

Access and facilities for people with disabilities in the alteration of a warehouse and office complex

1 THE MATTER TO BE DETERMINED

- 1.1 The matter before the Authority is a dispute about whether a lift is required in the alteration of a warehouse and office complex.
- 1.2 The Authority takes the view that it is being asked to determine whether the proposed provisions for access for people with disabilities comply as nearly as is reasonably practicable with clauses 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 The matter of accessible toilets (toilets having features to permit use by people with disabilities) was not raised in the application for determination. However, in processing the application the Authority noted that none of the proposed toilets appeared to be accessible. The Authority considered that if a lift were in fact required, then accessible toilet facilities would also be required. However, the Authority did not ask the parties to make additional submissions in respect of the toilets because the submissions as to whether it was reasonably practicable to install a lift applied equally to the installation of accessible toilet facilities.
- 1.4 Apart from those matters, the Authority has not considered any other aspects of the Building Act or of the building code in making this determination.

2 THE PARTIES

- 2.1 The applicant was the owner of the complex acting through a firm of architects. The other party was the territorial authority.

3 THE COMPLEX

- 3.1 For the purposes of this determination, two adjoining buildings on different allotments but under the same ownership and managed as a single building are considered as if they were one building (“the complex”) as provided by section 3(2)(b) of the Building Act. This determination takes no account of the requirements, if any, of section 37 of the Act.

- 3.2 The applicant is a trade supplier. The complex currently contains warehousing, administration, and car parking facilities. The architect described its customers as being generally tradespeople who visit the complex in panel vans to collect product items and rarely need to visit the offices on the upper floors. Currently, the warehouse and customer facilities are on the ground floors, with offices and a staff lunchroom on the upper floors. Currently, staff numbers total 65 people.
- 3.3 The two buildings making up the complex are each of two storeys. They are on different levels and their floor levels do not coincide. The lower building has approximately half the floor area of the higher building. In respect of the lower building, the proposed alterations will in effect convert its existing ground floor to car parking (“the lower ground floor”), add a new floor (“the ground floor”) at the same level as the ground floor of the higher building, and add another new floor (“the first floor”) at the same level as the upper floor of the higher building. The ground and first floors of the two buildings will extend throughout the complex, with the ground floor containing the warehousing and customer facilities, and the first floor containing offices for up to 45 staff, meeting rooms, and a lunchroom.
- 3.4 The original office area at first floor level was 509 m². The proposed extension of 643 m² will result in the first floor having an area of 1152 m². The number of people on that floor at any one time will usually be less than the total staff of 65, but about once a month when meetings are held there will be approximately 80 people on the first floor.
- 3.5 There are accessible stairs between floors.

4 THE LEGISLATION AND NZS 4121

- 4.1 For the reasons set out in Determination 95/008, the Authority takes the view that compliance with NZS 4121 is to be accepted as establishing compliance with the corresponding provisions of the building code.
- 4.2 The relevant provisions of the Building Act are:

(a) Section 3(2):

(2) For the purposes of [Part IX of this Act,] a building consent, a code compliance certificate, and a compliance schedule the term “building” also includes—

(b) Any 2 or more buildings which, on completion of any building work, are intended to be managed as 1 building with a common use and a common set of ownership arrangements.

(b) Section 38:

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 means of escape from fire, and 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 . . .

(c) Section 47A(1) and (4):

(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 . . . 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) The provisions of this section shall apply to, but shall not be limited to, buildings, and parts of buildings . . . that are intended to be used for or associated with one or more of the following purposes:

- (f) Commercial buildings and premises for business and professional purposes, including computer centres:

4.3 The relevant provisions of the building code are:

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

- (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 . . .

D1.3.4 An accessible route . . . shall:

- (c) Include a lift complying with Clause D2 “Mechanical Installations for Access” to upper floors where:
 - (ii) buildings are three storeys high and have a total design occupancy of 50 or more persons on the two upper floors,
 - (iii) buildings are two storeys high and have a total design occupancy of 40 or more persons on the upper floor . . .

G1.3.3 Facilities for personal hygiene shall be provided in convenient locations.

G1.3.4 Personal hygiene facilities provided for people with disabilities shall be accessible.

4.4 The relevant provisions of NZS 4121:2001 are in its clause 9.1.3.2:

. . . a lift is not required where:

- (a) Buildings are two storeys high and have a gross floor area of the upper floor of less than 400 m²;
- (b) Buildings are three storeys high and have a gross floor area of the upper floors of less than 500 m²;

provided that the ground floor complies with the requirements of this Standard and the upper floors have access for people with ambulant disabilities.

5. THE SUBMISSIONS

5.1 The architect, on behalf of the applicant, submitted that:

- (a) “The nature of the business is such that it is extremely unlikely that there would be disabled clients visiting the warehouse or office.”
- (b) “During the past 20 years [the] offices have been situated at first floor level. There has never been a requirement for the provision of a lift for access of staff or public within the building complex during this time.”

The applicant confirmed those matters and also said:

- (c) “I am advised by [the architect] that the likely cost of a lift installation will add nearly \$100,000 to the cost of the project. I do not consider that cost to be justified when there is such a small likelihood of use of the facility.”

5.2 The territorial authority formally acknowledged receipt of the application and accompanying documents, but did not make any submissions. The Authority was not given copies of any correspondence between the applicant and the territorial authority.

6 DISCUSSION

6.1 General

6.1.1 There is no dispute that section 47A of the Building Act applies to the complex and that therefore a lift is required for full compliance with clause D1 of the building code and accessible toilet facilities are required for full compliance with clause G1.

6.1.2 There is also no dispute that section 38 requires the complex, after the alteration, to comply with clauses D1 and G1 “as nearly as is reasonably practicable to the same extent as if it were a new building”.

6.1.3 Thus the Authority must first consider whether a lift and accessible toilet facilities would be required if this were a new building, and if so whether it is reasonably practicable to install them.

6.1.4 In fact, there is no dispute that if this were a new building then a lift or lifts would be required to serve all three floors. The need for accessible toilet facilities is equally clear.

6.1.5 As to whether it is reasonable and practicable to install a lift and accessible toilet facilities, the applicant has asserted in effect that people with disabilities, specifically people who cannot use accessible stairs, were “extremely unlikely” to be clients of the business and that a lift has never been needed over the last 20 years. The applicant also claims that the cost of a lift is not justified.

6.2 Are people with disabilities likely to use the first floor?

- 6.2.1 The applicant submitted that, because of the nature of the business, people with disabilities were unlikely to be clients. However, it is not for the Authority to adjudicate what people can or cannot achieve in a work environment, that will depend on the abilities of the individuals concerned. The Authority takes the view¹ that:
- (a) The provisions of the building code for access and facilities for use by people with disabilities apply to a building as a whole but do not apply to a building or to any part or portion of a building in which people with disabilities, solely because of their disabilities, cannot work, and which, for some specific reason, will not be visited by people with disabilities.
 - (b) It is important not to underestimate the extent to which people with disabilities are capable of overcoming those disabilities. The clear intention of section 47A of the Building Act is that buildings must not be constructed in such a way as to prevent people with disabilities from undertaking work which they are capable of undertaking or from visiting buildings which they are capable of visiting.
- 6.2.2 The Authority does not consider that it has been given reasonable grounds for accepting that people who cannot climb accessible stairs, solely because of that disability, cannot work in the trade served by the business.
- 6.2.3 In any case, even if clients never needed to visit the first floor, clients are not the only people to be considered. In Determination 92.1103, the Authority said:
- “ . . . under section 25 of the Disabled Persons Community Welfare Act [since replaced by section 47A of the Building Act] reasonable and adequate provision is to be made for people with disabilities ‘who may be expected to visit or work in’ the building concerned’. The Authority also notes that the objective of the relevant provisions of the New Zealand Building Code is to ‘Ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings’. The Authority considers that objective applies in respect of both customers and staff of the building.”
- 6.2.4 The Authority has not changed its view, and accordingly takes account of the fact that even if clients never do go to the first floor, nevertheless up to approximately 80 people at a time do use it. The Authority has been given no reason to believe that people who cannot climb accessible stairs, solely because of that disability, cannot undertake some or all of the tasks performed by the people who do use the first floor.

¹ See Determinations 95/003, 95/006, and 95/008, 97/009 and the Authority’s statement “Access and Facilities for People with Disabilities” published in *Building Industry Authority News* N. 23, June 1993.

6.2.5 Accordingly, the Authority concludes that people who cannot climb accessible stairs, in the words of section 47A, “may be expected to visit or work in that building and carry out normal activities in that building”, and that appropriate access and facilities are therefore required.

6.3 The cost of a lift

6.3.1 The Authority would have preferred a firm quotation from a lift installer to the architect’s estimate that it would cost \$100,000 to install a lift. However, even if that estimate is correct, there appears to be nothing peculiar to the complex that would make the installation of a lift significantly more costly than for the general run of two or three storey buildings undergoing alterations.

6.3.2 Even if it is treated as a two story building, the complex has a design occupancy of 80 as against the 40 at which a lift is required by clause 1.3.4(c) of the building code, and a gross floor area of 1152 m² as against the 400 m² at which a lift is required by clause 9.1.3.2(b) of NZS 4121. Given those numbers, the Authority considers that the advantage of having a lift outweighs the sacrifice involved in providing one.

6.4 Must the lift serve the lower ground floor?

6.4.1 The only remaining question is whether the lift needs to serve the lower ground floor car park.

6.4.2 In Determination 93/001 the Authority considered a similar situation and said:

“2.2 The Authority notes that, after the proposed alteration, both of the upper levels will be provided with car parking and access for people with disabilities, whether visitors or staff. The only part of the building not fully accessible will be the small bottom level reserved for staff car parking.

“2.3 The Authority considers that, after the proposed 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 people with disabilities. Furthermore it considers that despite the lift not serving all three levels, the building will nevertheless include reasonable and adequate provision by way of access and parking provisions, from the other two levels, for people with disabilities visiting or working in the building.”

6.4.3 In this case, accessible parking spaces are provided outside the main entrance to the ground floor. Accordingly, the Authority considers that the lift need not serve the lower ground floor.

7 THE AUTHORITY'S DECISION

7.1 In accordance with section 20 of the Building Act, the Authority hereby determines that, in order to comply as nearly as is reasonably practicable with the provisions of the building code for access and facilities for people with disabilities as required by section 38 of the Building Act:

- (a) A lift is to be installed between the ground floor and the first floor; and
- (b) Accessible toilet facilities are to be provided.

Signed for and on behalf of the Building Industry Authority on this 16th day of August 2002

W A Porteous
Chief Executive