



Determination 2014/043

Regarding the authority's exercise of powers in issuing notices to fix about the change of use of four collectively-owned residential buildings in Manukau, Auckland

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
 - the owners of the houses, E Yi, M Cho, E Choi and K Yi, represented by an agent (“the applicants”)
 - Auckland City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 The eight buildings involved in this determination are listed in Appendix A.1. The buildings will be referred to individually as houses one to eight and collectively as “the buildings” for the purposes of this determination.
- 1.4 This determination arises from a dispute regarding the change of use of the buildings and building work undertaken by the applicants. The authority has issued a notice to fix for houses one to four regarding the change of use from use category SH to SA².
- 1.5 The matter to be determined³ is therefore whether the authority was correct to issue notices to fix for houses one to four. I will also consider the change of use for all eight buildings.
- 1.6 I have not considered the certificates of acceptance under section 96 in this determination.
- 1.7 In making my decision, I have considered the submissions of the parties and the other evidence in this matter.

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

² As set out in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005; herein referred to as “the Regulations”. See also Appendix A.3.1.

³ Under sections 177(1)(b) and 177(2)(f) and 177(3)(f)

2. The buildings and background

2.1 The buildings can collectively be described as eight two storey detached houses with varying construction details, constructed approximately 20 to 30 years ago.

2.2 House one is of timber construction with the closest boundaries being 2.3m from its northern wall and 3m from its southern wall. The house is a two storey stand-alone single fire cell.

2.3 The notices to fix

2.3.1 On 28 August 2013 the authority issued four notices to fix (“the notices to fix”) for houses one to four. The notices to fix described the contravention of section 40 for building works undertaken without first obtaining a building consent to be either “additional sanitary fixtures installed’ or ‘changing of the garage into a habitable room with the installation of a ranch slider’ or a combination of both. Further detail regarding the notices to fix can be found at Appendix A.2. The notices to fix stated:

Contrary to s114 of the [Act] the owner must give notice of change of use – change of use of the dwelling into a boarding house, for international students (SH sleeping household to SA sleeping accommodation)

The applicants were asked to obtain a certificate of acceptance in accordance with section 96 of the Act to show the current lay out of the buildings and apply to the authority for a change of use of the building from a single household to sleeping accommodation.

2.4 The certificate of acceptance applications and supporting documents

2.4.1 On 29 November 2013 and 30 October 2013 the applicants applied for three certificates of acceptance (20132734, 20133057 and 20133059) through a consultant engineer and architect (“the consultant engineer and architect”) for houses one, two and four respectively (“the certificates of acceptance”), with the detailed work described as follows:

House one (20132734)

Installation of a timber frame into the garage door opening
New doors and windows
Change of use of the dwelling into a boarding house (fire requirement)

House two (20133057)

Bathroom modification
Plumbing + water supply
Wall alteration
(A hand written addition states ‘ Spa pool? Fence? Change of use (SH – SM), Prayer room? Garage door to door/window)

House four (20133059)

Bathroom modification – plumbing + water supply
Replace existing garage door with timber joinery door with side windows
Add fence to spa
Enlarge existing prayer room

(A hand written addition states ‘Change of use from residential dwelling to board as use (SH – SM)

- 2.4.2 On 4 December 2013 the authority wrote to one of the applicants regarding the certificate of acceptance application for house one. The authority noted that a fire report dated 9 October 2013 (which I assume was provided to support the application) stated that the dwelling had been converted into a boarding house and that the risk group had changed to SM. The authority referred the applicant to C/AS2 and requested further information to support the application.
- 2.4.3 On 4 December 2013 the applicants engaged in a building services engineer (“the building surveyor”) to provide a fire report for alterations at house one. In summary the report noted:
- House one has been purchased as accommodation for international students who attend school together and will live in cohesion in a family type environment which share cooking and cleaning duties.
 - The alterations include a fit out to the ground floor to provide an additional bathroom and rumpus room and the garage is being fitted out for additional accommodation.
 - The construction is to be in compliance with the new C/AS2 Acceptable Solution for clauses C1-C6 for protection from fire. This requires the building to undergo a change of use from SH to SM; it is classified as a ‘suite’ with less than 12 beds. It is considered permanent accommodation as the students stay up to two years.
 - The changes must comply with section 115 of the Act and requires ‘mains powered smoke detectors are to be installed in each bedroom to comply with F6’.
 - The means of escape complies and the control of internal spread of fire and smoke complies with Clause C/AS2.4.6.5 as the building surveyor considers house one to be a suite and a single fire cell.
 - The requirements for risk group SM are more onerous, however the building surveyor considers the house complies as near as is reasonably practicable as the fire load remains unchanged.
- 2.4.4 On 20 February 2014 the applicants provided to the authority an accessibility report for house one (“the accessibility report”) by the applicants’ consultant engineer and architect. In summary the report stated:
- House one has been purchased as accommodation for international students who attend school together. The alterations are to provide an additional bathroom and rumpus room and the garage is fitted out as a rumpus.
 - The buildings are not commercially operated; they would be considered a ‘home stay; to live in cohesion in a family type environment. The students ‘know each other well’ and will reside for often more than two years.
 - The buildings are considered private not public, people who stay are known by the owner and a closed circle of students.
 - Schedule 2 of the Act lists buildings that require provision for access and facilities for persons with disabilities. Full accessibility provision is not required as the building is not used by the public.

- The current access route can be improved by providing a handrail and a non-slip nosing at the entry for house one.
- 2.4.5 On 27 March 2014 the applicants' consultant engineer and architect emailed the authority attaching a letter from the applicants confirming the use of the buildings. It stated:
- [the students] are personally known to me. They live together, they eat together, they attend school together, and they socialise together. They do not have cars and usually walk to school. They come and stay here usually for three months or six months at a time and then return
- 2.4.6 On 31 March 2014 the authority emailed the applicants' consultant engineer and architect noting that:
- as the occupants (except one) are invited for a short period stay we consider the application to fall outside of risk group SH
 - 'the buildings cannot be classified as a [detached dwelling] as they house 6 or more visiting occupants, refer item 2.02 of clause 1 of the Building Code. Therefore the higher risk group SM applies.'
- 2.4.7 On 4 April 2014 the authority emailed the applicants' consultant engineer and architect confirming that the buildings fall within risk group SM 'all building code requirements for C/AS2 Fire Protection and Egress and Accessibility then apply and will need to be provided'.
- 2.4.8 On 10-11 April 2014 emails were exchanged between the authority and the applicants' agent to confirm how many persons occupy the houses. The applicants' agent advised that each of the eight houses have 9 students and a supervisor.
- 2.5 On 5 May 2014 the applicants wrote to the Ministry. In summary:
- The applicants operate an English language school in Manukau, Auckland. The regular students at the school are accommodated in homestays for which regular fees are involved.
 - The applicants have purchased the eight buildings as a charitable venture to accommodate selected students over 18 who have come from poor families ("the students") to attend the English language school and live in the buildings. The applicants assist by paying tuition and accommodation costs.
 - The applicants wish to have 9 students in each of the 8 houses, plus one person who is responsible for 'all matters concerning the operation of the home' ("the supervisor").
 - The buildings will operate as a home and extended family. The students will do everything together as a household, for example chores and cooking which are organised by the supervisor. The students do not pay any rent; only personal needs and expenses and for the running of the household for example power.
 - The students are like an extended family and the buildings should be considered household units. The buildings should not be classified as boarding houses or hostels as no rent is being charged.
 - The applicants have received advice from the building surveyor regarding fire safety and the advice has been implemented.
 - The applicants do not have disabled students living in the buildings. In the event they should need these facilities, the applicants propose to set up one of

the houses with whatever accessibility features are required by the authority. The applicants state there would never be a need to have more than one house set up with these facilities.

2.6 On 25 June 2014 the Ministry responded, in summary:

- The buildings the applicants purchased appear to fall within the category (in terms of Change of Use Regulations) as SH (Sleeping Home).
- The Act requires that if a building undergoes a change of use then the owner has to advise the authority that they are planning to change the use of a building (section 115 of the Act). The authority is then required to apply a “as nearly as is reasonably practicable” test for means of escape from fire and access for people with disabilities and to make sure that the rest of the Building Code clauses comply at least the same as before.
- There are two possible alternatives for the proposal: SA (Sleeping Accommodation) or SR (Sleeping Residential). On balance it is more likely to be SA as a space that provides transient accommodation or where limited assistance is provided for people.
- The applicants can apply for a determination for a full assessment of the issue.

2.7 The Ministry received an application for determination on 15 July 2014.

3. The submissions

3.1 The applicants provided a covering letter on 11 July 2014 with their determination application. In summary:

- The applicants request to be allowed to use the buildings for student accommodation and if required, one of these houses will be altered to cater for accessibility.
- Originally, house one was the ‘test case’ to obtain permission from the authority to accommodate the students and supervisor in the buildings, however the applicants propose to use house two for any students that may have special accessibility needs.
- The buildings do not fall within the category of boarding houses and they will never be used for commercial purposes.

3.2 The applicants’ agent provided the following documentation with the application:

- the building surveyor’s report regarding fire safety
- the guidance from the Ministry regarding the C Clauses of the Building Code (“the guidance document”)⁴
- the notices to fix for houses one to four
- building consent and a certificate of acceptance application documentation for house one
- the accessibility report for house one
- the site plans and proposed alterations to the buildings

⁴ Requesting information about means of escape from fire for existing buildings – a guide for Building Consent Authorities and Territorial Authorities, December 2013

- photographs of the buildings
- email correspondence between the applicants and the authority dated from 6 November 2013 to 11 April 2014.

3.3 The authority supplied a written submission on 13 August 2014. The authority stated the question to be addressed is ‘whether in circumstances where it is proposed to accommodate 9 students for up to 2 years, plus a manager in the buildings, is the applicable risk group is SH or SM?’ The authority submitted that risk group SM ‘is the correct fit, which means that compliance with C/AS2 and NZS4121 is required.’

3.4 A draft determination was issued to the parties for comment on 15 August 2014.

3.5 The applicants’ agent and the authority both accepted the draft determination without comment on 25 August 2014.

4. The legislation

4.1 Under section 114 of the Act, if an owner is planning to change the use of a building they must provide written notice to the authority. The authority must be satisfied on reasonable grounds, that the building in its new use will comply as nearly as 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:
- access and facilities for people with disabilities (if this is a requirement under section 118); and
- if the building complied with the other provisions of the Building Code immediately before the change of use, continue to comply with those provisions; or;
- if the building 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 after the change as it did before.

4.2 There are a number of different categorisations of buildings used in or for the purposes of the Act and associated Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (“the Regulations”). Different categorisations are used for different purposes. Examples of categorisations include:

- Classified uses, such as Housing, Commercial, Industrial, etc under Clause A1 of the Building Code; for the purpose of applying the performance requirements of the Building Code.
- Uses of buildings such as CS (Crowd small), SH (Sleeping Single Home), WH (Working High) under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005; for the purpose of decisions about upgrade work required when the uses of buildings are changed.

5. Discussion

5.1 General

5.2 The buildings, when purchased by the applicants, fitted within the use category of SH (Single Sleeping Home) in relation to the Regulations. This is not disputed by the parties.

5.3 The matter to be determined is whether the authority correctly exercised its powers in issuing the four notices to fix in respect to a change of use. In determining this matter I have analysed all eight buildings collectively to determine if the buildings have undergone a change of use, and if so which use category under the Regulations the buildings come under in the new use. To avoid any doubt this analysis is not restricted to the four houses subjected to notices to fix but applies to all the buildings listed in Appendix A.

5.4 SA (Sleeping Accommodation)

5.4.1 The use category of SA (Sleeping Accommodation) is defined as ‘spaces providing transient accommodation or where limited assistance or care is provided for people.’ Examples given include motels, boarding houses, clubs (residential) halls, boarding schools and wharenuī. The authority has likened the subject buildings to a boarding house; this view is reflected in the notices to fix issued for houses one to four.

5.4.2 The term “boarding house” is not defined in the Act so I take the view it must be given its ordinary and natural meaning in the context. The *Oxford English Dictionary* defines “boarding house” as “a private house providing food and lodging for paying guests”. My understanding of the current New Zealand usage is that “boarding house” describes accommodation where:

- members of the public live in a house with shared facilities, for example a group kitchen, usually involving more than six people in one house
- occupation is often transient in nature in terms of the length of stay
- there is no expected level of social cohesion between the occupants.

5.4.3 In my view based on the evidence provided, I do not consider the buildings to fall within the use category of SA as a boarding house. The students live in the buildings for at least six months; some of the students stay on as a supervisor for a further six months.

5.4.4 The Commentary⁵ to the Acceptable Solutions C/AS1 to C/AS7 discusses accommodation types and the length of occupancy. In relation to risk group SM, the Commentary suggests a 90-day period can be used to distinguish between temporary and permanent accommodation in some situations, and that someone’s residential address can be considered permanent accommodation. While the Commentary is not directly applicable to this situation (as I do not consider the risk group to be SM), it can be used as guidance in this case.

5.4.5 In my view the students will use the buildings as their permanent residence whilst in New Zealand and will be familiar with the layout of their residence.

5.4.6 In this particular situation, the students are specifically selected by the applicants in relation to age, social backgrounds and nationality. There is an expected level of familiarity that will develop between the students living in the buildings, leading to

⁵ Commentary for Acceptable Solutions C/AS1 to C/AS7, Department of Building and Housing, April 2012

the social cohesion of occupants by virtue of their relationship and living in a quasi-family situation that ensures any individual becoming aware of fire would naturally assist others within the buildings to escape.

5.4.7 I acknowledge that different countries have a different understanding of what constitutes a “boarding house”. In the New Zealand context I do not consider the subject buildings to fall within this definition.

5.4.8 In relation to payment, there are situations where a boarding house in New Zealand requires payment and some where it does not. There may be alternative forms of monetary payment for a person to live in a house. I do not consider monetary payment as a determining factor when analysing the use category of a building.

5.5 SR (Sleeping Residential)

5.5.1 The second category the buildings could fall within is the use category of SR described as ‘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’. Examples of SR are multi-unit dwellings, flats or apartments.

5.5.2 In my view the buildings fall within the use category of SR and can be likened to a flatting situation. In New Zealand flats are often formed by students attending universities or other educational institutions due to the similar age group and similar interests of the students. The applicants have advised the minimum stay for the students is six months. In my opinion this establishes a level of permanence and as discussed in paragraphs 5.4.4 and 5.4.5, the accommodation cannot be considered temporary. There is an expectation that the students will get to know each other as is the case in a flatting situation during the period of their stay.

5.5.3 Due to the age, occupation, and sense of belonging of the students being from the same country and speaking the same language, I expect there to be a high level of social cohesion formed in those six months. The activities carried out by the students, eating together and preparing meals, carrying out chores around the house and walking to the language school together will also foster this level of social cohesion. It is natural for students in a new country to form bonds with those in a similar situation particularly when they are away from the familiarity of their homes and families. Though the students sleep in individual rooms they share other facilities such as the kitchen and bathroom areas and communal spaces.

5.5.4 In relation to the ‘supervisor’ the applicants have confirmed six supervisors for six of the eight buildings are students who have already resided in the house for six months and takes on the role of an ‘assistant pastor’. The remaining two buildings have two permanent pastors living in each of the houses to oversee the living arrangements. The level of supervision or care is merely an operation one, much like a ‘head tenant’ in a typical student flat and is often necessary for the smooth running of any household. It is my understanding of the situation that the supervisors in the buildings have an additional role in relation to the running of the Church, being pastors or assistant pastors.

5.6 A comparison can be made with Determination 2014/026⁶ regarding which fire risk group should be used under the Acceptable Solutions for proposed new building units. That determination discussed social cohesion and concluded in that case there

⁶ Determination 2014/026: Regarding which fire risk group should be used in determining the compliance of proposed accommodation, (Ministry of Business, Innovation and Employment) 21 May 2014

was no expectation the residents would know each other or would get to know each other as would be expected in a flatting situation.⁷ Although the situation in Determination 2014/026 is distinct from the current determination, similar arguments are raised regarding social cohesion and permanence which assist to provide guidance. In relation to permanence, that determination stated that the design of the building could cater for temporary accommodation needs.⁸

5.7 Determination 2014/026 considered the future use of the building in relation to management practices. I do not consider this a relevant factor in this case; the foreseeable future use of the eight buildings would remain as single house hold units. There are no design features of the buildings that indicate they are likely to be used in a different manner in the case of a future owner.

5.8 In my view, the buildings have undergone a change of use from SH to SR.

5.9 The risk groups and Acceptable Solutions

5.9.1 The authority has stated in its submission the buildings fall within the risk group SM in relation to the Acceptable Solutions for compliance with Clause C of the Building Code and that ‘compliance with C/AS2...is required.’ As stated in Determination 2014/026 it is important to note that the Acceptable Solutions provide one way but not the only way of showing compliance with the Building Code. It is always open to the applicants to propose to use a Verification Method or an Alternative Solution to achieve compliance with Clause C of the Building Code. However, the Acceptable Solutions can provide a useful benchmark for the level of fire safety to be achieved – that is the type and degree of protection from fire that will be necessary for a building within a particular risk group to achieve compliance as nearly as is reasonably practicable.

5.9.2 The Acceptable Solutions for Clause C of the Building Code are based around the concept of different buildings, or parts of buildings, belonging to a different risk group. Risk groups under the Acceptable Solutions are allocated depending on the activities that will occur within the building or part of the building. If the Acceptable Solutions are being used as a means of complying with Clause C of the Building Code, the question is whether the buildings fall within SH (building sleeping – residential) or SM – (building sleeping – non institutional) (refer Appendix A.4 for the relevant parts of Table 1.1).

5.9.3 The Ministry has produced a guidance document on the Acceptable Solutions (*Commentary for Acceptable Solutions C/AS1 to C/AS7*, February 2013) which provides more detail about the types of activities that would fall within the particular risk groups. I have copied the relevant parts of the Acceptable Solutions and the commentary document relating to C/AS1 and C/AS2 as applied to this application in Appendix A.4.

5.10 Under C/AS1, buildings coming within the SH risk group include those that are used as houses, townhouses and small multi-unit dwellings where there is no more than one unit above another and each unit has an escape route. Buildings that come within SM risk group include permanent accommodation such as apartments, transient accommodation such as hotels, motels and hostels, and education accommodation.

⁷ Refer paragraph 6.3.13 of Determination 2014/026

⁸ Refer paragraph 6.3.15 of Determination 2014/026

- 5.11 To assist the authority, I consider that the buildings in this case provide for residential accommodation that is closest to the types of accommodation covered by risk group SH, and as a result the Acceptable Solution that applies is C/AS1. In parallel with the analysis completed regarding the change of use categories (refer paragraphs 5.4 and 5.5) I consider the buildings are occupied as single house hold units given the length of stay and that the students are likely to have an awareness of fellow students in the building and more naturally assist them in the event of a fire.
- 5.11.1 I note that for buildings classified under risk group SM for C/AS2 (paragraph 2.2.10) states:
- For low rise buildings that have no more than two levels (one household unit above another), and where each household unit has its own escape route that is independent of all other household units, and that contain only risk group SM, then the requirements of risk group SH shall apply (see C/AS1)

6. What happens next?

- 6.1 In establishing that a change of use has occurred from SH to SR, it is for the authority to determine that the buildings in their new use will comply as nearly as reasonably practicable for means of escape from fire, protection of other property, sanitary facilities, structural performance, fire-rating performance and access for people with disabilities, and to ensure the rest of the Building Code clauses comply at least to the same extent as before the change of use occurred. I remind the parties that compliance required under section 115 of the Act is ‘as nearly as is reasonably practicable’.
- 6.2 To assist the authority, in relation to access for people with disabilities, I do not consider the requirements of section 118 of the Act applies to the buildings as they are not open to the public⁹ and do not fall within Schedule 2 of the Act, therefore the buildings comply with Clause D1 of the Building Code.

7. The decision

- 7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority was correct in their exercise of powers in issuing the notices to fix; however, the notices to fix should be modified to take into account the findings of this determination at paragraph 5.8.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 19 September 2014.

John Gardiner
Manager Determinations and Assurance

⁹ Refer also Determination 2013/029: Whether access and facilities for people with disabilities are required at a private campground (*Ministry of Business, Innovation and Employment*) 20 May 2013

Appendix A

A1 Details of the buildings involved in this determination

House one	39 Ransom Smyth Drive, Goodwood Heights, Manukau
House two	22 Ransom Smyth Drive, Goodwood Heights, Manukau
House three	80 Ransom Smyth Drive, Goodwood Heights, Manukau
House four	36 Ransom Smyth Drive, Goodwood Heights, Manukau
House five	150 Everglade Drive, Totara Heights, Manukau
House six	11 Bougainvillaea Terrace, Goodwood Heights, Manukau
House seven	36 Deodar Place, Totara Heights, Manukau
House eight	16 Crail Court, Totara Heights, Manukau

A2 The notices to fix

	Particulars of contravention or non-compliance:	To remedy the contravention or non-compliance you must:
House one	<p>Contrary to s.40 of the Act, the following building works have been undertaken without first obtaining a building consent</p> <ul style="list-style-type: none"> Changing of the garage into a habitable room with the installation of a ranch slider <p>Contrary to s114 of the Act the owner must give notice of change of use</p> <ul style="list-style-type: none"> Change of use of the dwelling into a boarding house, for international students (SH sleeping household to SA sleeping accommodation) 	<p>Obtain a certificate of acceptance (COA) in accordance with s96 of the Act showing the layout of the building in its current state showing the new room layout and sanitary fixtures (bedrooms, showers, toilets, laundry etc)</p> <p>Apply to the authority for a change of use of the building from a single household to sleeping accommodation building.</p>
House two	<p>Contrary to s.40 of the Act, the following building works have been undertaken without first obtaining a building consent</p> <ul style="list-style-type: none"> Additional sanitary fixtures been installed without building consent Changing of the garage into a habitable room with the installation of a ranch slider <p>Contrary to s114 of the Act the owner must give notice of change of use</p> <p>Change of use of the dwelling into a boarding house, for international students (SH sleeping household to SA sleeping accommodation)</p>	<p>Obtain a certificate of acceptance (COA) in accordance with s96 of the Act showing the layout of the building in its current state showing the new room layout and sanitary fixtures (bedrooms, showers, toilets, laundry etc)</p> <p>Apply to the authority for a change of use of the building from a single household to sleeping accommodation building.</p>
House three	<p>Contrary to s.40 of the Act, the following building works have been undertaken without first obtaining a building consent</p> <ul style="list-style-type: none"> Changing of the garage into a habitable room with the installation of a ranch slider <p>Contrary to s114 of the Act the owner must give notice of change of use</p> <ul style="list-style-type: none"> Change of use of the dwelling into a boarding house, for 	<p>Obtain a certificate of acceptance (COA) in accordance with s96 of the Act showing the layout of the building in its current state showing the new room layout and sanitary fixtures (bedrooms, showers, toilets, laundry etc)</p> <p>Apply to the authority for a change of use of the building from a single</p>

	international students (SH sleeping household to SA sleeping accommodation)	household to sleeping accommodation building.
House four	<p>Contrary to s.40 of the Act, the following building works have been undertaken without first obtaining a building consent</p> <ul style="list-style-type: none"> Additional sanitary fixtures been installed without building consent <p>Contrary to s114 of the Act the owner must give notice of change of use</p> <ul style="list-style-type: none"> Change of use of the dwelling into a boarding house, for international students (SH sleeping household to SA sleeping accommodation) 	<p>Obtain a certificate of acceptance (COA) in accordance with s96 of the Act showing the layout of the building in its current state showing the new room layout and sanitary fixtures (bedrooms, showers, toilets, laundry etc)</p> <p>Apply to the authority for a change of use of the building from a single household to sleeping accommodation building.</p>

A3 The legislation

A.3.1 The relevant provisions of the Building (Specified Systems, Change the Use and Earthquake Prone Buildings) Regulations 2005 are:

Uses related to sleeping activities		
Use	Spaces or dwellings	Examples
SC (Sleeping Care)	spaces in which people are provided with special care or treatment required because of age, or mental or physical limitations	hospitals, or care institutions for the aged, children, or people with disabilities
SD (Sleeping Detention)	spaces in which people are detained or physically restrained	care institutions for the aged or children and with physical restraint or detention, hospitals with physical restraint or with detention quarters, detention quarters in police stations, prisons
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, wharehous
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
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

A.3.2 The relevant provisions of the Building Act include:

114 Owner must give notice of change of use, extension of life, or subdivision of buildings

- (1) In this section and section 115, change the use, in relation to a building, means to change the use of the building in a manner described in the regulations.
- (2) An owner of a building must give written notice to the territorial authority if the owner proposes—
 - (a) to change the use of a building; or
 - (b) to extend the life of a building that has a specified intended life; or
 - (c) to subdivide land in a manner that affects a building.
- (3) A person commits an offence if the person fails to comply with subsection (2).
- (4) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$5,000.

115 Code compliance requirements: change of use

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 people 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

A4 The relevant paragraphs of the relevant Acceptable Solutions C/AS1 and C/AS2

Table 1.1 Risk groups and Acceptable Solutions			
	Acceptable Solution	Risk group	Applies to
C/AS1	Single household units and small multi-unit dwellings	SH	Houses, townhouses and small <i>multi-unit dwellings</i>
C/AS2	Sleeping (non institutional)	SM	Permanent accommodation eg, apartments Transient accommodation eg, hotels, motels, hostels, backpackers Education accommodation

The comment to Table 1.1 explains that:

Designing a *building* to provide fire safety involves decisions on both the *construction* materials and layout needed to reduce the risk to an acceptable level. The risk is assessed according to: the number and mobility of the occupants (*occupant load* and *risk group* of the *building*); the activities undertaken within the *building*; and the nature of the *building* materials and contents. This assessment allows each *building* activity to be categorised in a risk group, which is the basis for determining *fire safety* features.

Acceptable solution	Risk group	Scope (from acceptable solutions)	Description (from the commentary document)	Commentary on the Acceptable Solutions and risk groups (from the commentary document)
C/AS1	SH	<p>(Page 17)</p> <p>The scope of this Acceptable Solution is restricted to <i>risk group SH</i>. This covers <i>buildings</i> where people sleep including multi-unit residential with some restrictions on height. This includes the following:</p> <p>a) Single household units</p> <p>b) Multi-unit dwellings with no more than one unit above another (see Figure 1.1) and where each unit has an <i>escape route</i> independent of all other units, and including associated garages or carports whether or not they are part of the same <i>building</i></p> <p>c) Detached dwellings used as boarding houses for fewer than six people (not including members of the residing family)</p> <p>d)...</p>	<p>(Page 3)</p> <p>Detached houses and <i>buildings</i> subdivided into multiple dwellings, provided that:</p> <ul style="list-style-type: none"> • People from each dwelling have their own independent <i>escape route</i> to a <i>safe place</i> (ie, their own corridor and <i>stairway</i>), and • The <i>buildings</i> are no more than two units high (there is no limit on the number of units side by side). <p>Not included: <i>buildings</i> with any corridor or <i>stairway</i> serving more than one dwelling, detached boarding houses with facilities for six or more guests (see <i>risk group SM</i>).</p>	<p>(Page 4)</p> <p>C/AS1: Risk group SH <i>Risk group SH</i> applies to detached houses and to <i>buildings</i> containing a number of separate residential units, provided there is no more than one unit above another. Therefore, the Acceptable Solution covers the <i>fire</i> safety requirements for a row of townhouses and maisonettes as well as two-storey apartment blocks.</p> <p>While each <i>household unit</i> may have more than one floor, it must still have its own independent <i>escape route</i>. If the <i>building</i> provides a shared <i>escape route</i>, then C/AS2 will apply. If a detached house is used as a boarding house, it may have the facilities to accommodate up to five paying guests and still fall within this <i>risk group</i>. Boarding houses accommodating six or more paying guests are categorised as <i>risk group SM</i>.</p> <p>The <i>fire</i> safety requirements for <i>risk group SH</i> are relatively minor and are limited to having maximum <i>travel distances</i>, restricting the use of <i>foamed plastics</i> on walls and ceilings, and protecting <i>other property</i>.</p>

C/AS2	SM	<p>(Page 20)</p> <p>The scope of this Acceptable Solution is restricted to <i>risk group SM</i>. This covers <i>buildings</i> or parts of <i>buildings</i> where people sleep. This will include the following provided they are no more than 20 storeys high (from ground level):</p> <p>a) Apartment <i>buildings</i> and other <i>buildings</i> which consist of more than one household unit</p> <p>b) Accommodation units within other risk groups</p> <p>c) Hotel, motel and serviced apartment buildings</p> <p>d) Backpackers, cabins on holiday parks</p> <p>e) <i>Buildings</i> where more than 5 people pay for accommodation (such as homestay/ bed and breakfast)</p> <p>f) University halls of residence, education accommodation (eg, school boarding hostels), and</p> <p>g) <i>Wharenui</i> and other community sleeping spaces.</p>	<p>(Page 3)</p> <p>All multiple unit accommodation <i>buildings</i> not included in <i>risk group SH</i>.</p> <p>Note: there are some minor differences in requirements depending on whether the accommodation is considered permanent (ie, the occupants would be considered to be familiar with the <i>building</i> and its features) or temporary. Apartments and flats are considered permanent accommodation, while hotels, motels, hostels, serviced apartments and similar <i>buildings</i> are considered temporary accommodation.</p> <p>The Acceptable Solution for this <i>risk group</i> also specifies particular <i>fire</i> safety requirements for education accommodation, which has been singled out because of its particular nature.</p> <p>This category includes boarding schools (both primary and secondary education) and university halls of residence.</p> <p>Not included: Early childhood education (see <i>risk group CA</i>).</p>	<p>(Page 4)</p> <p>C/AS2: Risk group SM</p> <p><i>Risk group SM</i> applies to any place where people sleep, except:</p> <ul style="list-style-type: none"> • those <i>household units</i> covered in <i>risk group SH</i> (C/AS1), and • where people are cared for or detained (refer to <i>risk group SI</i> (C/AS3)). <p>Accommodation types</p> <p>Permanent versus temporary accommodation</p> <p>The Acceptable Solution for this <i>risk group</i> has different <i>fire</i> safety requirements depending on whether the <i>buildings</i> in this category provide permanent or temporary accommodation.</p> <p>For the purposes of this Acceptable Solution, permanent accommodation is considered to be that where occupants live on a permanent basis such that this accommodation would be regarded as their residential address. Other accommodation within this category is considered to be temporary.</p> <p>When developing this Acceptable Solution, a time limit of 90 days was suggested as determining the difference between permanent and temporary accommodation. However, it was accepted that, in certain cases, people may not live in a fixed place for 90 days but would still consider their residence status as permanent. Equally, temporary accommodation may be used as a more permanent place of residence (for example, serviced apartments might be used on a long-term or semi-permanent basis for working week accommodation), but this</p>
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