

Installation of a lift in the alteration of a primary school

1 The matter to be determined

- 1.1 The matter before the Authority was whether a building consent should be issued for the addition of a new wing to an existing two-storey school building without providing a lift.
- 1.2 The Authority took the view that it was being asked in effect to determine whether, after the alteration, the building without a lift would comply as nearly as is reasonably practicable with clause D1.3.4(c) of the building code (the First Schedule to the Building Regulations 1992) as required by section 38 of the Building Act 1991.
- 1.3 In making its determination, the Authority has not considered whether the proposed building work will comply with any other provisions of the building code.

2 The parties

- 2.1 The applicant was the school's board of trustees acting through the firm of architects responsible for the design of the alterations and additions ("the applicant"). The other party was the territorial authority concerned ("the Council").

3 The building

- 3.1 The school is attended by pupils from 5 to 12 years old and consists of a complex of buildings on a sloping site. The building to be altered is of two storeys, with a staff common room, resource room, office facilities and sanitary facilities on the lower floor, and on the upper floor a board room, an office, an archives room, a storage room for uniforms, and general-purpose classrooms and their associated resource rooms and sanitary facilities. The proposed alteration consists essentially of the addition of a two-storey wing with specialised classrooms plus facilities for teaching music and drama on the lower floor, and general classrooms plus facilities for teaching art on the upper floor. The estimated value of the alteration is \$3,040,000.
- 3.2 Because of the sloping site, the ground floor of the new wing will be on two levels, respectively 0.59 m and 1.25 m above the ground floor level of the existing building. Ramp access is to be provided between levels. The upper floor of the new wing will also be on two levels, one the same as that of the existing building and the other 1.25 m higher. Access between levels was originally intended to be by a flight of steps, but in the course of the determination the design was changed to provide ramp access. Access between floors is by flights of stairs.

- 3.3 The gross floor area of the upper floor of the existing building is approximately 500 m² and of the new wing 600 m². Thus the gross floor area of the upper floor of the building as altered will be approximately 1,100 m², and its design occupancy is considerably in excess of 40 people.

4 The legislation

- 4.1 Section 38 of the Building Act says:

No building consent shall be granted for the alteration of an existing building unless the territorial authority is satisfied that after the alteration the building will-

- (a) Comply with the provisions of the building code for . . . access and facilities for use by people with disabilities (where this is a requirement in terms of section 47A of this Act), as nearly as is reasonably practicable, to the same extent as if it were a new building;

- 4.2 Section 47A(4) says:

The provisions of this section shall apply to buildings . . . intended to be used for . . . the following purposes:

- (m) Educational institutions, including public and private primary . . . schools . . .

- 4.3 Clause D1.3.4(c)(iii) 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 47A(4)(m) of the Building Act (previously section 25(4)(n) of the Disabled Persons Community Welfare Act).

- 4.4 However, the Authority takes the view 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 in school buildings for which a lift is not required, the principal activities shall be located on the ground floor.

5 The Council’s approach

- 5.1 The Council made no submissions to the Authority, but in a letter to the applicant it said:

We consider it necessary to apply to the Building Industry Authority for a determination as allowed for in section 17-20, Building Act 1991

The Building Regulations 1992, Section D1.3.4(c)(iii) require a lift in the situation indicated in your proposal, which can only be changed by a B.I.A. Determination. Council could approve a 'no lift' situation on the basis of acceptance and approval by the Building Industry Authority.

5.2 Presumably the Council took that view on the basis of section 34(7) of the Act, which provides that "a waiver or modification [of the provisions 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".

5.3 The Authority agrees that a territorial authority does not have the power to waive or modify the provisions for access and facilities for use by people with disabilities in a new building, but takes a different view in respect of the upgrading required by section 38 when an existing building is being altered. On the basis of a legal opinion from the Crown Law Office, the Authority has issued a statement (see *Building Industry Authority News* No. 23, June 1993) which includes the following:

A territorial authority may lawfully issue a building consent for the alteration of a building if it is satisfied that after the alteration the building will comply as nearly as is reasonably practicable with the provisions of the New Zealand Building Code for access and facilities for use by people with disabilities even though it will not comply in all respects.

6 The applicant's submission

6.1 Background

6.1.1 In the course of the determination, the Authority sent a draft determination to the parties. The Authority subsequently obtained a report from a lift consultant which it also sent to the parties. The applicant made additional submissions in response to the draft, and further submissions in response to the report. Various matters which were mentioned in the applicant's submissions are not specifically discussed below because, after full consideration of all the circumstances, those matters did not affect the Authority's decision. The various submissions from the applicant, and the Authority's responses, can be summarised as follows:

6.2 General

6.2.1 The applicant submitted that the school would be subjected to "a considerable penalty" if it was required to install a lift which "is not contemplated to have any practical use". In the applicant's submission, it was "highly unlikely" that "a disabled pupil, teacher or parent [would] arrive at the school" but if one did then "special arrangements would be made to welcome and accommodate them". That would be possible because: "All teaching facilities except Art have been positioned on the Lower Level. Should the School enrol a disabled pupil, that pupil will receive specialist Art teaching (if required) on the Lower Level. A disabled teacher would also not be disadvantaged as 12 of the Schools 20 classrooms are on the Lower Level. Staff facilities and Library are also on the Lower Level."

6.2.2 The applicant also submitted that: “The School recognises their responsibility to provide accessible access which is easy and direct and considerable effort (in view of the contours of the site) has been made in the design to achieve this access to all Lower Level facilities.”

6.2.3 The Authority does not consider those to be relevant submissions. The Authority must follow the Building Act, which requires all new schools to comply with the provisions of the building code for access and facilities for use by people with disabilities, and all existing schools, when being altered, to be brought to comply with those provisions as nearly as is reasonably practicable. The Authority applauds the improvements made to access at ground level between the various buildings of the school complex, but that is no more than compliance with the law and does not justify non-compliance in respect of the upper levels.

6.3 *Suitability of lifts for use by primary pupils*

6.3.1 The applicant submitted:

The School is extremely concerned at the dangers inherent in lift use by younger children particularly. The only way in which such a lift could be regarded as safe would be to have it locked and used only with teacher supervision. This would be extremely tedious and also negate the philosophy of easy access for the disabled (to be achieved without interfering with that persons independence.)

In the unlikely event of a disabled pupil coming to the School, that pupil would have to endure supervised lift rides every time access was required. For the pupil to have his own lift key would place an extreme level of responsibility on someone aged 12 or less, be open to abuse and pressure from other pupils, and raise the whole issue of personal safety.

6.3.2 The lift consultant’s opinion on that point was:

I see no reason why access equipment used in the controlled environment of a school should pose any more physical danger to users than in any other environment. In fact basic guidelines for use can be given more easily in the school environment to ensure users are aware of operating parameters, than found in the more open environment outside school.

To which the applicant responded:

This danger may be slight, but [the school] believes it would exist and a responsible school would not allow the lift to be used unless adult supervision was present.

6.3.3 The Authority is aware that there are significant numbers of lifts in New Zealand primary and intermediate schools, but is not aware of any special concerns about their safety having actually arisen in practice. The Authority notes that when it was considering two previous determinations about lifts in schools (967/003 and 96/004) it received no submissions alleging special danger.

6.4 *Cost*

6.4.1 The applicant estimated the cost of installing a lift in this particular building as \$100,000, with an annual maintenance cost of \$3,350. The applicant described that cost as “a considerable penalty for a facility that is not contemplated to have any practical use”.

6.4.2 As to the cost, the lift consultant gave a range of typical costs according to the size and type of lift concerned (see also 6.5.1 below). The applicant’s estimated installation cost, for a “full-size” lift, was at the top of the consultant’s range, and its estimated annual maintenance cost significantly above the top.

6.4.3 For the purposes of this determination the Authority is prepared to assume, in the applicant’s favour, that the applicant’s estimated cost is correct.

6.5 *The size of lift*

6.5.1 In its draft determination, the Authority contemplated that a lift could be “as small as 900 mm by 1400 mm [with] a carrying capacity adequate for two passengers only”. A similar comment was made in Determination 95/002 to indicate the minimum acceptable lift car size in the special situation where a lift was being installed in an existing two-storey building in order to comply as nearly as is reasonably practicable with the provisions of the building code for access and facilities for use by people with disabilities. The lift consultant’s report discussed a range of lifts from “a low use simple platform in a flush lift shaft with manual electro-mechanical inter-locked doors, to a high use fully automatic enclosed lift”.

6.5.2 The applicant commented: “We are not aware that an alternative to a fully automatic enclosed lift would comply with NZS 4332 or NZS 4121.”

6.5.3 Approved Document D2 cites NZS 4332, subject to certain modifications, as an acceptable solution, and section 47A(2) provides that NZS 4121 is “deemed to be one of the documents establishing compliance with the building code for the purposes of section 49”. However, section 49(2) provides that the documents issued under that section for establishing compliance with the building code “shall not be the only means of establishing such compliance”. In other words, there is nothing to prevent the use of some other means of complying with the building code, and a lift which does not comply with NZS 4332 only because the car size is smaller can clearly be

used as an alternative solution if the actual car size, and the associated landings, provides adequate activity space for a person in a wheelchair.

6.6 *Determination 96/003*

6.6.1 The applicant submitted that:

The Building Industry Authority has issued a Determination for similar circumstances . . . which found that a lift was not necessary. Determination 96/003.

6.6.2 The Authority does not consider Determination 96/003 to be directly applicable because it was concerned with a significantly different situation and turned on the fact that the building concerned did in fact comply with NZS 4121. However, the Authority notes that Determination 98/001 is relevant because there too the site on which the building was constructed created unusual difficulties in providing access for people with disabilities. In that case, an attempt had been made to provide such access but the Authority considered that the result was not “reasonable and adequate” and confirmed the territorial authority’s decision to refuse building consent. For the sake of completeness, the Authority notes that the other previous determination about a lift in a school, 96/004, turned on the fact that although there was in fact wheelchair access between levels, the lengths of the wheelchair routes and the gross disparities between the wheelchair routes and the other routes made it impossible for the Authority to accept that the wheelchair routes provided reasonable access for people with disabilities.

7 **Discussion**

7.1 If the building, including the proposed additional wing, were a new building then under clause D1.3.4(c)(iii) of the building code it would be required to include a lift by reason of both design occupancy and gross floor area. If the new wing were a separate new building it would require a lift, and the same is the case for the existing building.

7.2 Furthermore, if a lift were not provided than Schedule D of NZS 4121 would require the principal activities of the school to be located on the ground floor. The Authority takes the view (see Determination 96/003) that:

(a) 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*; and

(b) Classroom teaching is only one of the principal activities of a school or other educational institution, and other principal activities are carried out in such spaces as a resource room, a library, a laboratory, a gymnasium, and so on.

In this case, after the proposed alteration, various principal activities will be carried out on the upper floor, in the general classrooms and the art room, and probably in the office and related facilities also.

7.3 Thus the building, after the proposed addition at a cost of \$3,040,000, would fall a long way short of complying with the provisions of the building code for access and facilities for use by people with disabilities.

7.4 The Authority must decide what, if any, upgrading is necessary to bring the building to compliance with those provisions “as nearly as is reasonably practicable to the same extent as if it were a new building” as required by section 38 of the Building Act.

7.5 In making that decision, the Authority applies the interpretation of the words “as nearly as is reasonably practicable to the same extent as if it were a new building” decided by the High Court in *Auckland City Council v New Zealand Fire Service* [1996] 1 NZLR 330, an appeal against Determination 93/004, in which it was held that:

[Whether any particular item of upgrading is required] must be considered in relation to the purpose of the requirement and the problems involved in complying with it, sometimes referred to as “the sacrifice”. A weighing exercise is involved. The weight of the considerations will vary according to the circumstances

7.6 For the reasons set out in 6.2 above, the Authority considers that the sacrifice to be taken into account is the cost of the lift and its on-going maintenance.

7.7 On balance, the Authority considers that the benefits of making the upper floor of the building accessible to teachers, pupils, or other members of the school community who cannot climb stairs outweigh the sacrifice of installing a lift at a cost of approximately \$100,000 (or significantly less depending on the design).

8 Conclusion

8.1 The Authority has every sympathy for those owning a difficult site which they wish to develop. Such sites can pose considerable design problems. Nevertheless, designers must recognise the need to overcome those problems in order to comply with the law, and specifically with the requirements of the Building Act for reasonable and adequate access and facilities for use by people with disabilities.

8.2 In this case, the building, including the proposed additional wing, will have a design occupancy and a gross upper floor area well in excess of those at which a lift would be required for a new building. Some of the principal activities of the school are to be located on that upper floor. The installation of a lift would not involve sacrifices outweighing the benefits of making the upper floor accessible.

8.3 The Authority therefore concludes that this particular building, after the proposed alteration and without a lift, will not comply with the provisions of the building code for access and facilities for use by people with disabilities as nearly as is reasonably practicable as if it were a new building.

8.4 It is not for the Authority to decide on the design of the lift, that is a matter for the applicant to propose and for the territorial authority to accept when satisfied on reasonable grounds that the lift complies with the building code.

9 THE AUTHORITY'S DECISION

- 9.1 In accordance with section 20(a) of the Building Act the Authority hereby confirms the Council's decision to refuse building consent unless the proposed alterations include the installation of a lift complying with the building code.

Signed for and on behalf of the Building Industry Authority on this 27th day of January 1999

W A Porteous
Chief Executive