



Determination 2010/141

The code-compliance of a fire safety system installed in a building at 136 Cooks Road, Hunterville

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, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department.
- 1.2 The parties to this determination are:
- The C R Grace Family Trust, the owner of the property (“the applicant”), who is acting through the builder (“the applicant’s agent”)
 - the Rangitikei District Council carrying out its duties and functions as a territorial authority and a building consent authority (“the authority”).
- 1.3 I take the view that the matter for determination² is whether the fire safety system installed in a building complies with the relevant clauses of the Building Code (Schedule 1 Building Regulations 1992) in its current use.
- 1.4 In addition, I am of the opinion that I must also consider whether the authority correctly exercised its powers under section 115 of the Act in maintaining that there has been a change of use regarding the building.
- 1.5 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I also note that the relevant provisions of the Act, the Building Code, the Acceptable Solution C/AS1, and the Building (Specified Systems, Change the Use, and the Earthquake-prone Buildings) Regulations 2005 are set out in Appendix A.
- 1.6 I also forwarded the determination documentation to the New Zealand Fire Service Commission (“the NZFS Commission”) by way of consultation under section 170.

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

² In terms of sections 177(a) of the Act (prior to 6 July 2010)

2. The building

- 2.1 The two-storied building (“the building”) is situated in a rural location some 3.5km from the farm boundary and is not connected to a landline telephone system. The building was first built in about 1985 and moved to its current location and upgraded.
- 2.2 The ground floor contains a kitchen/lounge, one bathroom, two bedrooms (one with an ensuite), and a large deck with a covered area. ‘Ranch sliders’ open from each bedroom to the exterior. The first floor contains two bedrooms, one of which has a shower and a basin. The first floor is accessed by a single stair, and an escape ladder has been provided from a rear window.

3. Background

- 3.1 The authority issued a building consent (No 060060), which I have not seen, sometime in 2006 for the ‘Relocation of a Farmhouse’ onto the site. A second building consent (No 070300) dated 7 December 2007, was issued by the authority for additions to the building, which consisted of a new deck, bi-fold doors, and kitchen amendments. The consent notes the use as ‘Residential’.
- 3.2 From February to May 2008, the authority carried out various inspections of the building, regarding the work carried out under the second building consent.
- 3.3 The applicant applied for a code compliance certificate for the second consent. The application is undated, but I assume that it would have been requested late in 2008.
- 3.4 On 22 December 2008, the authority wrote to the applicant, regarding both building consents, noting that certain matters required attention before a code compliance certificate could be issued.
- 3.5 On 12 February 2009, the authority wrote to the applicant stating that it had become aware that the applicant was offering accommodation in the building for up to 10 people. This was a different situation from that understood by the authority when it issued the building consent for the building to be used by ‘family members and/or farmhands’. The authority said the use of the building ‘put[s] the building into the same category of SA (Sleeping Accommodation)... This is the same as a motel.’
- 3.6 In the correspondence that followed, the applicant and the authority disputed the fire safety systems requirements that should be applied to the building in its new use. Due to the building’s remote location, the parties have accepted that the protection of the building itself is impractical.
- 3.7 An application for a determination was received by the Department on 24 June 2010.

4. The submissions

- 4.1 In an undated covering letter addressed to the Department, the applicant’s agent set out the background to the dispute and described the building. The main points raised on behalf of the applicant are summarised as:
- Paying individuals are invited to shoot at the property and there are never more than 9 persons accommodated at one time. The groups of shooters are made up of persons who know each other.
 - The applicant’s agent discussed the requirements of the relevant purpose groups set out in acceptable solution C/AS1. It was concluded that the building

met the requirements of a SA purpose group that can be treated as a “SH (Sleeping Single Home) group as it is a single self-contained detached suite with no more than 12 beds”.

- The proposed fire-safety system was to have Type 1 domestic fire alarms within 3 metres of each bedroom, together with a fire-escape landing and ladder from the upper floor.

4.2 The applicant supplied copies of:

- the plans and specifications, various photographs and topographical details
- building consent No 070300 and the authority’s building consent documentation
- the authority’s inspection details
- the application for a code compliance certificate
- the correspondence between the parties.

4.3 In an email to the Department dated 2 August 2010, the authority submitted that:

- the building was being used as a lodge for groups containing up to 10 people
- the authority was of the opinion that, while people who stay at the building may be known to each other, equally a group could be made up from persons not known to each other
- alerting people to the presence of a fire and ensuring their safe exit was the authority’s only concern
- in accordance with C/AS1, the building fell within the “SA two floors one fire cell” requirement. Accordingly, it required a fire alarm system with smoke and heat detectors
- visibility was required in the escape routes
- as a direct phone line or connection to the Fire Service was not feasible, the authority considered that a fire alarm system and illuminated signs, especially for the first floor, was appropriate.

4.4 Following correspondence between the parties and the Department, in an email to the Department dated 15 August 2010, the applicant’s agent, summarised the current points of agreement and disagreement between the parties. I note that these differ in some respects with the authority’s submission set out in paragraph 4.3. These are set out verbatim as follows:

Both parties agree that:

- a. the purpose group of the building best fits the SA description;
- b. the lower bedrooms are not of issue in respect of fire escape;
- c. access to the building in the event of fire is not practical for the Fire Service to be effective;
- d. availability of telecom is not a viable consideration and therefore neither connection to or access to a telephone is expected; and
- e. therefore the emphasis is on personal safety versus property preservation.

The parties disagree:

a. On points of interpretation of the Building Code:

| The [applicant] | The [authority] |
|---|--|
| <p>The building (purpose group SA) can be treated as SH under clause 2.2.9 (b) as:</p> <ol style="list-style-type: none"> 1. the building is a single suite by virtue of the definition of a suite (p32 C/AS1); 2. Self contained and only Single Party bookings available; 3. the bedrooms are not available to different "key-holders" | <p>The [authority] doubts the building can be treated as purpose group SH under clause 2.2.9 (b) as:</p> <ol style="list-style-type: none"> 1. the degree of association among members of a shooting group is not strong enough, despite the single booking and the organized activity during the day; 2. In the event of a power failure and fire, lack of familiarity among the occupants with the layout of the building would compromise their ability to escape – particularly from the upper bedroom. |
| <p>The [applicant] has requested the specification of an automatic system. After consideration of the specifications the owner determined that:</p> <ol style="list-style-type: none"> 1. A modified smoke/heat alarm and detection system is not considered practical given: <ol style="list-style-type: none"> a. the configuration of the building particularly on the enclosed deck where sensors next to the exposed corrugated iron roof would set the alarms off if the fire place billowed smoke and on hot days the roof was hot enough to set off heat detectors b. Given the size of the house standard battery powered smoke alarms are fitted. These are considered more practical particularly if there is a power failure. 2. Aside from battery operated torches at each bed head proximity to the escape route is directly from each bedroom. | <p>The [authority] would prefer that the [applicant] install such Fire Safety Precautions as per table 4.1/5:</p> <ol style="list-style-type: none"> 1. 5f Automatic fire alarm system with modified smoke/heat detection and manual call points. 2. 16 Visibility in escape routes. 3. 18c The installation of a Fire Hydrant system is not considered necessary given the isolation of the building and the effectiveness of the Fire Service to reach the building in time. Secondly in the event the Fire Service did reach the building in time, the hose run distance is less than 75m to any part of the building. |

4.5 The draft determination was issued to the parties for comment on 29 November 2010. The authority accepted the draft determination without comment on 2 December 2010. The applicant's agent, on behalf of the applicant, accepted the draft determination without comment on 20 December 2010. The NZFS, as consultation under section 170 of the Act, confirmed on 14 December 2010, that it had no comments to make in response to the draft determination.

5. Discussion

5.1 Correspondence from the authority to the applicant (refer paragraph 3.5) indicates that the original intended use of the building was residential. There is no dispute between the parties that the building is now providing temporary accommodation for paying guests.

5.2 The applicant has disputed the fire safety requirements that are applicable for the building's new use and considers that in terms of C/AS1 the building can be considered a single suite, and the purpose group SA can therefore be treated as SH.

5.3 Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 states that a SA use spaces or dwellings relate to 'spaces providing transient accommodation...'. The SH use in that context relates to 'detached dwellings where people live as a single household or family...'.

- 5.4 In this case, the building in its current use will provide managed accommodation for up to ten people sharing the activity of shooting. In my opinion, this activity relates more closely to the SA space and dwelling use rather than those for a SH use.
- 5.5 Having come to that conclusion, I am of the view that the authority has correctly assessed the building as having a SA use and that a change of use in accordance with section 115 has occurred. However, I note that, in the case of self-contained suites each with no more than 12 beds, paragraph 2.2.9(b) of C/AS1 allows for the requirements of group SH in this instance. This is on the grounds that the suites are detached.
- 5.6 A SH use requires the building, in terms of Clause F7, to have an appropriate means of warning people to escape to a safe place in an emergency. In this respect, as the building already has standard battery smoke alarms, I am of the opinion that it complies with this requirement. However, in terms of section 100, as the building is not used wholly as a single household unit, it will require a compliance schedule in respect of the smoke alarms.
- 5.7 A change of use in terms of section 115 also requires a territorial authority to give consideration to the affect any change has on other property, sanitary facilities, structural performance, fire-rating performance and access and facilities for people with disabilities. However, as the authority has stated that fire-safety is its only concern, I take it that the authority has no concerns regarding these other matters. Accordingly I have not considered them in this determination.

6. The decision

- 6.1 In accordance with section 188 of the Act, I determine that:
- the fire safety system installed in the building in its current use complies with Clause F7 Warning systems of the Building Code
 - the authority correctly exercised its powers under section 115 of the Act in maintaining that there has been a change of use regarding the building.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 23 December 2010.

John Gardiner
Manager Determinations

Appendix A: The relevant legislation

A1 The relevant sections of the Building Act are:

100 Requirement for compliance schedule

- (1) A building not wholly used as a single household unit –
 (a) requires a compliance schedule if—
 (i) it has specified system...

115 Code compliance requirements: change of use

An owner of a building must not change the use of the building,--

- (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, will—
 (i) comply, as nearly as is reasonably practicable, with the every provision of the building code that relates to either or both of the following matters:
 (A) means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance;
 (B) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
 (ii) continue to comply with the other provisions of the building code to at least the same extent as before the change of use..

A2 The relevant section of the Building Code is:

Clause F7—WARNING SYSTEMS

FUNCTIONAL REQUIREMENT

F7.2 Buildings shall be provided with appropriate means of warning people to escape to a safe place in an emergency.

A3 The relevant section of the Acceptable Solution C/AS1 is:

2.2.9 Where any part of an SA purpose group consists of self contained suites, each with no more than 12 beds then:

- (b) Where the suites are detached, the requirements of purpose group SH may be applied.

A4 The following provisions of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 are relevant to this determination:

6 Uses of buildings for purposes of regulation 5

- (1) For the purposes of regulation 5, every building or part of a building has a use specified in the table in Schedule 2.
 2) A building or part of a building has a use in column 1 of the table if (taking into account the primary group for whom it was constructed, and no other users of the building or part) the building or part is only or mainly a space, or it is a dwelling, of the kind described opposite that use in column 2 of the table.

Schedule 2: Uses of all or parts of buildings

| Uses related to sleeping activities | | |
|-------------------------------------|--|--|
| Use | Spaces or dwellings | Examples |
| 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, whareniui |
| 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 members of the same family, and garages (whether detached or part of the same building) if primarily for the storage of the occupants' vehicles, tools, and garden implements | dwellings or houses separated from each other by distance. |