

Determination

under the

Building Act 1991

No. 93/003: Facilities and access for people with disabilities in a Government department office building

1. The matter to be determined

1.1 General

1.1.1 The matter before the Authority was a doubt in respect of provisions to be made, in accordance with section 38 of the Building Act 1991, for facilities and access for people with disabilities in the alteration of a Government department office building.

1.1.2 The Authority takes the view that it is being asked to determine under Part III of the Act whether, after the proposed alterations, the building will comply as nearly as is reasonably practicable with the provisions of the New Zealand Building Code (the First Schedule to the Building Regulations 1992) for facilities and access for people with disabilities, and in particular whether a lift is required. In making its determination the Authority has not considered whether the plans comply with any other provisions of the New Zealand Building Code nor whether the territorial authority itself had the power to issue a building consent for the building alterations without the inclusion of a lift.

1.2 The building

1.2.1 The plans submitted to the Authority show that the building has two stories and a basement. The ground floor is approximately 660m² in area, the upper floor 520m² (not including a central "lighting area"), and the basement 25m².

1.2.2 The ground floor is to be used for the district office, providing public reception and client services, and is to include water closets suitable for people with disabilities. A shower on the ground floor will not be suitable for people with disabilities.

1.2.3 Part of the upper floor is to be used for the regional office, which does not have direct contact with the general public but does have reception facilities for visitors. Also in that part of the upper floor are to be toilet facilities (not suitable for people with disabilities), a cafeteria for use by staff working in the building, and a meeting room to be used by visitors from other buildings as well as by staff working in the building itself and in other branches. If visitors who are unable to use the stairs wish to meet staff who work on the upper floor, the Authority understands that there are ample facilities for such meetings on the ground

floor. The remainder of the upper floor, approximately 260m² in area, is shown on the plans as "rental area" and might be used for an expansion of the applicant's own activities or might be let out on a short term basis.

1.2.4 The basement is described as a boiler room not occupied by people, but it appears that it is intended to be changed to a storage room for closed files.

1.2.5 The plans do not include all relevant details of the stairs or of the toilet facilities at ground floor level. The plans do not indicate whether there is any parking associated with the building.

1.3 *The submissions*

1.3.1 The applicant's submission contends that:

- (a) The building should be treated as a two storey building;
- (b) The design occupancy on the upper floor is fewer than 40 persons; and
- (c) "If an elevator is to be included it would be at the expense of the existing light well which runs through the core of the building providing natural light and air to both the ground and first floors. There will be a significant reduction in office amenity standards if the light well is lost for little or no practicable countervailing benefit." The cost of installing a lift would be "in excess of \$100,000", and if a lift is installed there will be "a significant reduction in office amenity standards . . . for little or no practicable countervailing benefit".

1.3.2 The territorial authority has made no submission.

2. Discussion

2.1 *General*

2.1.1 The Authority notes that under section 25(1) of the Disabled Persons Community Welfare Act 1975 reasonable and adequate provision is to be made for people with disabilities "who may be expected to visit or work in" the building concerned. The Authority also notes that the objective of the relevant provisions of the New Zealand Building Code is to "Ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings". The Authority considers that objective applies in respect of both customers and staff of the building.

2.1.2 The Authority takes the view that the costs of installing a lift, and the associated disadvantages, are relevant to its decision and should be considered in relation to the extent to which the building will fail to comply with the New Zealand Building Code if a lift is not provided.

- 2.1.3 The relevant provisions of the New Zealand Building Code are clauses D1.3.4(c)(ii), D1.3.4(c)(iii), and D1.3.4(c)(iv) which respectively require a lift to be provided:
- (a) To the upper floors of a three storey building having a total design occupancy of 50 or more persons on the two upper floors;
 - (b) To the upper floor of a two storey building having a design occupancy of 40 or more persons on the upper floor; and
 - (c) To an upper floor, irrespective of design occupancy, which is to be used for the purpose of public reception areas of banks, central, regional, and local government offices and facilities, and certain other types of building.
- 2.1.4 New Zealand Standard 4121, referred to in section 25(3) of the Disabled Persons Community Welfare Act, calls for a lift to be installed in a two-storey building where the gross floor area of the upper floor is 400m² or more.
- 2.1.5 The Authority notes that in respect of the alteration of any existing building the Authority is empowered, under section 25(2) of the Disabled Persons Community Welfare Act, to provide for a waiver or modification of all or any of the requirements of section 25 of that Act "if, having regard to all the circumstances, the Authority determines that it is reasonable to grant the waiver or modification". The Authority does not view this application as being for such a waiver or modification, but accepts that section 25(2) establishes the test to be applied, namely that the Authority must decide, having regard to all the circumstances, whether it is reasonable to issue a building consent for the alterations without a lift.

2.2 *The basement*

- 2.2.1 The Authority accepts that the small basement used for closed files need not be considered as constituting a story for the purpose of deciding whether clause D1.3.4(c)(ii) would apply if the building were a new building.

2.3 *Facilities for staff*

- 2.3.1 There is no requirement in the New Zealand Building Code for a staff cafeteria to be provided in the building. Nevertheless, as one is to be provided, the Authority considers that its use is one of the normal activities within the building that people with disabilities should be able to carry out in accordance with section 25(1) of the Disabled Persons Community Welfare Act.
- 2.3.2 The Authority is not persuaded that the ground floor provides a suitable alternative to the cafeteria in the present case.
- 2.3.3 The situation, therefore, is that if a lift is not provided in the present case then staff members whose disabilities prevent them from using the stairs will not only be unable to work on the upper floor but will also be deprived of access to the cafeteria and the meeting room.

2.4 *Facilities on the ground floor*

- 2.4.1 Toilet facilities (but not a shower) suitable for people with disabilities are to be provided on the ground floor. The staff shower on the ground floor is not suitable for people with disabilities. There is no requirement in the New Zealand Building Code for a shower to be provided in the building. The Authority does not consider that the use of a shower in an office building is of the same importance as the use of a staff cafeteria, and therefore does not consider that it is necessary to make the shower suitable for people with disabilities in order to bring the building as nearly as is reasonably practicable to compliance with the provisions of the New Zealand Building Code for access and facilities for people with disabilities.
- 2.4.2 Adequate access, clearances, and turning areas need to be provided on the ground floor as well as the proposed toilet facilities for people with disabilities. If there is parking provided it should include spaces suitable for use by people with disabilities.

2.5 *Design occupancy*

- 2.5.1 Clause D1.3.4(c)(iii) of the New Zealand Building Code requires a lift to be provided in a two storey building having a design occupancy of 40 or more persons on the upper floor. The phrase "design occupancy" is not defined. In this determination the Authority adopts no particular interpretation of the phrase "design occupancy".
- 2.5.2 The applicant submits that the plan for the upper floor shows office space for six persons plus a reception area, so that with "a liberal allowance of say, 12 persons occupying the 'rental area'" the number of persons accommodated on the upper floor will be "only of the order of 20 persons". In other words, the applicant submits that the design occupancy is fewer than 40 persons.
- 2.5.3 The Authority's own scrutiny of the plans indicates that work places are to be provided for at least 27 staff members on the ground floor and at least 7 on the upper floor, with seating for 16 in each of the cafeteria and the meeting room (which is to be used also by staff members from other buildings). Thus it seems reasonable to assume that the layout of the upper floor contemplates the possibility of at least 30 people being present in the meeting room, the cafeteria, and the offices at any one time plus however many people are present in the "rental area".
- 2.5.4 Thus if 10 or more people were to be present in the rental area at the same time as there were 30 present in the rest of the upper floor, the total of 40 or more persons would mean that if it were a new building a lift would be required under clause D1.3.4(c)(iii) of the New Zealand Building Code.
- 2.5.5 The applicant submits that the number of people in the rental area, on "a liberal allowance", will necessarily be limited to 12 or fewer. The rental area is approximately 260m² in area, and although it is of a configuration that will limit the number of occupants, the Authority considers that it is capable of accommodating significantly more than 12 people. However, as mentioned in 2.7.4 above, 10 people would be enough to necessitate a lift in a new building.

2.6 *Public reception areas*

2.6.1 Clause D1.3.4(c)(iv) of the New Zealand Building Code requires a lift to be provided to an upper floor, irrespective of design occupancy, to be used for the purposes of public reception areas of banks, regional and local government offices and facilities, and certain other building types.

2.6.2 The applicant submits that the regional office on the upper floor does not deal with the public. The plan for the alterations of the upper floor submitted to the Authority shows reception facilities for visitors to the regional office but the Authority accepts that those facilities do not amount to a public reception area for the purposes of clause D1.3.4(c)(iv). Accordingly, if the building were a new building a lift would not be required under that clause.

2.7 *Conclusions*

2.7.1 The Authority considers that the building, after the alterations shown in the plans submitted to the Authority, will not comply with the provisions of the New Zealand Building Code for access and facilities for people with disabilities as nearly as is reasonably practicable, as required by section 38 of the Building Act, for the following reasons as discussed in more detail above:

- (a) Staff whose disabilities make them unable to climb the stairs will not have access to the staff cafeteria and the meeting room, and therefore will be prevented to an unreasonable extent from carrying out normal activities within the building; and
- (b) The area and proposed facilities on the upper floor, together with the uncertain use of the rental area, indicate that the number of people likely to be present on the upper floor at any one time significantly exceeds the number for which the New Zealand Building Code requires a lift in a new building.

2.7.2 On the facts as presented to it, therefore, the Authority concludes that -

- (a) Section 6(2)(e) of the Building Act, which provides that particular regard shall be had to the need to ensure that reasonable and adequate provision is made to enable people with disabilities to enter and carry out normal activities and processes in the building, and
- (b) Section 38 of the Building Act, which provides that after the alteration the building is to comply with the provisions of the New Zealand Building Code for access and facilities for people with disabilities, as nearly as is reasonably practicable, to the same extent as if it were a new building -

require the installation of a lift notwithstanding the cost and the effect on office amenity standards.

3. The Authority's decision

- 3.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that a building consent shall not be issued in respect of the proposed alterations without a lift.

Signed for and on behalf of the Building Industry Authority on this 5th day of October 1993

J H Hunt
Chief Executive