

Determination

under the

Building Act 1991

No. 95/004: Safety barrier for a waterfront walkway

1. The matter to be determined

- 1.1 The matter before the Authority was whether a safety barrier was required alongside a waterfront walkway. The walkway is part of a development of the territorial authority's facilities, but it is constructed on land below the line of mean high water spring tides so that, because of the definition of "territorial authority" in section 2 of the Building Act 1991, the building consent falls to be granted or refused by the regional council, as the "organisation authorised to permit structures pursuant to section 12(1)(b) of the Resource Management Act 1991".
- 1.2 The applicant was the regional council. The only other party was the owner, the territorial authority.
- 1.3 The owner applied to the applicant for a building consent. The applicant refused building consent because it considered that a safety barrier was needed.
- 1.4 The Authority accordingly takes the view that it is being asked in effect to determine whether the proposed walkway, without a safety barrier, would comply with clause F4 "Safety from falling" of the building code (the First Schedule to the Building Regulations 1992).
- 1.6 In making its determination, the Authority has not considered whether the proposed building will comply with any other provisions of the building code.

2 The building

- 2.1 The walkway is a timber deck along the waterfront. The timber decking is laid over timber joists supported by steel beams on timber piles. In some places it is cantilevered above the water, in other places it is above the rocky margin of the water. People could fall 1 metre or more from the walkway.
- 2.2 The rest of the development is proposed to include a restaurant opening on to the walkway and is also proposed to include museums and other recreational facilities adjacent to the walkway.

- 2.3 The owner has in fact constructed the walkway, without a barrier, but is understood to have installed a temporary barrier pending the outcome of this determination.

3 The parties' contentions

- 3.1 The applicant contends that the walkway will be used for a variety of purposes as well as for access, in particular for viewing marine activities and for social gatherings. The water area adjoining the walkway is generally not navigable except at high water. The walkway will not be a wharf and has not been designed as such. The applicant's submissions included photographs of the walkway.
- 3.2 The owner made no specific submissions. However, before the application for a determination was made, the designer of the development discussed drawings of the proposed development with a member of the Authority's staff, who understood that the walkway was in fact to be used on an everyday basis as a working wharf, with the walkway aspect secondary. The staff member noted the "Limits on application" to clause F4.1, and on that basis gave a personal opinion to the effect that clause F4.1 did not apply and a barrier was not required along the edge of the wharf, but that a barrier should be erected along the frontage of the restaurant which would prevent young children from straying from the restaurant onto the wharf. That opinion included a disclaimer to the effect that it was a personal opinion based on the information provided and that a different decision might be reached if the matter was referred to the Authority for a formal determination.

4. Discussion

- 4.1 The relevant provision of the building code is clause F4.1:

F4.1 Where people could fall 1 metre or more from an opening in the external envelope or floor of a *building*, or from a sudden change of level within or associated with a *building*, a barrier shall be provided.

The associated "Limits on application" states:

Performance F4.1 shall not apply where such a barrier would be incompatible with the *intended use* of an area, or to temporary barriers on *construction* sites where the possible fall is less than 3 metres.

- 4.2 The walkway is a substantial structure. It is clearly a "building" for the purposes of the Building Act.
- 4.3 It is not disputed that people could fall 1 metre or more from the walkway. Thus the only question is whether a barrier would be incompatible with the intended use of the area as provided in the "Limits on application" for clause F4.3.1 of the building code.
- 4.4 There are significant differences between the drawings of the walkway as proposed and the photographs of the walkway as constructed. Where a drawing shows stone-faced walls rising vertically from the water, the corresponding photograph shows jagged rocks. It is clear from the photographs that the walkway cannot be used as a working wharf. In some

parts it is possible that vessels would occasionally tie up to the walkway at high water, but that would not mean that the intended use of the walkway is as a working wharf.

- 4.5 The Authority accepts the applicant's contentions as to the intended use of the walkway as being both to provide access to the various facilities and as a venue for social gatherings and not as a working wharf.
- 4.6 Admittedly, there are working wharves in the immediate vicinity of the walkway. Some people could well perceive an undesirable visual contrast between those wharves, with no barriers and the walkway with a barrier. In its previous Determination No. 92.1102 "Handrails for an Assembly Service Building" the Authority said that it did not consider that a wish to achieve an appropriate visual appearance justified a waiver of the building code, and it sees no reason to alter that opinion in this case.
- 4.7 The applicant did not specifically address clause F4.3.4, which requires that barriers shall restrict the entry of children under 6 years of age when located in areas likely to be frequented by them. The Authority considers that the walkway is an area likely to be frequented by children under 6 years of age because of the proximity of various existing and proposed recreational facilities suitable for family outings. In terms of Approved Document F4/AS1 the Authority considers that the walkway is similar to a bridge with pedestrian access and should be designed to restrict the passage of children in the age group "4 and under 6". The fact that children on the walkway are likely to be under adult supervision is not sufficient, as was also discussed in Determination No. 92.1102, where the Authority pointed out that it takes only a few seconds for a child to climb over or fall through a handrail, and it is unreasonable to expect a level of supervision that could prevent that.

5. The Authority's decision

- 5.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that a building consent is not to be issued for the proposed walkway without a barrier complying with clause F4.3.4 of the building code and designed to restrict the entry of children in the age group "4 and under 6".

Signed for and on behalf of the Building Industry Authority on this 30th day of October 1995

J H Hunt
Chief Executive