

# ***Determination***

## ***under the***

### ***Building Act 1991***

#### **No. 98/001: Access for people with disabilities in a hotel**

#### **1 THE MATTER TO BE DETERMINED**

- 1.1 The matter before the Authority is whether a building consent should be issued for that stage of the construction of a new hotel which includes the main entrance.
- 1.2 The Authority takes the view that it is being asked in effect to determine whether the proposed access to the hotel for people with disabilities complies with the provisions of the building code for access and facilities for use by people with disabilities.
- 1.3 In making its determination the Authority has not considered whether the hotel will comply with any other provisions of the building code.

#### **2 THE PARTIES**

- 2.1 The applicant was the owner acting through a firm of architects. The other party was the territorial authority.
- 2.2 Neither party wished the Authority to hold a hearing at which they could speak and call evidence.

#### **3 THE BUILDING AND THE SEQUENCE OF EVENTS**

- 3.1 The building is on a sloping site and has seven floor levels. The only direct street access is 1 m above level 4.
- 3.2 The street concerned is said to be so steep that it would not be possible for a wheelchair user to approach the building along it. Consequently, any wheelchair user is likely to arrive and depart from the hotel by vehicle.
- 3.3 There is a porte-cochere between the street and the main entrance. Vehicles can unload in the porte-cochere from where it is necessary to go 1 m down steps to the entrance lobby on level 4. Alternately, vehicles can go by ramp to carpark areas on levels 3 and 4. The ramps concerned are too steep to be used by people with disabilities.

- 3.4 The building is being constructed in stages, and the design, particularly of the main entrance, has changed several times in the course of construction. There was a significant relocation of the lifts, which must have affected most access matters, and there was also a change from one firm of architects to another. In an earlier design, ramp access was provided from the porte-cochere to the lobby area, but with too steep a gradient. In a later design there was a shorter route from the carpark to the main lobby than in the final design in which access from the carpark is through a lift lobby to a corridor serving bedrooms, and from that corridor through another door to the main lobby.

#### **4 THE LEGISLATION, THE APPROVED DOCUMENTS, AND NZS 4121**

- 4.1 Sections 7(1), 6(2)(e), and 47A(1) of the Building Act read:

**7. All building work to comply with building code-** (1) All building work shall 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.

##### **6. Purposes and principles**

(2) To achieve the purposes of this Act, particular regard shall be had to the need to-

- (e) Provide, both to and within buildings to which section 47A of this Act applies, means of access and facilities that meet the requirements of that Act to ensure that reasonable and adequate provision is made for people with disabilities to enter and carry out normal activities and processes in those buildings:

**47A. Access and facilities for persons with disabilities to and within buildings-**(1) In any case where provision is being made for the construction or alteration of any building to which the public are to be admitted, whether on payment or otherwise, reasonable and adequate provision by way of access, parking provisions, and sanitary conveniences, shall be made for persons with disabilities who may be expected to visit or work in that building and carry out normal activities and processes in that building.

- 4.2 Clauses D1.3.1 and D1.3.2 of the building code read (words and phrases in italic type are defined terms):

**D1.3.1** *Access routes* shall enable people to:

- (a) Safely and easily approach the main entrance of *buildings* from the apron or *construction edge* of a *building*,
- (b) Enter *buildings*,
- (c) Move into spaces within *buildings* by such means as corridors, doors, stairs, ramps and lifts,

- (d) Manoeuvre and park cars, and
- (e) Manoeuvre and park delivery vehicles required to use the loading space.

**D1.3.2** At least one *access route* shall have features to enable *people with disabilities* to:

- (a) Approach the *building* from the street boundary or, where required to be provided, the *building* car park,
- (b) Have access to the internal space served by the principal access, and
- (c) Have access to and within those spaces where they may be expected to work or visit, or which contain facilities for personal hygiene as required by Clause G1 “Personal Hygiene”.

In other words, at least one access route shall be an *accessible route*, defined as:

**Accessible route** An *access route* usable by *people with disabilities*. It shall be a continuous route that can be negotiated unaided by a wheelchair user. The route shall extend from street boundary or carparking area to those spaces within the *building* required to be *accessible* to enable *people with disabilities* to carry out normal activities and processes within the *building*.

Specific requirements for accessible routes are set out in clauses D1.3.3 and D1.3.4, which includes:

- (a) Be easy to find as required by Clause F8 “Signs”.

4.3 Section 50 of the Building Act provides in effect that compliance with the Approved Documents is to be accepted as compliance with the building code. Paragraph 1.1.1 of D1/AS1 in Approved Document D1 reads:

**1.1.1** *Accessible routes* shall be provided to give direct access to the principal entrance to the *building* where practical. If it is not practical, the alternative most direct practical route to the space served by the principal entrance shall be used. The route shall have signs complying with NZBC F8.

4.4 The Authority considers that section 47A(3) gives NZS 4121 a status equivalent to the Approved Documents. The relevant parts of clause 208.1.1 of NZS 4121 read:

**208.1.1**

The design of the main entrance of a building shall provide for the following:

- (a) At least one main entrance shall be on an access route.

- (b) When a main entrance of the building is not on an access route then a sign giving direction to an alternative accessible entrance shall be installed at the main entrance . . . .

## **5 THE SUBMISSIONS**

- 5.1 The applicant contended that its proposal complied with all of the provisions quoted above.
- 5.2 The territorial authority described the various proposals for access for people with disabilities which had been chosen and abandoned as the design of the building was changed from time to time. It said: "Entrance through a storage service lobby via bedroom corridor would be contrary to the objectives of the New Zealand Building Code".
- 5.3 A report obtained by the Authority from an expert in the subject, and copied to the parties, said:

Section 47A is important in this case as entering a building by way of a service store lobby and a corridor servicing other apartments is not a normal process to reach the main lobby, especially when there is only one main (or principal) entrance directly on to that lobby.

. . . many casual and regular visitors with disabilities and residents (and staff) with disabilities may come and leave by taxi. It does not seem a normal process [for] visitors to have to enter and leave by the suggested route.

. . . Section 208.1.1(a) from NZS 4121:1985 requires at least one entrance to be on the continuous "accessible route" and Approved Document D1/AS1 requires that "*accessible routes* shall be provided to give access to the principal entrance to the *building* where practical".

. . . It appears practical to achieve direct access by means of a ramp to the main lobby . . . . There remains more than ample space to provide ramping from the main entrance to the lobby . . . .

- 5.4 There was no suggestion of any inadequacy in the carpark itself as regards accessible parking spaces or an appropriate set-down area convenient to the proposed accessible route.

## **6 DISCUSSION**

- 6.1 The Authority considers that the provisions of the building code for access and facilities for use by people with disabilities must be interpreted in the light of sections 6 and 47A of the Building Act.
- 6.2 The Authority recognises that the site on which this building is constructed creates unusual difficulties in providing access for people with disabilities. The Authority also recognises that because the street concerned is so steep, people with disabilities are likely to approach the hotel only by vehicle.

- 6.3 The Authority acknowledges that with some buildings it is appropriate to provide internal access for people with disabilities from a carpark or set-down area. In this particular case, however, the Authority considers that the proposed access is not “reasonable and adequate” in terms of section 47A(1). The proposed access goes from the carpark, through the two doors of a lift lobby, along a corridor serving bedrooms, and from that corridor through another door to the main lobby. The Authority does not accept that route as reasonable access “to the internal spaces served by the main access” in terms of clause D1.3.2(b) of the building code.
- 6.4 The Authority also notes paragraph 1.1.1 of D1/AS1. The expert thought it was “practical” to give direct access to the principal entrance.
- 6.5 It is not for the Authority to design appropriate access for people with disabilities by deciding at this point whether a revised route from the carpark is necessary or whether perhaps a platform lift could be used to overcome the 1 m difference in level between the porte-cochere and the entrance lobby. Those are matters for the applicant to decide and for the territorial authority to consider by way of a revised application for building consent. Only if the territorial authority refuses to grant a building consent for the revised design might the Authority be required to consider the revised design by way of another determination.

## **7 CONCLUSION**

- 7.1 The Authority concludes that the proposal does not comply with the building code.

## **8 THE AUTHORITY'S DECISION**

- 8.1 In accordance with section 20(a) of the Building Act the Authority hereby confirms the territorial authority's decision to refuse building consent.

Signed for and on behalf of the Building Industry Authority on this 2<sup>nd</sup> day of March 1998

Brian Cashin  
Legal Adviser