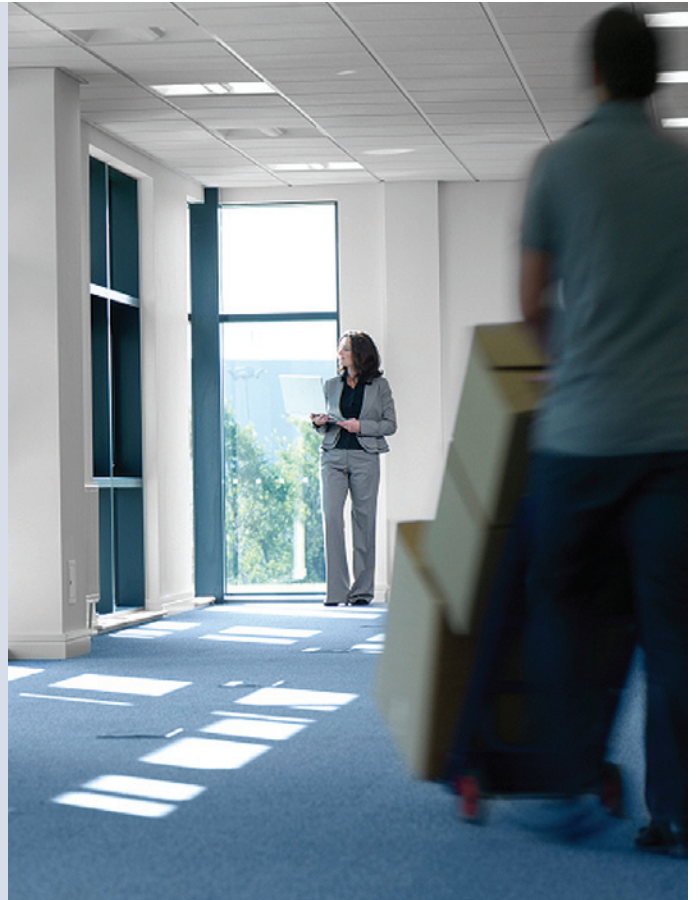


Proposing a change of use — watch out for the pitfalls

By John Wright,
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The last 12 months or more have seen many businesses forced to relocate to alternative premises. The supply of suitable premises has not always matched demand and a number of creative solutions have been exercised to meet accommodation needs.



In response to the immediate and mid term needs of many businesses and other non-residential accommodation, the Christchurch City Council has adopted a temporary accommodation application process.

Making an application

The Canterbury Earthquake (Resource Management Permitted Activities) Order 2011 (“the Order”) commenced on 15 March 2011. The Order is intended to meet the needs of displaced people, without the necessity to comply with the City or District Plans, or to go through the normal resource consent processes. Accordingly the requirements under the Resource Management Act 1991 have been streamlined for the purposes of temporary accommodation applications.

The Order expires on 18 April 2016 and any approval given under this legislation will also expire on that date.

The temporary accommodation procedure is specifically for persons displaced from their normal place of business because of:

- a) damage to, or destruction of, land or structures caused directly or indirectly by the Canterbury earthquake
- b) subsequent repair or reconstruction of structures or essential services
- c) land remediation works
- d) risk of damage to land or structures, or of injury to those inhabitants or passers-by, including risk arising because of the state of adjacent structures.

The starting point in making an application in the Christchurch City area is to complete a Christchurch City Council Temporary Accommodation Checklist.

If all the necessary standards in the checklist are complied with then a “complying” application can be made to the Council.

If the checklist cannot be fully complied with then a “non-complying” application is required. A commissioner is then appointed to consider whether the temporary accommodation can be permitted with suitable conditions attached.

Some of the relevant considerations taken into account by the commissioner will include the current zoning of a preferred site, the classification of the road frontage, the need for car parking, and the hours permitted within residential zones.

Risks

While a residential property may appear a good option from which to run a business, there are some hidden risks.

The granting of an application for temporary accommodation will trigger a change in use of the building. The new use may consequently attract additional Building Code requirements.

Section 115(b) of the Building Act effectively forbids a change of use unless the Council is satisfied on reasonable grounds that the building will comply with the Building Code:

- i) as nearly as is reasonably practicable with every provision of the Building Code that relates to:
 - (a) the means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance;
 - (b) access and facilities for people with disabilities (where members of the public will have access); and
- ii) will continue to comply with the other provisions of the Building Code to at least the same extent as before the change of use.

If building work is required as part of a change of use then a building consent may also be necessary. Any application for a building consent will require the Council to consider whether the building will comply as nearly as is reasonably practicable with the Building Code to the extent required by the Building Act.

Serious consideration should therefore be given to the state of repair of the building and its foundations before an application for a building consent is made. Specifically, old or damaged foundations may require major work depending on whether the land is zoned TC1, TC2 and TC3.

Any building work will also need to be notified to the insurers. No building work should be undertaken unless insurance cover will continue before, during, and after any building work. In addition, no change of use should be implemented without obtaining "commercial use" insurance for the building and an assurance that residential use cover can be re-implemented in the future.

Conclusion

While temporary accommodation for businesses in residential properties appears a practical step, there are hidden risks to building owners when the use of a building is changed.

A change of use can trigger additional compliance with the Building Code, whether as a result of Section 115 of the Building Act or the result of a building consent. Potentially, the costs involved in changing the use of a building could substantially outweigh any benefit to changing the use.

Any building work required as part of a change of use may also have implications for ongoing insurance.

If you own residential property and you are thinking of changing the building's use, we suggest you seek advice from your solicitor before making any formal applications.

If you would like to discuss information related to the article, please contact John Wright at MDS Law.



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