

Determination 2023/035

Whether proposed alterations to a dwelling to replace internal stairs with a lift comply with Clause D1 *Access routes*

975 Whangaparaoa Road, Matakatia, Whangaparaoa

Summary

This determination considers whether proposed building work to alter an existing dwelling to replace an internal stair with a lift will comply with Building Code Clause D1 *Access routes*. The determination considers whether, regardless of the lift, a stair is also required to allow access between floors, to comply with clause D1.3.3(e), when both floors have access to the ground outside.



Figure 1: View of dwelling from road, looking east¹

¹ Image reproduced from Google Maps, accessed 6 October 2023.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg, Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The parties and matter to be determined

- 1.1. This is a determination made under due authorisation by me, Charlotte Gair, Manager Advisory, Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.²
- 1.2. The parties to the determination are:
 - 1.2.1. the owners of the property, E and R Bardsley (“the owners”), who applied for the determination
 - 1.2.2. Auckland Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. This determination arises from the authority’s view that proposed building work to remove an existing stair between the two floors in the owners’ dwelling, and replace it with a lift, would not comply with Clause D1 *Access routes*. The authority considers that under clause D1.3.3(e), access “within” the dwelling to the “upper level” requires stairs, regardless of whether a lift is also provided.
- 1.4. The matter to be determined, under section 177(1)(a), is whether proposed alterations to a dwelling to remove an existing internal stair, and install a new lift, will comply with Building Code Clause D1 *Access Routes*.
- 1.5. In deciding this matter, I will consider clause D1.3.3(e), and the current access routes and means of escape from fire from both floor levels of the existing dwelling.

Issues outside the determination

- 1.6. I have not considered any other aspects of the Act or of the Building Code, including:
 - 1.6.1. any decision by the authority in relation to an application for a building consent³

² The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

³ The building work detailed in the application for building consent in this case includes, but is not limited to, the removal of the internal stair and installation of the proposed new lift.

- 1.6.2. the compliance of the proposed lift with the Building Code, including Clause D2 *Mechanical installations for access*
- 1.6.3. the Building Code compliance of the other building work detailed in the application for a building consent
- 1.6.4. the compliance, or otherwise, of the existing internal stair with the Building Code (noting its construction pre-dates when the Building Regulations 1992 came into effect).
- 1.7. The authority has stated that the application for a building consent would not have satisfied section 112(1)(b)(i)⁴, as the proposed work would result in the building not complying when it currently complies. This determination does not consider section 112, as the grant of the building consent is not the matter for determination.

2. The building and building work

- 2.1. The dwelling was originally built in the 1970s. It is set on a sloping section; its highest point is to the west (the road frontage) and the lowest point is to the east. The dwelling has two floor levels, with the larger ground floor at the same level as the road. Refer to Figures 1, 2 and 3.⁵

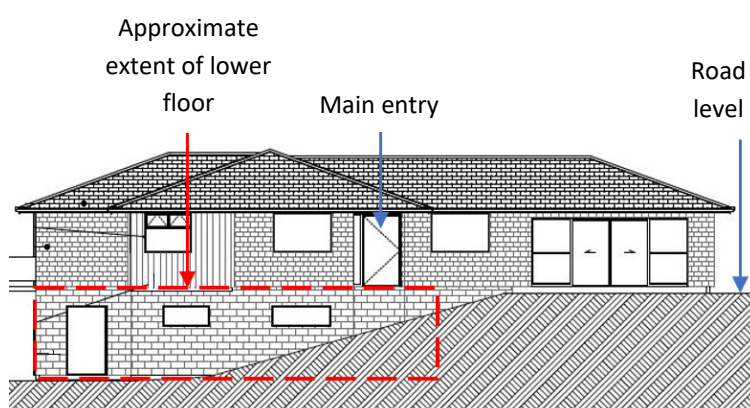


Figure 2: North elevation (not to scale)



Figure 3: View looking east down driveway

- 2.2. The ground floor appears to be set out and used as the principal part of the dwelling (eg bedrooms, living room, kitchen, and bathrooms). The lower floor is smaller in area and has similar spaces to those on the ground floor, including a separate laundry room.

⁴ Section 112: Alterations to existing buildings.

⁵ Figures 2 and 3 have been reproduced from images provided by the owners' agent.

- 2.3. The main entry to the dwelling and ground floor is located on the north side. A short concrete ramp leads up to the dwelling's main entrance from a concrete driveway.
- 2.4. The ground floor has another direct access to the outside via external double doors from a rumpus/office room which lead directly onto the driveway at road level.
- 2.5. The driveway extends from the road frontage, down the north side of the dwelling, to the lower floor (see Figure 3).
- 2.6. The lower floor level is below the east end of the dwelling. This floor level has three separate external doors on its east side that lead to the outside.
- 2.7. At present, internal access between the two floors is via a stair, which incorporates two flights of steps and a landing.
- 2.8. The manufacturer's information for the proposed electrically-powered lift states that it is 1278mm long x 1046mm wide, and can carry 2-3 people.

3. Background

- 3.1. The owners purchased the property in 2022. On 29 November 2022, the owners applied for a building consent (number BCO10360885) for the building work to remove the existing stair and install a new lift in its place.⁶
- 3.2. On 16 January 2023, the authority sent the owners a request for further information, asking them to "Revise the floor plans to show compliance [with] clause D1.3.3(e)".
- 3.3. On 26 January 2023, the owners replied to the authority stating, "the upper [ground] floor has direct access to the outside independently of the internal stairs in addition to the lift". The owners clarified this on amended floor plans by marking the "direct egress to outside" routes for each floor.
- 3.4. On 27 January 2023, the authority replied to the owners stating, "the access between the floors via stairs is a requirement of [clause] D1, the proposed access through the outside is not accepted".
- 3.5. The parties exchanged further correspondence on 27 January 2023. The owners stated that many dwellings have separate basements, and that while fire egress is important, there "is no lack of fire egress from any point" in the dwelling, so the stairs were not required for this purpose. The owners stated there is nothing in clause D1 "explicitly" requiring internal stairs between floors, and nothing in the

⁶ The proposed means of compliance with clause D1 specified in the application for building consent is the Acceptable Solution D1/AS1: *Acceptable solutions and verification methods for New Zealand Building Code Clause D1 Access routes*. Amendment 6, effective from 1 January 2017. The owners have not sought an associated waiver or modification in relation to clause D1.

clause “that negates the use of external steps off a deck or veranda. Rather we need an ‘access route’. If the access route has adequate slip resistance, we see no reason it cannot be external”.

- 3.6. The authority stated that the example of a basement did not apply to the owners’ dwelling, and that “no stairs will [only] be accepted if the [lower] floor is separated by fire rating and is being treated as a different unit”. The authority said, “the requirements for stairs is as per ... the functional requirements of code clause D1, clause D1.2.1 and clause D1.3.3[e]”.
- 3.7. The authority further stated, “internal stairs will be required for this building”, and “external stairs are not accepted as they will not comply with the functional requirements⁷ and objective of [clause] D1”, particularly:
 - 3.7.1. clause D1.1, which requires safeguarding of people during movements “within” the building, and
 - 3.7.2. clause D1.3.3(a), which requires an “adequate” access route, with the definition of “adequate” as set out in Clause A2 *Interpretation*⁸.
- 3.8. On 1 February 2023, the owners replied to the authority stating, “the stairs are unusable, for both casual usage and in an emergency” and “adding the lift will simply afford [the owners] with a basic amenity to get up and down inside [the dwelling], so to deny that seems to defeat the intent of the building code”.

4. Submissions

The owners

- 4.1. The owners submit (in summary):
 - 4.1.1. The existing stair is “steep and narrow”, and it is “neither safe nor easy for the occupants to use on a day-to-day basis. They predate the modern [Building] code requirements and hence present a hazardous situation for able bodied occupants let alone mobility compromised ones”. The occupants use the concrete driveway as the access route between the floors.
 - 4.1.2. The purpose of the building work is to make the property “more workable”, with the lift designed to allow “safe movement between the floors” because the existing stair “is considerably less practical and safe”. Replacing the stair with a lift would provide a practical solution to achieving compliance.

⁷ Clause D1.2.1 provides “Buildings shall be provided with reasonable and adequate access to enable safe and easy movement of people”.

⁸ Adequate means adequate to achieve the objectives of the building code.

- 4.1.3. Clause D1.3.3(e) states stairs are required for upper floors, but that requirement is intended to ensure there is “egress in the case of a fire or other emergency”. Further, both floors have direct egress to the outside, and the property is on a slope. The “property meets the intent of the Building Code, irrespective of if it has stairs or a lift, as there is always safe egress”.
- 4.1.4. The requirements in clauses D1.2.1 and D1.3.3(e) would be improved by the proposed building work. The purpose of access routes is twofold, to “provide safe and easy access under normal, day to day conditions” and “to provide safe egress in emergency situations primarily being fire.”
- 4.1.5. Someone using the stair, such as during an emergency, is “more likely to have a fall”, which would be contrary to the requirements of the Building Code. If there was a fire, there are several direct routes to escape from both floors. “There is no instance where it makes sense to use the stairs or lift in the event of a fire.”
- 4.1.6. In relation to clause D1.3.3(e), “the term ‘Upper floors’ is not very well defined” and should be interpreted “in this context as being a floor which does not have direct access to the ground outside the [dwelling].” The owners’ dwelling is “better considered a ‘split level home’ rather than the classic two storey home.” The intent of this clause is to “prevent occupants from potentially being isolated on a level that does not have direct egress to the outside.”
- 4.1.7. Regarding clause D1.1(a), and safeguarding people from injury during movement within buildings, there is much more chance of injury from people using the stair, rather than a lift, due to the existing stair being steep and narrow.
- 4.1.8. The authority’s interpretation of the Building Code in this case is “imposing a harsh situation” on the owners, as they have to “walk outside ... to get down to [the] laundry”. They had looked at alternative locations for the lift, but none were acceptable as they used “too much of the habitable space and left [the owners] with a non-functional living area.”

The authority

- 4.2. The authority submits (in summary):
 - 4.2.1. The objective of clause D1 includes, “to safeguard people from injury during movement into, within and out of buildings”.
 - 4.2.2. The performance criteria in clause D1.3.3(e) “includes stairs to allow access to upper levels irrespective of whether an escalator or lift has been provided

and must be achieved to enable the objectives and functional requirements to be met.”

- 4.2.3. There is more than one compliance path to meet performance criteria, however, the authority had not received, as part of the application for building consent, a proposal for an alternative solution that would enable the requirements in clause D1.3.3 to be met.
- 4.2.4. There are other locations in the dwelling where a lift could be installed which would allow the stair to be left in place.
- 4.2.5. Section 112 is triggered by the proposed building work, and its requirements would not be satisfied, as “the proposed work would have resulted in the building not complying when it currently complies”.

5. Discussion

- 5.1. The matter to be determined is whether proposed alterations to a dwelling to remove an existing internal stair, and install a new lift, will comply with clause D1.

The legislation

- 5.2. Section 3 sets out the purposes of the Act, including:
 - (a) ... the setting of performance standards for buildings to ensure that—
 - (i) people who use buildings can do so safely and without endangering their health; and
 - (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
 - (iii) people who use a building can escape from the building if it is on fire; and
 - ...
 - (b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.
- 5.3. Section 4 sets out the principles of the Act, including:
 - (2) In achieving the purpose of this Act...
 - (a) when dealing with any matter relating to 1 or more household units,-
 - (i) the role that household unit play in the lives of people who use them, and the importance of-
 - (A) the building code as it relates to household units; and
 - (B) the need to ensure that household units comply with the building code ...

5.4. Section 17 provides:

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

5.5. Clause D1 is the relevant Building Code clause that the building work in this case must comply with. An objective of clause D1 is to:

- (a) safeguard people from injury during movement into, within and out of *buildings*,

5.6. The relevant functional requirement is in clause D1.2.1:

D1.2.1 *Buildings* shall be provided with reasonable and adequate access to enable safe and easy movement of people.

5.7. The relevant performance requirement is in clause D1.3.3(e):

D1.3.3 Access routes shall:

...

- (e) include stairs to allow access to upper floors irrespective of whether an escalator or lift has been provided, ...

5.8. Clause D1 relates to access routes; “access route” is defined in Clause A2 *Interpretation* as:⁹

access route a continuous route that permits people and goods to move between the apron or *construction* edge of the *building* to spaces within a *building*, and between spaces within a *building*.

Compliance with clause D1

5.9. The authority is of the view that the proposed building work does not comply with clause D1.3.3(e), because it requires stairs to be provided to upper floors regardless of whether a lift has been provided.

5.10. The authority is taking a literal reading of clause D1.3.3(e), and by referring to the lower floor as its starting point, it is designating the ground floor as an “upper floor”, and therefore requiring a stair to access it.

5.11. However, in this case, the setting out and configuration of the dwelling is such that the main entrance into the dwelling is close to road level and the driveway. This enables people to approach the main entrance safely and easily from the road and it is this that allows access into, and egress from, the ground floor.

5.12. In my view, the reference in clause D1.3.3(e) to “upper floors” is not intended to encompass buildings where each floor can be accessed directly from the ground

⁹ An access route may contain features such as corridors, doors, stairs, ramps, and lifts. Information accessed from [D1 Access routes | Building Performance](#) on 8 November 2023.

outside, and where reasonable and adequate access has been provided between the floors.

- 5.13. I note that the authority has also stated that internal stairs are required for the purposes of clause D1.3.3(e), and external stairs are not sufficient. I do not agree that this is the case. Clause D1.3.3(e) does not state or imply that stairs are required either internally or externally to the building. If there was an intention to limit the clause's application to just internal stairs, then this would have been stated.
- 5.14. In reaching this view on the need for internal stairs, the authority has particularly relied on the word "within" in clause D1.1(a). However, this part of the objective is about safeguarding people's movements inside buildings. It does not create a requirement that movement between different areas within the dwelling must be made available by stairs (just that if there are stairs, they must safeguard people from injury).
- 5.15. I have also considered the purposes and principles of the Act. In my view, none of the purposes or principles would be furthered by requiring the owners to retain or install a stair between the floors of their dwelling. The new lift would allow people who use the dwelling to do so safely and will contribute to the physical independence and well-being of those people.
- 5.16. In this case, the only time the lift may not be available to the occupants would be during periods when it becomes inoperable (for example, it breaks down or requires repair or maintenance). In that instance, access between the floors is provided by the existing sloping driveway along part of the north side of the dwelling, which also serves as the current means of approaching and accessing the building at both levels. However, the authority does not consider this route is adequate in terms of clause D1.2.1.
- 5.17. However, I have been provided with no evidence to suggest the existing access arrangements provided by the concrete driveway are not reasonable and adequate to enable safe and easy movement of people.
- 5.18. Therefore, I conclude the proposed building work will comply with clause D1, and there is no requirement for the owners to either retain the existing stair or install a new stair between the floors of their dwelling.

Means of escape from fire

- 5.19. The owners are of the view the intent of clause D1.3.3(e) is to prevent people becoming trapped or isolated on a level of a building that does not have direct access to the outside, for example in the event of a fire, by ensuring there are always stairs to the lower floors.
- 5.20. In this case, the setting out and configuration of the dwelling is such that there are multiple existing access and egress points from both floor levels of the owners'

dwelling to the outside, and these are not affected by the building work. Therefore, in the event of a fire, the means of escape by the occupants from the dwelling is not dependant on using either the existing stair or the proposed new lift.

6. Decision

- 6.1 In accordance with section 188 of the Building Act 2004, I determine the proposed alterations to the owners' dwelling, to remove an existing internal stair and install a new lift, will comply with Building Code Clause D1 *Access Routes*.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 16 November 2023.

Charlotte Gair
Manager Advisory, Determinations