

# ***Use of a footbridge by people with disabilities***

## **1 THE MATTERS TO BE DETERMINED**

- 1.1 The matter before the Authority is a doubt as to whether a proposed footbridge is to be accessible, in the sense of having features to permit its use by people with disabilities.
- 1.2 The Authority takes the view that it is being asked to determine:
  - (a) Whether the bridge is a building to which section 47A of the Building Act 1991 applies, and if so
  - (b) Whether the bridge, without lift or ramp access, will comply with clause D1 of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making its decision, the Authority has not considered whether the bridge will comply with any other provisions of the Act or of the building code.

## **2 THE PARTIES**

- 2.1 The applicant was the territorial authority in its capacity as the owner of the proposed bridge. There was no other party.
- 2.2 The Authority obtained, and copied to the applicant, a report from an expert on access and facilities for use by people with disabilities.

## **3 THE BRIDGE**

- 3.1 The proposed bridge, approximately 5 m high, 18 m long, and 2.4 m wide, will provide pedestrian access across a railway line between a recreation reserve and the footpath beside a road, beyond which are other recreational facilities. People with disabilities can clearly be expected to use the bridge if it is in fact suitable for use by them.
- 3.2 The expert mentioned in 2.2 above observed that:

From the material provided there appears to be more than adequate space available to comply with gradient and landing requirements. For anyone who is unable to use [the bridge], to move from one side to the other would require a long, circuitous, and time consuming journey, whether by wheelchair (manual or motorised) or by vehicle . . . .

I have some difficulty finding any reason why this footbridge shouldn't be accessible.

- 3.4 The applicant made the following points in response to the expert's report:
  - (a) A high degree of athleticism will be required to negotiate ramps to the bridge, which are also likely to disadvantage people with ambulant disabilities.

- (b) The footpath at one end of the bridge is not wide enough to permit the installation of a ramp without exposing pedestrians to danger from traffic.
- (c) Whether or not it can be used by people with disabilities, the bridge is necessary for safety reasons.

#### 4 THE LEGISLATION

##### 4.1 Section 7(1) reads:

(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.

##### 4.2 The relevant provisions of section 47A read:

**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.

(2) Notwithstanding the provisions of subsection (1) of this section, in respect of the alteration of any existing building or premises, the Building Industry Authority may at any time by determination under Part III of this Act provide for a waiver or modification from all or any of the requirements of this section if, having regard to all the circumstances, the Building Industry Authority determines that it is reasonable to grant the waiver or modification.

(4) The provisions of this section shall apply to, but shall not be limited to, buildings, and parts of buildings, (including driveways, accessways, and passages within and between complexes and developments, and associated landscaping, if any) that are intended to be used for or associated with one or more of the following purposes:

- (g) Central, regional, and local government offices and facilities:
- (z) Other buildings, premises, or facilities to which the public are to be admitted, whether on payment or otherwise.

##### 4.4 Section 34(4) is also relevant:

(7) Notwithstanding subsection (4) of this section, in relation to any building to which section 47A of this Act applies, a waiver or modification relating to access and facilities for use by people with disabilities shall only be granted by the Authority in a determination issued under Part III of this Act which is in accordance with the requirements of the said section 47A.

##### 4.5 The relevant provisions of the building code are shown on the next page.

## Relevant provisions of the building code

### Clause D1—ACCESS ROUTES

Provisions	Limits on application
<b>OBJECTIVE</b>	
<b>D1.1</b> The objective of this provision is:	
(c) Ensure that people with disabilities are able to enter and carry out normal activities and functions within <i>buildings</i> .	Objective D1.1(c) shall apply only to those buildings to which section 25 of the Disabled Persons Community Welfare Act 1975 applies.
<b>FUNCTIONAL REQUIREMENT</b>	
<b>D1.2.1</b> <i>Buildings</i> shall be provided with reasonable and adequate access to enable safe and easy movement of people.	Requirement D1.2.1 shall not apply to <i>Ancillary buildings</i> or <i>Outbuildings</i> .
<b>PERFORMANCE</b>	
<b>D1.3.1</b> <i>Access routes</i> shall enable people to:	
(a) Safely and easily approach the main entrance of buildings from the apron or construction edge of a building,	
(c) Move into spaces within buildings by such means as corridors, doors, stairs, ramps and lifts,	
<b>D1.3.2</b> At least one <i>access route</i> shall have features to enable <i>people with disabilities</i> to:	
(a) Approach the building from the street boundary or, where required to be provided, the building car park,	Performance D1.3.2 shall not apply to <i>Housing, Outbuildings, Ancillary buildings</i> , and to <i>Industrial buildings</i> where no more than 10 people are employed.
(b) Have access to the internal space served by the principal access,	
<b>D1.3.4</b> An accessible route, in addition to the requirement of Clause D1.3.3, shall:	
(b) Have adequate activity space to enable a person in a wheelchair to negotiate the route while permitting an ambulant person to pass,	
(g) Not include spiral stairs, or stairs having open risers,	
(h) Have stair treads with leading edge which is rounded, and	
(i) Have handrails on both sides of the accessible route when the slope of the route exceeds 1 in 20. The handrails shall be continuous along both sides of the stair, ramp and landing except where the handrail is interrupted by a doorway.	

- 4.6 The specific requirements of the documents for use in establishing compliance with the building code under section 47A(3) and 50, namely NZS 4121 and Approved Document D1, are outlined in 5.6 below.

## 5 DISCUSSION

- 5.1 The Authority takes the view that sections 34(7) and 47A(2) authorise the Authority to grant waivers or modifications of the building code in respect of the alteration of an existing building only, and not in respect of the construction of a new building. Therefore, if the bridge is a building to which section 47A applies, the Authority has no power to waive or modify the provisions of the building code for access and facilities for use by people with disabilities.
- 5.2 The Authority considers that the bridge is a building to which the public are to be admitted, and, as a local government facility, comes within section 47A(4)(g). Therefore it must comply with the provisions of the building code for access and facilities for use by people with disabilities. Clause D1.3.2 requires the provision of an access route for people with disabilities, and that route must comply with clauses D1.3.3 and D1.3.4. That appears to dispose of the matter, given that the Authority cannot waive or modify that requirement.
- 5.3 However, it might be argued that in some cases compliance with the relevant requirements of NZS 4121 or Approved Document D1, and therefore with the corresponding provisions of the building code, would not in fact amount to reasonable and adequate provision for people with disabilities. If so, does the Act require building owners to provide access that is not reasonable and adequate? Looking at it another way, if access is not reasonable and adequate then can people with disabilities be expected to visit and use that building? If not, does that mean that section 47A does not apply to the building after all. The Authority notes those questions without answering them, because in this case it concludes that ramp access will in fact make reasonable and adequate provision for people with disabilities for the reasons set out below.
- 5.4 Access for people with disabilities could in theory be provided by way of a lift at each end of the bridge, although the bridge is not one of those buildings required by clause D1.3.4 to have a lift. The Authority considers that it would be unreasonable to require the installation of lifts, not only because of the capital cost of installation but also because of the ongoing costs of both normal maintenance and, very probably, repairs and maintenance necessitated by vandalism.
- 5.5 Another solution is to provide ramps. The report mentioned in 2.2 above identified a significant number of pedestrian bridges around Wellington which incorporate ramp access for people with disabilities. The Authority does not know the heights of those bridges.
- 5.6 For this 5m high bridge, the acceptable solution D1/AS1, which specifies ramps at a gradient of 1 in 12, with 1200 mm landings for each 750 mm rise, requires a ramp almost 70 m long at each end of the bridge.
- 5.7 Travelling by wheelchair along a 70 m ramp rising 5 m, and then down a similar ramp, is clearly a daunting journey, and might even, as the applicant put it, require “a high degree of athleticism”. Nevertheless, the Authority has consistently taken the view<sup>1</sup> that it is important not to underestimate the extent to which people with disabilities are capable of overcoming those disabilities. The clear intention of the Building Act is that buildings must not be

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<sup>1</sup> See Determinations 97/009, 95/003, 95/006, and 95/008, and the Authority’s statement “Access and Facilities for People with Disabilities” published in *Building Industry Authority News* No. 23, June 1993.

constructed in such a way as to prevent people with disabilities from carrying out normal activities to the fullest extent that their disabilities allow.

5.8 Accordingly, the Authority considers that it would not be unreasonable to require ramp access to be provided for use by people with ambulant disabilities in this particular case.

5.9 That being so, the practical difficulties mentioned by the applicant are irrelevant. As the Authority said in Determination 99/001:

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.

5.10 In this case, the applicant was under no obligation to seek a determination, and the Authority commends it for doing so. It is entirely proper for organisations acting in the public interest, and particularly territorial authorities charged with enforcing the Act, to set a good example and apply not merely the letter but also the spirit of the Act in their own building activities.

## **6 CONCLUSION**

6.1 The Authority concludes that ramp access must be provided for this particular bridge so that it will comply with the provisions of the building code for access by people with disabilities.

## **7 THE AUTHORITY'S DECISION**

7.1 In accordance with section 20, the Authority hereby determines that building consent is not to be issued for the proposed bridge without ramp access.

Signed for and on behalf of the Building Industry Authority on this 24<sup>th</sup> day of March 2000.

W A Porteous  
Chief Executive