



## Determination 2014/039

# Regarding access for people with disabilities to a proposed building that forms part of a large urban development area at 4 Williamson Avenue, Grey Lynn, Auckland

### 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
- the owner of the development, Progressive Enterprises Ltd and S Marlo, as the purchaser of Lot 6 within the development. For the purposes of this determination they will be referred to as “the applicants”, although I note the determination application was applied for by Progressive Enterprises Ltd.
  - Auckland City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from a building consent application applied for by the applicants for a proposed building on Lot 6 (“Lot 6”). The authority is not satisfied there is ‘reasonable and adequate’ access under section 118 of the Act for Lot 6 in relation to the urban development (“the development”) for accessible car parking spaces.
- 1.4 The applicants have proposed that accessible car parking be provided in the nearby car parking building located at Lot 1 in the development (“the car parking building”). No building consent has yet been granted for the car parking building and therefore the method of compliance of Lot 6 with Clause D1 of the Building Code is still just a proposal at this stage.
- 1.5 The matter to be determined<sup>2</sup> is therefore whether, in principle, the provision of accessible car parking in the nearby car parking building will enable Lot 6 to comply with Clause D1 of the Building Code (Schedule 1, Building Regulations 1992).
- 1.6 I note the applicants are intending to use this determination for the remainder 32 lots in the development. I consider the remainder 32 lots are outside the scope of this determination. It is likely their situations could be different and it is not appropriate to cover alternative situations without sufficient information being provided for each case. However, I encourage the parties to use this determination as guidance for similar situations.

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<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.dbh.govt.nz](http://www.dbh.govt.nz) or by contacting the Ministry on 0800 242 243.

<sup>2</sup> Under section 177(1)(a) of the Act

- 1.7 Unless otherwise stated, references below to sections are to sections of the Act and references to clauses are to clauses of the Building Code.
- 1.8 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I have not considered any other aspects of the Act or the Building Code.
- 1.9 The Office for Disability Issues ("the ODI") at the Ministry of Social Development has been included as being a department with which the Chief Executive must consult under section 170 of the Act.

## 2. The development and Lot 6

- 2.1 The development consists of 33 lot subdivisions and a new public road ("Vinegar Lane"). The development is set out generally as per Figures 1 and 2.



Figure 1: the development layout showing the accessible route, Lot 6 and the car parking building.

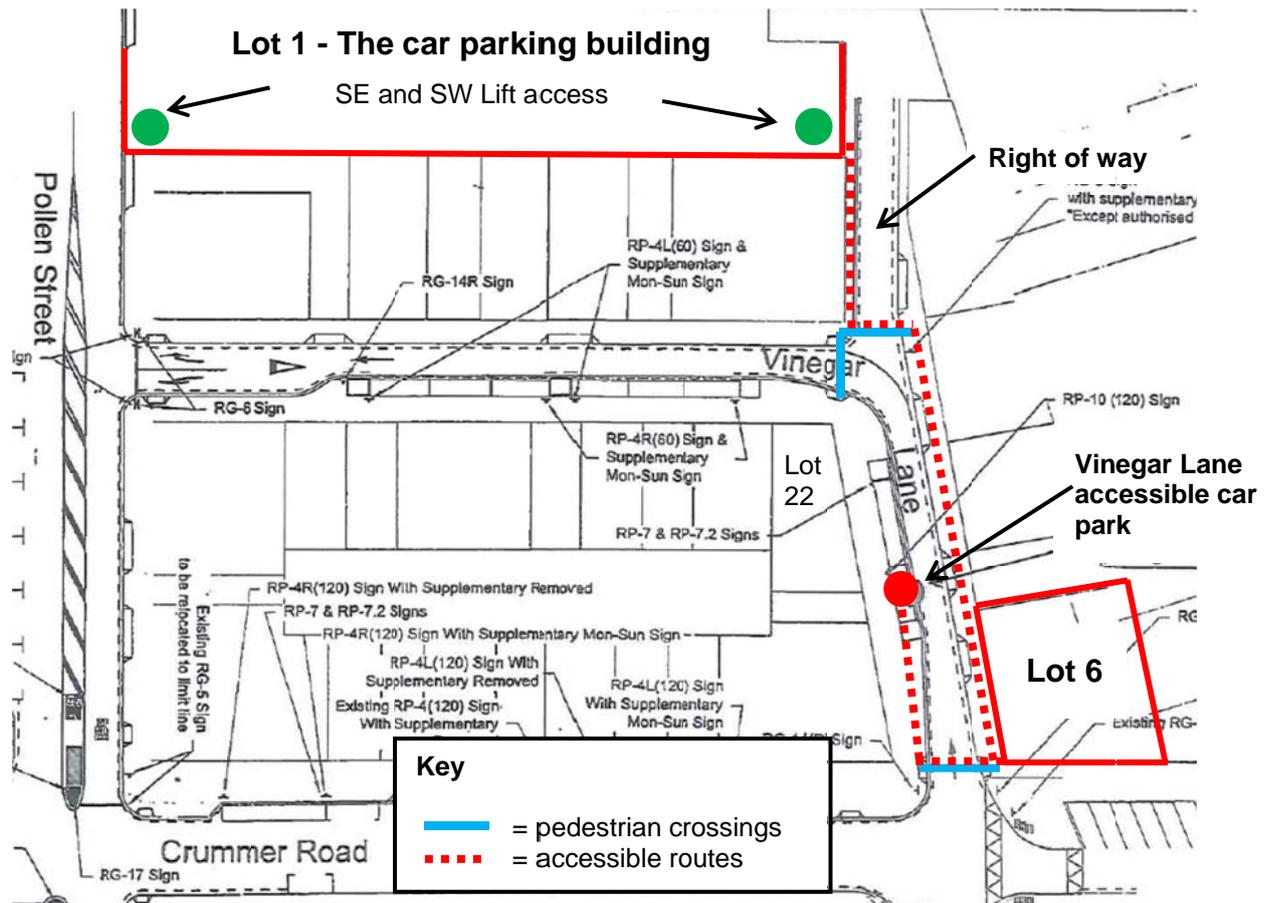


Figure 2: The development layout showing further details

2.2 Lot 1 consists of a multi-level building accommodating a supermarket, retail units, offices and five levels of basement car parking providing 681 parking spaces, 16 of which are accessible parking spaces. The car parking building is to be built over 9 levels, with Levels 1-5 being car parking as follows:

- Level 1 – private car park for other residents and users in the development
- Level 2 and 3 – general car parking for visitors and tenants
- Level 4 and 5 – supermarket car parking

The public access to the parking levels is off Level 3 on Pollen Street.

2.3 Lots 2-31 contain individual mixed use residential and commercial developments. Up to 240 car parking spaces are available in the car parking building to lease or purchase by the owners and occupiers of Lots 2-31. The owner/occupier of each lot has a choice of:

- no onsite parking, purchase or lease of spaces in the car parking building including the use of the defined accessible spaces
- some onsite public parking with or without nominated accessible car spaces
- onsite private car parking

2.4 The applicants have applied for a building consent No. B/2014/2364 for the five level building at Lot 6, consisting of the following:

- a basement parking level, ground floor retail, first floor a commercial office and the second and third floor residential apartments
  - the basement area contains eight car parks for private use by owners of the spaces in Lot 6
  - the ground floor retail area plus a coffee shop and a small storage area
- 2.5 Lot 6 has allocated parking spaces in the car parking building, including the use of the 16 accessible car parks.

### 3. Background

- 3.1 In September 2013 the authority granted resource consent to the applicants for the development.
- 3.2 Around mid-January 2014 the applicants applied for Building Consent No. B/2014/2364 for Lot 6.
- 3.3 On 21 April 2014 the authority requested further information for the building consent for Lot 6. In relation to Clause D1 of the Building Code 'access routes' the authority asked for the applicants to:
- Revise Stair 1 in accordance with the following, or provide evidence that accessible parking requirements are either not required by the building code, or are satisfied elsewhere by the alternative provisions outlined under Conditions 27-29 of the approved resource consent R/LUC/2012/3145/6
- 3.4 At some stage between 21 April 2014 and 4 June 2014 the applicants and the authority held a meeting to discuss the matter of accessible routes.
- 3.5 On 4 June 2014 the applicants wrote to the authority with a detailed response to the request for further information, in summary:
- Lot 6 complies with the Act as it is part of an overall development where accessible car parking has been considered, provided and allowed for all buildings of the consented subdivision.
  - Lot 6 is mixed-use containing both retail and commercial activities.
  - It is reasonable and adequate to expect to have accessible parking provisions catered for offsite but associated with the building. Some of the buildings in the development are small in size; it would therefore be unreasonable to expect each lot to individually provide onsite accessible parking for retail and commercial activities.
  - In relation to access and distance there are two sets of accessible lifts provided to service the lots within the development from the car parking building. The accessible car parks in the car parking building are located as close as possible to these lifts. The travel distances to the various lots in the development ranges from 3 to 100m. For Lot 6, the distance from the basement lifts is 55m and the distance from the accessible park in the street is less than 5m. This is 'no different' to many large mall or town centre developments, and the lift access points have been located as centrally as possible to allow for optimal access.
  - Additional public street accessible parking is available on Vinegar Lane.
  - The gradient between the car parking building and Lot 6 is a 'gentle incline' at 1:37.

- In relation to weather protection Lot 6 provides both a small canopy on the corner and a recessed undercover entry. The remainder lots have the choice to have full width canopies which will provide respite for inclement weather along the street. This will depend on lot owners.
- Lot 6 is primarily private residential apartments; the building has less than 40% retail and commercial floor plates that will not generate large amounts of people.
- Lot 6 has a small basement that means vehicle manoeuvring is difficult. The commercial and retail spaces are owner-occupied and the owners do not want the staff or public to have access to the onsite basement. The basement is proposed to have a controlled entry that is only accessible by the owners and residents of Lot 6.
- Locating vehicles in the car parking building removes vehicles from Vinegar Lane and improves the safety of pedestrians.

3.6 On 18 June 2014 the authority wrote to the applicants regarding accessible car parking. The authority concludes that the provision of accessible parking elsewhere does not meet the test of a reasonable and adequate provision required under section 118 of the Act, saying:

In reaching this decision, we have given regard to section 8(1)(c) of the [Act] and its definition of “building” and what it means and includes, being

“includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements”

In view of the above, we ask that you provide one or the other of the following:

1. Revised design documents in all affected form detailing and specifying a single accessible parking space in accordance with recognised standards; or
2. A determination in favour of the current proposal in accordance with section 177(a) or (b) of the [Act]

3.7 On 26 June 2014 the authority provided the applicants with information regarding the determination process.

3.8 On 2 July 2014 the applicants’ legal representative provided an opinion to the applicants, in summary:

- Section 118 of the Act does not specify how many car parks should be provided and where, just that ‘reasonable and adequate’ parking provisions must be made.
- NZS4121 provides where parking is provided, spaces for people with a disability shall be provided with a ratio of not less than one accessible car park where there are up to 20 car parks and that parking spaces for people with disabilities shall be provided as close as practicable to the accessible entrance or to an accessible lift to the building or facility.
- There are no specific requirements for how close the car park must be to the building. The guidelines on accessible car parking spaces produced by the Department of Building and Housing and Barrier Free New Zealand Trust<sup>3</sup> (“the guidelines”) states ‘car parks allocated to a building can sometimes be on another site. If this is the case, there must be an accessible route from the parking area to the building it is associated with’.

<sup>3</sup> “Accessible Car Parking Spaces” Published June 2008

- The “as close as practicable to the accessible entrance” would make preferential treatment (in terms of location to the entrance) of regular car parks likely to be a breach of the standard, so the location of the accessible spaces compared to the regular spaces will also be a relevant factor.

3.9 The Ministry received an application for determination on 7 July 2014.

## 4. The submissions

4.1 The applicants provided a written submission dated 1 July 2014. In summary:

- There is a clear path from Lot 6 to accessible parking spaces in the car parking building which has lifts providing access to Vinegar Lane and Pollen Street.
- The applicants have provided considerable detail how the provisions of section 118 are ‘satisfied elsewhere by the alternative provisions’ (refer paragraph 3.4).
- There is no specific requirement for how close an accessible car parking space must be to the building and to this extent the legislation is permissive.
- Lot 6 is ‘not a unique situation and other proposed buildings in the [development] are likely to face the same issues’.

4.2 The applicants provided the following documentation:

- correspondence with the authority
- legal opinion from the applicants’ legal representative
- various resource consents for the buildings of the complex
- a design manual for the complex
- plans and elevations for Lot 6

4.3 On 10 July 2014 the Ministry sought confirmation on the ownership of the building and development. The applicants responded on 11 July 2014 noting that:

- S Marlo applied for building consent for Lot 6 with the agreement of Progressive Enterprises Ltd
- Progressive Enterprises Ltd are the current owners of the development and will remain the owners until the subdivision titles are issued.

4.4 On 25 July 2014 the Ministry sought further information from the applicants regarding the location of the accessible car parks in the car parking building and further details to show how the accessible routes comply with Clauses D1.3.3 and D1.3.4 of the Building Code.

4.5 On 31 July 2014 the applicants responded providing further plans for the car parking building and the development, a report from an architect (“the applicants’ architect”) and guidance documentation on accessible parking. In summary the applicants’ architects stated:

- The car parking building is built over 9 levels, with Levels 1-5 being car parking, Level 6 a supermarket and retail, and Levels 7 to 9 being office spaces. Public access to the car parking is available off Level 3 on Pollen Street; Level 1 is specified as private car parking for Vinegar Lane residents and users, Levels 2 and 3 as general car parking for tenants and visitors, and Levels 4 and 5 as supermarket car parking.

- Paragraph 10.2.1 of Acceptable Solution D1/AS1 requires 13.38 accessible car park spaces based on total car parking spaces for the car parking building. The design of the car parking building shows the accessible car park spaces evenly distributed over the publicly accessible parking levels.
- The parameters proposed for the car parking building has been successfully implemented in the applicant's supermarket in Wellington which was completed in 2012, this project had all car parks on indoor basement levels and is operating on a daily basis.
- All stairwells have been designed to meet the requirements of Clause D1.
- Lifts are located on three corners of the building. Visitors will have access to all three lifts on level 2, and two of the lifts on level 3. The lifts take visitors to street level on Williamson Avenue, Pollen Street, or the northern end of Vinegar Lane.
- All accessible car parks have been placed as near as practicable to lifts, stairs and travelators, given circulation and construction constraints.

4.6 On 5 August 2014 the authority provided a written submission including a report by the Traffic Design Group ("the traffic design report") for the applicants and various email correspondence between the applicants and the authority, in summary the authority stated:

- As parking has been provided within the basement of Lot 6 it is not 'reasonable or adequate' for people with disabilities to rely on off-site parking.
- Lot 6 meets the definition of a "commercial building, and premises for business and professional purposes" under Schedule 2(f) of the Act, then accessible parking is required to be contained within it.
- Eight car parking spaces are detailed in the original application for building consent and only three were allocated the apartment residents. The authority submitted that of the five remaining spaces, only one would be required to satisfy the accessibility provisions of the Act and Building Code.
- People with disabilities may be expected to work in or visit the building, they will be disadvantaged if the five car parking spaces are 'removed'.
- The accessible car park on Vinegar Lane is limited to a stay of 120 minutes and will 'prove prohibitive' for those who may be expected to work in the building.
- The authority quoted from Determination 1992/1102<sup>4</sup> stating a waiver of the Building Code 'could not generally be justified on the basis of assurances as to future management practices' stating that this remains 'good law' in the current case and context.

4.7 On 6 August 2014 the applicants responded to the authority's submission with a further submission, in summary the applicants stated:

- The determination is to seek clarity as to whether accessible car spaces within the car parking are adequate for lots 2-31 but specifically Lot 6. Lot 6 must be seen in the context of the larger development.
- 10 car parking spaces were required in the original building consent application: 8 of which are in Lot 6 and 2 in the car parking building.

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<sup>4</sup> Determination 1992/1102: 'Handrails for an Assembly service building'. The current Act does not give the Ministry the ability to waive or modify the access requirements of the Building Code in respect of new buildings, as was the case for the Building Act 1991.

- The applicants dispute the statement made by the authority that one car park space is required to be accessible in the Lot 6 basement. The applicants outlined significant costs and loss of three parking spaces in the Lot 6 basement if this was required.
- The Act does not require a prioritisation of accessible car parking over regular car parking, rather the provision of accessible parking with an accessible route which is provided within the car parking building.
- The building consent applications for the car parking building are to be lodged shortly.

4.8 A draft determination was sent to the parties and the ODI for comment on 8 August 2014.

## **5. Further submissions to the draft determination**

### **5.1 The authority**

5.1.1 The authority made two written submissions; on 20 August 2014 in response to the draft determination and on 27 August 2014 in response to the applicants' further submission. In summary the authority submitted:

- Lot 6 and the car parking building (Lot 1) should not be regarded as a building within section 8(1)(c) of the Act as they are not intended to be managed as one building with a common use and common set of ownership. The authority anticipates ownership of the lots within the development will transfer during the subdivision process.
- Under section 118 and Schedule 2 of the Act an accessible car park should be located in Lot 6. The authority submits it is unreasonable to provide accessible car parking elsewhere when Lot 6 has sufficient parking space.
- If an accessible car park is located within Lot 6 it is closer and protected from the weather. The distance to the car parking building is not adequate especially if the south eastern accessible car park is occupied.
- The 'legal instrument' should be agreed between the parties before a building consent is issued for Lot 6 as it is an essential element to ensure accessible car parking for Lot 6 is reasonable and adequate.
- The draft determination considers examples where 'outcomes and effects will be reliant upon individual choices to be exercised at some later juncture'.
- The authority submits matters relating to the applicants' legal opinion only appears in abridged form, and section 8(1)(c) is omitted.
- The authority states factors affecting the development may – but should not necessarily – be considered.
- A single accessible car parking space is only required to meet accessible provisions. The intention of the applicants to remove all but residents parking is preferential and therefore prejudicial to non-ambulant persons.
- The authority agreed that the planning consent (under the Resource Management Act 1991) does not constitute building consent approval.

## 5.2 The applicants

5.2.1 The applicants provided two written submissions. The first dated 21 August 2014 stated, in summary:

- A series of management structures will exist within the development including an incorporated society, a body corporate for Level 1 car parking unit holders and an owner/manager for the car parking building. The development will be managed as an ‘integrated comprehensive precinct’.
- The car parking building is the location for nearly all car parking within the development except for any parking contained on individual lots.
- Resource consent shows the relationship between the car parking building and the remaining lots, the most common linkage being car parking requirements. The applicants note conditions on the resource consent and the associated design manual to support their arguments that the buildings within the development are interrelated and management structures are in place to ensure management for car parking.
- The applicants have amended physical works on the site to remove any issues identified in the draft determination. They believe the accessible route(s) will now comply with the requirements of the Building Code. This includes widening of footpaths (to at least 1200mm wide), lowered kerbs and the addition of pedestrian crossing markers across the right of way entrance and across Vinegar Lane to Lot 22 (refer Figure 2). The applicants have specifically created a right of way leading from Vinegar Lane to the loading dock. The street accessible car park has also been altered to comply.
- It is reasonable and adequate to rely on accessible parking in the car parking building. A full assessment has resulted in a requirement of 15 accessible car parking spaces being available. Whilst some lots in the development have limited parking on site it is agreed with the draft determination that the distance to the accessible car parking in the car parking building is reasonable.
- The applicants provided a comparison to other developments in Auckland where accessible car parking is provided in alternative buildings and at distances exceeding that of the current development.
- The applicants note the draft determination did not identify any issues within the car parking building and therefore they assume it achieves compliance.
- The applicants have provided a plan of the legal instrument they will register on the title for the car parking building and any other site to reflect the right of way and to protect the use of those accessible car parks.

5.2.2 The applicants provided a second written submission in response to the authority’s further submission dated 28 August 2014. In summary the applicants note:

- The applicants object to the authority taking emails out of context, the emails were provided in good faith as part of negotiations for alternative approaches for achieving compliance for the development.
- ‘Practicable’ has an implication that it should be capable of being done and ‘completed without creating significant undue burden that would render it neither practical nor reasonable to complete’. It is not practical to change the design of

Lot 6 retrospectively when there is a reasonable and compliance solution within the car parking building.

- Section 118 allows for flexibility in interpretation and for external influences to inform the outcome. It is reasonable to expect a building to be part of a larger more comprehensive development.

5.3 On 21 August 2014 the ODI accepted the draft determination without further comment.

5.4 I have taken account of the submissions from the applicants and the authority and amended the draft determination where appropriate.

## **6. Discussion**

### **6.1 The legislation**

6.1.1 Section 118 of the Act provides for when a new building is constructed to which members of the public are to be admitted, reasonable and adequate provision by way of access, parking provisions, and sanitary facilities must be made for persons with disabilities who may be expected to visit or work in that building or carry out normal activities and processes in that building.

6.1.2 Section 69(3) of the Act states that there is no discretion to waive the requirements of section 118 in relation to a new building. The development and the Lot 6 building are new buildings.

6.1.3 Section 118(1) applies to buildings that are intended to be used for or associated with, one or more of the purposes specified in Schedule 2 of the Act. It is not disputed that the Lot 6 comes within the scope of buildings listed in Schedule 2 of the Act as it contains a mixed-use retail, a coffee shop, and commercial space and is likely to fall under clauses (f) (q) and (r) of Schedule 2. The building therefore must comply with section 118(1) of the Act.

6.1.4 The definition of building in section 8(1)(c) of the Act says that a building:

Includes any 2 or more buildings [that] are intended to be managed as one building with a common use and a common set of ownership requirements ...'

6.1.5 Previous determinations<sup>5</sup> have established an approach for assessing the need for accessible routes and facilities in situations where buildings are part of a complex of buildings. It is accepted that the other buildings in the complex may be taken into account for some purposes, for example where a building contains facilities not present in another. In my view when assessing if Lot 6 complies with section 118 of the Act, the development as a whole can be considered.

6.1.6 I note that section 16 of the Act states that buildings must comply in their intended use with the functional requirements and performance criteria of the Building Code. Intended use is defined in section 7 as including 'any reasonably foreseeable occasional use not incompatible with the intended use'. In the current case, the applicants have stated the development is being used like a mall or small township with common areas and facilities. I do not see any foreseeable occasional use of the development or Lot 6 that would negate the assessment of compliance with the Building Code against this intended use, in relation to accessible car parking.

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<sup>5</sup> Determination 2013/036 Access for people with disabilities to a school building undergoing earthquake repair at a College and 2009/027 Access for people with disabilities to a relocatable classroom at a school

6.1.7 I remind the parties that any limitations provided in resource consents do not provide grounds for not complying with the Building Code.<sup>6</sup> The compliance with the relevant clauses of the Building Code need to be considered when applying for resource consent.

6.1.8 Clause D1.3.3 and D1.3.4 provide the detailed performance criteria of an accessible route, D1.3.2 provides the overarching criteria, stating that:

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

An 'accessible route' is defined as

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 car parking 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.

6.1.9 'Reasonable and adequate' access is not defined in the Act, however, Clause A2 of the Building Code defines 'adequate' as being adequate to achieve the objectives of the Building Code, therefore assessment is against the performance requirements set out in Clause D1. The objective in Clause D1.1 is to ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings. The relevant performance requirements of the Building Code are Clause D1.3.3 and D1.3.4 in relation to access routes and D1.3.6 in relation to provision for accessible car parking spaces.

## 6.2 Will the development enable Lot 6 to comply with Clause D1 of the Building Code?

6.2.1 For Lot 6 to comply with Clause D1, the submission from the applicants relies on accessible car parking being provided in the car parking building. I accept there is a relationship between the Lot 6 and the car parking building within the development from the Resource Consent documentation, however, in my view this legal relationship needs to be better formalised (refer paragraph 7.1). There is an agreement for the users of the various lots within the development to use the car parking building, which has 15 accessible car park spaces available for public use, but in my view the agreement needs to formalise the requirement for the accessible route to be maintained.

6.2.2 The applicants have provided a draft instrument to be registered on the title for the car parking building to protect the use of the accessible car parks for use for accessible users who may occupy lots 2-31 in the development. This draft instrument will need to be reviewed by the authority as part of the building consent process for the car parking building. As noted above, the draft instrument will also need to provide for the maintenance of the accessible route from the car parking spaces in the car parking building to Lot 6, and so may also need to encompass the titles for that route via Vinegar Lane throughout the expected life of the building.

6.2.3 The current development proposes two options for disabled car parking in relation to the proposed building. The first is to use the accessible car park located on Vinegar

<sup>6</sup> Determination 2010/066 The provision of access and facilities for people with disabilities to a new building at the Emilia Maud Nixon Memorial Gardens

Lane (“the Vinegar Lane car park”) (refer paragraph 6.3.1). The second is to make use of the 15 accessible car park spaces in the car parking building (refer paragraph 6.3.4).

### **6.3 The nature of the route of travel – Clauses D1.3.3, D1.3.4 and D1.3.6**

#### ***The Vinegar Lane car park***

- 6.3.1 The Vinegar Lane car park is located on Vinegar Lane, a one-way street with vehicle access from Crummer Road. The location of the Vinegar Lane car park (refer Figure 2) is such that the vehicle’s driver door will open out onto traffic on Vinegar Lane, and a non-ambulant person must then negotiate getting out of their vehicle and onto the footpath opposite Lot 6 to then use the proposed pedestrian crossing and lowered kerb areas on the corner of Vinegar and Crummer Road to cross the street to Lot 6.
- 6.3.2 D1.3.6 states that accessible car spaces need to avoid conflict between vehicles and people using or moving to or from the space. In my view the Vinegar Lane car park does not currently satisfy Clause D1.3.6 of the Building Code. The applicants have submitted the Vinegar Lane car park has been varied to ensure it complies and instruction has been provided to their contractor. The applicants have not provided detailed information regarding compliance with D1.3.6 for the Vinegar Lane car park.
- 6.3.3 If the applicants can show the Vinegar Lane car park complies with Clause D1.3.6, I acknowledge an additional pedestrian crossing is to be located on Vinegar lane at the intersection with Crummer Road by Lot 6. This will enable a non-ambulant person to cross the road from the Vinegar Lane car park to Lot 6.

#### ***The car parking building***

- 6.3.4 The car parking building and Lot 6 are linked by Vinegar Lane. The applicants propose the lane will have new street lighting, pavement guides for the visually impaired, new street intersections, and kerb ways to ensure the route is safe and well-lit.
- 6.3.5 The applicants have provided amended plans (“the amended plans”) to show lowered kerb areas for wheel chair access. This will satisfy Clause D1.3.3 (d) which states the accessible route shall contain no threshold or upstands forming a barrier to an unaided wheelchair user.
- 6.3.6 The amended plans show that all pathways, including the pathway alongside the right of way will be a minimum of 1200mm required for wheelchair access, to comply with Clause D1.3.3 (b), which states an accessible route shall have adequate activity space to enable a person in a wheelchair to negotiate the route while permitting an ambulant person to pass.
- 6.3.7 The amended plans show two pedestrian crossing road markings between the kerb crossing points at Vinegar lane and the right of way as per Figure 2. The non-ambulant person only needs to use one of these pedestrian crossings to cross the right of way to access Lot 6. Additionally the applicants propose to protect the right of way specifically for accessible car park users and adding this to the existing legal instrument. A person in a wheelchair must be able to negotiate the accessible route unaided, safely and easily. I consider the addition of the pedestrian crossings will comply with clauses D1.3.2, D1.3.4 and D1.3.6 of the Building Code.

6.3.8 There is a small gradient of 1:37 along Vinegar Lane from the car parking building and Lot 6, I accept this is a gentle incline and not unreasonable for an accessible route.

#### **6.4 Distance**

6.4.1 I note that whilst the application submitted 55m for the distance from the car parking building, and 5m for the distance from the Vinegar Lane car park, this is slightly underestimated as it does not incorporate the need to cross the road for both accessible routes. However as this is a small addition to the accessible routes I will continue to use 55m and 5m respectively, as the stated distances for analysis.

6.4.2 In relation to access, the accessible car parks in the car parking building are located on Levels 2 to 5 of the car parking building. In relation to Lot 6 the accessible car parks that relate to the accessible route include one on level 2 (SE corner), and one of levels 2 and 3 respectively in the SW corner. The accessible car parks have been located as close to the lift access as possible. The applicants have submitted the closest lift access from the car parking building (in the SE corner) is approximately 55m from Lot 6 and the Vinegar Lane car park is approximately 5m from Lot 6.

6.4.3 I accept that 5m is a very short distance, however, I acknowledge there may be times that the Vinegar Lane car park is in use and not available. I note the park has a 120 minute time limit. For the times that the Vinegar Lane car park is in use, the car parking building must be used which has a significantly longer travel distance.

6.4.4 The intended use of the development is likened to a shopping mall (refer paragraph 6.1.6). In comparison to other shopping malls around New Zealand it is frequently the case that ambulant and non-ambulant persons will need to park in the car parking building associated with the mall and travel some distance to the required shop or café that they wish to visit. Therefore, I do not consider the distance of 55m to the Lot 6 to be unreasonable, furthermore it is expected there will be times where the Vinegar Lane car park is available leaving a distance of some 5m.

6.4.5 The time taken for the journey from the car parking building to Lot 6 is a relevant factor, compared to the location of the car parks available to non-ambulant members of the public. The provision of time for non-ambulant people should be at least the same as those for ambulant people for the accessible route to be reasonable. The Vinegar Lane car park will take a minimal amount of time to access Lot 6, and is in a better location compared to the public car parking in the car parking building. Additionally, the accessible car parks in the car parking building provide for a route that will not take a longer time to navigate compared to an ambulant person. In my view this is adequate and reasonable.

6.4.6 In my view, taken together, the two proposed accessible routes from the car parking building and the Vinegar Lane car park adjacent to Lot 6 will, in principle, enable Lot 6 to comply with Clause D1 of the Building Code. The applicants needs to provide sufficient information for the authority to be satisfied that the remaining work in the development approved under the consents under the Act, and approvals issued under other legislation, provides an accessible route as it is defined in the Act, from accessible car parks to Lot 6; and that the car park to Vinegar Lane is suitable for use by wheelchair users.

6.4.7 The authority will need to be satisfied, on reasonable grounds, that the location of the accessible car parking spaces within the car parking building will comply with the Building Code, given the building's intended use providing parking for the

development as a whole, and not just for the users of Lot 1. The authority will also still need to assess, under section 49 of the Act, whether the building complies with the relevant clauses of the Building Code, including clause D1.

## **7. What happens next**

- 7.1 The determination has identified the need for there to be a legal instrument that ties Lot 6 with the car parking building and the accessible route between (refer paragraph 6.2.2). It is important that any future owners to be aware of this requirement, and a notation on the certificate of title for Lot 6, or similar, would appear to be the most appropriate mechanism to formalise this.
- 7.2 It is for the authority to appropriately manage the sequencing of the various building consents. The applicants' proposal for accessible car parking to be provided in the car parking building and the additional Vinegar Lane car park the building consent for Lot 6 will be dependent on a number of matters, including the legal instrument mentioned above, the car parking building complying with Clause D1 and the accessible routes complying with Clause D1 (refer paragraph 6.3).

## **8. The decision**

- 8.1 In accordance with section 188 of the Building Act 2004, I hereby determine that, in principle, the applicants' proposal for accessible car parking for Lot 6 to be provided in the car parking building will enable Lot 6 to comply with Clause D1 of the Building Code.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 8 September 2014.

John Gardiner  
**Manager Determinations and Assurance**

## Appendix A

A 1 The relevant sections of the Act include:

### 8 Building: what it means and includes

(1) In this Act, unless the context otherwise requires, building—

(c) includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements; ...

### 16 Building code: purpose

The building code prescribes functional requirements for buildings and the performance criteria with which buildings must comply in their intended use

### 118 Access and facilities for persons with disabilities to and within buildings

(1) If provision is being made for the construction or alteration of any building to which members of the public are to be admitted, whether for free or on payment of a charge, reasonable and adequate provision by way of access, parking provisions, and sanitary facilities must be made for persons with disabilities who may be expected to—

(a) visit or work in that building; and

(b) carry out normal activities and processes in that building.

(2) This section applies, but is not limited, to buildings that are intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2

### 69 Waiver or modification may only be granted by chief executive in certain cases

(3) This section does not apply to a waiver or modification of the building code that relates to a new building or that is contained in a national multiple-use approval

A 2 The relevant clauses of the Building Code of the Act include:

#### A2 Interpretation

**Accessible** Having features to permit use by people with disabilities.

**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 car parking 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.

**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...

**D1.3.6** Vehicle spaces for use by people with disabilities, shall, in addition to the requirements of Clause D1.3.5, be:

- (a) provided in sufficient numbers,

- (b) located to avoid conflict between vehicles and people using or moving to or from the space, and
- (c) easy to find as required by Clause F8 Signs

**D1.3.3** Access routes shall

- (a) have adequate activity space,
- (b) be free from dangerous obstructions and from any projections likely to cause an obstruction,
- (c) have a safe cross fall, and safe slope in the direction of travel,
- (d) have adequate slip-resistant walking surfaces under all conditions of normal use,
- (e) include stairs ...
- (j) have smooth, reachable and graspable handrails to provide support and to assist with movement along a stair or ladder,
- (k) have handrails of adequate strength and rigidity as required by Clause B1 Structure,
- (l) have landings of appropriate dimensions and at appropriate intervals along a stair or ramp to prevent undue fatigue,
- (m) have landings of appropriate dimensions where a door opens from or onto a stair, ramp or ladder so that the door does not create a hazard, and ...

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

- (a) be easy to find, as required by Clause F8 Signs,
- (b) have adequate activity space to enable a person in a wheelchair to negotiate the route while permitting an ambulant person to pass,
- (c) include a lift ...
- (d) contain no thresholds or upstands forming a barrier to an unaided wheelchair user,
- (e) have means to prevent the wheel of a wheelchair dropping over the side of the accessible route,
- (f) have doors and related hardware which are easily used,
- (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.