



# Guidance to Assist the Development of Seasonal Workers Accommodation

February 2018 ●●●●



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## Use of this document:

This document is intended as a general guide to assist the design and construction of seasonal workers accommodation in the context of horticultural activities. While Horticulture New Zealand has taken every care in preparing this guidance, it should not be relied upon as establishing all requirements under the Resource Management Act 1991, the Building Act 2004, Building Code or Building Standards or the Immigration Act 2009. Readers should always refer to the appropriate regulation as the source document, and be aware that for specific situation or problems it may be necessary to seek independent legal advice.

# Guidance to Assist the Development of Seasonal Workers Accommodation

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## Introduction

This guidance document has been prepared by Horticulture New Zealand to assist growers in developing seasonal workers accommodation (SWA). This document aims to summarise the most relevant legislation that needs to be considered when designing and building SWA, hopefully assisting growers to more effectively liaise with Council's and future proof the accommodation they provide.



## Regulatory Context

There are three key areas of regulation that must be considered when designing and building SWA:

- Resource Management Act 1991 (RMA)
- Building Regulation – Building Act 2004, Building regulations and the Building Code
- Recognised Seasonal Employer (RSE) worker accommodation standards

The relevant RMA and Building regulation are largely administered by District Councils. The RSE worker accommodation standards are administered by Immigration New Zealand and are only relevant if you are employing people from the RSE scheme. Each area of regulation has a different purpose and function, however these laps over when it comes to SWA and therefore all three need to be considered when designing and building the accommodation.

This is discussed below.



## Resource Management Act 1991 (RMA)

The RMA is New Zealand's primary piece of legislation that sets out how we should manage our environment. It is based on the principle of sustainable management which involves considering effects our activities have on the environment, now and in the future, when making resource management decisions. Local Councils administer the RMA through Regional and District Plans.

### Resource Consent

When it comes to SWA, it is likely that a resource consent will be required under the District Plan to establish the activity. Some District Plans specifically provide for this type of activity and understand what differentiates it from other types of accommodation, such as; visitor accommodation, motels, backpacker's and Bed and Breakfasts. The District Plan rules may include bulk and locations restrictions, such as; setbacks to boundaries, height and site coverage. There will also be a carparking requirement, which should typically be a low number of car parks given that most seasonal workers travel together in a van.



Other District Plans, typically those that are yet to be reviewed, do not specifically provide for SWA. When this is the case, you will need to provide a very clear explanation to Council of what SWA is and why it is different to other types of accommodation. The key difference is that SWA is not available for the public to book. It is solely for the use of able bodied employees of your horticultural operation. For this reason, you will not need disability access or other aspects that accommodation open to the public requires, such as roadside signage and a reception, or large number of car parks. If the SWA facility is to be a standalone house on the property, then there will be requirements such as number of dwellings per property that will need to be met.

Resource consent applications take up to 20 working days to process on a non-notified basis. Should the application be notified, then Council processing may take up to 130 working days. Council can decline a resource consent or grant it subject to appropriate conditions. You have five years to 'give effect to a granted resource consent (i.e. – build the accommodation), otherwise it will lapse.

Development contributions may be payable to Council and the amount varies between Districts, as the amount depends on services provided.

### Existing Use Rights (Certificate of Compliance)

Alternatively, existing use rights might apply, for example:

- Accommodation facilities or dwellings that were lawfully established prior to the District Plan.
- Accommodation facilities or dwellings that were lawfully established under previous District Plan rules, which permitted these at the time, but these rules have since been removed.

Determining existing use rights is not straightforward as it will also require an assessment of any changes in effects that have occurred overtime and whether the accommodation use has been discontinued at any point. Proof is required of the continued use as workers accommodation.

If you have existing use rights, you won't need to get a resource consent or comply with new District Plan provisions. However, if you wish to confirm existing use rights, you need to apply for a "certificate of compliance – existing use rights" (S.139A Resource Management Act 1991) and there will be an application fee. These take up to 20 working days to process.

The first step in establishing resource consent requirements or an existing use right should be talking to your District Council. You can phone or request a meeting with the Council's Duty Planner to establish your resource consent requirements and find out what information you will need to provide with any application. For larger or more complex applications, it is recommended that you engage a planning consultant to prepare the application for you.

#### Note:

Contact details for local planning consultants can be found on the following website that is managed by the New Zealand Planning Institute: <https://www.planningconsultants.org.nz/>



## Building Regulation

The regulation and performance of buildings sits under the following three-part framework:

- the Building Act 2004 (the Building Act), which contains the provisions for regulating building work
- the various Building Regulations, which contain prescribed forms, list specified systems, define 'change of use', and set out the rate of levy and fees for administering various functions under the Building Act, and
- the Building Code, which is contained in Schedule 1 of the Building Regulations 1992

### The Building Act 2004

The Building Act provides the mandatory framework for the building control system to be followed when undertaking building work in New Zealand.

It applies to all:

- buildings including Crown buildings, except those which may be exempt for reasons of national security, and
- components in a building, including plumbing, electrical, mechanical installations and life-safety systems.
- All buildings unless specifically exempt by the Act or the District Council.

### The Building Code

The Building Code is contained in Schedule 1 of the Building Regulations 1992. It sets out performance criteria that building work must meet in New Zealand. It covers aspects such as structural stability, access, moisture control, durability, services and facilities, protection from fire and energy efficiency. The Building Code does not prescribe how work should be done, but states how completed building work and its parts must perform. One advantage of having a performance-based Building Code is flexibility. It does not contain prescriptive requirements or stipulate that certain products or design methods must be used, which provides for developments and innovation in building design and technology.

**Note:** The purposes of the Building Act include setting performance standards to make sure people using buildings can do so safely and without endangering their health, and that they can escape if the building is on fire. However, having a performance-based Building Code does allow for innovation. All 'building work' undertaken to construct SWA must comply with the Building Code, whether or not a building consent is required.

### Access and Facilities for People with Disabilities

The Building Act requires certain buildings that are being constructed or altered to have 'reasonable and adequate provision' by way of access, parking provisions and sanitary facilities for persons with disabilities who may be expected to visit or work in the building and carry out normal activities in these building. Such buildings include hotels, motels, hostels, boarding houses 'and other premises providing accommodation for the public'. The access and facilities requirements are primarily spelt out in the Building Code clauses D1, which covers movement throughout buildings, clause G1 that covers toilet and bathroom facilities and clause G3, which deals with kitchens.



<sup>1</sup> Schedule 2 of the Building Act 2004 identifies the building types that are required to have access and facilities for persons with disabilities: [www.legislation.govt.nz/act/public/2004/0072/latest/DLM309341.html](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM309341.html)

If you are altering or changing the use of an existing building, you need to comply as nearly as is reasonably practicable with the Building Code provisions relating to access and facilities for people with disabilities (this 'test' differs from that required for newly constructed buildings). The new building work that is part of the alterations must comply with the Building Code.

However, there is the ability to seek exemption from providing the disability provisions under s118 of the Building Act.

There may be opportunities for designers to utilise alternative solution pathways to demonstrate compliance with the access and facility provisions of the Building Code. This will require the designer to clearly demonstrate how compliance is achieved with the relevant performance requirements of the Building Code.

The building's use, its attributes, importance level, lifespan and occupancy are also important considerations that need to be considered as part of this analysis. For example, it may be that particular areas or facilities are only likely to be used by ambulant workers, whereas communal areas such as cafeterias are more likely to be used by all workers or visitors of the building, including non-ambulant workers or visitors. It is important to note that accommodated workers may experience injuries that could affect their mobility. This is where the designer needs to clearly articulate how the building is going to be used (by who, how this is managed) and the attributes of the building, so the Council can accurately assess compliance with sections 112, 113, 115, 116, 118 and 119 of the Building Act.



In 2008 HortNZ and the Department of Building and Housing developed a draft Code of Practice (COP) for seasonal worker accommodation in respect of New Zealand Building Code requirements for access and facilities for people with disabilities.

#### The COP recommends that:

1. All buildings proposed to accommodate seasonal workers will comply fully with all the relevant clauses of the New Zealand Building Code. The interpretation of section 118(1)(a) of the Building Act 2004 suggested in this code of practice, if accepted by the building consent authority, will mean that access and sanitary facilities for people with disabilities will not be required where the workers are required by the nature of their employment to be able to move without wheelchairs.
2. Where the buildings will accommodate seasonal workers under the RSE Scheme, the industry will abide by the rules of the scheme and any agreements as to living conditions for workers that have been agreed with the Department of Labour.
3. Any processing or factory facilities will be treated as if there is potential for wheelchair users to access and work in those buildings.
4. In the event that a worker becomes reliant on a wheelchair for movement, or is otherwise disabled, either temporarily or permanently, through accident or illness and requires accessible sanitary or other facilities, the industry accepts that alternative accommodation will be provided for any period for which it remains appropriate for the worker to be engaged.
5. Building owners agree to only accommodate people in seasonal worker accommodation who, by the nature of their employment, do not rely on a wheelchair for movement. In the event that the building containing seasonal worker accommodation is proposed to accommodate other employees or to undergo a change of use so that this code of practice would no longer apply, then the building owner undertakes to approach the relevant territorial authority and to address any additional requirements for the building's new use. This may include triggering the requirement to provide access and facilities for people with disabilities under section 115 – Code Compliance requirements: change of use of the Act.
6. Any building consent applications for seasonal worker accommodation that intends to refer to this code of practice should be lodged with the code enclosed. The industry acknowledges that this code of practice is not legally binding and that the final decision in each case rests with the building consent authority.

<sup>2</sup> See Clause A3 of the Building Code: [www.legislation.govt.nz/regulation/public/1992/0150/latest/whole.html](http://www.legislation.govt.nz/regulation/public/1992/0150/latest/whole.html)

<sup>3</sup> Now known as the Building and Housing Group within the Ministry of Business, Innovation and Employment.

## Determinations

Determinations<sup>4</sup> provide a means of appeal for disputes about decisions made by a local authority about Building Code compliance. If an owner, designer, or another affected party does not agree with a council's decision they may seek a determination from the Building and Housing Group within the Ministry of Business, Innovation and Employment<sup>5</sup>. A determination is a binding decision made by the Building and Housing Group under the Building Act. It provides a way of solving disputes or questions about the rules that apply to buildings, how buildings are used, building accessibility and health and safety. Information is available on the Building and Housing Group's website [www.dbh.govt.nz/determinations](http://www.dbh.govt.nz/determinations).

Determination 2008/111<sup>6</sup> sets a precedence for Seasonal Workers Accommodation with respect to the provision of access and facilities for people with disabilities. The determination arose from the local authority's decision that the proposed building must have access and facilities for people with disabilities. This decision was appealed to the then Department of Building and Housing.

### The key facts of the case were:

1. The facilities are solely for seasonal worker accommodation.
2. By virtue of the nature of the work, persons requiring wheel chair for movement cannot carry out such work and would not be employed to carry out such work.
3. The orchard does not employ people who are not fully fit and cannot move without a wheelchair.
4. No visitors will be permitted to use the facilities.
5. A fresh resource consent would be required if the use of the buildings were to change from seasonal worker accommodation to any other use.

The decision was to reverse the local authority's decision to refuse to issue a building consent unless a ramp and accessible toilet were built.

This determination sets a useful precedence. It would be useful to provide a copy of this determination to your architect / designer and local authority for their reference, as it demonstrates that a waiver to the requirements with respect to access and facilities for people with disabilities is appropriate in this circumstance.



## Applying for Building Consent

A building consent authority (your local District council's building control unit) will assess your building consent application. It is important that practitioners (architects and designers) provide quality documentation that clearly demonstrates Building Code compliance. Quality building consent documentation along with a pre-application meeting and a detailed design brief will help ensure the building consent process is much smoother. There may be a specific form required to apply for an exemption from providing disability facilities.

As recommended above, it will be useful to provide a copy of Determination 2008/111 to your architect/designers and your local authority when lodging a building consent.

A Council has up to 20 working days to process an application for building consent.

<sup>4</sup> [www.dbh.govt.nz/determinations-about-determinations](http://www.dbh.govt.nz/determinations-about-determinations)

<sup>5</sup> Previously the Department of Housing and Building

<sup>6</sup> [www.dbh.govt.nz/UserFiles/File/Building/Determinations/2008/pdf/2008-111.pdf](http://www.dbh.govt.nz/UserFiles/File/Building/Determinations/2008/pdf/2008-111.pdf)



## RSE Worker Accommodation Standards

The Recognised Seasonal Employer (RSE) scheme came into effect in April 2007. The policy allows the horticulture and viticulture industries to recruit workers from overseas for seasonal work when there are not enough New Zealand workers.



Immigration New Zealand (INZ) administer the scheme and has RSE worker accommodation standards that must be complied with to qualify RSE employers to recruit RSE workers. These standards were updated and from 1 January 2018 mirror WorkSafe's Worker Accommodation Fact Sheet (November 2016).

The key changes from the accommodation standards that were in place prior to 1 January 2018 is an increase in the living space, and toilets and showers required per accommodated worker. Application has been made to INZ to permit grandfathering where accommodation was built complying with the earlier INZ standard.

INZ have also recently introduced a 'Self-Audit' form for RSE Employers to use – a copy of the version current in October 2017 is attached and that form implements the new INZ accommodation standard that applies from 1 January 2018. RSE employers can use this form to assess whether the accommodation for their RSE workers meets the INZ required standard.

**i More information about this scheme can be found on the Immigration New Zealand website:**

<https://www.immigration.govt.nz/about-us/research-and-statistics/research-reports/recognised-seasonal-employer-rse-scheme>

**Note:**

A Recognised Seasonal Employer (RSE) is a New Zealand employer whose core area of business is horticulture or viticulture and who has had an application for RSE status approved by INZ. An RSE is able to apply for an Agreement to Recruit (ATR) that will allow them to recruit workers who are not New Zealand citizens or residence class visa holders under the RSE Instructions.

<sup>7</sup> Immigration New Zealand Definition - <https://www.immigration.govt.nz/opsmanual/59461.htm>



# Checklist for ●●●●

## Complying with requirements for seasonal workers accommodation

RSE Accommodation	Yes	No	Refer to page:
1. Are you currently, or planning to be, an RSE employer?			4
a. If yes, have you informed your architect/designer that accommodation must comply with Immigration NZ RSE Worker Accommodation Standards?			4

Resource Consent	Yes	No	Refer to page:
2. Have you checked with the District Council if you require resource consent? <i>(If not required, go to step 4)</i>			4
3. Have you contacted a local planning consultant to prepare and lodge a resource consent application?			4

Building Consent	Yes	No	Refer to page:
4. Do you have a building consent? <i>(If yes, go to step 8)</i>			7
5. Have you engaged an architect/designer to prepare building plans?			7
6. Have you informed your architect/designer that you do not have to provide access and facilities for people with disabilities?			5/6
7. Have you lodged a building consent application with your District Council?			7
8. Has your building consent and resource consent (if applicable) been approved by your District Council?			

### If you answered 'Yes' to step 8

You are now ready to build your seasonal workers accommodation