users of a backcountry hut, work camp or camping ground.
- 4.28. Accordingly, I consider the use of the term “household” is more informative of the distinction between the two categories of Housing and Communal residential than the overarching descriptions of “self care and service” versus “assistance or care”, although those features of self care versus assistance or care of course must also be considered. In which case, for the unit to fall within the Housing classified use (specifically, Multi-unit dwelling) the unit must have the relevant physical features of a household unit and be used as a household unit. If not, the unit falls within the Communal residential classified use (specifically, Community Service) as the only other relevant classified use.
- 4.29. In this case, I accept that the unit is physically capable of being occupied by one or two persons functioning, for the duration of a booking, in a manner similar to a household. It is a one-bedroom apartment and contains the physical features and facilities necessary for independent domestic living, including a kitchen, bathroom, laundry and living space.¹⁹ Those features mean the unit is capable of occupation by a household unit and the occupants can undertake a degree of self-care and service during their stay.
- 4.30. However, the physical characteristics of the unit is only one aspect that informs its classified use. A building may be capable of household occupation, but that capability does not determine the classification where the intended/actual use is materially different.

¹⁸ At paragraphs [64] and [65].

¹⁹ As shown in photos on the listing on an accommodation website (<https://ohanastays.co.nz/stays/central-1br-apartment-with-kitchen-patio/>, accessed 30 April 2026).

- 4.31. In this case, the unit is not occupied as the exclusive home or residence of a household, as defined by section 7 of the Act. The unit is made available to members of the public as short-term accommodation through an online accommodation platform, with different occupants able to stay on a nightly or weekly basis. That pattern of occupation is transient, rotational and commercial in character.
- 4.32. Although each booking may involve only one person or one group staying at a time, there is no continuity of occupation by any particular household. The unit is not being used as anyone's settled or permanent residence. Under the definition of "household unit" in section 7 of the Act, the unit is not being "used ... only or mainly for residential purposes" nor is it "occupied ... exclusively as the home or residence of not more than 1 household". The purpose of the use is to rent the unit out as temporary accommodation. That use is materially different from the purpose of the Housing category.
- 4.33. In response to the owners' submissions, I do not consider it answers the issue to say that the occupants during any given stay may display the characteristics of a household. Nor is the owners' suggested use of the unit as their occasional holiday home supportive of the use being a household unit. The intended and actual use of the unit is the repeated provision of temporary accommodation to successive occupants. This pattern of occupation defines the essential character of the use of the unit.
- 4.34. Nor do I consider the low level of services provided is determinative of the use of the unit. It is relevant that there is no staffed reception, no luggage service, and no housekeeping or laundry service during the stay. However, as I have discussed above, the distinction between Housing and Communal residential does not turn solely on whether active assistance or care is provided on site, rather, for the unit to fall within the Housing classified use (specifically, Multi-unit dwelling) it must have the relevant features *and* be used as the exclusive home or residence of a household. The examples given in Community service include uses such as holiday cabins, hostels, motels and time-share accommodation. Those examples indicate accommodation that is temporary, managed or made available to changing users, rather than occupied as a settled household residence. Read in that context, the reference to assistance or care does not confine Community service to uses involving active personal support during the stay.
- 4.35. I also note that section 118 of the Act requires reasonable and adequate provision by way of access, parking provisions, and sanitary facilities for persons with disabilities, and that the types of buildings in Schedule 2 of the Act for which such access must be provided include in clause (j) "premises providing accommodation for the public". These requirements in section 118 of the Act that apply to accommodation providers are consistent with the conclusion that buildings used for transient accommodation for commercial purposes are more likely to have a classified use of Communal residential, not Housing.

- 4.36. I have also considered the owners' reliance on Determination 2019/050. That determination involved a different starting classified use (Detached dwelling), and that category expressly includes examples such as a holiday cottage and hut. The present case concerns a unit consented as part of a Multi-unit dwelling development. The Multi-unit dwelling examples do not include transient accommodation. Although the unit can only be booked by a single booking of 1-2 people at a time, this is not decisive where the actual and intended use is the repeated provision of temporary accommodation to different occupants. Moreover, I am not bound by decisions made in previous determinations.
- 4.37. I also do not consider the *Wanaka Gym* decision supports the proposition that the classified use remains Housing merely because only one group can occupy the unit at a time. This case involves a smaller unit than in *Wanaka Gym*, but the underlying point remains: a building used on a continuing basis for transient accommodation to successive unrelated occupants does not become settled residential accommodation merely because one booking group occupies it at a time. There is no "degree of permanence" in the occupants, and the nature of this type of occupation and use cannot be described as a building that is "used ... only or mainly for residential purposes" and "occupied ... exclusively as the home or residence of not more than 1 household".
- 4.38. In my view, although the unit is apartment-like in form and can temporarily be occupied in a household-like way, it is not used as the exclusive home or residence of a household. The unit's essential purpose is to provide temporary accommodation to changing occupants. This use aligns more closely with Communal residential, and in particular Community service, than with Housing or Multi-unit dwelling.
- 4.39. As such, I conclude that the classified use has changed from Multi-unit dwelling within the Housing category to Community service within the Communal residential category.
- 4.40. The parties appear not to dispute that there are more onerous Building Code requirements with this use, such as the requirements for access and facilities for persons with disabilities, eg code clause D1.3.2 (which does not apply to housing) and D1.3.4.

5. Conclusion

- 5.1. The unit's use group has changed from SR to SA, the classified use has changed from 'Multi-unit dwelling' to 'Community service', and there are additional or more onerous Building Code requirements under the new use. Accordingly, there has been a change of use for the purposes of sections 114 and 115 of the Act.
- 5.2. The owners did not provide written notice to the authority under section 114, and the use was changed without written notice from the authority under section 115 that the building in its new use complies to the extent required, in contravention of these sections of the Act. Therefore, there was a basis to issue the notice to fix under section 164.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I confirm the authority's decision to issue the notice to fix (NTF number: 001 Hybris Ticket Number ENF1542012 dated 11 March 2026) to the owners for a contravention of section 114 and 115 of the Act.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 7 August 2026.

Rebecca Mackie

Principal Advisor Determinations