

Change of use, alterations and extension of life

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If you want to change the use of a building, even if no building work is involved, the owner needs to let the council know of the change (in writing).

You should also talk to the council if you want:

- to alter a building, as this could trigger upgrade provisions for the whole building
- an extension of life for a building with a specified intended life
- to do a subdivision that will affect a building
- to notify of a natural hazard or build over allotments (<https://www.building.govt.nz/building-officials/guides-for-building-officials/notifying-natural-hazards-or-building-over-allotments/>).

Change of use

You cannot make the proposed change until the council gives the owner written confirmation that the requirements of the Building Act have been complied with.

The requirements will vary, depending on whether the change of use means that household units will be incorporated in the building. If this is the case, the council will need to be satisfied that the building in its new use will comply with the Building Code as near as reasonably practicable (also known as ANARP). If this is not the case, the building will have to comply with Building Code requirements around access and escape for fire. Often a building consent will be required.

If you make the change without advising the council you could be liable for a fine of up to \$5,000.

You also need to let the council know if you want to:

- extend the life of a building with a specified intended length of life
- subdivide land in a way that affects a building (including a neighbouring property in a multi-unit complex).

Every building is designed for a specific use and has to meet Building Code requirements that ensure it will be safe, healthy and durable when used in the way it was designed. If that use changes, the building may need to be altered to support the new use.

For example, single residential buildings do not generally require access and facilities for people with disabilities. However, they may do if the building is being used for another purpose, such as a daycare centre or doctor's surgery.

You could discuss your proposed change of use with your council in the early stages of your planning so you know whether your building will need upgrading.

The legislation refers to 'change the use' but the common term is 'change of use', which is how we describe it here.

The legislation provides a mechanism to gradually upgrade existing buildings to current standards for safety, health and durability.

Understanding 'change of use'

A change of use occurs when both:

- the use of a building or part of a building changes from one use to another as defined in the Building (Specified Systems, Change the Use, and Earthquake-<http://mbie5.cwp.govt.nz/managing-buildings/change-of-use-and-alterations/>

prone Buildings) Regulations 2005 (the Regulations)

- and the new use has more onerous or additional Building Code requirements than the old use.

Understanding a building's 'use'

The 'use' of every building or part of a building is categorised by law. For the purposes of the Building Act, that use is specified in Schedule 2 of the Regulations.

Schedule 2 divides the uses for all or parts of buildings into four broad activity groups:

- crowd activities
- sleeping activities
- working, business or storage activities
- intermittent activities.

The four activity groups each have a varying number of use categories and there are 15 uses in total. They are all defined with examples in Schedule 2 of the Regulations.

For example, a building might be designed to be used for sleeping activities (such as a home, hospital or prison) so falls under the broad 'sleeping' activity group. This has five categories:

- SH (sleeping single home, detached dwelling where people live as a single household ...)
- SR (sleeping residential, attached and multi-unit residential dwellings ...)
- SA (sleeping accommodation, spaces providing transient accommodation ...)
- SC (sleeping care, where people are provided with special care or treatment)
- SD (sleeping detention, where people are detained or physically restrained).

The specific category of use can be determined based on the number of people who will use the building, whether the building is enclosed and what activity will be undertaken.

Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005

Includes all the Schedule 2 definitions. The legislative requirements relating to change of use are in the Building Act 2004, including sections 114, 115 and 118. These can be read in full on the New Zealand Legislation website.

Find out more (<http://www.legislation.govt.nz/regulation/public/2005/0032/latest/DLM313966.html>)

More onerous or additional Building Code requirements

The new use might mean the building has to meet more onerous or additional Building Code requirements. For example, the new use might increase the fire hazard or the risk to life.

The fire hazard may increase because:

- the type of work or activity carried out in the building has changed. For example, an electrical workshop has become a car spray painting workshop
- goods now stored in the building present a greater fire hazard than the goods previously stored. For example, a building previously used for storing appliances now stores highly combustible furniture
- goods previously stored in racks 2.4m high are now stored in racks 4m high.

The risk to life may change because:

- there are more people in the building. For example, a building previously used as a storage warehouse changes to a bulk retail store or supermarket
- people's activities place them at increased risk. For example, a building previously used as a workplace becomes a building in which people sleep.

When a change of use occurs

Once the council receives advice about a change of use, they must confirm to the owner in writing whether they are satisfied that the building (in its new use) will meet the Building Code compliance requirements.

Building Code compliance requirements are:

- a. if the change of use involves incorporating one or more household units into the building where there were none before, the council must be 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.
- b. for all other cases, the council must be satisfied on reasonable grounds that the building (in its new use) will:
 - i. comply, as nearly as is reasonably practicable, with every Building Code provision relating to either or both of:
 - a. means of escape for fire, protection of other property, sanitary facilities, structural performance and fire-rating performance
 - b. access and facilities for people with disabilities (if this is a requirement under section 118 or the Building Act)
 - ii. and continue to comply with other Building Code provisions to at least the same extent as before.

Building consent and change of use

You don't need a building consent solely because you are changing the use of a building.

However, you will need a building consent if you need to do building work as part of the change of use and it is building work that requires a building consent (for example, the building in its new use may need to have new fire safety features or some of its existing features altered).

The council will consider the intended change of use and the proposed building work to see if it agrees that the building, in its new use, will comply 'as nearly as is reasonably practicable' with the Building Code to the extent required by the Building Act.

When a building consent is not required for a change of use

A building consent is not required where either:

- the owner has notified the council and the council is satisfied the building already complies and does not need any upgrade
- proposed building work is exempt (under Schedule 1 to the Building Act)
- the Council decides to exempt the work (a decision totally at the council's discretion, based on their assessment of the risk of the building work not being carried out in accordance with the Building Code or of endangering people or property).

When making a decision to exempt work the council should apply their formal policies, systems and procedures for receiving and processing such exemption requests.

Identifying what you need to upgrade

The council must decide to what extent the existing building must be upgraded. This is the 'as nearly as is reasonably practicable' test in section 115 of the Building Act. (This approach does not apply to any new building work, which must be shown to fully comply with the Building Code).

Defining 'as nearly as is reasonably practicable' (<https://www.building.govt.nz#defining>).

When applying the test, we recommend the council apply a risk-based approach. This is particularly relevant where public safety or health may be affected. When defining risk criteria, councils are likely to need to consider:

- the nature and types of risk that can occur and any resulting consequences
- how to mitigate the risk
- the likelihood of risk (for example, a fire is more likely to occur in a domestic setting than a commercial one)
- the timeframe(s) (that is, temporary versus permanent, and the likelihood of temporary use becoming permanent)
- the level of risk the proposed use may cause
- the level at which risk becomes acceptable or tolerable.

In addition, the council may consider:

- building size
- building complexity
- location of the building in relation to other buildings and public places
- public access or attendance in the building
- any other matter the council considers relevant.

When change of use has not been notified

An owner has committed an offence if they change the use of a building without notifying and getting approval from the council.

If the owner also fails to get a building consent where one is required for building work performed to change the use they have committed a further offence.

In these instances the council may:

- issue an infringement notice
- issue a notice to fix
- recommend the owner apply for a certificate of acceptance for the illegal building work.

The approach they take will depend on the circumstances of the change of use.

In addition, the council still needs to be satisfied that the building in its new use will meet the requirements of the Building Act, irrespective of whether building work was carried out.

<https://www.building.govt.nz> Defining 'as nearly as is reasonably practicable'

To determine the extent of any Building Code upgrade requirements, the council must apply the 'as nearly as is reasonably practicable' test. This test was expressed in a High Court judgment as a weighing exercise and involves a costs and benefits assessment where the sacrifices and difficulties of achieving full compliance are balanced against the advantages of upgrading.

The High Court approach to "as nearly as is reasonable practicable":

- The weight of the considerations will vary according to the circumstances and it is generally accepted that where considerations of human safety are involved, factors which impinge upon those considerations must be given an appropriate weight.

Auckland City Council v New Zealand Fire Service [1996] 1 NZLR 330 at page 27.

The consideration of 'as nearly as is reasonably practicable' must be applied on a case-by-case basis. This is explained in more detail under step 5 on page 14 'Determining required upgrades'.

When considering what is 'as nearly as is reasonably practicable', we suggest the council consider how long the change of use is proposed for (whether it is a temporary or permanent change).

Alterations to existing buildings (including extension of life)

If you are altering an existing building, for change of use or any other purpose, you may trigger upgrade provisions for the whole building.

These provisions are in the Building Code and ensure the quality of New Zealand's building stock improves over time.

Upgrade provisions relate to:

- means of escape from fire
- access and facilities for people with disabilities (if relevant).

All other aspects of the building must continue to comply with the Building Code to at least the same extent as before the alteration.

Councils can allow people to alter their building use without ensuring it complies with the Building Code's relevant provisions if they are satisfied the alteration:

- will not take place if the building has to comply
- and will improve the means of escape from fire or access and facilities for people with disabilities
- and outweighs (through improvement) any detriment likely to arise from not complying.

Extension of life

Where a building with a specified intended life is issued with a building consent that is subject to the condition that the building be altered before the end of its life, an 'extension of life' can be obtained.

An owner of a building must give written notice to the council if it proposes extending the life of a building.

Some examples of change of use

These examples were prepared to provide practical assistance following the Canterbury earthquakes. They focus on temporary relocations, but may be considered examples for permanent changes of use.

Example 1

A business owner temporarily relocates their offices and staff to a residential dwelling. The current use of the dwelling is SH (sleeping single home). The new use is WL (working low).

This is a change of use because the activity or use has changed and the Building Code requirements are more onerous for this new use. For example, under structural performance there is a need to consider increased floor loadings and/or adequate toilet numbers under sanitary facilities. Therefore, the owner must notify the Council of the proposed change of use.

Note: Business relocations may not always result in a change of use. For example, a sole trader decides to operate their business from home or garage. This is not change of use because the new and old primary use of the building remains SH (sleeping single home) and no other users of the building need to be considered.

Example 2

Part of a suburban library is temporarily converted into office space to provide for approximately 100 people that have been displaced from their earthquake damaged building.

As the use of that part of the building changes from CL (crowd large) to WL (working low) and there are more onerous Building Code requirements (for example, sanitary facilities) this would be considered a change of use.

Example 3

A residential dwelling is converted from SH (sleeping single home) into two rental residential units SR (sleeping residential). This change will result in more onerous requirements for protection of other property (for example, internal moisture) and fire rating performance (for example, fire separations between residential units) and is therefore considered a change of use.

Related determinations

A determination is a legally binding decision made by MBIE as a way of solving disputes about the rules that apply to buildings, how buildings are used, building accessibility, health and safety. They only apply to the individual parties of the determination, but are useful to others as a guide when faced with a similar problem.

Previous determinations

Determinations are made by MBIE on matters of doubt or dispute to do with building work. Rulings are legally binding, but only in relation to each case. Previous determinations may provide some useful guidance for those faced with similar problems, but note that individual circumstances may vary. You can also search for Determinations on

View Determinations issued (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>)

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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.