MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Determination 2020/025

Regarding the authority's decisions to issue a dangerous and insanitary building notice and a certificate of acceptance in respect of a sleepout at 594 Manuka Terrace, Ben Ohau, Twizel

Summary

This determination considers the authority's decisions to issue a dangerous and insanitary building notice and a certificate of acceptance for a sleepout. The determination discusses whether the sleepout was dangerous or insanitary at the time, whether the authority was correct to include a 'restriction of usage' in the issued certificate of acceptance, and the classified use of the sleepout.

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 ("the Act") made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.[1]

1.2 The parties to the determination are:

- the owners of the property, J and A Menard, who applied for this determination ("the applicants")
- Mackenzie District Council ("the authority"), carrying out its duties and functions as a territorial authority or a building consent authority.

1.3 This determination arises from the authority's decisions to issue a dangerous, affected or insanitary building notice (under section 124 of the Act[2]) and a certificate of acceptance (under section 96 of the Act) in respect of a sleepout constructed on

[1] The Building Act and Building Code (Schedule 1 of the Building Regulations 1992) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents and guidance issued by the Ministry, is available at www.building.govt.nz.

[2] In this determination, unless otherwise stated, references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code.

the applicants' property. The authority is of the view that the sleepout does not comply with the provisions of the Building Code that apply to public accommodation. The authority issued the certificate of acceptance noting the sleepout's use as "residential sleep out only (not visitor accommodation)". The applicants disagree with this decision, and consider that the sleepout complies with the Building Code in its intended use.

1.4 Accordingly, the matters to be determined[3] are:

- the authority's exercise of its powers of decision in issuing a notice under section 124 in respect of the sleepout
- the authority's exercise of its powers of decision in issuing a certificate of acceptance under section 96 in respect of the sleepout.

1.5 In making my decision, I have considered the application, the submissions of the parties, and the other evidence in this matter. I have not considered any other aspects of the Act or Building Code beyond those required to decide on the matter to be determined.

1.6 For the purposes of clarity, I note here some parts of this discussion refer to a second shipping container, which is a used as a 'home office' by the applicants. The matter in dispute relates to the shipping container described in paragraphs 2.2 to 2.8 only (the sleepout), and the 'home office' shipping container is not considered further in this determination.

1.7 The applicants sought a decision on the compliance of the sleepout with Building Code Clause G1.3.3 of G1 Personal hygiene. However, I am of the view I do not need to consider the compliance of the sleepout with this clause given the conclusion at paragraph 5.9.2.

1.8 This determination application includes references to matters that relate to the Resource Management Act 1991 ("RMA"), which is outside the scope of this determination. I have no jurisdiction under other enactments and this determination considers only matters relating to the Act and its regulations.

2. The building work

2.1 The applicants' property is a 10 acre site in a rural-residential area in Ben Ohau, Canterbury. The property contains the applicants' house, a garage, a two-bedroom cottage, which the applicants rent out as public accommodation, a woodshed and two converted shipping containers, one of which is also used as public accommodation.

2.2 One of the containers has been converted for use as a home office. The second was originally used for storage, and the determination relates to this shipping container.

2.3 The applicants advise that in 2016 this shipping container was converted to provide sleepout accommodation ("the sleepout") for visiting friends and family members. This building work was carried out without a building consent. It involved installing double-glazed windows in the container's external walls, constructing internal walls, insulating and lining the interior of the container, installing electricity and giving the building cement footings. The applicants state that these footings were "engineer approved" and "designed for habitable use". The work was carried out by a licensed builder and registered electrician.

[3] Under section 177(1)(b), (3)(f) and (3)(b).

2.4 In March 2017, the applicants decided to make the sleepout available as public accommodation.

2.5 The sleepout now has a floor area of 14.52m^2 and comprises two separate rooms. At the time of the application for determination, each room was furnished with a set of bunks that, in total, provided beds for up to five people. The only other fittings and furniture in the sleepout are a wall fixed panel heater, a smoke alarm, a wardrobe and a book case.

2.6 The sleepout has a lean-to constructed against its northern side. This lean-to is described by the applicants as a second woodshed, and contains a composting bucket toilet. The applicants advise that this composting toilet was installed to provide extra toilet facilities during a large family gathering, and is only ever used by the applicants' immediate and extended family. It is not used by paying guests.

2.7 People staying in the sleepout have access to a communal lounge in the garage. Initially, when the applicants started renting the sleepout as public accommodation, sanitary facilities for sleepout guests were in the cottage, which is located approximately 50m away. The applicants have since built a new house, and advised that guests in the sleepout would now have access to the sanitary facilities in the new house, which is located approximately 20m away. However, I note that the applicants have also advised that they may construct a separate ablution block for the sleepout in the future.

2.8 The sanitary facilities in the applicants' house include a toilet, shower and bathroom, in the main portion of the house, and a second toilet in the entrance hall. Guests would share use of these facilities with the applicants and their family. There are no cooking facilities made available to guests staying in the sleepout other than an outside barbecue.

3. The background

3.1 In March 2017, the applicants decided to make the sleepout available as public accommodation, and listed it on an online accommodation booking service. Their intention was that it could be occasionally booked in this way, when it was not being used by family and friends. The applicants advised the authority that they were doing this, so that their rates could be adjusted.

3.2 Following a complaint, the authority inspected the sleepout on 15 June 2018. At this point the authority noted that the building work to convert the container to a sleepout had been done without building consent. The authority advised the applicants at the inspection:

- a certificate of acceptance would need to be sought for the existing building work carried out without a building consent to continue offering public accommodation in the sleepout
- any additional work required to make the sleepout code compliant would require a building consent
- the composting toilet in the lean-to should not be used and should be removed "immediately".

3.3 The applicants applied for a certificate of acceptance for the existing building work on 19 June 2018. On the application form, the applicants noted that the current lawfully established use of the building was as a "sleep out for friends & family".

3.4 On 21 June 2018, the authority emailed the applicants a 'Dangerous and Insanitary Building Notice' pursuant to section 124 ("the section 124 notice"), together with a covering letter. The section 124 notice stated:

> 1. Two shipping containers on the [applicants'] property, are deemed by [the authority] to be dangerous and insanitary pursuant to Section 121(1)(a)(i), 1(b) and 123(b)(c) of the Building Act 2004 in that.
>
> a) In reference to section 40 of the Building Act the owner has failed to comply with the requirement that building work must be carried out in accordance with a building consent; and
>
> b) In reference to section 363 of the Building Act the owner has permitted the use of a building having no consent or code compliance certificate or certificate for public use for premises for public use.
>
> 2. You are required to carry out the following:
>
> a) Not allow public to use the two buildings (shipping containers) for habitable purposes.
>
> b) Remove the toilet facility from the woodshed.
>
> c) Apply for a Certificate of acceptance for work carried out to date, with the following supporting documents…
>
> d) Apply for Building Consent for the above proposal covering compliance to all relevant building code clauses to satisfy the use of visitor accommodation…
>
> 3. **Until the above Building Consent has been approved and building work carried out to [the authority's] approval, the two buildings (shipping containers) are to be used only for non-habitable purposes. Please respond in writing with confirmation that this will be actioned immediately.**
>
> 4. If you do not comply with this notice an infringement fee of $2000.00 under the Building (Infringement, Offences, Fees and Forms) Regulations 2007 and a Notice to Fix with any associated costs will be issued to the owner of the property.
>
> (Emphasis in original)

3.5 The authority visited the applicants' property on the same day to affix the section 124 notice to the door of the sleepout. The applicants removed their online accommodation listing for the sleepout on 21 June 2018.

3.6 The authority inspected the sleepout on 28 June 2018 in order to assess whether a certificate of acceptance could be issued. The site notice for the inspection records that the work being inspected was "[s]hipping containers to be used as non-habitable storage". The inspection failed on the grounds that further information was required.

3.7 The applicants subsequently supplied the requested information and the authority re-inspected the sleepout on 27 July 2018. This time the inspection passed. The site notice for the inspection records compliance with various clauses of the Building Code, including Clauses G4 Ventilation, G5 Interior Environment[4] and G8 Artificial light. Under the heading "Confirm scope and extent of work for this inspection" the site notice states:

> Container 1 is a sleep out and meets the Building Code requirements for a residential sleep out only.

3.8 The parties then discussed the intended use of the sleepout, and whether separate sanitary facilities should be provided for the sleepout if the applicants intended to use it as public accommodation. The authority expressed the view that the applicants

[4] I note it is not clear what performance requirements of Clause G5 the authority consider the building work complies with as there are no performance requirements that relate to 'Housing' use, which the authority consider the use to be.

should apply for a change of use[5]. The applicants were of the view that there was no change of use if they continued to limit the number of guests to six per night.

3.9 On 6 September 2018, the parties held a meeting to discuss the matter. The authority advised that during the discussion it expressed its opinion that use of the sleepout must be restricted to "private use". Therefore, if the sleepout was to be used for public accommodation a change of use would be required from "SH (Sleeping Single Home) to SA (Sleeping Accommodation)". I note that these use categories derive from the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 ("the Change of Use Regulations").

3.10 Also on 6 September 2018, the authority issued a certificate of acceptance (CA20180007) in respect of the building work on the sleepout. The certificate stated:

> ACCEPTANCE OF COMPLIANCE
>
> [The authority] is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it can ascertain, the building work described below complies with the building code:
>
> Shipping containers to be used as non-[habitable] storage. Building work undertaken includes inserting windows, creating walls within the container, insulation in walls, electrical work has been undertaken. PS1 provided for the anchors to the containers.
>
> Outbuildings
>
> [The authority] was only able to inspect the following parts of the building work and this certificate is qualified as follows:
>
> - Container 1 is a sleep out and meets the Building Code requirements for a residential sleep out only (not visitor accommodation).
>
> …

A number of Building Code clauses were specifically excluded from the certificate, as the authority had been unable to inspect them.[6]

3.11 The applicants were not satisfied with the restriction in the certificate of acceptance that the sleepout could not be used as public accommodation. In the applicants' opinion, the requirement that guests in the sleepout walk 20m to use the sanitary facilities in their house was not an issue. The applicants subsequently contacted various officers of the authority to see if the restriction could be lifted. The authority declined to remove the restriction.

3.12 An application for a determination was received by the Ministry on 9 October 2018. The application was accepted on 18 October 2018.

4. The parties' submissions

4.1 The applicants' submissions

4.1.1 The applicants made a submission with their application for a determination.

4.1.2 The applicants advise that they applied for the certificate of acceptance on the understanding that, once it had been issued, they could "resume occasionally renting the sleepout [as public accommodation for a maximum of five occupants], and intended to do so, but with the primary use remaining for family and friends". However, the restriction in the certificate of acceptance meant that the sleepout could no longer be used for this purpose. In the applicants' opinion, the certificate of

[5] Under section 114 of the Act.
[6] Clauses B2 Durability, E2 External moisture, E3 Internal moisture, and H1 Energy efficiency.

acceptance was not the "correct forum" for this restriction to be imposed. Other points made in the applicants' submission were as follows:

- The authority's reason for restricting the usage of the sleepout is that it is unreasonable to expect guests to walk 20m to use the sanitary facilities in the house. However, this arrangement is common in accommodation of this type and none of the previous guests have found it an inconvenience. In this respect, the applicants' "sleep out arrangement is similar to that of a holiday park cabin."
- The authority also considers that access for people with disabilities is required. The applicants' understanding is that they are "exempt from this requirement due to not exceeding the maximum of six paying guests per property, per night", and they will never accommodate more than six guests on their property at any one time.
- The applicants believe the sleepout is "fully compliant with all codes and permitted activities", and they plan to use the sleep out as public accommodation.
- The sleepout is neither dangerous nor insanitary and the authority incorrectly issued the section 124 notice in respect of it;

> On the contrary, the sleep out is exceptionally safe with securely engineered cement footings, all fire safety precautions addressed, certified electrical work, and is immaculately lined….

4.1.3 With their submission, the applicants provided:

- a summary of events
- a copy of the section 124 notice
- a copy of the certificate of acceptance
- a presentation document about their sleepout accommodation
- a site plan of their property.

4.1.4 On 12 December 2018 the applicants provided further information in response to the Ministry's request of the same day, reiterating previous comments and making the following additional points:

- The applicants' accommodation is "essentially a homestay providing sanitary facilities in our family home, with an external bedroom (the sleep out) located 20m away".
- The sleepout does not come within the dangerous and insanitary examples given in the authority's policies.
- During the first part of 2018, the applicants had approximately 12 paying guests per month staying in the sleepout. The applicants did not keep records for how often they had friends and family to stay. However, the sleepout was built primarily to allow friends and family to visit, and is only rented to paying guests "occasionally".

4.2 The authority's submission

4.2.1 The authority made a submission dated 19 October 2018 in response to the application for a determination.

4.2.2 In its submission, the authority made the following main points:

- The authority issued the section 124 notice because there was "insufficient evidence to suggest the building was safe for public use". In particular, the authority was concerned about the structure of the building, and the "bucket/compost toilet being provided for public use in a lean-to shed beside the sleepout shipping container". In addition, the authority was concerned with the applicants' breaches of sections 17, 40, 114(3), 116B(1)(a) and 363.
- For the authority to be satisfied that the sleepout could be used for public accommodation, it would need to consider whether a change of use had occurred under the Change of Use Regulations. If the applicants want to change the use of the sleepout, then the authority would have to consider the requirement under sections 114 and 115 to ensure that the building in its new use will, as nearly as is reasonably practicable, comply with the requirements relating to:
  - accessible facilities for persons with disabilities
  - provision of sanitary facilities in a convenient location, as set out in Clause G1.3.3.
- With respect to the location of the sanitary facilities, the authority clarified that:

> In terms of the location of the existing bathroom facilities (for the proposed shipping container for visitor accommodation) being 20m away in a standalone dwelling, [the authority] does not accept this is a suitable solution for providing sanitary facilities. [The authority] would accept that, similar to a camping ground, an outdoor sanitary facility specific to that unit, and in this particular case, be accessible for persons with disabilities.

4.2.3 With its submission the authority provided:

- a summary of the events and background to the dispute
- correspondence between the parties
- a site plan for the applicants' property
- photos and layout plans for the completed sleepout
- copies of documents relating to the certificate of acceptance
- correspondence between the parties.

4.3 The first draft determination and submissions received in response

4.3.1 The draft determination was issued to the parties for comments on 16 May 2019. The draft determination concluded the applicants' sleepout had a classified use of 'Community service' as the use was commercial in nature and offered "limited assistance or care". The first draft determination could not draw a conclusion about the compliance of the sleepout with Clause G1.3.3 based on the classified use of community service due to insufficient information about the sanitary facilities that are to be used by occupants of the sleepout. The first draft determination also concluded that there was insufficient information to determine whether the authority correctly exercised its powers of decision-making in issuing the section 124 notice, and concluded that the authority correctly issued the certificate of acceptance based on the intended use it was provided by the applicants.

4.3.2 The authority responded on 30 May 2019 accepting the draft determination without comment.

4.3.3 The applicants responded on 31 May 2019 accepting the draft determination without comment.

4.4 The second draft determination and submissions received in response

4.4.1 The second draft determination was issued 11 November 2019. The draft determination concluded the applicants' sleepout had a classified use of 'detached dwellings' as the intended use of the sleepout as described by the applicants most closely corresponds with the description of detached dwellings and the principles on which that classified use has been grouped into the 'Housing' category. The second draft determination did not consider the compliance of the sleepout with Clause G1.3.3 as the authority, through issuing the certificate of acceptance, indicated that it considers the sleepout complies with Clause G1 for the detached dwellings use.

4.4.2 As with the first draft determination, the second draft determination also concluded that there is insufficient information to determine whether the authority correctly exercised its powers of decision-making in issuing the section 124 notice. The second draft concluded that the authority correctly issued the certificate of acceptance based on the intended use as described by the applicants.

4.4.3 The authority responded on 26 November 2019, stating it did not accept the second draft determination, and providing the following submission (in summary):

- the Act and its regulations were written at a time when holiday cabins, holiday cottages and boarding houses had a different meaning (noting these terms are not defined in the Act or regulations)
- identified the various uses of the terms 'holiday cabin' versus 'holiday cottage' in Clause A1 Classified uses[7] and Schedule 2 of the Act[8], and the use of 'boarding house' in two different classified use categories, noting the difference being the number of guests being accommodated (fewer than six people for the detached dwellings classified use)
- in referencing the District Court decision *Queenstown Lakes District Council v The Wanaka Gym Ltd*[9], noted that the number of occupants is a relevant consideration in determining the classified use of the sleepout
- in referencing the "fewer than 6 people" limit of boarding houses listed as an example in the classified use detached dwellings, reasoned that this limitation of number of occupants could be extended to holiday cottages listed as an example of this use
- noted that if the applicants limited the number of occupants to a maximum of five, the sleepout could be considered a 'holiday cottage' as described in the examples of detached dwellings

4.4.4 The applicants responded on 26 November 2019 to the authority's submission, not accepting the second draft determination, reiterating previous comments regarding the use of the sleepout.

[7] Clause A1 sets out the various 'classified uses' of buildings.
[8] Schedule 2 Buildings in respect of which requirement for provision of access and facilities for persons with disabilities applies (refer to section 118).
[9] *Queenstown Lakes District Council v The Wanaka Gym Ltd* DC Christchurch CIV-2003-002-265, 18 November 2008.

4.4.5 On 25 February 2020 the applicants outlined a proposal to limit the occupancy of the sleepout to two occupants, but did not confirm this proposal.

4.4.6 On 22 April 2020 the applicants further confirmed the existing bunk beds of the sleepout are to be replaced with a queen bed thus limiting the occupancy of the sleepout to two occupants.

5. Discussion

5.1 The applicants have raised concerns about the authority's exercise of its powers in issuing the certificate of acceptance, and specifically whether it had the power to add a clause restricting the use of the sleepout.

5.2 The applicants are also of the view the authority's exercise of its powers in issuing the section 124 notice (which preceded the certificate of acceptance) was incorrect.

5.3 In their submissions, the parties have focussed on the issue of the sleepout's compliance with Clause G1 Personal hygiene. The applicants wish to use the sleepout for public accommodation, and are of the view that the sleepout complies with the Building Code for this use. The authority considers that the sleepout will not comply with Clause G1 if it is used as public accommodation.

5.4 Accordingly, I must consider the sleepout's compliance with Clause G1, and the extent of compliance that is required by the Act. This in turn requires me to consider the classified use of the sleepout, as the performance requirements of the Building Code and the degree of compliance required apply according to a building's classified use.

5.5 The section 124 notice

5.5.1 The authority issued the section 124 notice in respect of the applicants' sleepout when it became aware that it was being used as sleeping accommodation for paying guests. The grounds given in the notice were that the building work on the sleepout had been done without a building consent, and members of the public used the unconsented sleepout.

Was the sleepout dangerous?

5.5.2 I must consider whether the building was dangerous at the time in terms of section 121, in order to determine whether the authority correctly exercised its powers of decision to issue the section 124 notice in regard to the building being dangerous.

5.5.3 Section 121 sets out the meaning of 'dangerous building' as follows:

> **121 Meaning of dangerous building**
>
> (1) A building is **dangerous** for the purposes of this Act if,—
>
> (a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause—
>
> (i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or
>
> (ii) damage to other property; or
>
> (b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.

5.5.4 Section 121(1)(a) and (b) establish that a building is dangerous if, in certain circumstances, it is "likely" to cause injury, death, or damage to other property. The term "likely" has been considered in a number of judicial decisions regarding section

121 and its predecessor in the Building Act 1991, and means something that could well happen.[10]

5.5.5 The grounds stated in the section 124 notice do not shed any light on the particular reasons that the authority had for considering the sleepout to be dangerous. The authority's main concern appears to have been that the building work had been carried out without a building consent and was used by the public without a code compliance certificate or certificate of public use.

5.5.6 The authority has stated that it issued the section 124 notice because it was concerned about the structure of the sleepout and the composting toilet. It also considered it had "insufficient evidence" that the building was safe for public use.

5.5.7 In their submissions, the applicants have detailed the work that was done to the sleepout in 2016 to make it suitable for use as sleeping accommodation. This included installing double glazing and lining and providing engineered foundations. I understand that this work was carried out to a high standard. The section 124 notice was issued two years later. In these circumstances it seems unlikely that the sleepout could have appeared "dangerous" in terms of section 121, in that in the ordinary course of events the building was likely to cause injury, death, or damage to other property.

5.5.8 It is probable that the authority's main concern was that, in the absence of a building consent, it could not be satisfied that the building was safe, rather than having any specific evidence that the building was dangerous. In those circumstances, the correct tool for the authority to use would have been a notice to fix under section 164.

5.5.9 One of the grounds for issuing a notice to fix is where an authority considers on reasonable grounds that a specified person is failing to comply with the Act, including failing to "obtain a building consent" (section 164(1)(a)). Among the provisions that a notice to fix may contain (section 165) are a direction that a certificate of acceptance (for building work already completed) or a building consent (for work that needs to be done) should be sought.

Was the sleepout insanitary?

5.5.10 Section 123 sets out the meaning of 'insanitary building' as follows:

> **123 Meaning of insanitary building**
>
> A building is insanitary for the purposes of this Act if the building—
>
> (a) is offensive or likely to be injurious to health because—
>
> (i) of how it is situated or constructed; or
>
> (ii) it is in a state of disrepair; or
>
> (b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or
>
> (c) does not have a supply of potable water that is adequate for its intended use; or
>
> (d) does not have sanitary facilities that are adequate for its intended use.

5.5.11 The specific provisions cited by the authority in the section 124 notice were sections 123(b) and (c), namely that the building had insufficient or defective provisions against moisture penetration, and did not have an adequate supply of potable water.

[10] See *Rotorua District Council v Rua Developments Ltd* DC Rotorua NP1327/97, 17 December 1999, as discussed in Determination 2006/119 Dangerous building notices for houses (7 December 2006) and subsequent determinations.

5.5.12 I do not have sufficient information before me to understand the specific defects the authority was referring to in the section 124 notice. None of the reasons given by the authority (the use of a composting toilet by the public and the location/distance of sanitary facilities from the sleepout) relate to the grounds cited in the section 124 notice (insufficient or defective provisions against moisture penetration, and not having an adequate supply of potable water). As previously stated, I understand the work that was done to the sleepout in 2016 to make it suitable for use as sleeping accommodation was carried out to a high standard.

5.5.13 However, I also note that the applicants say they spent a significant amount of money fulfilling the terms of the section 124 notice. I therefore assume there must have been some work to be done in respect of the sections 123(b) and (c) grounds cited in the notice.

5.5.14 I also note that while removing the composting toilet from the lean-to woodshed adjacent to the sleepout was one of the required actions specified in the section 124 notice, the adequacy of the sanitary facilities is not one of the grounds cited in the notice for why the building is insanitary (section 123(d)). This may have been an oversight on the authority's behalf. Further, the adequacy of the composting toilet appears to have been identified as an ongoing RMA concern, not a matter of compliance with the Building Code.

Conclusion

5.5.15 On the evidence that I have before me, based on the circumstances that existed at the time it seems unlikely that the sleepout could have appeared "dangerous". Therefore, I consider the authority incorrectly exercised its powers of decision-making in respect of whether the building was dangerous.

5.5.16 The authority's grounds for believing that the sleepout was insanitary at the time may be stronger. However, on the evidence that I have before me I cannot establish the condition of the sleepout at the time in respect of section 123 to conclusively decide whether the building was insanitary and whether the authority was correct to issue the section 124 notice.

5.5.17 In any event, the section 124 notice has now been superseded and is made redundant by the certificate of acceptance. Whether the notice was correctly issued will make no difference to the parties' current position.

5.6 The certificate of acceptance

5.6.1 There does not appear to be any dispute between the parties as to whether the certificate was the correct regulatory tool, or whether the building work that the certificate relates to complies with the Building Code. Instead the dispute relates to the wording in the certificate that seeks to limit the use of the sleepout to a "residential sleep out" prohibiting its use for public accommodation.

5.6.2 The provisions in the Act relating to certificates of acceptance are found in sections 96 to 99A. Section 96(1) and (2) provide that an authority may issue a certificate of acceptance where building work has been done without a building consent (where one was required) and the authority is satisfied "to the best of its knowledge and belief and on reasonable grounds" that the work complies with the Building Code. Section 99 sets out that the certificate of acceptance must be issued in the prescribed form and states that where the authority has inspected the work, the certificate may be "qualified to the effect that only parts of the building work were able to be inspected".

5.6.3 It goes without saying that in issuing a certificate of acceptance for building work, an authority is issuing it in relation to a specific building with a specific classified use. Section 16 states that the Building Code prescribes the functional requirements and performance criteria that a building must comply with in its intended use[11]. Regulation 3 of the Building Regulations 1992 states that the intended use informs the classified use of a building, and that each building shall achieve the performance requirements of the Building Code for that classified use. Put another way, an authority cannot certify that building work complies with the Building Code unless it knows the classified use of the building that the work relates to.

5.6.4 The certificate of acceptance for the building work on the applicants' sleepout and the other shipping container contains a degree of contradiction or uncertainty as to what use the shipping containers will have. In the certificate, the building work is described as follows:

> Shipping containers to be used as non-[habitable] storage. Building work undertaken includes inserting windows, creating walls within the container, insulation in walls, electrical work has been undertaken. PS1 provided for the anchors to the containers.
>
> Outbuildings

5.6.5 However, in the qualifications section of the certificate it states:

> [The authority] was only able to inspect the following parts of the building work and this certificate is qualified as follows:
>
> Container 1 is a sleep out and meets the Building Code requirements for a residential sleep out only (not visitor accommodation).
>
> ….

The use of Container 1 is identified as a "residential sleep out".

5.6.6 A description of the intended use of the sleepout is in the Application for a certificate of acceptance that the applicants made on 19 June 2018. Here, the "current, lawfully established use" is described by the applicants as "Sleep out for friends & family". Later in the form, in response to the question "Did the building work result in a change of use of the building?" the applicants have answered: "Container was used for storage, then converted to a sleep out for friends & family".

5.6.7 These descriptions are useful, as they make clear the applicants' intended use of the building, which they are asking (via the application for the certificate of acceptance) for the building work's compliance to be assessed in relation to. In issuing the certificate, the authority was doing so in relation to building work on a sleepout that was to be used as a sleepout for family and friends. I assume the authority considered the intended use most closely resembles the detached dwellings[12] classified use. Adding the qualification "not visitor accommodation" reinforced this particular classified use.

5.6.8 The applicants have objected to this qualification. However, the applicants have applied for a certificate of acceptance for a building with a use that most closely resembles the detached dwellings classified use. The authority has granted the certificate for this intended use as described in the application for the certificate. The presence of the qualifying or restricting clause does not change the manner of the application. If the qualification or 'restricting' clause was omitted from the certificate, the applicants would still not have been able to change the use of the

[11] Intended use is defined in section 7.
[12] Classified use '2.0.2 Detached dwellings' as defined by Clause A1 is the classified use that most closely corresponds to the intended use of 'a sleepout for family and friends'.

sleepout without notifying the authority and receiving its approval for the change of use under sections 114 and 115.

5.6.9 Having said that, I accept the applicants' point that the certificate of acceptance was not the correct place for the authority to include this limitation. Section 99 allows certificates of acceptance to be issued with qualifications as to the parts of the building work that they relate to. It does not allow them to be issued with limitations on the future uses of the building. The better course would have been for the authority to make clear in the certificate the classified use of the building. Then, if it had come to the authority's notice that the applicants had changed the use of the building without appropriate notification, it could have required the applicants to apply for a change of use under section 114.

Conclusion

5.6.10 In summary, the authority issued the certificate based on the intended use it was provided as included on the application form completed by the applicants.

5.7 Compliance with the Building Code

5.7.1 In their submissions and discussions, the parties have focussed on the issue of the sleepout's compliance with Clause G1, and as a result the classified use of the sleepout as defined by Clause A1.

5.7.2 I have established the sleepout has been regularised, by way of the certificate of acceptance, with the detached dwellings classified use. The authority, through issuing the certificate of acceptance, has indicated that it considers the sleepout complies with Clause G1 when it falls within the detached dwellings classified use.

5.7.3 Therefore, the compliance of the sleepout with Clause G1 will depend on its classified use, which the parties dispute, in particular when used for public accommodation in the manner described by the applicants.

5.7.4 The authority considers that the sleepout will not comply with Clause G1 if it is used as any form of public accommodation, which would have a classified use different from detached dwellings. The authority also considers it will not comply because of the sharing of sanitary facilities, the distance to the sanitary facilities from the sleepout, the use of a composting bucket toilet, and the need for access and facilities for persons with disabilities[13].

5.7.5 The applicants wish to use the sleepout for public accommodation and believe it complies as the sanitary facilities are currently configured for its intended use. The applicants consider the distance to sanitary facilities from the sleepout is no different from other types of accommodation (e.g. a camp ground), the composting toilet is not to be used by paying guests, and because the number of guests will be less than six, access and facilities for persons with disabilities is not required.

5.7.6 As I have described in paragraph 5.6.3 the intended use of a building must be matched to its classified use. The performance criteria that a building must meet under the Building Code will depend on its classified use.

5.7.7 In considering the Building Code compliance of the sleepout when used for public accommodation, I must first consider the classified use of the building.

[13] Under section 118.

Establishing the classified use of the sleepout when used for public accommodation

5.7.8 Clause A1 sets out the various classified uses that a building may have. There are 11 classified uses, which are generally grouped into seven categories – Housing, Communal residential, Communal non-residential, Commercial, Industrial, Outbuildings, and Ancillary. The 11 classified uses are grouped together within these categories, based on the nature of the activities that will occur in buildings with those uses.

5.7.9 It is not always obvious what classified use a building will have, as the activities that occur within the building may not neatly fit into those described or given as examples in Clause A1. However, I consider that the principles on which the classified uses have been grouped into categories are relevant, and can be used to delineate the various use categories for buildings, and to interpret the examples given for those categories.

5.7.10 Residential uses are separated into two categories – Housing (three classified uses) and Communal Residential (two classified uses). Housing applies to buildings or uses where there is "self care and service (internal management)", and Communal Residential applies where "assistance or care is extended to the principal users". In this case, it is not immediately clear whether the use of the sleepout for public accommodation will fall within Housing or Communal Residential.

5.7.11 I will now discuss these two categories in turn for the purpose of determining the classified use of the applicants' sleepout.

Housing category of classified uses

5.7.12 Turning first to the Housing category of classified uses, this category contains three types of dwelling where there is "self care and service (internal management)":

Classified use	Examples
2.0 Housing 2.0.1 Applies to buildings or use where there is self care and service (internal management). There are three types:	
2.0.2 Detached dwellings Applies to a building or use where a group of people live as a single household or family.	a holiday cottage, boarding house accommodating fewer than 6 people, dwelling or hut
2.0.3 Multi-unit dwelling Applies to a building or use which contains more than one separate household or family.	an attached dwelling, flat or multi-unit apartment
2.0.4 Group dwelling Applies to a building or use where groups of people live as one large extended family.	within a commune or marae

5.7.13 The Housing category consists of three different types of dwelling that relate to use by households or families. Within the Housing category occupants are expected to practice "self care and service" by looking after themselves and each other, as a family would. This concept is reinforced through the Building Code performance requirements that are applicable to 'Housing', particularly those related to life safety, which are significantly less onerous when compared with the Building Code requirements of the Communal Residential category or other classified uses. The

expectation is that within a "household or family" an individual becoming aware of a fire would naturally alert and assist others within the building to escape. This is also reinforced through the additional amenity related Building Code requirements for buildings that fall within Housing, but that are not required for the Communal Residential category or other classified uses.

5.7.14 The Housing category places an emphasis on the requirement for a single household, family or a family-like arrangement, through the inclusion of the term "family" within the description of each subcategory. I consider the fact occupants of this classified use will exercise "self care and service" referred to in Clause 2.0.1 is a reflection of the characteristics of a household or family.

5.7.15 I acknowledge the sleepout is currently recognised (by way of the certificate of acceptance) as a detached dwelling. It is important to note this assessment is required as there is a dispute as to the classified use of the sleepout when used for public accommodation.

What is a household or family?

5.7.16 For a building to fall within the Housing category the building must house people that live as a "single household or family" as the characteristics of such demonstrate "self care and service (internal management)". In order to decide whether the sleepout falls within this category, it is necessary to consider what is meant by a "single household or family". Neither of these terms is defined in the Building Code or Act, although the term 'household unit' is.

5.7.17 Section 7 defines a household unit as:

> (a) …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, boarding house, or other specialised accommodation

5.7.18 It must be noted that a household unit is not the same thing as a single household. The term household unit refers to the physical building or buildings that form the residence of the household, but does not elaborate on what a single household or family might be. However, this definition is useful in excluding certain types of accommodation, which by their nature cannot be considered to accommodate a household.

5.7.19 The meaning of the word "household" has been previously considered in the courts. The District Court in *Queenstown Lakes District Council v The Wanaka Gym Ltd* [14] set out a list of factors it considered when deciding a commercial gym with a residential unit added to the back did not constitute a single household. The High Court in *The Wanaka Gym Limited v Queenstown Lakes District Council*[15] approved those factors set out in the earlier District Court decision:[16]

> In determining that the company's building could not be properly be described as a dwelling for use as a single household, he said:

[14] *Queenstown Lakes District Council v The Wanaka Gym Ltd* DC Christchurch CIV-2003-002-265, 18 November 2008.
[15] *The Wanaka Gym Limited v Queenstown Lakes District Council* [2012] NZHC 2662.
[16] At [29].

> [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 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.

5.7.20 The High Court[17] stated:

> … the issue of whether a building is used as a dwelling for a single household 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.

5.7.21 Determination 2018/015[18] considered whether the occupants living in a three-storey building that had separate cooking, sanitary, and laundering facilities on each level, and whose numbers varied from 15 to 28, was a single household. The determination assessed the building against the factors used in *Wanaka Gym*, and found the majority of factors to be relevant, which indicated a lack of "self care and service (internal management)" or "social cohesion". The occupants could not be described as a "single household" because of, among other things, the configuration of the building, the means by which the occupants came to occupy the building, and lack of social cohesion between the occupants.

5.7.22 The meaning of 'household' was also considered by the District Court in *Jayashree Limited v Auckland Council*[19], which was an appeal of Determination 2018/015. The Court stated:

> While essentially an issue of fact, the meaning of the word 'household' has been considered in several decisions including *Hopper Nominees Limited v Rodney District Council* where Anderson J considered the meaning of the word as it appears in s 30 of the Rating Powers Act 1988, saying:
>
> > Such an intent is most consistent, I think, with the ordinary New Zealanders concept of a "household' namely "an organised family, including servants or attendants dwelling in a house"…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 examples, persons sharing a dwelling-house such as students or friends. The essential connotation of the term is familial domesticity.
>
> …I accept in terms of the meaning given to the word 'household' by Anderson J in *Hopper Nominees Limited* that the configuration of the dwelling-house as well the means by which the occupants were obtained, namely by advertisements in public media, means that the concept of familial domesticity is missing and that the various occupants do not operate as a single household.

5.7.23 The District Court[20] also referenced the importance of social cohesion:

[17] At [34].
[18] Determination 2018/015 Regarding a notice to fix and the refusal to issue a certificate of acceptance for alterations to a house (20 April 2018).
[19] *Jayashree Limited v Auckland Council* [2019] NZDC 2407 at [7].
[20] At [12].

> The very nature of the tenancy arrangements, their varied occupancy and absence of close familial relationships means that inevitably there would be less social cohesion in the event of an emergency such as a fire as would occur in a true organised family household.

5.7.24 The judgment reiterated the factors that can be used when assessing whether a building is a single household, noting that the list is not prescribed or exhaustive. In my view, the factors from *Wanaka Gym* as well as the *Jayashree Limited* and *Hopper*

Nominees Limited[21] judgments can help in considering whether there is "familial domesticity", and therefore whether the occupants are living as a single household or family.

5.7.25 Together, these cases extend the concept of a single household or family beyond traditional ones of the nuclear or extended family, to arrangements based on how and why the occupants live together.

5.7.26 I have also considered these terms and applied the courts' approach in previous determinations. For example, Determination 2007/111[22] considered a 'flat' can lend itself to being considered a single household where there is a level of interaction and community between flatmates. Previous determinations have considered a 'flat' means a residence of a group of people who have chosen to live together in a "family-like arrangement" with a similar atmosphere of social cohesion, comfort and trust.

5.7.27 Therefore, for a group of occupants to be described as a household or family they will display "self care and service (internal management)" and this will be demonstrated by the configuration of the building and the occupants familial domesticity, for example the social cohesion present between the occupants.

5.7.28 I note this decision will need to be made on a case-by-case basis, as there is no one definitive list of characteristics a group of occupants or building must display to be considered a "single household or family". Given the discussion above regarding what is meant by a household, I will now consider whether the use of the sleepout, which incorporates some public accommodation, could be considered to fall within the Housing category.

5.8 Does the sleepout fall within the classified use detached dwellings?

5.8.1 I will now consider whether the building falls specifically within the detached dwellings classified use. In making this analysis, I have considered the physical configuration of the building and its intended use as described by the applicants.

5.8.2 I note the building is clearly not a group dwelling and does not have the physical configuration and attributes to be used as a multi-unit dwelling. Therefore, I have only considered whether the building has the detached dwellings classified use.

5.8.3 The detached dwellings classified use is limited to "where a group of people live as a single household or family". Accordingly, I have considered the present case against the factors taken from *Wanaka Gym* and applied in Determination 2018/015 when considering whether the occupants could be described as single household:

Factor from *Wanaka Gym*	The subject building
Varying numbers at any given time	Only one group are permitted to stay in the building at any time
Large numbers of people involved in the occupation of the building	The sleepout can accommodate up to five people[23]
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	No information provided
Relatively short term of the residence	Short term stays

[21] *Hopper Nominees Ltd v Rodney District Council* [1996] 1 NZLR 239.
[22] Determination 2007/111 Fire safety provisions for two relocated buildings to be used as staff accommodation (17 September 2001).
[23] The applicants have indicated their intention to reduce this number to two.

There is no connection with the others residing in the house	Only bookable by one group at any time, and for that reason it is reasonable to assume the occupants will display social cohesion between themselves
No agreement of the residents to stay together	There is agreement of the residents to stay together because the building is only bookable by one group
The main purpose of the building essentially is commercial rather than domestic	The building appears to be used as combination of public accommodation and accommodation for family and friends of the applicants

5.8.4 The building in this case does not broadly meet all the factors that resulted in the occupants in both Determination 2018/015 and *Wanaka Gym* failing to be described as a "single household". However, the use of this building includes short term stays, and has a commercial element to the use, which is typically not characteristic of dwellings occupied by a single household or family.

5.8.5 The fact the occupants in this case will only reside in the sleepout for a short time could exclude the building from falling within detached dwellings, as some level of permanence would appear to be a key characteristic of a "single household". Determination 2014/026[24] discussed that permanence is not only a matter of how long people stay in a place, but it is also how they view their residence. An occupant who does not consider their accommodation to be permanent is considered more at risk in a fire event and is less likely to be familiar with the escape routes.

5.8.6 I will consider the examples of detached dwellings to understand whether this classified use can include this sleepout where the occupants likely demonstrate "self care and service", but stay short term, and the building has a commercial element. The following are included as examples of detached dwellings: holiday cottage, boarding house accommodating fewer than six people, and hut. The occupants in these examples would not necessarily be described as a single household or family, or have the social cohesion relied upon in an emergency due to their transient occupancy, lack of connection to each other, and the commercial element of the use. However, based on those examples, the Building Code seems to allow for buildings where the occupants could stay short term, provided the number of occupants is low, to fall within detached dwellings.

5.8.7 A "holiday cottage" could describe a self-contained unit that is used for public accommodation. Alternatively, this example could describe a building that is not the primary residence of an owner instead a second house, such as a weekend bach. While not the permanent residence of the occupants, and used for short stays, the occupants are likely to view this as their permanent accommodation and they are likely to be familiar with the building layout.

5.8.8 However, the inclusion of a "boarding house accommodating fewer than 6 people" appears to allow for uses in detached dwellings that are transient, at least when the occupant numbers are restricted. The occupants in a boarding house could not be described as a "single household". There is no agreement to reside together, a lack of connection to other occupants, short stays, communal facilities, and the building's use has a commercial element.

5.8.9 However, there is an argument that occupants in a boarding house may have some degree of permanence and develop some form of social cohesion if there are

[24] Determination 2014/026 Regarding which fire risk group should be used in determining the compliance of proposed accommodation (21 May 2014).

minimum stay periods, or if a boarding tenancy agreement is required. The limited number of occupants also may not significantly affect escape times in the event of a fire. However, the decision in *Jayashree Limited* noted that a collection of unconnected occupants may, over time, learn to cooperate to some extent but this would not translate to the social cohesion of a "true organised family household" in the event of a fire.

5.8.10 Therefore, the reliance on social cohesion would seem to be missing in the boarding house example. Instead, the Building Code has accepted a lower fire safety standard and mitigated for the lack of social cohesion within these types of buildings, by restricting the numbers of occupants. Where the occupants are likely to be unknown to each other, as in a boarding house, the limit is less than 6 occupants (not including the residing family). Where the occupants are more likely to know each other and practice "self care and service" the occupancy limit is less explicit, and instead appears to rely on the fact that a "cottage" or "hut" is unlikely to hold large numbers of people, and in the case of a holiday cottage, and also in the case of this sleepout are likely to be known to each other.

5.8.11 In this case the occupants are likely to demonstrate social cohesion unlike previous determinations[25] where the buildings fell outside the detached dwellings classified use. I consider in this instance that while there are short stays and a commercial element, this does not outweigh the fact the occupants will know each other and have agreed to stay together. This lends itself to "self care and service (internal management)" similar to that of the boarding house of fewer than six people envisioned in detached dwellings rather than "assistance or care is extended to the principal users" being the factor of Communal Residential (discussed below). Therefore, when considering the type of buildings described within detached dwellings, the fact there will be social cohesion and the configuration of the sleepout means the building could fall within this classified use.

5.8.12 For the above reasons, I consider that the applicants' sleepout, when used for friends, family and some public accommodation, most closely corresponds with the detached dwellings classified use.

Does the building fall within the 'Communal Residential' category?

5.8.13 Despite this view, for completeness I must also consider whether the sleepout falls within the 'Communal Residential' category. The subcategories within communal residential are grouped together based on the degree of 'assistance or care' extended to the principal users of the building. I will now consider whether limited assistance or care is extended to the occupants.

5.8.14 Unlike the subcategories within Housing, there is no emphasis placed on the users of the building to live as a family (or single household) and the examples given tend to relate to buildings where the occupants are less likely to know each other. I note however there is nothing limiting the occupants within the subcategories of Communal Residential from displaying "self care and service" to each other.

There are two subcategory classified uses within Communal Residential – community service and community care:

Classified use	Examples
3.0 Communal residential	

[25] Determination 2018/015; Determination 2018/044 Regarding the classified use of a main house which is let out as accommodation (7 September 2018); Determination 2018/045 Regarding the classified use of a building let out as accommodation (11 September 2018).

3.0.1 Applies to buildings or use where assistance or care is extended to the principal users. There are two types:	
3.0.2 Community service Applies to a residential building or use where limited assistance or care is extended to the principal users.	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.
3.0.3 Community care Applies to a residential building or use where a large degree of assistance or care is extended to the principal users. There are two types: (a) Unrestrained; where the principal users are free to come and go (b) Restrained; where the principal users are legally or physically constrained in their movements.	(a) hospital, an old people's home or a health camp (b) a borstal or drug rehabilitation centre, an old people's home where substantial care is extended, a prison or hospital.

5.8.15 The community care classified use applies to residential buildings where the occupants receive 'a large degree of assistance or care'. The examples given in relation to this use include buildings such as hospitals, old people's homes and prisons. All of these examples are institutional in their nature, and the large degree of care provided to occupants is associated with the institution's purpose. I consider it clear that the applicants' sleepout does not come within this classified use.

5.8.16 By comparison, the community service classified use applies to residential buildings where the occupants receive "limited assistance or care". The following services are described in the applicants' submission:

- greeted on arrival and settled in to the sleepout
- on-site management to help with any queries and itineraries
- facilities provided for entertainment

5.8.17 I note "assistance or care" is not a defined term in the Building Act or Building Code. It is not clear whether assistance or care is referring to assistance arising from Building Code requirements, for example building features that provide assistance in escaping the building, or the ordinary natural meaning suggesting the level of comfort provided to the occupants. However, it is necessary to consider the nature and degree of the assistance or care.

5.8.18 In considering what may constitute "limited" assistance or care, I compared the examples against those in community care, which applies to residential buildings where a "large degree" of assistance is provided. It is then apparent community care is intended to cover situations where occupants are almost completely dependent on another person (the person offering assistance), whereas occupants in community service are largely independent of other people. Taking that into account the threshold for "limited" assistance may still require a high degree of assistance or care.

5.8.19 The larger degree of independence in community service could explain the varying range of what "limited assistance or care" can manifest as within the examples

provided for that classified use. For example, back country huts offer minimal services to occupants, whereas hotels offer a higher level and wider range of assistance.

5.8.20 I have considered the nature and degree of assistance or care provided by the applicants alongside the examples. The services in this case are primarily for the comfort of the occupant and if removed would not affect how the occupants operated within the building. In the event of an emergency the services would also offer little help.

5.8.21 The fact a building may have considerable assistance or care does not necessarily result in the building falling within community service where there is clearly a single household in existence. Similarly, where there is a lesser degree of assistance or care but a weak or non-existent single household this may fall within community service. In this case, unlike the group of occupants in Determination 2018/015, the fact there is minimal assistance or care offered, the use of sleepout by family, friends and some public accommodation, and the configuration of the sleepout, lead to the sleepout more closely resembling the description and examples of detached dwellings than community service.

5.8.22 I acknowledge also that the sleepout has a commercial element because it is sometimes offered as public accommodation, which would seem to align more with the examples in community service, such as a hotel. However, a building that offers public accommodation in some forms would seem to be allowed for in detached dwellings, as a number of the examples, e.g. boarding house accommodating fewer than six people, holiday cottage, and hut could have a commercial element to them. Despite having a commercial element, I am of the view that the sleepout that is used for family and friends with some public accommodation, is more closely aligned with these examples in detached dwellings rather than community service.

5.9 Compliance with Clause G1.3.3

5.9.1 I have concluded that the sleepout has the classified use of detached dwellings, and the assessment of the community service classified use does not outweigh this conclusion.

5.9.2 The applicants sought a decision on the compliance of the sleepout with Clause G1.3.3. However, I am of the view I do not need to consider the compliance of the sleepout with Clauses G1.3.3 as the authority, through issuing the certificate of acceptance, has indicated that it considers the sleepout complies with Clause G1 for a detached dwellings classified use.

6. Conclusion

6.1.1 Taking into account the evidence and reasoning outlined above I conclude that:

- the authority's decision to issue a dangerous building notice was incorrect
- I cannot establish the condition of the sleepout at the time in respect of section 123 to conclusively decide whether the building was insanitary at the time the authority issued the section 124 notice
- the authority correctly issued certificate of acceptance CA20180007 based on the intended use it was provided. However, the authority did not accurately record the classified use of the sleepout and the certificate of acceptance was

not the correct place for the authority to include the additional qualification of the use of the sleepout

- the applicants' sleepout has the classified use detached dwellings
- I do not need to consider the compliance of the sleepout with Clause G1.3.3 as the authority, through issuing the certificate of acceptance, has indicated that it considers the sleepout complies with Clause G1 for a detached dwellings use.

6.1.2 The authority should now modify the certificate of acceptance to record the classified use of the sleepout as detached dwellings and remove any conflicting information regarding the use of the sleepout, such as the qualification that the sleepout not be used for visitor accommodation.

7. The decision

7.1 In accordance with section 188 of the Building Act 2004, I hereby determine:

- I do not have sufficient information to determine whether the authority correctly exercised its powers of decision-making in issuing the section 124 notice in respect of the sleepout at the time, but in any event that notice has now been superseded and made redundant by the certificate of acceptance
- the authority was correct to issue the certificate of acceptance in respect of the intended use of the sleepout. However, I modify the authority's decision to issue certificate of acceptance CA20180007 to record the classified use of the sleepout as detached dwellings and remove any conflicting information regarding the use of the sleepout.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 29 September 2020.

Katie Gordon
Manager Determinations