

**Determination
under the
Building Act 1991**

No. 96/003: Installation of a lift in a new classroom block in a primary school complex

1. The matter to be determined

- 1.1 The matter before the Authority was whether a building consent should be issued for the construction in a primary school complex of a new two storey classroom block without a lift.
- 1.2 The Authority took the view that it was being asked in effect to determine whether the building without a lift would comply with clause D1.3.4(c) of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 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 parties

- 2.1 The applicant was the Ministry of Education acting through the firm of architects responsible for the design of the classroom block (“the applicant”). The other party was the territorial authority concerned (“the Council”).

3. The building

- 3.1 The new classroom block is part of an existing complex containing a variety of buildings most of one storey but some of two storeys. The new block is a two storey building having a gross floor area of approximately 360 m² on each level. There are three classrooms or teaching spaces with associated resource rooms and cloakrooms on each floor. There are also toilets on each floor, including an accessible toilet on the ground floor. The classrooms and facilities on the ground floors of the new building and the existing buildings are said to be accessible (i.e. to have features to permit use by people with disabilities). A building consent has been issued for the construction of the new block but subject to the condition that a lift is to be installed unless the Authority determines that a lift is not required.
- 3.2 In the existing buildings there are 20 classrooms or teaching spaces said to be accessible, and 3 which are not accessible. It is not stated whether those 3 classrooms are on the ground floor or on an upper floor of an existing building.

3.3 If the new block does not have a lift, the school will have a total of 29 classrooms or teaching spaces of which 23 (79%) will be accessible.

4. The legislation

4.1 Section 34(7) of the Building Act provides that a waiver or modification of the building code relating to access and facilities for use by people with disabilities “shall only be granted by the Authority in a determination”. However, section 25(2) of the Disabled Persons Community Welfare Act provides that “in respect of the alteration of any existing building or premises, the Building Industry Authority may . . . by determination . . . provide for a waiver of all or any of the requirements of this section”. The Authority takes the view that the combined effect of those two sections is that the Authority’s power of waiver or modification under section 34(7) applies only in respect of the alteration of an existing building. There appears to be no such power in respect of the construction of a new building.

4.2 Clause D1.3.4(c) of the building code requires a lift to be provided in a building which is two storeys high and has a design occupancy of 40 or more persons on the upper floor. That clause applies to educational institutions, including schools, by virtue of section 25(4)(n) of the Disabled Persons Community Welfare Act.

4.3 However, the parties both accepted that compliance with the provisions of NZS 4121 “New Zealand Standard Code of Practice for Design for Access and use of Buildings and Facilities by Disabled Persons” is to be accepted as establishing compliance with the corresponding provisions of the building code (see Determinations 94/006, 95/001, and 95/008). The relevant provisions of NZS 4121 are:

- (a) Clause 304 “Lifts”, which provides that a lift is not required “in the case of a two-storey building where the gross floor area of the upper floor is less than 400 m²”; and
- (b) Schedule D “Churches . . . schools . . . and other places of public assembly”, which provides that “If the provisions of this Standard do not require a lift to be installed, then the principal activities shall be located on the ground floor.”

5. The submissions

5.1 The submissions from both parties were primarily concerned with Schedule D of NZS 4121.

5.2 The applicant contended that the building without a lift would comply with Schedule D, and submitted that:

“A letter from [the school] states:

“(a) they have thirty ground floor teaching spaces and three upper teaching spaces proposed,

- “(b) they would relocate the teaching class group to the ground floor to accommodate the needs of any disabled person. In short, the rooms are all similar general teaching spaces; there will be no specialist teaching spaces on the First Floor.”
- 5.3 The letter itself was not included with the application, but the Authority received a letter to the same effect directly from the school. In response to a query from the Authority, the applicant subsequently advised that the school currently had 20 accessible and 3 non-accessible teaching spaces, and that the proposed building would mean that it would have 23 accessible and 6 non-accessible teaching spaces. The letter to the Authority from the school also said “The installation of a lift would have a significant effect on the school’s budget with respect to ongoing maintenance and repair.”
- 5.4 The Council submitted that Schedule D required the principal activities to be located on the ground floor. It also quoted the article “Schools and Access” in *Building Industry Authority News* No. 59, July 1996, which says: “In a new school, accessible access to all classrooms and appropriately located accessible toilets is required”. The Authority understood the Council to mean that Schedule D required all of the principal activities to be located on the ground floor. Classroom teaching is clearly a principal activity of the school. In other words, the Council considered that in this case Schedule D would not be complied with if any classrooms were on an upper floor without lift access.
- 5.5 The Authority obtained, and copied to the parties, a report from a consultant specialising in access and facilities for people with disabilities who concluded that a lift was not required. In the report, the consultant said amongst other things:
- (a) “NZS 4121 establishes a gross floor area of up to a maximum of 400 square metres that can be built on a first level before a lift is required to that upper level.”
 - (b) “Under [clause 2(a) of Schedule D] all school buildings are required to be connected by an ‘accessible (access) route.’. Thus the complex of buildings that comprises any school, or other educational institution, must be considered as a single entity for achieving compliance with the access requirements”.
 - (c) “Once the aggregate upper floor area of all two level buildings on the school site reaches 400 square metres, any new or altered buildings (for teaching, social, recreational, and administration activities) which takes this aggregate floor area above 400 square metres will require a lift to its upper level irrespective of upper floor area. *This gives a clear direction for budgeting new building and alteration work for any school, or other educational institution, which has, or intends to provide, upper level facilities.*”

6. Discussion

6.1 General

- 6.1.1 A school is a building to which section 25 of the Disabled Persons Community Welfare Act applies. Any new school building is therefore required to comply completely with the

provisions of the building code for access and facilities for people with disabilities. In this case, compliance with NZS 4121 is used to establish compliance with those provisions of the building code. Compliance with NZS 4121 requires in effect that all of a school shall be accessible, with only two exceptions:

- (a) An adequate number but not all sanitary facilities shall be accessible; and
 - (b) The upper floors of two and three storey buildings of less than certain gross floor areas need not be accessible by lift but only if the principal activities of the building are located on the ground floor.
- 6.1.2 A question not raised by the parties but which has been raised with the Authority on other occasions is whether, given that the complex of buildings comes within the Building Act's definition of "building" for the purposes of the building consent, the building work concerned is to be seen as the construction of a new building or as an alteration to an existing building complex.
- 6.2 *Is the building work to be treated as the construction of a new building or as an alteration to the existing building complex?*
- 6.2.1 Section 3(2)(b) of the Building Act provides in effect that in certain cases 2 or more buildings come within the definition of "building" for the purposes of a building consent, a code compliance certificate, and a compliance schedule. This is such a case. Does that mean that the construction of the new classroom is to be treated as being an alteration to an existing building rather than as the construction of a new building? If it is an alteration to an existing building then section 38 requires in effect that after the alteration the complex as a whole shall comply as nearly as is reasonably practicable with the relevant provisions of the building code. Furthermore, if it is an alteration then the Authority has the power to waive the requirements of section 25 of the Disabled Persons Community Welfare Act, in other words to exempt the building from the need to include reasonable and adequate provisions for people with disabilities. If it is the construction of a new building, on the other hand, then it is required to comply in all respects with the provisions of the building code for access and facilities for use by people with disabilities and the Authority has no power of waiver.
- 6.2.2 The Authority considers that it is, and is to be treated as, the construction of a new building. Section 3(2)(b) is seen by the Authority as a provision that allows for a reduction in paperwork when it is convenient and reasonable to issue a single building consent, code compliance certificate, or compliance schedule in respect of all of the buildings in a complex instead of issuing one for each building. In other words, section 3(2)(b) is to be applied only where it is reasonable to do so. The Authority does not consider it would be reasonable to do so in this case.
- 6.2.3 As mentioned in 5.4 above, the school has advised that the installation of a lift would have a significant effect on its budget with respect to ongoing maintenance and repair. In previous determinations the Authority has taken account of the construction costs of upgrading an existing building, but this is the first time it has been asked to take account of ongoing maintenance costs in a determination. However, in this case, costs of any kind are irrelevant

to the question of whether the new building without a lift would comply with the building code as required by the Building Act. The Authority expresses no opinion as to whether ongoing maintenance costs might be relevant to the question of upgrading an existing building.

- 6.2.4 Nevertheless, the fact that the building is part of a complex of school buildings cannot be ignored when considering whether the building without a lift would comply with the relevant provisions of NZS 4121 set out in 4.3 above.

6.3 *The interpretation of Schedule D to NZS 4121*

- 6.3.1 The case turns on the interpretation of the words “the principal activities of the building shall be located on the ground floor”. (There is no dispute that classroom teaching is one of the principal activities of a school or other educational institution, nor that other principal activities are carried out in such spaces as a resource room, a library, a laboratory, a gymnasium, an office, and so on.)

- 6.3.2 The Authority considers that those words must be interpreted in the context not only of NZS 4121 itself but also of section 25 of the Disabled Persons Community Welfare Act. As its Foreword states, the purpose of NZS 4121 is “to provide design rules for those who are responsible for making buildings accessible to, and useable by people who have disabilities as required by Section 25 of the Disabled Persons Community Welfare Act”. Although NZS 4121 was issued before the Building Act was enacted, and although the Disabled Persons Community Welfare Act itself was amended by the Building Act, the Authority considers that where the words of NZS 4121 are capable of more than one meaning they are to be interpreted as having the meaning most appropriate for that purpose. In this case, the words are to be interpreted as having the meaning most appropriate to ensuring that reasonable and adequate provision is made for disabled persons to carry out normal activities in the building concerned.

- 6.3.3 Schedule D applies not only to schools but also to churches and theatres. The Authority does not consider that Schedule D requires lift access to any gallery, balcony, or other upper floor for worshippers or members of the audience in a church or a theatre if reasonable and adequate provision is made for disabled persons on the ground floor.

- 6.3.4 The Authority also notes that Schedule F of NZS 4121 provides that:

“Lifts are not required in two-and-three storey hotels and motels provided that the accessible accommodation units, reception office, restaurant, bars and other communal facilities are on the ground floor.”

- 6.3.5 The Authority concludes that Schedule D is to be interpreted as meaning that the principal activities shall be located on the ground floor *to the extent necessary to ensure that reasonable and adequate provision is made for people with disabilities to take part in those activities in the institution concerned.*

- 6.3.6 In other words, the Authority takes the view that Schedule D is not to be interpreted as meaning that no classrooms shall ever be located on an upper floor not served by a lift. That

would go further than is necessary for the purpose of ensuring that reasonable and adequate provision is made for people with disabilities and would be inconsistent with Schedule F. The Authority regrets that the Council appears to have been misled by the article in *Building Industry Authority News*, which was speaking in general terms when it referred to “all classrooms” and did not mention the special case of a small two or three storey building.

- 6.3.7 However, that does not mean that the Authority accepts that Schedule D is satisfied by an assurance from the school that it is possible to make special arrangements for people with disabilities to participate in the principal activities of the building, as the applicant's submission seems to suggest.
- 6.3.6 In effect, the applicant's submission invites the Authority:
- (a) To take account of the facilities available elsewhere in the complex when deciding whether the new classroom complies with the relevant provisions of the building code; and
 - (b) To accept the school's assurance that accessible classrooms will be available for people with disabilities.
- 6.3.7 The Authority agrees that the other buildings in the complex may be taken into account for some purposes. The Authority has previously taken the view that the facilities available in the other buildings in the complex may be taken into account when deciding whether the building concerned complies with particular provisions of the building code: see Determination 94/004 in relation to providing access by way of a lift in an adjacent connected building, and Determination 95/003 in relation to providing accessible sanitary facilities in another building. The Authority therefore considers that the other buildings in the school complex may be taken into account when considering whether the building concerned complies with Schedule D of NZS 4121.
- 6.3.8 As to the assurance that classes will be relocated to accommodate the needs of any people with disabilities, the Authority generally treats such assurances as to future management practices with some caution (see Determination 92.1102). Furthermore, the question in this case is not simply whether it is possible for the school's staff to make arrangements for people with disabilities, the question is whether the new building complies with NZS 4121. In particular, the question is whether the 23 accessible classrooms, out of a total of 29 classrooms, would be sufficient to ensure that reasonable and adequate provision is made for people with disabilities to take part in classroom activities. Nevertheless, in answering that question, one cannot ignore management factors. One factor is that classrooms in a primary school are generally interchangeable. Thus in this case the Authority accepts the school's assurance that it will relocate classes to the ground floor as necessary to suit people with disabilities.
- 6.3.9 However, the Authority is not so sure that the same assurance could be given in respect of a secondary school, and doubts that any such assurance could be given in respect of a polytechnic or a university, simply because of the more specialised use of spaces and the scheduling difficulties involved.

6.3.10 Thus the Authority agrees with the consultant's approach, set out in 5.5(b) above, that "the complex of buildings that comprises any school, or other educational institution, must be considered as a single entity for achieving compliance with the access requirements". However, the Authority does not accept the consultant's suggestion set out in 5.5(c) above to the effect that a lift should be required in any new two storey building, irrespective of floor area, which would bring the aggregate upper floor area of all buildings in the complex to more than 400 m².

6.3.11 The Authority therefore considers that in all the circumstances of this particular case, the new classroom block without a lift will comply with the provisions of NZS 4121 and is therefore to be accepted as complying with the provisions of the building code for access and facilities for people with disabilities. However, that does not mean that a lift is never required in a two or three storey educational building not exceeding the gross upper floor area specified in clause 304.1 of NZS 4121. It is also not to be taken as a decision to the effect that only a certain proportion of classrooms need to be accessible.

6.4 General guidance

6.4.1 The article in *Building Industry Authority News* arose from a wave of questions about provisions for people with disabilities in schools. The need for such guidance is emphasised in the passage from the consultant's report quoted in italic type in 5.5(c) above.

6.4.2 The article gave general guidance, subject to the usual note to the effect that in any particular case those concerned should consult their own legal advisers. The Authority offers the following more specific guidance on the same basis and with the emphatic warning that each case must be treated on its merits taking account of the particular circumstances of that case. Subject to those comments, the following addresses educational institutions in particular but applies to any institution to which Schedule D of NZS 4121 applies:

- (a) NZS 4121 is a means of establishing compliance with the provisions of the building code to which it relates, but it is not the only such means, see section 49(3) of the Building Act; however, in the following paragraphs only NZS 4121 is considered.
- (b) The relevant provisions apply in respect of staff as well as pupils or students.
- (c) Each new building must comply in all respects. Thus all new single storey buildings are to be accessible and a lift is to be provided in any new building having a gross upper floor area equal to or greater than that at which a lift is required by NZS 4121. A lift is also to be provided in any new two or three storey building irrespective of area if that is necessary to ensure that reasonable and adequate provision is made in the school or other institution for people with disabilities to take part in principal activities undertaken on an upper floor of that building.
- (d) If the building is part of a complex of buildings then the other buildings may be taken into account when one contains facilities not present in another.
- (e) Any facility provided in one building for the use of people in another building is to be conveniently located with respect to that other building. Accessible parking spaces

are to be conveniently located in relation to accessible buildings. In deciding whether facilities or spaces are accessible, account will need to be taken of the distance to be travelled and the route of travel, including the nature of the surface and any protection from the weather.

7. The Authority's decision

- 7.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that a building consent is to be issued for the construction of the new classroom block without a lift.

Signed for and on behalf of the Building Industry Authority on this 19th day of August 1996

J H Hunt
Chief Executive