



Department of
Building and Housing
Te Tari Kaupapa Whare

Change of Use

Meeting the requirements under section 115 of the
Building Act 2004

**A guide for Christchurch City Council temporary
business and housing relocations**



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Introduction

The change of use provisions in the Building Act 2004 (the Building Act) are one of the mechanisms used to gradually upgrade existing buildings to current standards. These provisions also ensure a building is appropriate for its proposed use and any consented building work made during a change of use meets current Building Code requirements and does not reduce Building Code compliance for the rest of the building.

Change of use provisions have not always been well understood or correctly applied by the building control sector. In addition, the Canterbury earthquakes of 2010/11 have meant that many buildings can no longer be occupied, triggering an increase in the number of people moving to alternative premises and consequently an increase in change of use notifications.

Purpose and content

The Department of Building and Housing (the Department) has prepared this guide primarily to provide practical assistance and tools for the Christchurch City Council (the Council) when dealing with changes of use for temporary business and/or housing relocations as a result of the Christchurch earthquakes.

It explains the change of use provisions in the Building Act and associated Regulations, explains how to apply these correctly as well as matters to take into account given the current exceptional circumstances.

Information is provided on:

- how to apply section 115 of the Building Act with regard to Building Code compliance requirements
- what to consider when receiving written notices from the owner for proposed changes of use required under section 114 of the Building Act
- what to consider when approving changes of use
- determining what, if any, building upgrades may be required.

While this document focuses on temporary relocations, the information and tools provided can also be used when considering permanent changes of use. However, the risk-based approach outlined on page 13 of this document may not be appropriate for permanent changes, in particular with regard to fire safety and access and facilities for people with disabilities.

Use of this document

This document is intended as a general guide to the change of use provisions of the Building Act and has been written in accordance with section 175 of that Act. While the Department has taken every care in preparing this document, it should not be relied upon as establishing all the requirements of the Building Act. Readers should always refer to the Building Act as the source document, and be aware that for specific situations or problems it may be necessary to seek independent legal advice

The legislation explained

What is a use?

Every building or part of a building has a 'use' that has been categorised by law. For the purposes of the Building Act, that use is specified in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (the Regulations).

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

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

The four activity groups each have a varying number of categories of uses adding up to 15 uses overall. Definitions and examples for each of these uses are also given in Schedule 2 of the Regulations.

For example, a building might be designed to be used for crowd activities (such as a cinema, university or stadium) so falls under the broad 'crowd' activity group. This has four categories: CS (Crowd Small), CL (Crowd Large), CO (Crowd Open) and CM (Crowd Medium). The specific category of use can be determined based on the number of people who will use the building, whether the building is enclosed and what activity will be undertaken.

What is a change of use?

The legislative requirements and definitions relating to change of use are contained in:

- the Building Act 2004, including sections 114, 115 and 118, and
- Regulations 5, 6 and Schedule 2 of the Building (Specified Systems, Change the Use and Earthquake-prone Buildings) Regulations 2005.

A change of use occurs when:

- a building's (or part of a building's) use, as defined in the Regulations, changes from one use (the old use) to another (the new use), **and**
- the new use has more onerous or additional Building Code requirements than the old use.

When might the Building Code requirements be more onerous?

The new use of a building might have additional Building Code requirements than the old use if, for example it increases the fire hazard or the risk to life.

The fire hazard may increase because:

- the type of work/activity carried out in the building has changed. For example, an electrical workshop has become a car spray painting workshop which changes the use from WL (Working Low) to WH (Working High).
- the goods stored present a greater fire hazard than the goods stored previously. For example, a building previously being used for storing

appliances is now storing highly combustible furniture, which changes the use from WL (Working Low) to WF (Working Fast).

- goods stored previously in racks 2.4m high are now stored in racks 4m high, which is 1m above the 3m threshold. As a result, the use changes from WM (Working Medium) to WH (Working High).

The risk to life may change because:

- There are more people in the building. For example, a building previously used as a storage warehouse WL (Working Low) changes to a bulk retail store/supermarket WH (Working High),
- People's activities place them at increased risk. For example, a building previously used as a workplace WL (Working Low) becomes a building in which people sleep SR (Sleeping Residential).

Example 1

A business owner temporarily relocates their offices and staff to a residential dwelling. The current use of the dwelling is SH (Sleeping Single Home). The new use is WL (Working Low). This is a change of use because the activity/use has changed and the Building Code requirements are more onerous for this new use. For example, under structural performance there is a need to consider increased floor loadings and/or adequate toilet numbers under sanitary facilities. Therefore, the owner must notify the Council of the proposed change of use.

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

Example 2

Part of a suburban library is temporarily converted into office space to provide for approximately 100 people that have been displaced from their earthquake damaged building. As the use of that part of the building changes from CL (Crowd Large) to WL (Working Low) and there are more onerous Building Code requirements (for example, sanitary facilities) this would be considered a change of use.

Example 3

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

What is required of the owner if they propose to change the use of a building?

The building owner must give written notice to the Council if they propose to change the use of a building. Not doing so is an offence and the owner is liable to a fine of up to \$5,000. The owner must also not proceed with a change of use until they receive notification in writing from the Council allowing the change.

What is required of the Council if a change of use occurs?

As a territorial authority, the Council must give the owner written notice confirming whether they are satisfied that the building (in its new use) will meet the Building Code compliance requirements of Section 115 of the Building Act. These are:

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

What does ‘as nearly as is reasonably practicable’ mean?

To determine the extent of any Building Code upgrade requirements, the Council must apply the ‘as nearly as is reasonably practicable’ test. This test was expressed in a High Court judgment as a weighing exercise and involves a costs and benefits assessment where the sacrifices and difficulties of achieving full compliance are balanced against the advantages of upgrading¹.

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

When considering what is ‘as nearly as is reasonably practicable’, the Department suggests the Council consider how long the change of use is proposed for, ie whether it is a temporary or permanent change.

¹ *Auckland City Council v New Zealand Fire Service* [1996] 1 NZLR 330

When is a building consent required for a change of use?

A building consent is not required solely because the building's use is changing.

However, if building work will take place as part of the change of use (for example, the building in its new use may be required to have new fire safety features or to have some of its existing features altered) and that building work requires a consent, the owner must apply for a building consent.

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

Note

While the Council needs to use its discretion under the Building Act to determine the level of compliance the building must achieve, the Council decisions must still be on reasonable grounds.

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

A building consent is not required where:

- written notification has been received under section 114 of the Building Act and the Council is satisfied that the building already complies with section 115 of the Building Act without the need for any upgrade; or
- the proposed building work is exempt under Schedule 1 to the Building Act; or
- the Council decides to exempt the work under clause (k) of Schedule 1.

The decision to allow an exemption under Schedule 1(k) is totally at the Council's discretion, based on the Council's own assessment of the risk of the building work not being carried out in accordance with the Building Code or of endangering people or property.

When making a decision to exempt work under clause (k), the Council should apply their formal policies, systems and procedures for receiving and processing such exemption requests.

What if there are building alterations as well as a change of use?

The requirements for building alterations are set out in section 112 of the Building Act. However, the requirements of section 115 (Building Code compliance requirements for change of use) are more onerous. Therefore, if both a change of use and alterations are going to occur, the requirements of section 115 will usually apply and take precedence over section 112.

What if a building is already being used for a use it was not designed for?

Following the Canterbury earthquakes, if an owner has changed the use of a building but, for whatever reason, has neglected to notify the Council and obtain the Council's approval then they have committed an offence under section 114 of the Building Act. In addition, if the owner has failed to obtain a building consent where this was required for the building work performed then a further offence has been committed under section 40 of the Building Act. The Council may issue an infringement notice, a notice to fix or recommend the owner apply for a certificate of acceptance for the illegal building work. The approach taken will depend on the circumstances of the change of use. In addition, the Council also still needs to be satisfied that the building in its new use will meet the requirements under section 115 of the Building Act, irrespective of whether building work was carried out.



Practical tools

We will take you through a series of steps to determine whether a change of use will occur and, if so, what you need to do about it. The steps cover scenarios where the Council has received a written notice for the proposed change of use under section 114 of the Building Act and when assessing building consent applications for proposed building work that are subject to section 115 of the Building Act. The associated helpsheets provided in Appendix 1 will help you with the process to establish the existing and/or proposed use.

The Council must decide whether or not to give an owner written notice allowing a change of use. This notice can be in the form of an approved building consent, ie Form 5 of the Building (Forms) Regulations 2004.

When approving a proposed change of use, the Council will need to assess the owner's documentation to decide whether or not the building, in its new use, meets the relevant Building Code compliance requirements 'as nearly as is reasonably practicable'.

Work through these steps to:

- confirm the proposed new use will result in a change of use
- confirm the level of Building Code compliance relating to the building's new use, and
- determine whether you are satisfied, on reasonable grounds, that the proposal to change the use of the building complies with the aspects of the Building Code as 'nearly as is reasonably practicable'.

Step by step

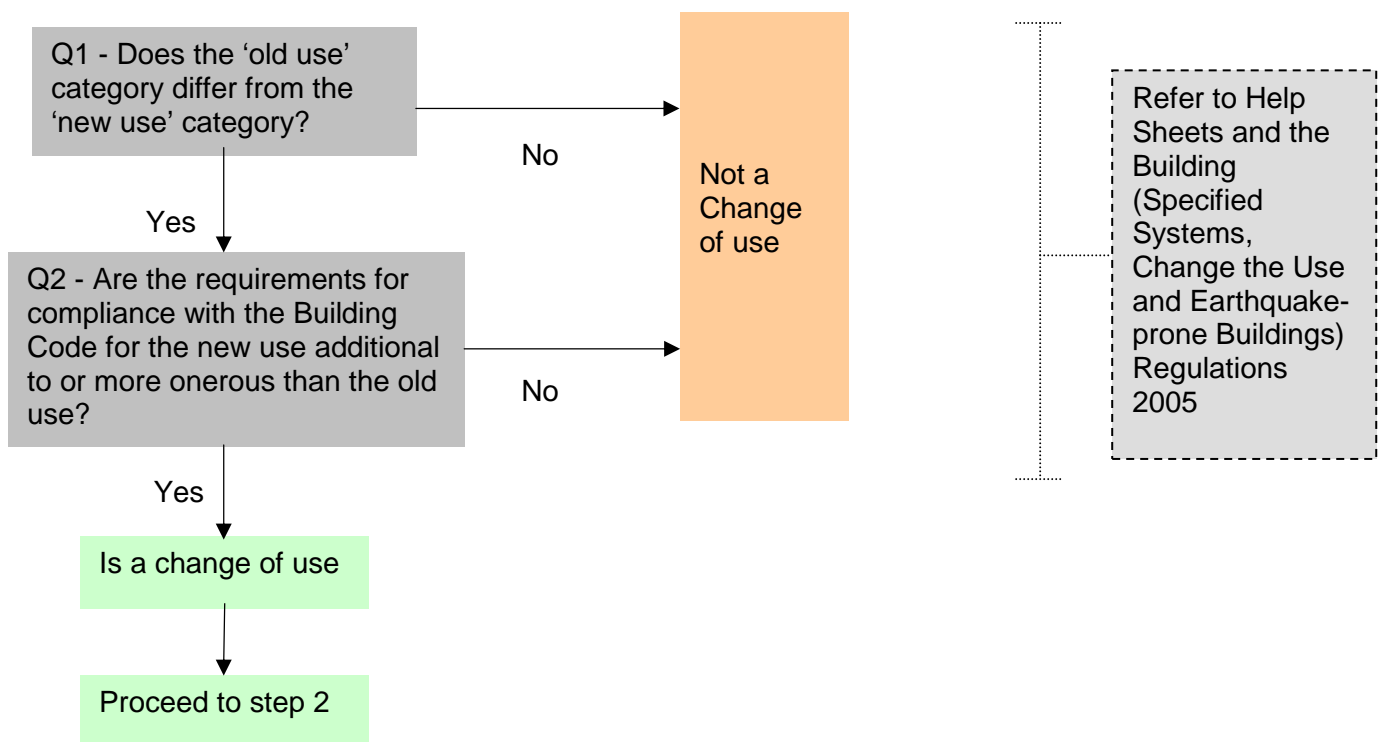
	Step	Page
1	Determining whether there is a change of use	10
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Step 1: Determining whether there is a change of use

A. What is the old use? (refer to help sheets) _____

B. What is the new use? (refer to help sheets) _____

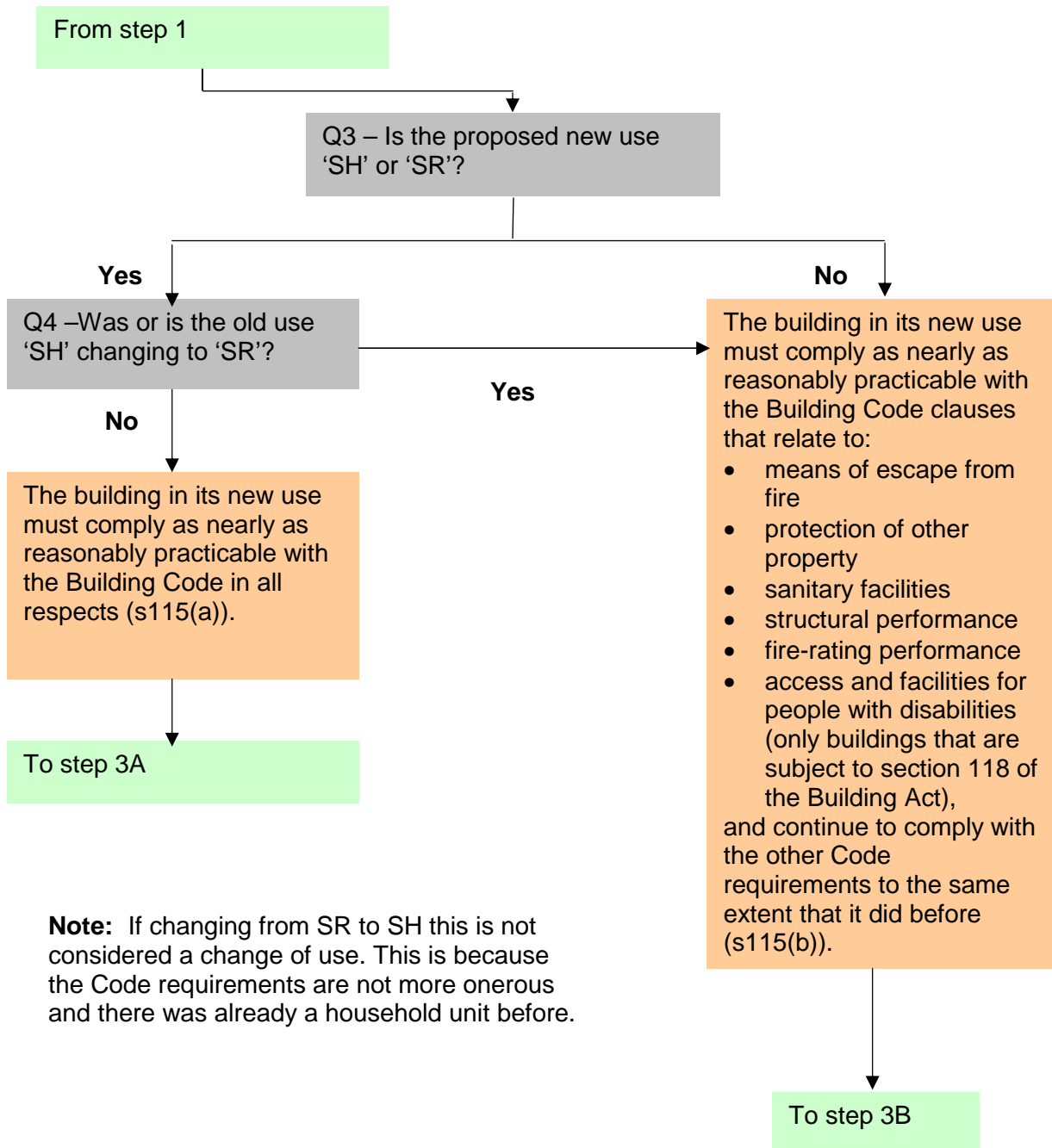
C. Once the new use and old use are established, proceed to using the flow diagram below.



D. If there is a change of use – proceed to step 2.

Step 2. Determining the type of change of use

There are two distinct requirements for buildings in their new use depending on the new and old uses.



Step 3. Consideration of proposed change of use (s115)

The Council must decide whether to give written notice to allow the change of use to occur. Potentially the building, in its new use, will already fully comply with the Building Code in the required areas. This should be checked first:

3A:

From step 2

Q5A – Does the building in its new use already fully comply with the provisions of the Building Code in every respect?

Yes

Written notice from the Council allowing the change of use

3B:

From step 2

Q5B - Does the building in its new use already fully comply with the Building Code provisions that relate to:

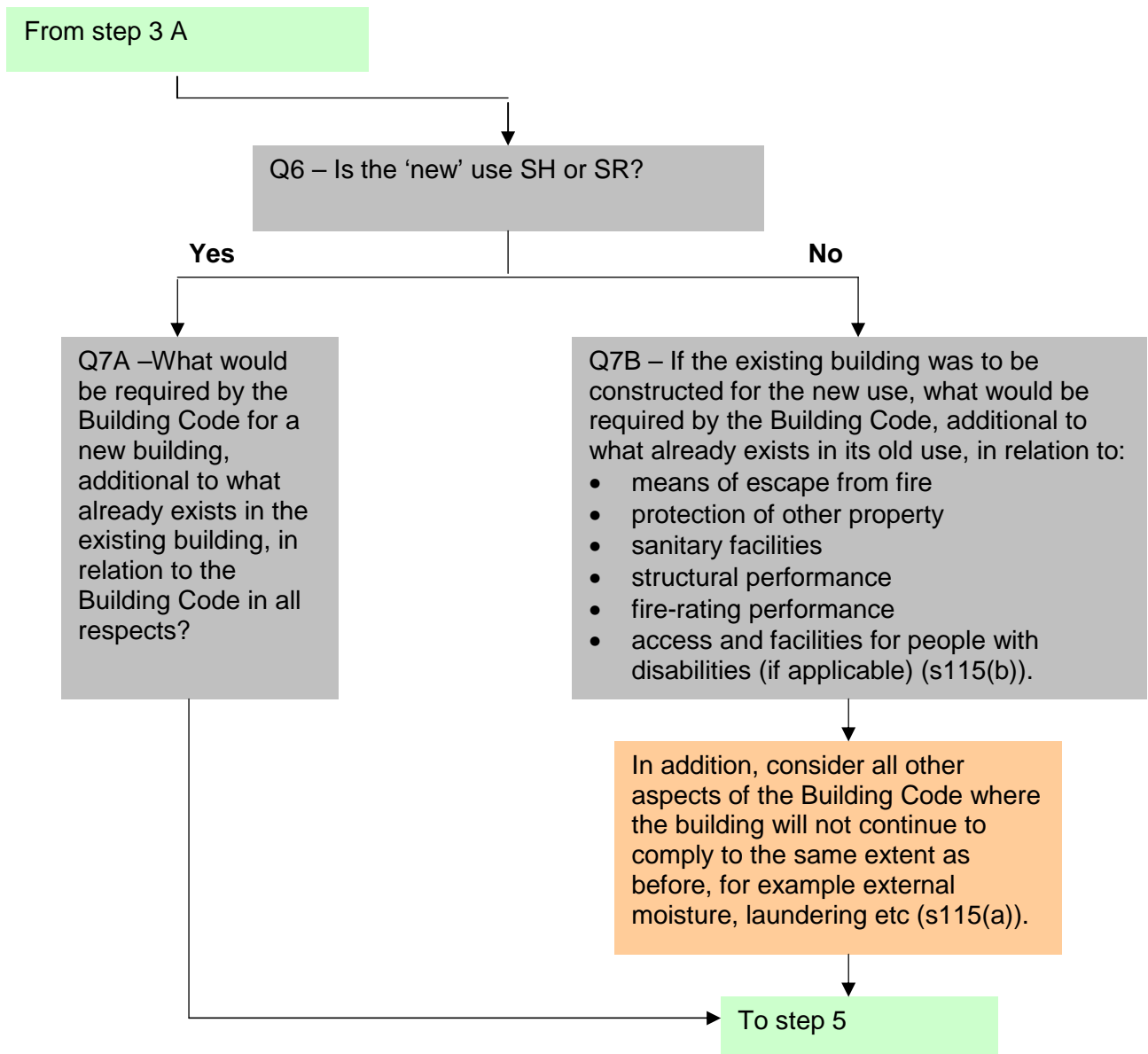
- means of escape from fire
- protection of other property
- sanitary facilities
- structural performance
- fire-rating performance
- access and facilities for people with disabilities (where required), and continue to comply with the other Code requirements to the same extent that it did before?

No

To step 4

Step 4. Comparing full compliance to current compliance

The purpose of this step is to determine the difference between the level of Building Code compliance of the existing building and what would be required if it was a new building.



Step 5. Determining required upgrades

Once the difference between current provisions and requirements for a new building are established, the Council must then decide to what extent the existing building must be upgraded. This is the 'as nearly as is reasonably practicable' test in section 115 of the Building Act already mentioned before on page 5².

When applying the test, we recommend the Council adopt a pragmatic approach by taking into account what is acceptable for short periods versus long periods. This is particularly relevant for temporary business and housing relocations where a lower level of Building Code compliance may be acceptable.

Note. Any new building work must be shown to fully comply with the Building Code (see section 17 of the Building Act) ie the 'as nearly as is reasonably practicable' test does not apply.

The High Court approach

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

Matters for the Council to consider:

When deciding on the level of upgrade required, the Department suggests the Council apply a risk-based approach (see examples provided at the end of this section). This is particularly relevant where public safety or health may be affected.

When defining risk criteria, factors to be considered should include the following:

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

² *Auckland City Council v New Zealand Fire Service* [1996] 1 NZLR 330 at p.27

In addition, the Council may also wish to consider the following matters:

- the building size
- the building complexity
- the location of the building in relation to other buildings and public places
- how often members of the public visit the building
- any other matter that the Council considers to be relevant.

The costs and benefits assessment (CBA)

Although not required by section 115 of the Building Act, ideally, written notice of the proposed change of use from a building owner will include a CBA. The Council can then decide whether or not to provide written notice allowing the change of use to occur or require further information in respect of the assessment. Where a CBA is not provided with the written notice, the Council can request such an assessment or application for building consent with the proposed upgrades (that they believe satisfy section 115). Alternatively, the Council could choose to carry out their own CBA and make a decision on what upgrades (if any) are required.

Costs

The costs are the tangible and intangible costs the owner will meet in achieving certain benefits. This can include obvious things such as the direct cost of carrying out upgrades - for example, installing a lift or sprinkler system - but can also include factors such as time constraints, business interruption and loss of amenity values. These costs are generally upfront, and can be ongoing.

Benefits

The benefits are meeting the Building Code objectives under consideration, such as those that relate to fire safety and access and facilities for people with disabilities. Benefits can be expressed and evaluated in terms of for example, reduced fire safety risk, improved structural stability, the number of persons with disabilities that will have access to the building and the quality of the access and facilities.

Example 4

An architectural practice relocates to a dwelling with an existing use of SH (Sleeping Single Home). They intend to operate from these new premises for a period of one year, while their earthquake damaged offices are being repaired. The use of the building will change from SH (Sleeping Single Home) to WL (Working Low), which triggers additional Building Code requirements for access and facilities for people with disabilities, for example. However, when deciding the extent of the required upgrades, the Council may consider the limited time frame of this change of use and accept a lower level of compliance such as fitting a grabrail adjacent to the existing toilet pan, changing handle taps to the wash hand basin to capstan lever taps, or installing a temporary simple ramp outside the main entrance.

Example 5

An old two storey community hall CS (Crowd Small) is converted into temporary offices WL (Working Low). A new building of this type would require, under the fire safety compliance documents, an automatic fire sprinkler system with manual call points and emergency lighting in escape routes. However, in considering the temporary nature of the new use, the Council may accept a manual fire alarm system and high visibility photoluminescent products used to mark escape routes, instead. In addition, the Council may take into account the number of employees and the frequency of visits by the public and decide to accept a lesser level of Building Code compliance for access and facilities for people with disabilities. For example, while a new building would require accessible toilet facilities and accessible stairs, the Council may accept an upgrade of the existing toilet facilities by adding grabrails and capstan lever taps, and the installation of a second graspable hand rail and contrasting stair nosings to the stair as an acceptable level of upgrade.

Example 6

A family decides to leave their earthquake damaged house that is located in the red zone. They own a rental property in West Christchurch, which is a semi-detached apartment building SR (Sleeping Residential). The property has not been occupied for a while so they intend to convert it into a single residential household unit SH (Sleeping Single Home). They submit a building consent application to the Council for the proposed changes. While the use of the building is changing from SR to SH, this is not considered a change of use under section 115 of the Building Act. This is because the Building Code requirements for the new use are not additional to, or more onerous than, the Building Code requirements for the old use.

Step 6: Written notice

The Council must provide the owner with written notice of its approval for the proposed change of use. There are two methods of providing this written notice:

- Where there is no building consent associated with the change of use, this can simply be in form of a letter.
- Where there is a building consent associated with the change of use, this notice can be the approved building consent, ie Form 5 of the Building (Forms) Regulations 2004.

APPENDIX 1 - Help sheets

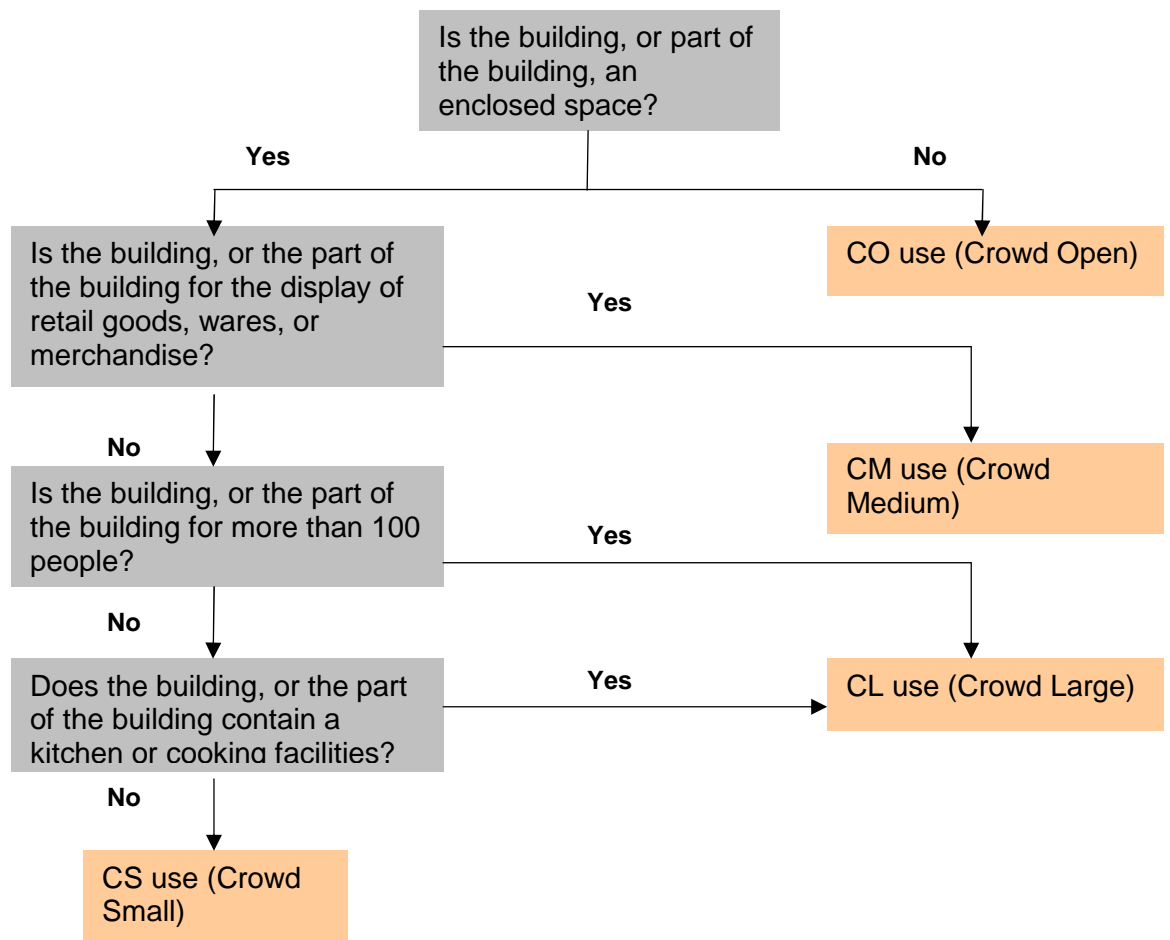
Every building or part of a building has a 'use' as defined by the Building (Specified Systems, Change the Use and Earthquake-prone Buildings) Regulations 2005. It is essential to determine both the current use (defined as 'old use' in the Regulations) and the 'new use'. Schedule 2 of the Regulations contains the list of the various uses which the Council can use to determine both uses.

The help sheets contained in this section provide the tools to determine both uses.

How to determine the use of the building

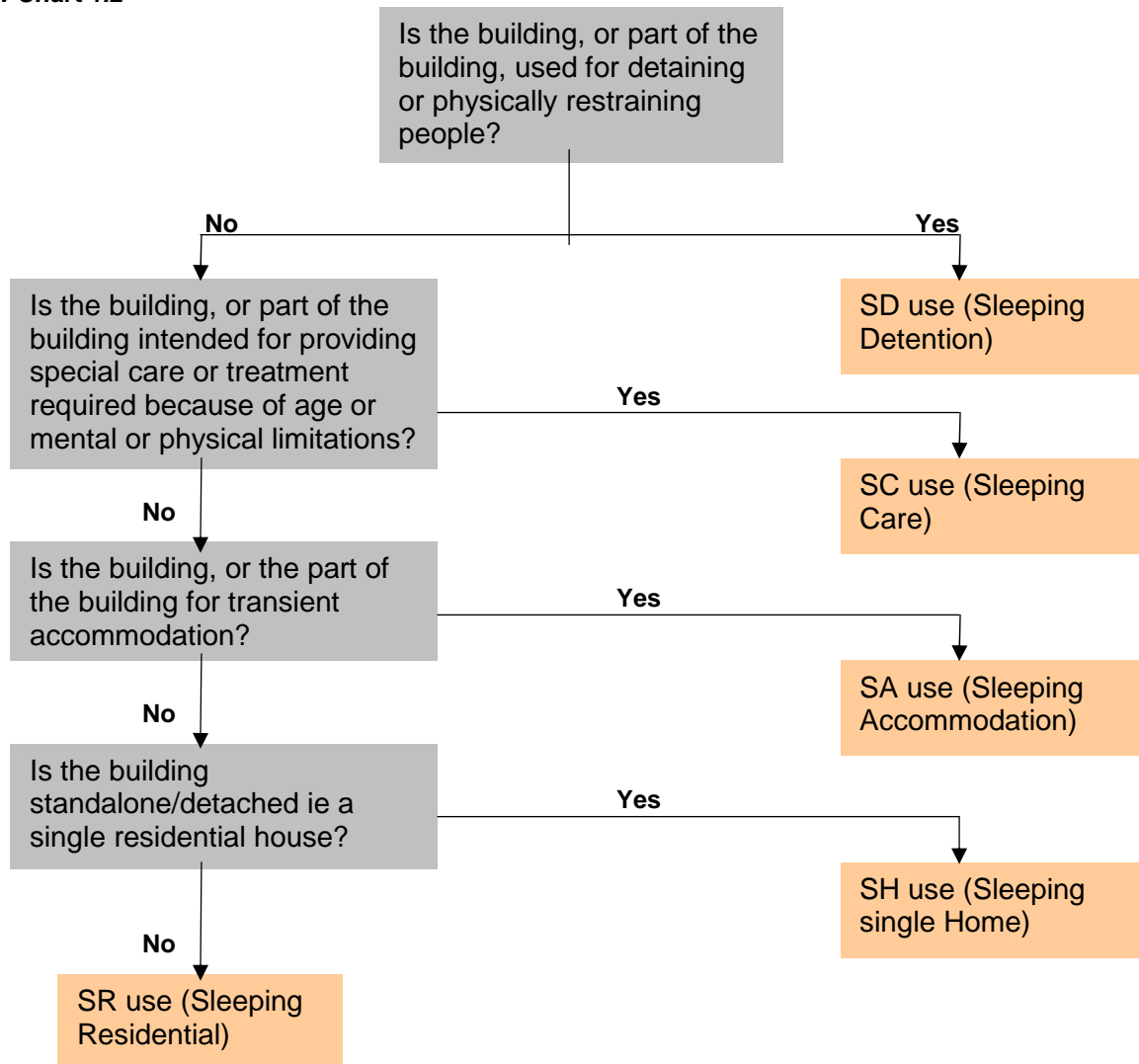
Buildings for crowd activities

Flow Chart 1.1



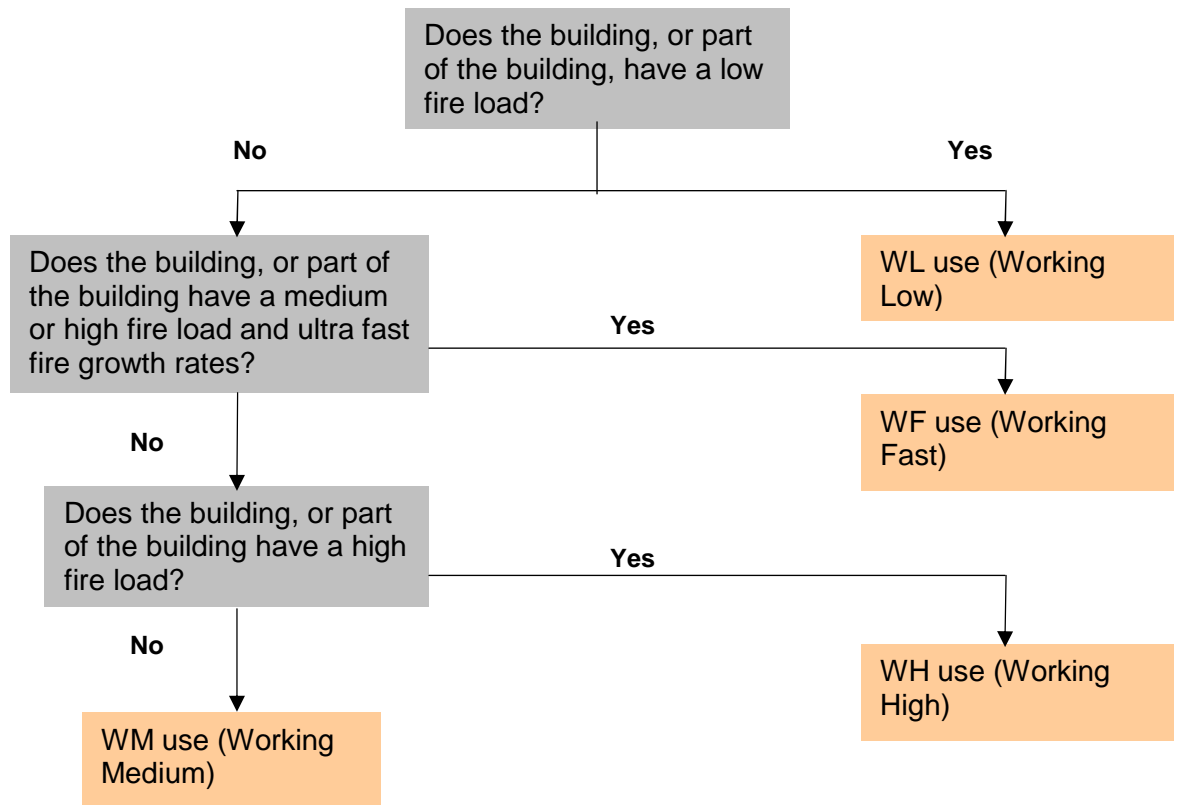
Buildings for sleeping activities

Flow Chart 1.2



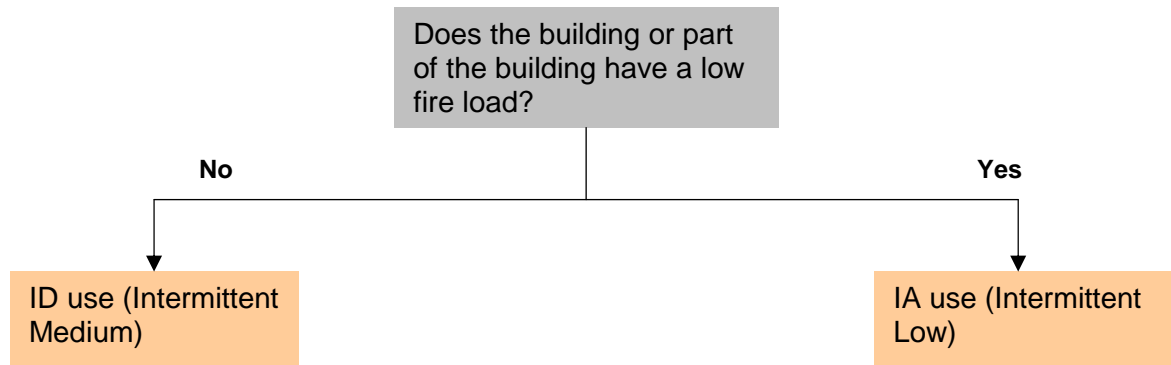
Buildings for working activities

Flow Chart 1.3



Buildings for intermittent activities

Flow Chart 1.4



APPENDIX 2 - Notification for change of use

Notification of change of use

Section 114 of the Building Act 2004

1. The building

Street address of building:

Legal description of land where building is located:

Building name:

2. The owner

Name of owner:

*Contact person:

Mailing address:

Street address/registered office:

Phone number: Landline:

Mobile:

Daytime:

After hours:

Facsimile number:

Email address:

Website:

First point of contact for communications with the Council: [Give full name, mailing address, phone number/s, facsimile number & e-mail address, which must be located in New Zealand. This person must have authority to permit a person to enter the building for the purpose of inspecting any specified systems.]

3. The project

The change of use relates to: *All of the building *Part of the building

*The part of the building includes: [describe the affected part of the building, for example, location within the building, level/unit number etc]

Building height (m)

Building area (m2) [total or footprint area]

Building layout [describe, reference plans]

Age of building/year first constructed

The period for which the building is proposed to be used in its new use [temporary, no intention to change again]

Reason for change of use [new occupancy, temporary Christchurch accommodation]

Is building work proposed? [Y/N]

*The building work proposed is for *for upgrades required by Section 115 *not in direct relation to section 115 requirements

The location of the building in relation to other buildings, public places, and natural hazards

The specified intended life/expected useful life of the building

4. The use

Current/old use:

Proposed/new use:

*The change involves incorporating a household unit where one did not exist before

Current use(s)

Occupant load [employees, contractors on site etc]

Occupant frequency [office hours, after hours, weekends]

Fire hazard category for building/part of the building [insert number]

Public access [Y/N]

*Type of public access [primary purpose, occasional etc]

*Frequency of public access [how many people spend time in or in the vicinity of the building]

*Building activities [office work, manufacturing etc]

New use(s)

Occupant load [employees, contractors on site etc]

Occupant frequency [office hours, after hours, weekends]

Fire hazard category for building/part of the building [insert number]

Public access [Y/N]

*Type of public access [primary purpose, occasional etc]

*Frequency of public access [how many people spend time in or in the vicinity of the building]

*Building activities [office work, manufacturing etc]

5. Compliance comparison

Provisions of the Building Code under s115	Current compliance/features	Full compliance/features	Upgrade required?
Means of escape from fire	[List/describe]	[List/describe]	[Y/N]
Protection of other property	[List/describe]	[List/describe]	[Y/N]
Sanitary facilities	[List/describe]	[List/describe]	[Y/N]
Structural performance	[List/describe]	[List/describe]	[Y/N]
Fire-rating performance	[List/describe]	[List/describe]	[Y/N]
Access and facilities for people with disabilities (if applicable)	[List/describe]	[List/describe]	[Y/N]
Other Building Code aspects (for new uses that are SH or SR)	[List/describe]	[List/describe]	[Y/N]

6. The proposed upgrades (delete if not applicable)

Provisions of the Building Code under s115	Proposed upgrades
Means of escape from fire	[refer to attached consent number if applicable]
Protection of other property	[refer to attached consent number if applicable]
Sanitary facilities	[refer to attached consent number if applicable]

Structural performance	[refer to attached consent number if applicable]
Fire-rating performance	[refer to attached consent number if applicable]
Access and facilities for people with disabilities (if applicable)	[refer to attached consent number if applicable]
Other Building Code aspects (for new uses that are SH/SR only)	[refer to attached consent number if applicable]

7. Attachments

The following documents are attached to this written notice:

- *Compliance worksheets *(delete if not applicable)*
- *Cost benefit analysis *(delete if not applicable)*
- *Plans and specifications *(delete if not applicable)*
- *Maps *(delete if not applicable)*
- *Fire reports *(delete if not applicable)*

8. Written notice

*I consider no upgrade requirements are required for the building in its new use, and I request the territorial authority supply me with written notice allowing the change of use to proceed

*I consider the upgrades proposed above are sufficient to ensure the building complies with the required aspects of the Building Code as nearly as is reasonably practicable, on this basis I request the territorial authority supply me with written notice allowing the change of use to proceed

Signature

Position:

On behalf of [name of the building owner]

Date: [insert date]

GLOSSARY OF TERMS

See section 7 of the Building Act 2004 and Clause A1 – Classified Uses under Schedule 1 of the Building Regulations 1992.

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