IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2024-004-002347
[2026] NZDC 775

BETWEEN	SUKHDEV SINGH Appellant
AND	AUCKLAND CITY COUNCIL Respondent
AND	CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Interested Party

Hearing: 3 December 2025

Appearances: S S Khan and M G Orange for the Appellant
S F Quinn for the Respondent
N Smith for Interested Party

Judgment: 19 January 2026

RESERVED JUDGMENT OF JUDGE JACQUI CLARK

Introduction

[1] Mr Singh changed his three bedroom dwelling to a five bedroom dwelling within its original footprint. The property is used as a small boarding house. The Council said Mr Singh was in breach of the Building Act (the Act) because he had not given notice of a change of use in relation to the property. Mr Singh did not consider there was a change of use and sought a determination from the Ministry of Business, Innovation and Employment (the Ministry). The Ministry said there had been a change of use.

[2] This is an appeal against that determination.

Background

[3] A property in New Lynn Auckland[1] (the property) was constructed in the 1950s as a three bedroom detached dwelling. Mr Singh purchased it in 2007 and reconfigured it into a five bedroom detached dwelling with a kitchen, lounge, bathroom and laundry. The footprint of the property remains unchanged. The property is run as a small boarding house.

[4] After an inspection in 2022 the Auckland Council (the Council) considered the property had undergone a "change of use" for the purposes of the Building Act. The Council's view was that the property which was previously classed as a sleeping single home (SH) was now sleeping accommodation (SA). It also found that the property failed to meet the applicable building code requirements for the new sleeping accommodation (SA) use.

[5] On 2 December 2023 the Council issued a notice to fix under section 164 of the Building Act 2004 (the Act).

[6] The notice to fix noted -

(a) The house had been converted to a five bedroomed house with a lounge room, and that the Council inspectors were advised the lounge was also used as a bedroom when required.

(b) The house was described as "emergency housing" by the property manager.

(c) There was at the time five tenants residing in the house in five separate lockable rooms.

(d) There was a shared kitchen, laundry and living areas.

[1] 16 Hinekohu Street, New Lynn.

(e) A separate building at the rear of the property was said to be a storeroom, but was currently undergoing renovations and the Council inspectors suspected it was very likely to be used as accommodation once the renovations were finished.

(f) The garage at the front of the property was in a poor state of repair.

(g) Neither the owner nor the property manager lived on site.

[7] The site visit report[2] also noted the property manager lived next door and

> …the residents live alone without direct supervision. Although there are basic house rules displayed, it is evident not all are enforced.
>
> When asked where the tenants came from we were informed by the property manager that it was a mixture of WINZ and corrections, with some staying a few weeks and some longer.

[8] The Council concluded the main dwelling was no longer a single- family household unit but was permanent or transient accommodation as tenanted accommodation and stated –

> … there has been a change of use from Classified Use Detached Dwelling, Building Use SH, and fire risk group SH to Classified Use Community Service, Building Use SA, and Fire risk group SM.[3]

[9] The notice to fix explained Mr Singh was in breach of sections 114 and 115 of the Act. He had failed to notify the Council that the property was changing use, and the new use did not comply with the building code requirements for that new use.

[10] Mr Singh was given three options to remedy the non-compliance – revert the use of the main dwelling back to a single – family household unit; notify the change of use to the Council and apply for building consent to ensure the change of use complies with statutory requirements; or pursue another option that would achieve compliance with the Act.

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[2] Dated 23 November 2022.
[3] Notice to Fix dated 2 December 2022.

[11] A failure to comply with a notice to fix is an offence under section 168 of the Act and Mr Singh may be liable to a fine.

[12] Mr Singh applied under section 177 of the Act to the Ministry for a determination which was issued on 20 September 2024. It determined a change of use had occurred in contravention of sections 114 and 115 of the Act. Accordingly, there were grounds to issue the notice to fix[4].

[13] Mr Singh appeals the Ministry's determination to this Court.

Issues

[14] The fundamental issue is whether there has been a change of use of the property. To determine that issue the Court must consider the two limb test under the Building (Specified Systems, Change of Use, and Earthquake-prone Buildings) Regulations 2005 (the Regulations).

[15] First, has there been a change from one use determined under Regulation 6 of the Regulations to another use under Regulation 6.

[16] Second, if there has been a change of use, does the new use result in building code requirements that are additional to, or more onerous than, the requirements in respect of the old use.

[17] Mr Singh and the Council disagree about whether there has been a change of use and therefore whether the Ministry's determination was correct.

Law

Sections 114 and 115 of the Act

[18] Sections 114 and 115 of the Act set out what is required when there is a change of use.

[4] Although, the Ministry required the notice to fix to be modified to remove one of the compliance options – that is, applying for building consent.

[19] Under section 114 of the Act the owner of a building must provide written notice to the relevant territorial authority if they propose to change the use of a building.

[20] Even after notifying the territorial authority under section 114 of the Act an owner must not change the use of a building unless the territorial authority, is satisfied the new use of the building will comply to the extent required with section 115 of the Act.

[21] Section 115 provides –

> An owner of a building must not change the use of the building-
> (a) in a case where the change involves the incorporation in the building of 1 or more household units where household units did not exist before, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, will comply, as nearly as is reasonably practicable, with the building code in all respects; and
> (b) in any other case, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, -
>
> (i) will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to the following:
>
> (A) means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance:
>
> (B) access and facilities for persons with disabilities (if this is a requirement under section 118); and
>
> (ii) will, -
>
> (A) if it complied with the other provisions of the building code immediately before the change of use, continue to comply with those provisions; or
>
> (B) if it did not comply with the other provisions of the building code immediately before the change of use, continue to comply at least to the same extent as it did then comply.

[22] In this case relevant to the application of section 115 of the Act is the definition[5] of "household unit" which -

> (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.

The Regulations

[23] To determine whether there has been a change of use the Court must consider the Regulations[6].

[24] Regulation 5 provides –

> For the purposes of sections 114 and 115 of the Act, **change of 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.

[25] Regulation 6 states that for the purposes of Regulation 5 every building or part of a building has a use specified in the table in Schedule 2.

[26] The relevant parts of Schedule 2 are those which address sleeping accommodation (SA) and sleeping single home (SH).

[27] The Schedule provides that sleeping accommodation (SA) is "spaces providing transient accommodation, or where limited assistance or care is provided for people". The examples given are motels, hotels, hostels, boarding houses, clubs(residential), boarding schools, dormitories, halls, and wharenui.

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[5] Section 7 of the Act.

[6] Section 114(1) of the Act provides –"In relation to this section and section 115, change of use, in relation to a building, means to change the use of the building in a manner described in the regulations".

[28] Sleeping single home (SH) is "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 occupants' vehicles, tools, and garden implements." The example given is "dwellings or houses separated from each other by distance".

[29] These provisions are used to determine whether the property has changed from one use to another – that is the first limb of the test. If there has been a change of use under these provisions, then the second limb of the test must be considered.

The Building Code

[30] The second limb of the assessment requires the Court to consider whether the new use gives rise to building code requirements which are additional to or more onerous than the requirements for the old use.

[31] To do the second limb assessment the Court looks at the building code. The building code requirements apply according to a building's classified use and not according to the change of use groupings of SA and SH. Therefore, in order to determine whether the second limb is met (i.e. more onerous building code requirements) the classified use of the property must be considered. The two relevant classified uses under the building code are "Detached dwellings" and "Community service".

[32] 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".

[33] 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".

[34] After the Court has established the old and new classified use of the property then the Court must determine whether the building code requirements for the new classification are more onerous than those for the old classification.

The authorities

[35] "Household" is used in the definition of sleeping single home (SH), the definition of detached dwelling and in relation to "household units" in section 115.

[36] It's meaning has been considered in the context of the Rating Act 1988. In *Hopper Nominees Limited v The Rodney District Council*[7] Anderson J said -

> Such an intent is most consistent, I think, with the ordinary New Zealander's concept of a "household", namely "an organised family, including servants or attendants, dwelling in a house" (see the Oxford Dictionary (2nd ed)). The word "family" has a wide meaning adequate in modern use to connote relationships of blood or marriage or other intimate relationships of a domestic nature, including, for example, persons sharing a dwelling such as students or friends. The essential connotation of the term is familial domesticity.
>
> In my judgment the institutional provision of board with or without medical care and irrespective of the attentiveness of the providers of board, does not come within the ambit of the term "household" as such term is commonly understood in New Zealand society. 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. That persons may reside in an institution, even on a long-term basis, participating to a substantial degree in the organisation of the institution, submitting to the rules of it and recognising someone as the head of it, may frequently be features of, but are not definitive elements of, a "household". If they were a prison could be called a "household" as an acceptable description in ordinary use. Plainly any such use would be simply wry.
> …
>
> **Observations for Guidance**
>
> For the purposes of s 30(2) the term "household" takes its ordinary meaning in common usage in this country. When considering whether the subsection applies in any particular case an appreciation of the connotations of the term "household" in the context of the subsection will be of more practical use than an abstract definition. In any particular case it will be necessary for the features of the arrangement being examined to be considered in terms of consistency or inconsistency with the connotations of domestic residence of a family or a group living in a situation analogous to a family, such as a group of intimate acquaintances, friends or flatmates jointly residing in a house or

[7] [1996] 1 NZLR 239.

> flat. Institutions of a commercial or public nature whose services or functions include the provision of accommodation, or board and accommodation, such as boarding houses, rest homes, hospitals, boarding schools and prisons, do not, in common usage and therefore as used in s 30(2) of the Act, come within the scope of the term "household".

[37] In *Karmakar v Auckland Council* [8] Becroft J considered whether a property was operating as a boarding house for the purposes of a resource consent. His Honour said

> I accept the conclusion of the Environment Court in the decision under appeal that the following common elements are encompassed in the meaning of "household unit" or "dwelling":
>
> a) a family unit related by blood or marriage, civil union or de facto relationship; or
> b) a small group of people who are unrelated but agree to share a dwelling and have a relationship of a domestic nature with social cohesion, such as friends sharing a flat together; and
> c) where the raison d'être of the dwelling is domestic rather than commercial.

[38] In *The Wanaka Gym Limited & Fiona Caroline Graham v Queenstown Lake Districts Council*[9] Lang J approved a set of criteria set out by Judge Neave in the decision at first instance where he held a commercial gymnasium with a residential unit added to the back did not constitute a single household unit.

> **[29]** Judge Neave adopted a similar approach. In determining that the company's building could not properly be described as a dwelling for use as a single household unit, he 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

[8] [2025] NZHC 1285 at [18].
[9] [2013] NZHC 2662 at [27].

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.

[39] Lang J emphasised that[10]

> …the 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.
>
> …
>
> The most compelling answer to the argument, however, is that each case in this area will turn on its own unique facts.

[40] In *Simmons v Pizzey* [11]the House of Lords considered whether a refuge for women who had been ill-treated constituted a single household, and Lord Hailsham said

> …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.

The Appellant's submissions

[41] Mr Orange submitted on behalf of Mr Singh that the property has always been classified as a sleeping single home (SH) and no relevant change occurred with the reconfiguration into five bedrooms because the physical footprint of the property has not changed, and the property remains a detached suburban dwelling.

[42] Mr Orange submitted the only aspect of the sleeping single home (SH) definition which is in question is whether the current occupants who are not related are a "single household". Mr Orange rejected the Council's narrow interpretation and submitted

[10] Footnote 9 at [34] and [40].
[11] [1977] 2 All ER 432.

(a) The sleeping single home (SH) definition refers to "single household unit" or "family". Family is therefore only one example of household and there is no requirement that the occupants must be related to be a single household unit. A single household unit is a social unit and not a biological one.

(b) The occupants live as a single household. They each have their own bedroom but share all domestic facilities – kitchen, bathroom, lounge and laundry. They use the facilities co-operatively.

(c) Practically the Council's interpretation would result in many flatting and co-living arrangements being classed as sleeping accommodation (SA) and this is not what happens in practice.

[43] Although a boarding house is specified in Schedule 2 of Regulation 6 as an example of sleeping accommodation (SA) Mr Orange submitted the property's use as a boarding house with only five occupants assists it in coming within the definition of sleeping single home.

[44] Boarding house is not defined in Regulation 6, so Mr Orange looked to other references to and definitions of boarding house. He drew inferences from the definition of "detached dwelling" in the building code referring to a "boarding house accommodating fewer than 6 people"

[45] Although the definition of detached dwelling is applicable only to the second limb Mr Orange submitted it influenced the definition of boarding house under Regulation 6.

[46] Drawing the strands of the argument together Mr Orange submitted Mr Singh's property (which has only five occupants) is not the type of boarding house envisioned by Regulation 6 as sleeping accommodation (SA) because the definition of boarding house under regulation 6 is coloured by the detached dwelling definition and cannot have been intended to include boarding houses of less than six occupants.

[47] Mr Orange submitted, if the Court finds the property is still a sleeping single home (SH), there has therefore been no change of use under the Regulations. The consequence of such a finding is that there is then no need to consider the second limb and the appeal is successful.

[48] Mr Orange submitted if, however, the Court finds the property is no longer a sleeping single home (SH) the second limb of the test is still not triggered. Mr Orange argued section 115 only applied to "household units" and the definition of "household unit" expressly does not include a hostel, a boarding house, or other specialised accommodation. [12]

[49] Alternatively, Mr Orange submitted if the second limb test is triggered the property's classification under the building code should be as a detached dwelling because it comes under that definition as a boarding house of six or less occupants. Consequently, Mr Orange says the applicable compliance requirements are no more onerous for the new use than the old use and the second limb of Regulation 5 is not met.

[50] Mr Orange accepted that if the Court finds the first limb is met, and under the second limb the property is a community service (rather than a detached dwelling) then there are additional building code requirements that apply.

[51] Mr Orange accepted the rationale of *The Wanaka Gym Limited & Fiona Caroline Graham v Queenstown Lake Districts Council* [13] but submitted it was not applicable to this case because it involved a very different factual situation than that of Mr Singh's property. It was not a detached dwelling, it was a commercial establishment, it looked more like a hostel or hotel than a house, and the level of occupancy was far greater and involved an explicitly transient set of occupants.

[52] Counsel addressed the Council's emphasis on the safety requirements underpinning these definitions and requirements. Mr Khan submitted there was no evidence that the purpose of the relevant sections of the Act was to address safety

[12] Section 7 of the Act.
[13] [2012] NZHC 2662.

concerns or that safety was relevant to interpreting the relevant definitions. Mr Khan argued the Council was speculating about safety implications and it was just as relevant to argue the distinction made of a boarding house with less than six occupants was because that is a manageable number in a boarding house situation and met any safety issues.

Analysis and Discussion

[53] The first issue to consider is whether there has been a change from one use determined under Regulation 6 of the Regulations to another use under Regulation 6.

[54] Simply put the question is -is this property still a sleeping single home (SH) or has it become sleeping accommodation (SA)?

[55] I agree with Mr Orange that the property is a detached freestanding house and the aspect of the sleeping single home (SH) definition on which the issue turns is the meaning of "single household" in Schedule 2 of Regulation 6. I also agree with Mr Orange that the occupants of a single household do not need to be related. This conclusion is supported by the separation out of "family" in the definition and accords with the observations in *Hopper* and *Karmaker.*

[56] However, I accept Mr Quinn's submission for the Council and concur with the Ministry determination that the property is no longer a sleeping single home (SH) and has become sleeping accommodation (SA). I reach this conclusion by focussing on the features and actual use of the property and for the following reasons.

[57] First, as Judge Gibson held in *Jayashree Limited v Auckland Council*[14] each situation needs to be approached on its own facts. In establishing the facts in this case, I place weight on the findings and observations of the Council inspection of November 2022. I note the tenants are a mixture of people referred from WINZ and corrections; basic rules were displayed but not enforced; a property manager lives next door; there

[14] [2019] NZDC 2407 at [9].

are lockable bedroom doors; and the owner's description of "emergency housing with short term stay providing for urgent cases[15]

[58] Second, it is important to consider the full phrase which is "where people live as a single household". This means more is needed than a single physical building. The focus is on the way the people live in that building. It is necessary to have indications that the occupants operate and relate to each other as a unit. Given the characteristics of the property's occupants' living situation I do not consider there is sufficient social cohesion or relationships of a domestic nature to view this property as a single household.

[59] Third, the living situation of the occupants satisfies many of the factors both the District Court and the High Court held in the *Wanaka Gym* case to be indicators that the situation was not a sleeping single home (SH). Although the *Wanaka Gym* case was different factually from this case that does not diminish the relevance and assistance of the criteria considered. These include relatively short terms of residence, no necessary connection between people residing in the property and no agreement for the occupants to live together as might be expected in a flatting situation. Of particular note is the possible considerable variance in the numbers at the property at any given time. In this case, the Council inspection recorded the lounge was used as a bedroom when required and the Council officers suspected renovations to a separate building at the rear of the property might be further accommodation.

[60] On this factor I do not accept there is any basis to be assured the occupancy would remain no more than five at the property. Other than the Council officers recording the owner as being "adamant…there were only 5 tenants" there is no evidence to support the contention the number of tenants would not vary and increase. All the Court has before it is reference to an undertaking given (without specifying from whom) in a report by Alan Light, building consultant to support the application for a determination. It is not even clear from the reference whether the undertaking refers to this property or another of Mr Singh's properties in New Lynn.

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[15] Owner comments made to the Ministry for the purposes of the determination recorded at paragraph 4.10.

[61] In the absence of anything definitive to restrict the number of occupants to five and the possible indications[16] to the contrary in the Council inspection, the property could be occupied by more than six occupants at any time, and this is therefore not a basis on which lines of classification can be drawn in this case. I agree with Mr Quinn's observation that a property's classification should not be able to change on a daily basis because of the number of occupants and such a distinction would in any event, at a practical level be very difficult to administer and monitor.

[62] There has therefore, been a change from one use, single sleeping house (SH) determined under Regulation 6 of the Regulations to another use, sleeping accommodation (SA) under Regulation 6. It is necessary to next consider the second limb - does the new use result in building code requirements that are additional to, or more onerous than, the requirements in respect of the old use.

[63] The answer to this issue turns on whether the property is classified under the building code as a detached dwelling or a community service.

[64] The "single household" also features in the definition of detached dwelling. For the reasons already outlined I consider the property is not a single household and therefore is not a detached dwelling under the building code. I acknowledge the definition of detached dwelling specifically includes by way of example a "boarding house of less than 6 occupants". However, I view the example given in the same way as "boarding house" is given as an example of sleeping accommodation (SA) and as an example of community service.

[65] The meaning of legislation must be determined from its text and in light of its purpose and context. Examples are indications provided in the legislation which form part of the text.[17] The examples are therefore relevant but not determinative.

[16] The report of the lounge being used as a bedroom.
[17] Sections 10 (1), (3) and (4) Legislation Act 2019.

[66] I do not place weight on the property having only five occupants currently and therefore seeming to come within the example given for the definition of detached dwelling for the reasons already given.

[67] Boarding house is also an example given (without a numbers restriction) for the definition of "community service". In my view, the inclusion of boarding house under both definitions simply serves to highlight the importance of deciding the issue on the particular factual situation under consideration.

[68] The lack of social cohesion and sense of one unit in the property's occupants' living arrangements is in my view more in line with the definition of community service. I consider the property is a residential building where there is limited assistance or care extended to the occupants. For this conclusion I rely on the occupants being unknown to each other, no agreement between the occupants as to who lives there and the property manager being off site.

[69] I find therefore that there is a new use of the property under the building code as a community service. Mr Orange accepted that, if the property was classified as a community service rather than a detached dwelling, then there were additional building code requirements that applied.

[70] Accordingly, the second limb is satisfied, and the new use does result in building code requirements that are additional to, or more onerous than, the requirements in respect of the old use.

[71] That determines the issues in the appeal, but I briefly address three further arguments submitted by Mr Orange.

[72] First, Mr Orange and Mr Khan challenged the relevance of safety considerations to the definition and classification exercise under the Regulations and the building code. I have not relied on this aspect in reaching my decision but consider there is a connection. The more onerous building code requirements for a building classified as community service accords with the purposes of the Act[18] to ensure

[18] Sections 3 and 4 of the Act.

people's safety, health and well-being in the use of buildings. Where there is a living situation without oversight/ control of anyone ensuring safety or social cohesion where people will be inclined to ensure the safety of each other these more onerous requirements are appropriate, and it is appropriate that the need for them underpins the classification of the different uses of a building.

[73] Second, Mr Orange submitted the second limb was not triggered because this case was not captured by section 115 (a). This argument turned on the definition of "household unit" and Mr Orange's submission this property as a boarding house, fell within an exclusion to that definition. However, I agree with Mr Quinn's submission that even if section 115(a) does not apply, section 115 (b) does as it applies "in any other case". Therefore, the need to address the second limb of Regulation 5 is triggered.

[74] Third, I do not accept the argument that the definition of detached dwelling flavours the definition of boarding house under regulation 6 and therefore impacted whether Mr Singh's property was sleeping single home (SH) or sleeping accommodation (SA). While references in other parts of a statute can assist interpretation, the primary guide is the text of the provision in question. Again, for reasons already given the classifications required under the Act and the building code should not in this case depend on whether there may be at any given time less than or more than six occupants.

Conclusion

[75] The grounds of appeal in the amended notice of appeal dated 16 July 2025 are not made out. The Court under section 211 of the Act confirms the Ministry's determination of 20 September 2024.

[76] The appeal is dismissed**.**

Costs

[77] Costs were claimed but not addressed at the hearing. The Council is entitled to costs as the successful party. If the parties cannot agree any memorandum with respect to same should be filed and served within 14 days of the date of this decision and any response 14 days thereafter.

Dated at Auckland this 19th day of January 2026.

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Judge Jacqui Clark
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 19/01/2026