

Determination 2024/003:

Whether three buildings are backcountry huts

Loch Katrine Campsite, Lake Sumner Forest Park, Hurunui District

Summary

This determination considers whether, for the purpose of compliance with the Building Code, three buildings meet the definition of 'backcountry hut' in Clause A2 *Interpretation*. The determination considers if the buildings are intended to provide overnight shelter to any person who may visit and who carries his or her own food, bedding, clothing, and outdoor equipment.



Figure 1: Aerial view of the three buildings¹

¹ Image reproduced from Google Maps, accessed 19 January 2024.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg, Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Andrew Eames, Manager Advisory, Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.²
- 1.2. The parties to the determination are:
 - 1.2.1. the owner of the three buildings, the Loch Katrine Association Incorporated, which applied for this determination (“the applicant”)
 - 1.2.2. Hurunui District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. I consider the Department of Conservation (“DOC”) to be a person with an interest in this determination, as the government department responsible for administering the public conservation land on which the three buildings are located.
- 1.4. This determination arises from a dispute regarding whether one of the buildings is a ‘backcountry hut’ as defined in Clause A2 *Interpretation*.
- 1.5. The building that led to this determination (Building 1) is one of three similar buildings, all used for the same purpose of providing transient (overnight) accommodation for members of the general public visiting the area.³ For the purposes of this determination, the buildings will be referred to as Building 1, Building 2, and Building 3, or collectively as the “three buildings”. This determination applies to all three buildings.
- 1.6. The matter to be determined, under section 177(1)(a), is whether, for the purpose of compliance with the Building Code, each of the three buildings is a ‘backcountry hut’, as that term is defined in Clause A2 *Interpretation*.

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

³ Information available on the DOC website for Loch Katrine Campsite, www.doc.govt.nz accessed on 22 January 2024, states, “There are three huts in the area that can be booked for a fee, managed by the Loch Katrine Association”.

- 1.7. In this case, the dispute relates to whether the three buildings meet one of the requirements stated in the definition, specifically, if they are “intended to provide overnight shelter to any person who may visit and who carries his or her own food, bedding, clothing, and outdoor equipment”.

Issues outside this determination

- 1.8. The parties have raised issues in their correspondence and submissions that are beyond my jurisdiction or outside the scope of the matter to be determined. This determination does not consider:
 - 1.8.1. the authority’s decisions regarding any of the building consents granted or code compliance certificates issued in relation to the three buildings (except by way of background)
 - 1.8.2. the Building Code compliance of the three buildings in terms of their design and construction
 - 1.8.3. any issues arising from the Fire and Emergency New Zealand (Fire Safety, Evacuation Procedures, and Evacuation Schemes) Regulations 2018
 - 1.8.4. the process followed by the Director-General of Conservation to certify buildings as being in a location that wheelchair users are unlikely to be able to visit⁴
 - 1.8.5. any issues arising from the Resource Management Act 1991.

2. The three buildings

- 2.1. The three buildings are located at the Loch Katrine campsite on the shores of Loch Katrine, in the Loch Katrine Recreation Reserve⁵, which is part of the Lake Sumner Forest Park. Refer to Figure 1.
- 2.2. The applicant holds a concession from DOC to build “publicly available cabins ... for overnight stays” on the land.⁶ The campsite is accessible via walking track, four-wheel drive track, or by water, and is designated by DOC as a ‘basic’ campsite.⁷ The only facilities at the campsite are non-flush toilets and a non-potable water supply.
- 2.3. The three buildings are rectangular, with a floor area of approximately 42-50m². They each have an area with a benchtop, sink, and solid fuel heater. Each building

⁴ As required by paragraph (d) of the definition of ‘backcountry hut’ in clause A2.

⁵ Classified as a reserve for recreation purposes under the Reserves Act 1977, by notice in the New Zealand Gazette dated 23 November 1982.

⁶ This is the ‘Concession Activity’ described in an unsigned copy of the ‘Concession Document (Lease)’ contained in the building consent file for Building 2 (BC090045) provided to the Ministry by the applicant.

⁷ According to DOC’s website about the campsite: <https://www.doc.govt.nz/parks-and-recreation/places-to-go/canterbury/places/lake-sumner-forest-park/things-to-do/campsites/loch-katrine-campsite/> (accessed 16 January 2024).

has two bunkrooms, with built-in sleeping platforms or bunk beds. Buildings 1 and 2 are each capable of sleeping a maximum of 8 people. Building 3 can sleep a maximum of 6 people.

- 2.4. The three buildings each have stormwater and greywater (from the sink) collection and dispersal systems, and a non-potable water supply, but do not have toilets or other sanitary facilities. Users of the buildings share campsite toilets with other campsite users. There is no mains electricity supply (provided by a network utility operator) to the buildings or the campsite.

3. Background

- 3.1. The Building (Building Code: Backcountry Huts) Amendment Regulations 2008 (“the Backcountry Huts Regulations”) came into force on 31 October 2008.⁸ The regulations enacted simplified Building Code requirements for buildings meeting the definition of a ‘backcountry hut’.
- 3.2. The applicant constructed the three buildings at the campsite between 2009 and 2012, pursuant to three separate building consents granted by the authority.⁹
- 3.3. In support of the building consent applications, the applicant provided the authority a letter dated 7 May 2009 from DOC. The letter stated:

I am writing to confirm that the Department endorses “back country hut” as an appropriate building code designation for the huts your association propose to build on the Loch Katrine Reserve.

We believe this is the most appropriate designation given the site’s location and restricted access; its current and historical use and the visitor expectations for a more remote back country experience. Based on this information we also believe the site is, and will continue to be, unlikely to be visited by a wheel chair user. This is also reflected in the provision and management of other public facilities in the Loch Katrine Reserve and the Lake Sumner Forest Park.

...

- 3.4. In various documents relating to the building consents, the buildings were identified as a ‘back country hut’ or ‘high country hut’¹⁰. These documents included (but were

⁸ Clause 5 of the regulations inserted into Building Code clause A2 the definition of ‘backcountry hut’ and associated definitions.

⁹ Building consents BC090044 (relating to Building 1) and BC090045 (relating to Building 2), both dated 10 September 2009, and BC100065 (relating to Building 3), dated 30 March 2010.

¹⁰ I note ‘high country hut’ is not a defined term in either the Act or the Building Code. Therefore, for the purposes of this determination, I have assumed the parties’ reference to ‘high country hut’ in building consent 090045 was intended as ‘backcountry hut’.

not limited to) the building consents granted for all three buildings, and the code compliance certificates for all three buildings.¹¹

- 3.5. In August 2022, the applicant applied to the authority for a building consent to replace the solid fuel heater in Building 1. The new heater and flue were to be located in the same place as an existing solid fuel heater and flue. The application stated:

The dwelling has been designed and erected in compliance with the building code for a “Back Country Hut” and the existing [code compliance certificate] ... confirms this designation.

Per the applicable building code, [clause] F7.3^[12] ... smoke detectors are not required in a backcountry hut.

- 3.6. On 29 September 2022, the authority requested the applicant provide an updated floor plan showing the location of smoke alarms to be installed in Building 1. The request stated:

The dwelling is considered to not fall completely under the interpretation of a “backcountry hut” (... Clause A2 ..). Therefore clause F7.3 can not be considered to be exempt from the consent application. Please provide an updated floor plan showing compliance to F7/AS1 3.3 Location of Smoke Alarms (Smoke alarm to be located within each sleeping space or with in 3m of every sleeping space door).

- 3.7. The applicant replied to the authority’s request and disputed that smoke alarms were required.
- 3.8. On 6 October 2022, a further request by the authority repeated the first request, and added:

The Building is accessible by a vehicle and the site is classified as a basic campground, it is not unreasonable to comply to clause F7.3 to provide the appropriate fire protection for people occupying sleeping spaces.

- 3.9. The applicant did not agree with the authority, and in correspondence between the parties stated its view that as Building 1 is a backcountry hut, smoke alarms were not required in accordance with the limitation on clause F7.3. The applicant considered the three buildings had been “consented, constructed, and approved as ‘Back Country Huts’ in accordance with the Building Code”.
- 3.10. The authority replied to the applicant that the original building consent (for Building 1) had been processed as if the building was a dwelling and not as a backcountry

¹¹ The authority issued code compliance certificates for buildings 1 and 3 on 19 July 2012, and for building 2 on 10 August 2012. I note the code compliance certificates refer to the buildings as either back country hut or high country hut.

¹² Clause F7 *Warning Systems*; clause F7.3.1 states “A means of warning must alert people to the emergency in adequate time for them to reach a safe place”. However, the ‘Limits on application’ states “Performance F7.3 does not apply to outbuildings, backcountry huts, or ancillary buildings.”

hut. The authority also referred to the Acceptable Solution for backcountry huts, BCH/AS1¹³ (“the Acceptable Solution”), stating Building 1 “did not follow the acceptable solution”, and instead had “many consistencies with a dwelling, above what would be built for a [backcountry] hut”.

3.11. The applicant responded stating the Acceptable Solution is one way of showing compliance with the Building Code, and DOC’s approval of the design was provided to the authority, and whether the authority used the Acceptable Solution or not does not affect the building’s “designation” under the Building Code.

3.12. The applicant advises it agreed “under duress” to install smoke alarms in Building 1, in order to obtain the building consent to replace the solid fuel heater. The authority subsequently granted a building consent that incorporated smoke alarms, and issued a code compliance certificate following the completion of the building work.¹⁴ The code compliance certificate states the “Current, Lawful established use” of Building 1 is “Communal residential”¹⁵.

4. Submissions

The applicant

4.1. The applicant submits (in summary):

4.1.1. The three buildings “correctly complied with the building code for a backcountry hut”, and “documentation held by the [authority] for the original hut build” confirms they were built “in accordance with this classification” (as backcountry huts).

4.1.2. The buildings were “consented” as backcountry huts, with code compliance certificates issued on that basis, and nothing has changed since then.

4.1.3. It is important the buildings’ status as backcountry huts is retained as this will affect other aspects of their compliance with the Building Code.

4.1.4. It is irrelevant the campsite has vehicle access, as the Building Code and Acceptable Solution make “no mention of vehicle access as being a factor in assessing compliance”.

4.1.5. It is also irrelevant the site is contains a basic campground; it is a Recreation Reserve administered by DOC.

¹³ BCH/AS1 Acceptable Solution for Backcountry Huts. First published July 2009. Current version is Amendment 1, effective from 1 July 2014.

¹⁴ Building consent 220387 was granted and issued on 14 October 2022. The code compliance certificate for the building work was issued on 24 March 2023.

¹⁵ Clause A1 *Classified Uses*, 3.0 Communal residential.

- 4.1.6. The buildings are not similar to homes in other locations that are rented out to the public; they are accessible only by four-wheel drive track, are “off the grid”, and have “no connections to [authority] provided utility services including drinking water, power, phone and sewer such as would be found in [other areas]”.

The authority

- 4.2. The authority submits (in summary):
- 4.2.1. It considers Building 1 is a dwelling, which requires a smoke alarm (rather than a backcountry hut, which does not).
- 4.2.2. Building 1 does not “fall completely” within the definition of backcountry hut. Paragraph (b) of the definition “probably intends for walking access rather than driving, which this site can be accessed via car most of the year”.

The Department of Conservation

- 4.3. In an email to the Ministry, DOC stated, “This is to confirm the Loch Katrine Huts are categorised as Back Country Huts by DOC”.
- 4.4. In a further email to the Ministry, DOC advised that its letter of 7 May 2009 (which states the Loch Katrine Reserve site is unlikely to be visited by a wheelchair user) relates to all three buildings.

5. Discussion

- 5.1. The matter to be determined is whether, for the purpose of compliance with the Building Code, each of the three buildings is a ‘backcountry hut’, as that term is defined in clause A2.

The legislation

- 5.2. Clause A1 of the Building Code sets out the various classified uses a building may have.¹⁶ The ‘Communal residential’ category applies to buildings or use where assistance or care is extended to ‘principal users’. There are two subcategories or types of Communal residential, which are ‘Community service’ and ‘Community care’.
- 5.3. Backcountry huts come within the ‘Community service’ classified use:

3.0.2 Community service

¹⁶ Clause 3(3) of the Building Regulations 1992 sets out how the classified use is established, stating “The classified use or uses of a building or part of a building shall be the ones that most closely correspond to the intended use or uses of that building or part of that building.”

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.

5.4. However, buildings that are backcountry huts are not subject to some of the Building Code compliance requirements that would otherwise apply to buildings with a 'Community service' classified use, for example, clause F7.3.1¹⁷.

5.5. The term 'backcountry hut' is defined in clause A2 as follows:

backcountry hut means a *building* that—

- (a) is located on land that is administered by the *Department of Conservation* for conservation, recreational, scientific, or other related purposes, including any land administered under any of the following:
 - (i) the Conservation Act 1987;
 - (ii) the National Parks Act 1980;
 - (iii) the Reserves Act 1977; and
- (b) is intended to provide overnight shelter to any person who may visit and who carries his or her own food, bedding, clothing, and outdoor equipment; and
- (c) contains only basic facilities, which may include (but are not limited to) any or all of the following:
 - (i) sleeping platforms or bunks;
 - (ii) mattresses;
 - (iii) food preparation surfaces;
 - (iv) appliances for heating;
 - (v) appliances for cooking;
 - (vi) toilets; and
- (d) has been certified by the *Director-General*¹⁸ as being in a location that wheelchair users are unlikely to be able to visit; and
- (e) is intended to be able to sleep—
 - (i) no more than 20 people in its *backcountry hut sleeping area*¹⁹; and
 - (ii) no more than 40 people in total; and
- (f) does not contain any connection, except by *radiocommunications*, to a *network utility operator*²⁰

5.6. The definition in clause A2 and the limitations associated with backcountry huts were added to the Building Code and came into force on 31 October 2008. The

¹⁷ Clause F7.3.1 A means of warning must alert people to the emergency in adequate time for them to reach a safe place.

¹⁸ 'Director-General' means the Director-General of Conservation (the definition of 'Director-General' in clause A2 refers to section 2(1) of the Conservation Act 1987).

¹⁹ The term 'backcountry hut sleeping area' is also defined in clause A2.

²⁰ The terms 'radiocommunications' and 'network utility operator' are also defined in clause A2.

definition has remained unchanged since that date. The explanatory note in the Backcountry Huts Regulations states:

The amendments relate to a new example of a Community Service building in the Communal Residential type of classified use of buildings: backcountry huts.

Backcountry huts, as defined, are on land that is administered by the Department of Conservation for particular purposes, and, because of their remoteness and limited facilities, are exempted by these regulations from some of the building code's performance criteria and functional requirements, such as the requirement for adequate artificial lighting.

Whether the three buildings are backcountry huts

- 5.7. The definition of 'backcountry hut' sets out six criteria that must be satisfied for a building to be a backcountry hut, and they must all be met for the definition to apply. The definition applied at the time the original building consents for the three buildings were granted, and the buildings constructed, and it has not been amended since it came into force.
- 5.8. In this case, it is paragraph (b) of the definition that the authority has raised as an issue. As the remaining criteria in paragraphs (a) and (c) to (f) (inclusive) are not in dispute between the parties, I have not considered them further in this determination.
- 5.9. The parties do not dispute the three buildings are intended to provide overnight shelter to any person who may visit, or that people staying in the buildings must bring or have their own food and bedding etc.
- 5.10. The issue is whether "carries" is limited to carrying on foot, or whether it includes carrying by vehicle (or other means). The authority's view is that this paragraph "probably intends for walking access rather than driving, which this site can be accessed via car most of the year".
- 5.11. The authority appears to be taking a narrow interpretation of the word "carries". However, I consider the word "carries" is not limited to only being carried on foot. While the words "carry" or "carries" are not defined in the Act or Building Code, the Oxford English Dictionary defines "carries" as "To convey or transport (goods, people, etc) from one place to another, esp. by means of a vehicle or vessel".²¹
- 5.12. In this case, the campsite is in a remote location and can be accessed on foot via a walking track, by boat via Loch Katrine, and by four-wheel drive track from Lake Taylor. The use of the track is not limited to vehicles; walkers or cyclists will also use this track.

²¹ Oxford English Dictionary (online publication), accessed on 29 January 2024.

- 5.13. In addition, the definition does not state a backcountry hut cannot be capable of being accessed by vehicle.
- 5.14. Consequently, in relation to the three buildings at the Loch Katrine campsite, I consider the requirement in paragraph (b) of the definition of a backcountry hut is met.

Conclusion

- 5.15. As the parties do not dispute the other criteria in the definition, I have only considered whether paragraph (b) of the definition has been met. I am of the view the three buildings are backcountry huts.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I determine that for the purpose of compliance with the Building Code, each of the three buildings is a 'backcountry hut' as defined in Clause A2 *Interpretation*.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 16 February 2024.

Andrew Eames
Manager Advisory, Determinations