

# *Access for people with disabilities in a building on two levels each accessible from the outside*

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

- 1.1 The matter before the Authority is whether lift access between the floor levels of a proposed new building on two levels is necessary for compliance with the building code when each level is accessible from the outside.
- 1.2 In making its determination the Authority has not considered whether the building complies with any other provisions of the building code.

## **2 THE PARTIES**

- 2.1 The applicant was a firm of consulting engineers acting for the owner and the tenant. The other party was the territorial authority.

## **3 THE BUILDING**

- 3.1 The building is a film and television production facility specifically designed for the tenant. It is on a sloping site and has two floor levels referred to as “the ground floor” and “the lower ground floor”. Each level is accessible from outside through a reception area adjacent to accessible carparks.
- 3.2 The ground floor has a floor area of approximately 4,000 m<sup>2</sup>. It is entered from outside through a “reception” area. In it are four film and television production studios with a 7 m stud height. The rest of the ground floor, partially extending over the lower ground floor, contains an art department with a 4.5 m stud height, and various other production facilities including changing rooms and sanitary facilities, including accessible facilities, with 2.7 m stud heights. It is accessible from the outside through an area identified as “secondary reception”.
- 3.3 The lower ground floor has a floor area of approximately 1,350 m<sup>2</sup>. It is directly below part of the ground floor and contains some production facilities including wardrobe and properties storage and editing, training, and audition facilities. The rest of the lower ground floor contains administration and sanitary facilities, and a cafeteria with kitchen facilities.

There is a 2.7 m stud height throughout. It is accessible from the outside through an entrance identified as “main entry”.

- 3.4 There are three sets of stairs between the two levels. Access between the levels for people who cannot use the stairs is by an external walkway with a canopy over it. The walkway appears to be about 50 m long and it has a maximum slope of 1 in 12.
- 3.5 The Authority has not been advised as to the design occupancies of the floors, but for both the ground floor and the lower ground floor it is clearly well in excess of 40 people.

#### **4 THE LEGISLATION**

- 4.1 It was common ground that the building is one to which section 47A of the Building Act applies. That section requires that:

reasonable and adequate provision by way of access . . . 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.

Section 7(1) requires that:

All building work shall comply with the building code to the extent required by this Act . . .

- 4.2 The relevant provision of the building code (the First Schedule to the Building Regulations) is:

**D1.3.4** An accessible route, in addition to the requirement of Clause D1.3.3, shall:

- (c) Include a lift complying with Clause D2 “Mechanical Installations for Access” to upper floors where:
- (iii) buildings are two storeys high and have a total design occupancy of 40 or more persons on the upper floor . . . .

- 4.3 For the reasons set out in Determination 95/008, the Authority takes the view that compliance with NZS 4121 is equivalent to compliance with the corresponding provisions of the building code. The relevant provision of NZS 4121 is clause 304, which says that, subject to certain conditions, a lift is required in a two storey building unless the gross floor area of the upper floor is less than 400 m<sup>2</sup>.

#### **5 THE SUBMISSIONS**

- 5.1 The applicant submitted:

Our proposal shows a building with a ground level and lower ground level, though this is a two storey building the building has two ground floors, both floors having disabled access and disabled facilities, both floors have their own receptions and can be regarded as two independent buildings. It is proposed that the building accommodate four separate occupants. The use and activities of the occupants will be demarcated both vertically and horizontally with security doors. With the primary reason for the provision of stairs being to provide an alternative means of fire egress

of all occupants. The only exception to this being the art department which is a minor and ancillary activity.

. . . this solution fulfils the objectives of the Building Code and should be assessed as an alternative solution addressing a unique situation and not as compliance with one of the acceptable solutions.

5.2 The tenant submitted in effect that:

Each floor has level access and includes accessible toilet facilities.

The functions at both levels of the building are essentially separate, with production staff working on the ground floor and administrative staff working on the lower ground floor. No-one normally working on the lower ground floor would be “compelled” to visit the ground floor.

The tenant was currently using facilities where the production offices were upstairs 250 yards from the studio. “Production staff do not go to the studio but use the closed circuit television cameras and telephone to talk to the [studio] floor. The admin staff have no need to visit the shooting floor. As a matter of practice most admin staff only visit the production area once or twice a month.”

The new building was designed to “cluster” so that during one week some production personnel would work on the ground floor and not visit the lower ground floor, and during another week work on the lower ground floor and not visit the ground floor.

In other words, people who cannot use the stairs would not be disadvantaged by the fact that there was no lift access between floors.

5.3 The territorial authority made no specific submissions.

5.4 When the application for a determination was received, the Authority obtained a report from an independent architect having special experience with access and facilities for use by people with disabilities, who said in effect:

“The building design is not unique, it is very versatile with possibility for multi purpose uses.”

The cafeteria on the lower ground floor is presumably intended for people working on both floors.

“[The tenant says that] staff from the Administration level will visit the production level, albeit infrequently. The alleged infrequent use of a facility for people with disabilities is not a sufficient reason for the non provision of a facility. . . There is no discussion [by the tenant] about the use of the building by daily visitors. . . . If all visitors go to the main entry reception then vertical access is inevitable.”

“In my opinion the design submitted without a lift fails to provide for *loss of amenity* [as mentioned in section 6(2)(a) of the Building Act] for people seeking to visit from one floor level to another in a convenient and safe manner. A presumed alternative solution of using the carpark driveways is neither reasonable (for protection from the weather), practicable (for slope), or safe (from traffic). Such an alternative is certainly not an equal amenity in terms of useability.”

“Most people would consider being able to visit both floors within a building, especially where the nature of employment and work activities extend over both floors, to be a *normal activity or process* [as mentioned in section 6(2)(e) of the Building Act].

“In my opinion the design submitted without a lift fails to provide for the *normal activity or process* of people seeking to visit from one floor to another.”

- 5.5 That report was copied to the parties.
- 5.6 The applicant responded with a drawing (not dimensioned) showing external ramp access between the floors as described in 3.4 above.
- 5.7 The tenant responded with a detailed rebuttal of the main points in the report, essentially saying that it did not “take into account the realities of television production and television studios”. In particular:

If staff are working on the lower ground floor they can use the cafeteria. If they are working on the ground floor then the production is catered with meals and refreshments served in the studio.

“Whilst staff from admin level may visit production infrequently, there is no requirement for them to do so at all.”

“Visitors to the building are either for admin office . . . or production . . . . Any visitor for a production is given very clear instructions prior to coming. . . . As a business we have very few casual visitors. It is critical for us that security keeps casual visitors away from . . . productions.”

“The conclusion that visiting both floors because of the nature of employment and activities extend over both is simplistic and not a reality.

“There are many TV and film buildings where production staff never leave the floor on which they work and admin staff rarely travel to those sections.”

## 6 DISCUSSION

### 6.1 General

- 6.1.1 The building is an “ordinary” industrial arrangement of a single-storey high-stud workplace area with a two-storey administration area. The only thing that makes it “special” is that it is specifically designed for the tenant’s purposes and the way in which the tenant proposed to manage the building.
- 6.1.2 There is no dispute that the building is one to which section 47A applies, that people with disabilities may be expected to visit and work in it, and that it is therefore required to include access and facilities for use by people with disabilities. In respect of lift access, that means that the building is required to comply with clause D1.3.2(c)(ii) of the building code or clause 304 of NZS 4121.
- 6.1.3 The Authority understands the applicant to argue that a lift is not required for each of the following reasons:
- (a) The building should be treated as a single-storey building.
  - (b) The external ramp access should be accepted as an alternative solution complying with the building code.
  - (c) The external ramp access, even if it does not comply with the building code, nevertheless amounts to “reasonable and adequate provision. . . for people with disabilities who may be expected to visit or work in that building and carry out normal activities and process in that building” as required by section 47A(1) of the Building Act.

### 6.2 Is the building to be treated as a single-story building?

- 6.2.1 The question of whether a floor level is to be treated as a storey for the purposes of clause D1.3.4 of the building code arose in Determinations:

94/005: One-storey bank building with a change of floor level, lift required.

95/008: Two-storey floating tourist facility with underwater viewing chamber, lift not required because people with disabilities could not be expected to visit or work in the building.

96/004: Three-storey school building with rooms at two levels each of which had ramp access from the outside, lift required. The fact that two levels were accessible from the outside without the use of stairs did not mean that those levels were to be treated for access purposes as if they were both at the same “ground level”. The gross disparity between the wheelchair routes and the routes via the stairs made it impossible for the Authority to accept that the wheelchair routes were reasonable.

97/003: Carparking area beneath an office building not treated as a storey of that building for access purposes.

- 6.2.2 In Determination 97/003 the building could properly have been described as having three storeys, one of them a carpark, or as being a two storey building with a carpark beneath it. In this case, however, it is self-evident from the drawings submitted to the Authority that the building has two storeys and the Authority considers that it cannot properly be described as a single storey building for any purpose.

### **6.3 Is external ramp access to be regarded as an alternative solution?**

- 6.3.1 The problem with regarding ramp access as an alternative solution is that the building code specifically requires a lift and nothing else can comply. See Determination 96/001 in which the Authority took the view that a wheelchair stairlift was not a “lift” for the purposes of clause D1.3.4(c) of the building code. Admittedly, clause 304 of NZS 4121 differs from clause D1.3.4(c) of the building code but is equally acceptable, but that arises from the words of section 47A(3) of the Building Act and does not justify anything else which does not comply with clause D1.3.4(c).

### **6.4 Is external ramp access reasonable and adequate provision for people with disabilities?**

- 6.4.1 The argument, as the Authority understands it, is that the way in which the building is to be managed almost entirely removes the need for people on one floor to travel to the other. That being so, the proposed external ramp access is claimed to be adequate and reasonable provision for people with disabilities on the few occasions on which they do have to travel between floors. In other words, this reason for not needing lift arises solely from the way in which the tenant intends to manage the building.

- 6.4.2 The Authority takes the view that the Building Act prevents it from accepting that argument for the reasons set out in 6.4.4 below. Nevertheless, the Authority notes that the question of the extent to which management matters are to be taken into account arose in Determinations:

92.1102: Assembly service building where children were said to be “under constant supervision and surveillance”, no relaxation of requirements for safety barriers.

95/006: Small two-storey shop, lift not required, where it was said that people with disabilities could not be expected to work in the shop because only one attendant was to present at one time and must be able to climb the stairs, accessible toilet facilities required on the ground floor.

6.4.3 The Authority repeats what it said in Determination 95/006:

Even if the Authority found those [management] reasons persuasive, they would apply only for so long as the building was in fact managed that way. . . . The tenant's current intentions as to the management of the building can therefore be given little if any weight for the purposes of this determination.

6.4.4 For the building which is the subject of this determination, there could well be a significant change of management without any change of use that would invoke the "upgrading" provisions of section 46(2) of the Building Act. Once again, therefore, the Authority considers that the tenant's current intentions as to the management of the building can be given little if any weight.

6.4.5 Even if the Authority were to accept the tenant's arguments that the proposed external ramp access would be adequate and reasonable provision for people with disabilities, section 7(1) requires the building to comply with the building code, and section 47A(2) prevents the Authority from waiving or modifying the provisions of the building code for access and facilities for use by people with disabilities in respect of anything other than "the alteration of any existing building or premises". As the building code specifically requires a lift to be provided, and as the Authority has no power to waive or modify that requirement, the Authority must inevitably decide that a lift is required.

## **7 CONCLUSION**

7.1 The Authority recognises that the building is carefully designed to suit the tenant's proposed management of the specialised business of film and television production. That may well have created problems over the installation of a lift. However, the Authority does not believe that those problems are insurmountable. In Determinations 98/001 (construction of a multi-storey hotel on a difficult site) and 99/001 (alteration of a school on a difficult site) the Authority emphasised that no matter what difficulties were presented by the particular circumstances of a new or altered building, designers must recognise the need to overcome those problems in order to comply with the law. The same applies in this case also.

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

7.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that a lift is to be installed in order to comply with clause D1.3.4(c) of the building code.

Signed for and on behalf of the Building Industry Authority on this 29<sup>th</sup> day of April 1999

W A Porteous  
Chief Executive