

## Building Consent Guideline

# Change of use to existing buildings

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### Purpose:

The purpose of this document is to provide guidance on the application of sections 114 and 115 of the Building Act 2004 in relation to a change of use.

The change of use provisions in the Building Act are used to upgrade existing buildings to the relevant current standards and ensure the building is fit for purpose for its proposed new use.

An owner of a building must not change the use of a building without written notice to Council (section 114).

The owner must not proceed with a change of use until they receive notification in writing from Council accepting the proposed change of use (section 115).

### What is a change of use?

A change of use in relation to a building is defined in Building (Specified Systems, Change of Use and Earthquake Prone Buildings) Regulation 2005/032:

*A change of use occurs when:*

- *A building or part of a building use 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.*

If a change in the use of a building or part of a building does not result in more onerous or additional Building Code performance requirements needing to be met, it is **not** considered a change of use.

### Uses of buildings

Building uses are well defined in [Schedule 2 of Regulation 2005/032](#):

Schedule 2 divides the uses of buildings into 4 broad categories:

- Crowd activities
- Sleeping activities
- Working, business and storage activities
- Intermittent activities

The four categories are further subdivided into subcategories where the level of Building Code performance requirement varies.

Note: Risk group classification as per the C/AS1-AS2 are not the same as building uses and must not be used to define a change of use.

### Legislative requirements

The requirements and definitions of change of use are contained in:

- Regulations 5 & 6, and Schedule 2 of the [Building \(Specified Systems, Change of Use and Earthquake Prone Buildings\) Regulation 2005/032](#)
- The [Building Act 2004](#) – sections 114 & 115

## Notification of proposed change of use

When dealing with change of use, a building consent may or may not always be required.

- **A building consent is required** where, due to the change of use, the building work is required to upgrade the building for compliance with the building code to the extent required by section 115 AND the building work is not exempt under schedule 1 of the Building Act or the specified system needs to be altered to reflect the new use of the building.

Applying for a building consent can be considered as a notification to Council of the proposed change of use.

The owner will be notified in writing of the Council's acceptance of the change of use by granting the building consent if the Council is satisfied on reasonable grounds that:

- the building in its new use, i.e., the areas in the building affected by the change of use, will comply as near as is reasonably practicable with the building code to the extent required by section 115  
**AND**
- the building as a whole (after the alteration) will comply as near as reasonably practicable with the building code to the extent required by section 112

- **A building consent is not required** where:

- The owner notifies the council and council is satisfied the building already complies fully with the building code performance requirements for the new use (building does not need an upgrade)
- Proposed building work is exempt (under Schedule 1 to Building Act)
- Council decides to exempt the work Schedule 1(2) (Assessment on the risk of the building work not being carried out in accordance with the Building Code or of endangering people or property)

Notification of the proposed change of use must be given to Council in writing by filling out form [AC2154 Notification of proposed Change of Use](#).

The owner will be notified in writing of the Council's acceptance of the change of use if the Council is satisfied on reasonable grounds that:

- the building in its new use, i.e., the areas in the building affected by the change of use, will comply as nearly as is reasonably practicable with the Building Code to the extent required by section 115

### Note:

- The owner will need to apply for a building consent to remove specified systems that are no longer required.
- Occasionally, existing specified systems are used to satisfy the requirements of the building code in the new use. In these cases, although the specified system does not need to be altered, the BWOF team should be notified by completing AC1129. This allows the BWOF team to revise the occupancy number of the building on the BWOF certificate. An example of this a building with a Type 7 system (Automatic fire sprinkler system with smoke detection and manual call points) changing from Crowd Large (CL) to Crowd Small (SC) and its specified systems do not need to be altered.
- As per Section 43 of the Building Act Building consent not required for energy work unless energy work that relates to any specified system.
- The change of use may affect the property rates.

## As nearly as is reasonably practicable (ANARP)

To determine the extent of any building code upgrades, ANARP will be applied to weigh the benefits versus the sacrifices. The benefits may be the rate of compliance in terms of safety, amenities, health, physical independence and wellbeing. While the sacrifices might be the cost, inconvenience, difficulty and disruptions.

The application of as near as is reasonably practicable must be applied on a case-by-case basis and considers the following factors:

- the size and complexity of the building
- the expected useful life of the building
- the reasonable practicality of the building work requiring upgrade
- the effect of the upgrade on safety and wellbeing of the occupants
- how often people visit the building
- the location of the building in relation to other buildings
- special cultural or historical value of the building
- the occupancy of the building
- the use of the building
- any other factors the TA considers relevant

Refer to [AC2226 Applying the term as near as is reasonably practicable](#).

## Resource consent

A resource consent may be required for a proposed change of use. The owner will need to check if the proposed use is permitted under the Auckland Unitary Plan or Hauraki Gulf Islands District Plan and therefore not require a resource consent. An existing resource consent applying to the site may need a variation of conditions. The owner needs to contact the Council Planning Helpdesk if they are proposing a change of use in their development. As examples, a 'change of use' can affect the number of car parking spaces required, or the area of floor space permitted for the proposed use.

## Documentation

The building consent application or notification for change of use should be accompanied by supporting documentation – plans, specifications, calculations and reports, so that Council can efficiently assess your application. The documentation should include:

- Confirmation the proposed new use will result in a change of use
- Comparison of the current level of compliance of the existing building to full level of compliance under the new use by providing following reports:
  - Fire report to address:
    - Means of escape from fire
    - Fire rating performance
    - Protection of other property
  - Accessibility report (if applicable) to address accessible route, signs, accessible car parks, accessible toilets and shower facilities, public counters, outdoor public areas; some of these items may not be applicable to the specific project
- Verification of the new use complies with section 115 for G1 sanitary facilities.
- Verification of the new use complies with section 115 for B1 structure.
- Information to demonstrate that all other provisions of the building code continue to comply after the change of use at least to the same extent as it did before the change of use.
- Extent of the proposed upgrade and where full compliance is not achieved, justification for the extent the existing building will be upgraded under the test of as nearly as is reasonably practicable
- For buildings with unit plans, body corporate approval may be required to change the use of the building.

## Assessing the application

- Research property file to confirm legally established use, building layout, BWoF status etc
- Establish if the proposed use is a change of use under the Building Act:
  - If the change of use is from SH to SR and can be assessed by referring to C/AS1, this application can be assigned to Res 3 assessor.
  - All other applications should be assigned to an assessor with a minimum Com1 competency as the application may involve a compliance schedule.
- Assess the notification to confirm that the building complies to the provisions of S115 (a) or (b). This process involves checking plans, fire reports, expert reports etc.
- Identify and advise the customer of any other approvals that may be required, e.g., resource consent, building consent, body corp approval.
- Identify and advise the customer if any building work or upgrades are required to achieve as near as is reasonably practicable compliance with the provisions of the Building Code to the extent required by section 115
- Send a Request For Information (RFI) to the customer, if required.
- Notification to planning and Development Contributions team if required -
- Notify the Building Warrant of Fitness (BWoF) team for SAP data changes if applicable.
- Place PDF DYNAMIC “approved” or “rejected” stamp on docs.
- Provide the owner with written notice that either:
  - The proposed change is not a change of use and does not require notification or written approval, OR
  - The Council is satisfied on reasonable grounds that the building in its new use will comply as nearly as is reasonably practicable with the relevant provisions of the Building Code and therefore no upgrade is required, OR
  - The Council is not satisfied that the building in its new use will comply as nearly as is reasonably practicable with the provisions of the Building Code and reject the change of use. OR
  - A building consent will be required to address the upgrade required for compliance to ANARP to the extent required by section 115
- Issue acceptance or refusal letter and place the approved Change of Use information on the property file.
- If Change of Use already took place and notification is rejected by Council, we also need to notify Compliance Team for enforcement action.

## References

Building Act 2004

Building (Specified Systems, Change of Use and Earthquake Prone Buildings) Regulation 2005/032

MBIE – [Change of use, alterations and extension of life](#)

Renovate – [Change of use](#)

## Process flow

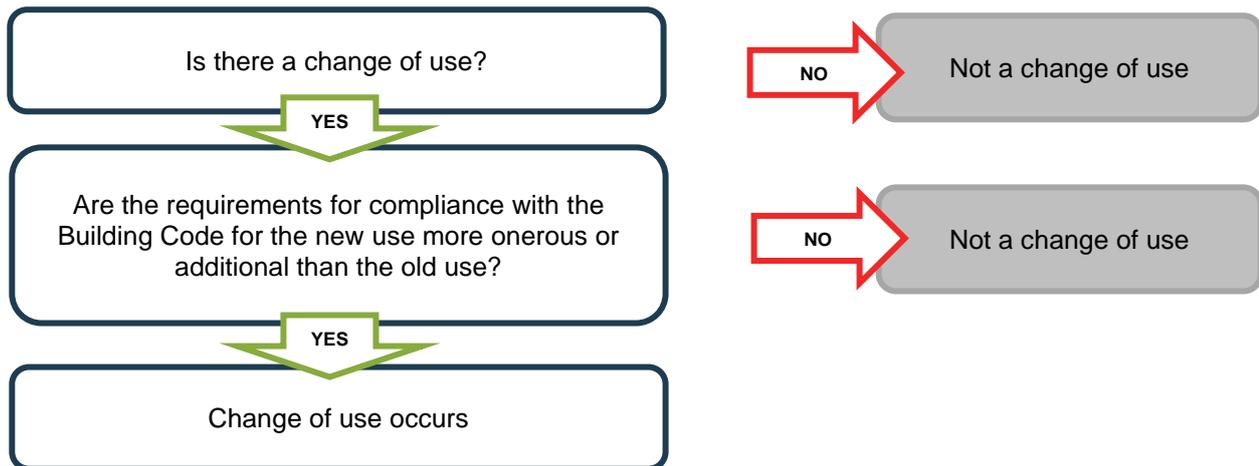
Step 1 - Confirm change of use

Step 2 - Determine the type of change of use

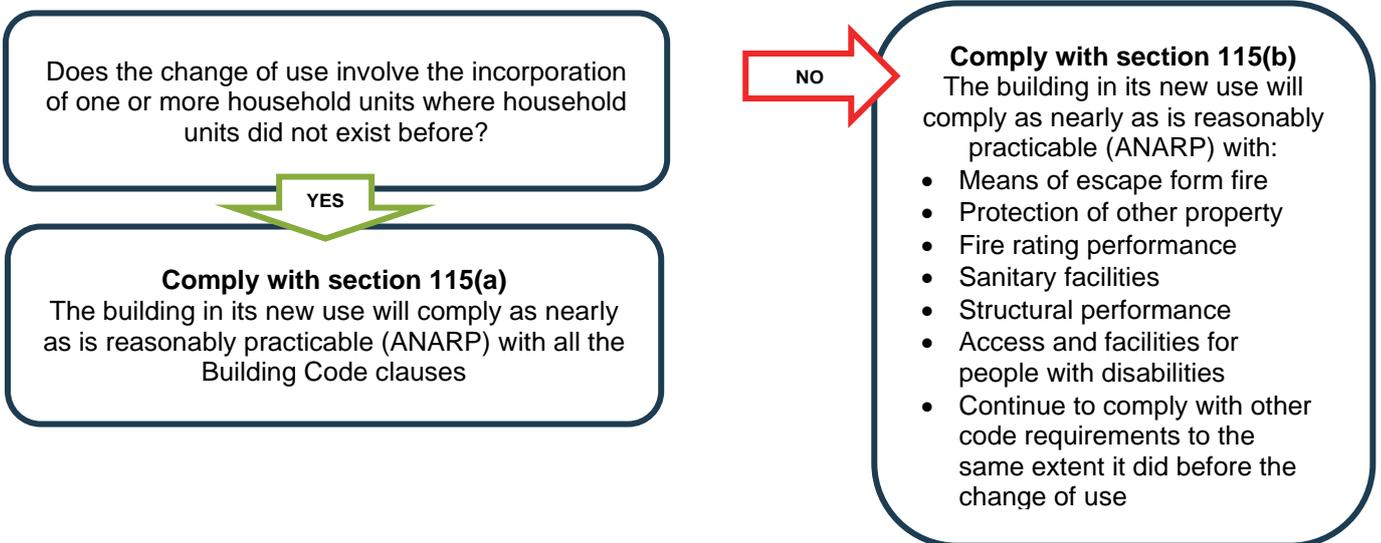
Step 3 - Compare current level of compliance of existing building to full level of compliance under new use

Step 4 – Assessment of proposed upgrade required by section 115

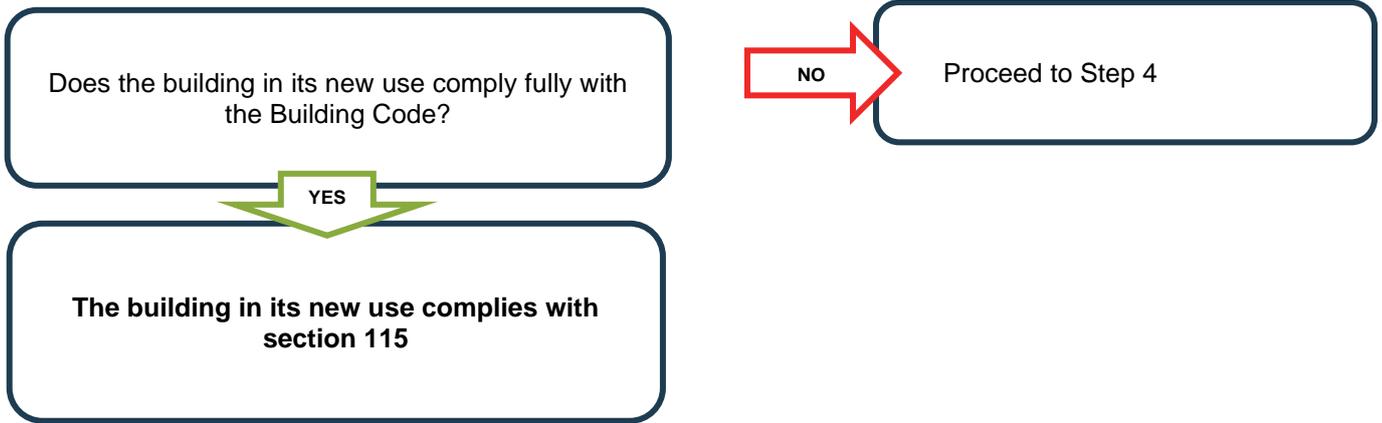
### Step 1 – Confirm change of use



### Step 2 – Determine the type of change of use



**Step 3 – Compare current level of compliance of existing building to full level of compliance under new use**



**Step 4 – Assessment of proposed upgrade required for compliance with section 115**

