



Determination 2016/007

Regarding the code compliance of proposed access for people with disabilities to three swimming pools in a proposed aquatic centre at Merton Road, St Johns, Auckland

Summary

This determination considers what is reasonable and adequate access for people with disabilities to three different pools in a proposed aquatic centre. The determination discusses the intended use of the pools and the interrelationship with the design features of the pools, as well as the use of other countries guidance documents and standards to achieve compliance as an alternative solution.

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“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 this determination are:

- Swimtastic (“the applicant”) as the owner of the proposed aquatic centre, acting through a consultant engineer as its agent (“the applicant’s agent”)
- Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.3 This determination arises from the parties’ desire to gain clarity around the nature of the access required to three pools in a proposed aquatic centre (“the aquatic centre”). A building consent has been applied for, and the authority has suspended its decision about what is required in order for the proposed pools to achieve code compliance until it has received the outcome of this determination.

1.4 The original plans submitted for this determination showed that access to the three pools was to be by way of pool-side hoists. The applicant amended these plans in response to earlier drafts of this determination and discussions at the hearing (see paragraph 6 of this determination). The applicant is now proposing to provide different means of access to each of the three pools, and is seeking guidance on whether the access would comply with Clause D1 of the Building Code.

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.

- 1.5 I therefore take the view that the matter for determination² is whether the proposed means of access to the three swimming pools as described in this determination comply with Clause D1 to the extent required by Section 118 of the Act.
- 1.6 In making my decision, I have considered the submissions of the parties, including the oral submissions made at the hearing on 28 October 2015, and the other evidence in this matter. I have not considered the requirements of the Act or the Building Code in relation to any other aspects of the aquatic centre, nor have I considered the compliance of the various means of access to the pools in terms of their installation and construction other than as a means of providing an accessible route into the pool.
- 1.7 I also forwarded a copy of the draft determination to the Office for Disability Issues (ODI), at the Ministry of Social Development, by way of consultation under section 170 of the Act.
- 1.8 The relevant sections of the Act, clauses of the Building Code, and paragraphs from NZS 4121³ referred to in this determination, are set out in Appendix A.

2. The aquatic centre and the pools

- 2.1 The aquatic centre will be housed within a 3,200m² building on a 9,000m² site in St Johns in Auckland. The centre will include 150 carparks, reception, waiting, retail and office areas, three swimming pools, sanitary and changing facilities, plant rooms, a spectator seating area and a mezzanine floor housing a gym.
- 2.2 The three pools were described in the plans submitted with the application for a determination. The applicant has subsequently changed the nomenclature of the pools, to reflect more accurately how they are intended to be used. For the sake of clarity, I will use this preferred nomenclature. The three pools are a learn-to-swim pool, a teaching pool and a water polo/high-performance pool. All three of the pools are flush with the surrounding floor on all sides.
- 2.3 The high performance/water polo pool measures 34.5x25m, and has a uniform depth of 2.2m. The pool has a moveable bulkhead, which enables it to be reconfigured, depending on whether it is being used for day-to-day training and coaching, competition swimming, or water polo. The pool has six recessed step ladders with removable handrails set into its sides. The plans show that an access hoist is to be constructed adjacent to the north-eastern corner of the pool, with the exact location to be confirmed.
- 2.4 The teaching pool measures 25x11.5m, and varies in depth from 950 to 1100mm, again across the width. The plans show four recessed step ladders with removable handrails set into the sides (two at each end of the pool), and that an access hoist is to be installed at the north-western corner of the pool, with the exact location to be confirmed. In addition, the applicant has proposed to have available a second set of removable accessible stairs, so that the stairs do not need to be shared between the learn-to-swim and teaching pools.
- 2.5 The learn-to-swim pool measures 20x8m, and varies in depth from 700 to 950mm. The variation in depth runs across the width of the pool, so that each lane is of a constant depth throughout its length, with some lanes deeper than others. The plan indicates the pool is accessed by way of three steps, each 300mm wide and running along the entire shallow (eastern) side of the pool. The applicant advises that a

² Under section 177(1)(a) of the Act

³ New Zealand Standard NZS 4121: 2001 Design for access and mobility – Buildings and associated facilities

handrail is to be installed at either end of these steps, and further that a moveable hoist and a set of removable stairs will be available. (Neither the steps nor the handrail appear on the sections for this pool that I have been provided with. The plans show a hoist is to be installed at the north-western corner of the pool, with the exact location to be confirmed.)

3. The background

3.1 The aquatic centre is described by the applicant as a private aquatic centre, and is intended to replace an existing aquatic centre that the applicant currently runs nearby.

3.2 In November 2014, the applicant's agent contacted the Ministry seeking advice as to the likely compliance of the proposed swimming pools with the access requirements of the Building Code and Act. The Ministry provided informal advice, and advised the agent to 'present what is proposed to [the Authority] to get its view on the matter'. The Ministry advised that for it to be able to provide a binding view on compliance a determination would be required.

3.3 On 23 June 2015, the applicant's agent attended a meeting with the authority to discuss the compliance of the aquatic centre ahead of making a building consent application. The parties discussed various aspects of the aquatic centre's design and construction, including how access for people with disabilities would be provided to the three pools. The authority's minutes from the meeting record that:

[The Ministry] to be consulted to give a Determination on accessibility requirements for private facility. Access to water issues. Because this is a private learn to swim facility, the applicants believe they do not have to provide ramped access to the pools and will offer pre-arranged managed access via hoists.

The minutes also note that accessible car park, entry, sanitary and changing facilities would be provided in the aquatic centre, 'as per the design standard NZS4121'.

3.4 On 14 August 2015, the applicant's agent applied for a determination as to whether access to the pools, as shown on the submitted plans, complied with Clause D1 of the Building Code.

3.5 The applicant applied for building consent on 6 October 2015.

4. Submissions

4.1 The applicant's agent made a submission with the application, in which he outlined the specifications for the three pools. The submission stated that:

The new aquatic centre will be a privately owned and operated facility, providing high performance coaching for swimming and water polo in Auckland ...

As a private facility all clients are required to be registered members to undertake swimming and water polo coaching. There is no occasion when the general public have access to the water without being part of a specifically coached member's session.

The facility as a whole including the spectator seating and gym, has been designed to cater for Accessible needs under [Clause D1 of the Building Code]. The only departure is deemed to be the limited provision of "ramped access" to the pool water.

Currently, should a client have accessible needs, they are interviewed by the coaches and their abilities assessed. Typically they are provided with dedicated one to one tuition with a fully qualified swim coach. In this instance they are either helped into the pool, either by using a hoist or with help from the coach from the side of the

pool. This one to one coaching would only happen in the shallower [teaching] pool area.

The main deep water pool to the rear is specifically intended for use by high performance swimmers and water polo training and competition.

4.2 The applicant's agent also provided copies of:

- the plan for the proposed aquatic centre and pools
- the minutes of the meeting with the authority (see paragraph 3.3).

5. The first draft determination and submissions received

5.1 A draft determination was provided to the parties and ODI for comment on 23 September 2015. The draft concluded that the provision of hoists alone would not comply with Clause D1.

5.2 The applicant did not accept the draft determination and in a submission, dated 21 October 2015, requested a hearing be held. The applicant's submission stressed how the aquatic centre was intended to be managed, saying (emphasis is the applicant's):

This facility is not a community pool open to the general public to be able to use freely.

This is a privately owned and operated facility with specifically designed pools for structured classes for teaching swimming, coaching & water polo competition.

...Unlike a public or community pool, access to the water within this private coaching facility is **completely controlled by the Management**. The management has the right to restrict membership at its own discretion to adhere to its Health and Safety Regulations.

To become a member, an individual is first assessed in terms of swimming ability and then they are entered into one of the carefully structured classes. These structured classes range from one to one lessons in the shallow pool, through to squad/competitive training in the deeper pools. Each pool body is designed to have a specific purpose, governed principally by depth.

...As such, in our opinion the level of accessible provisions for 'reasonable and adequate' access need to be reflective of the above.

5.3 The applicant provided a revised proposal for how it intended to achieve compliance with Clause D1, in terms of providing reasonable and adequate access to the pool water. Essentially, this comprised:

- for the high-performance/water polo pool – by means of a 'modern mobile hoist'
- for the teaching pool – by way of a hoist. The applicant also notes that the removable stairs from the learn-to-swim pool could also be used in this pool 'if so desired to enhance "reasonable and adequate" access'
- for the learn-to-swim pool – by way of a hoist and 'a set of removable Accessible Stairs' (note that this pool also has a flight of permanent shallow steps, with hand rails).

- 5.4 The other main points that the applicant raised in the submission are as follows.
- The applicant is ‘using an alternate [sic] solution to demonstrate compliance’ with Clause D1. It is not relying on the Acceptable Solution in NZS 4121 with regards to access to the pool water.
 - The applicant proposes using design guidance issued by Sport England ‘as a method of demonstrating compliance with NZBC D1’. This guidance is contained in two documents – *Accessible Sports Facilities: Formerly known as Access for Disabled People: Updated 2010 guidance* (Sport England, 2010); and *Swimming Pools: Updated guidance for 2013* (Sport England, 2013) – which in this determination will be collectively referred to as the “Sport England Guidance”.
 - The three pools in the proposed aquatic centre each have a ‘defined function’ and this dictates the nature of the activities that will take place in them and who will be able to use them.
 - The applicant ‘question[s] whether ramps in reality provide ‘unaided’ access to water for people in wheel chairs’, because the person would first need to swap from their own wheelchair into an aquatic wheelchair, may require assistance to wheel up and down the ramp, and would need another person to remove the chair from the ramp while they were swimming, then bring it back when they were finished.
 - In the applicant’s opinion ‘it is not appropriate to install a ramp or fixed stairs as a method of access to [the high-performance/water polo] pool’. Pool users would be ‘fully buoyant’ and need to be able to swim before they reached this depth. Paralympic athletes using pools of this type ‘typically like to enter the pool as able bodied people direct from pool side’.
 - The applicant stated that it could find no examples of deep water pools in New Zealand or the United Kingdom where fixed stairs or ramps had been provided. To support this point, the applicant provided photos of several UK pools. The applicant also listed several other recently constructed New Zealand pools where it believed that hoists were the main means of access.
- 5.5 The applicant also provided details of the mobile hoists that it proposed to install and stated that in its opinion, the hoists would provide “‘unaided access” to the water, and as such meet the objective of Section 118 and NZBC D1 in terms of ‘reasonable and adequate provision by way of access’ to water’. With respect to people using wheelchairs, the applicant believed ‘modern mobile hoists allow a person in a wheel chair to enter and exit the water poolside from their own wheel chair, using the hand operated control device. This is a completely unassisted process and we believe a more well received option.’
- 5.6 The applicant also provided a copy of a letter of endorsement from Paralympics New Zealand confirming the rules that apply to Paralympic athletes.
- 5.7 ODI responded to the draft determination on 29 September 2015, noting that it supported the decision as it was then worded. ODI commented on the obligations for requiring access, as established through ratification of the United Nations Convention on the Rights of Persons with Disabilities. ODI stated that it did not consider that staff helping disabled people access a pool via a hoist would be consistent with the convention with respect to inherent dignity.
- 5.8 The authority accepted the first draft determination on 29 September 2015.

6. The hearing, the second draft determination, and submissions received

- 6.1 A hearing was held on the matter on 28 October 2015. The hearing was attended by representatives from the applicant, the applicant's agent, the authority, and the Ministry.
- 6.2 In general, the submissions and the discussions at the hearing canvassed the points already raised in the applicant's submission. Where new points were made or discussed these are summarised below.
- 6.3 The applicant and agent reiterated their opinion that the means of access now proposed (see paragraph 5.3), meant that compliance with Clause D1 was achieved. In addition, they:
- repeated their belief that ramps did not necessarily provide unaided access to pools, and added that in their experience of the industry ramps could be dangerous
 - stated that for competitive swimmers with disabilities, the preferred means of access was usually directly from the poolside
 - provided further information about the poolside hoists that they intended to install, and reiterated that some users would be able to use these unaided
 - raised the need to maintain an unrestricted 30m x 25m water space in the high-performance/water polo pool in order to comply with international water polo requirements. This space would be demarcated within the pool using lane ropes.
- 6.4 The authority's representative:
- pointed out that the requirement for an accessible route to be able to be 'negotiated unaided by a wheelchair users' comes from the Building Regulations 1992, where it forms part of the definition of an accessible route in Clause A2
 - stated that in the authority's opinion a ramp made better provision for unaided access, and that a hoist would not provide this.
- 6.5 The parties all agreed that there was no dispute that the aquatic centre was a building to which members of the public are to be admitted, and that hence Section 118 of the Act applied.
- 6.6 Other matters discussed at the hearing that had not been previously raised in the submissions included:
- the use of platform lifts as a means of providing access to the pools
 - the design of the fixed steps in the learn-to-swim pool, and how people with disabilities could use these to access the pool
 - the business model that the applicant intended to use to run the proposed aquatic centre, and the management and health and safety practices that would form part of this
 - the existence of any external regulatory systems or requirements that would apply to the aquatic centre.

- 6.7 Following the hearing, the applicant provided a further submission dated 29 October 2015 repeating the points raised in the hearing, and confirming that the applicant was putting forward an alternative means of establishing compliance with Clause D1 using the Sport England Guidance.
- 6.8 Taking into account the submissions during the hearing, and those received in response to the draft determination, I issued a second draft to the parties and ODI for comment on 17 November 2015. In that draft I concluded, based on the access features proposed at that time, that the means of access to the water polo/high performance pool complies with Clause D1, but that the means of access to the teaching pool does not.
- 6.9 ODI responded by email on 30 November 2015, noting that it agreed with the decision and supported the view taken that the future use of the aquatic centre needed to be considered as it may be different to what is currently proposed, and that the emphasis on access for disabled people is broader than access for people using wheelchairs.
- 6.10 The applicant responded to the second draft by email on 8 December 2015, submitting that the following would provide reasonable and adequate access to the pools:
- For the high performance pool/water polo – six sets of recessed step ladders and a moveable hoist would provide reasonable and adequate access.
 - For the teaching pool – the recessed ladders and hoist, along with an additional set of removable accessible stairs dedicated for use with that pool only.
 - For the learn-to-swim pool – two fixed inset seats/steps that run the length of the pool, along with a moveable hoist and a set of removable accessible stairs.
- The applicant considered the above proposal addressed the issues of human agency or management practices referred to in the second draft.
- 6.11 The applicant acknowledged concerns regarding possible future use of the aquatic centre, and proposes that the means of access be prescribed as a condition of future resource consents, and that the accessible stairs and hoist be nominated as a specified system⁴ within the building consent, meaning they would be checked annually as part the building warrant of fitness.
- 6.12 The applicant is of the view that the presented means of access meets the intent of the Sport England Guidance. The guidance calls for a minimum of built-in steps, but also states that ‘lightweight portable step units are available for pools where a built-in flight of steps cannot be incorporated.’
- 6.13 The applicant also considered that the justification it had presented had been incorrectly recorded in the second draft, noting that instead it should read
- ... we could find no example of any deep water pools where they have used fixed ramps or step for access. It was also the fact that once a person is at 160cm they are deemed to be fully buoyant and so people would need to swim up a ramp and off stairs?
- 6.14 In addition, the applicant noted that an officer of the authority had verbally accepted the accessible provisions that were being submitted and had expressed the opinion that only one method of access was required. The applicant also noted that the space planning and requirements in respect of boundaries, resource consent requirements,

⁴ Specified systems are set out in Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 and includes (8) Lifts, escalators, travelators, or other systems for moving people or goods within buildings

and car parking, etc., meant there was no ability for an increase in the building foot print to accommodate built-in accessible steps or a ramp within the surrounds.

- 6.15 On 10 December 2015 the authority advised it was seeking comment from the Barrier Free Trust. The authority's response to the draft was then provided on 11 December 2015. The authority stated that where an officer makes a comment that reflects their own view rather than the authority's, it is the authority's view that prevails. The authority submitted that the incorporation of a permanent means of access for people with disabilities into the teaching pool raises the issue of a design amendment, and that the authority was aware of solutions adopted elsewhere and may be able to offer suggestions that may achieve a better outcome.

7. Discussion

7.1 General

- 7.1.1 The applicant's agent originally applied for a determination about whether the aquatic centre and pools complied with Clause D1 of the Building Code, and specifically about whether ramp access is required to be provided to the pools 'given [that the aquatic centre is] a private learn to swim facility'.
- 7.1.2 Through the further submissions and the hearing this has evolved, so that the issue that I must now determine is whether the proposed combined means of access to the pools, as outlined in paragraph 5.3 and subsequently amended as noted in paragraph 6.10, comply with Clause D1.
- 7.1.3 I note here that the adequacy of access for people with disabilities to other facilities within the aquatic centre is not in dispute.
- 7.1.4 There is no dispute between the parties that the proposed aquatic centre is a building to which Section 118 of the Building Act applies, and that as a result, reasonable and adequate provision by way of access must be made for persons with disabilities who may be expected to visit or work in the building and carry out normal activities and processes in that building.

7.2 What is considered a disability?

- 7.2.1 There are a couple of issues raised in the course of this determination that I need to consider before I turn to the code-compliance of the proposed access. The first of these is the nature of the disabilities that I need to take into account.
- 7.2.2 In the parties' submissions and at the hearing there was substantial discussion about the need for the pools to be accessible for people using wheelchairs. Much of this focus stems from the definition of an accessible route as being one that is capable of being 'negotiated unaided by a wheelchair user'.
- 7.2.3 However, the definition of a 'person with a disability' given in section 7 of the Act is much broader than this, and encompasses 'an impairment or a combination of impairments that limits the extent to which the person can engage in the activities, pursuits, and processes of everyday life'. This includes, but is not limited to, physical, sensory, neurological and intellectual impairments, and mental illness.
- 7.2.4 The breadth of this definition is important. It highlights the scope of the potential needs that must be taken into account when designing and constructing 'reasonable and adequate provision by way of access' for people with disabilities. It also demonstrates that what may be reasonable and adequate for one person, will not necessarily be so for another.

7.2.5 So for example, an elderly person or a person who has experienced a stroke may find it possible to enter and exit a pool using a ramp, but may be unable to use a ladder or stairs. Similarly, some people in wheelchairs may be capable of entering and exiting a pool from the pool edge, while people with no or limited ability to balance unaided may not. In my opinion, reasonable and adequate does not that mean access must be provided to cater for every possible impairment; it does however require designers to look for options that maximise access for as many people with different impairments as possible, not just those in wheelchairs.

7.3 The legislative requirements for access

7.3.1 Section 16 requires buildings to comply with the functional requirements and performance criteria of the Building Code in their intended use. The provision of the Building Code that relates to access for people with disabilities is Clause D1 – Access Routes, and as the aquatic centre is a new building, it must comply fully with the requirements in that clause.

7.3.2 Section 118 requires “reasonable and adequate” provision by way of access, and that this is for people with disabilities who may be expected to “visit or work” and “carry out normal activities and processes” in the building.

7.3.3 The term “reasonable and adequate” is not defined in the Act, though Clause A2 of the Building Code defines “adequate” as being adequate to achieve the objectives of the Building Code. Considering what is “adequate”, the relevant objective in the current case is Clause D1.1(c):

D1.1 The objective of this provision is:...

- (c) ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings.

This objective reflects the requirements of section 118.

7.3.4 Clause D1.3.2 requires that at least one access route shall have features to enable people with disabilities to approach the building from the street boundary, have access to the internal space served by the principal access, and have access to and within those spaces where they may be expected to work or visit.

7.3.5 Clause D1.3.3 sets out the requirements for Access Routes, and Clause D1.3.4 sets out the additional requirements for Accessible Routes.

7.3.6 The definition of an accessible route in the Building Code is:

Clause A2 – Interpretation

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 carparking 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.

7.3.7 The aquatic centre is required to comply with the Building Code and, as it is a new building, no waivers or modifications with respect to provisions for people with disabilities are permitted.

7.3.8 The question then becomes what is “reasonable” in this case in respect of access for people with disabilities who may be expected to visit or work, or carry out “normal activities and processes” in the building.

7.3.9 As “reasonable” is not separately defined in the Act its natural and ordinary meaning applies: “*Within the limits of what it would be rational or sensible to expect; not*

extravagant or excessive; moderate” and “*Sufficient, adequate, or appropriate for the circumstances or purpose; fair or acceptable in amount, size, number, level, quality, or condition*”⁵.

- 7.3.10 In considering what the “normal activities and processes” referred to in section 118 are, the “intended use” of the building, which is referred to in section 16, must be taken into consideration. Section 7 of the Act includes in the definition of “intended use” any reasonably foreseeable use that is not incompatible with the intended use.
- 7.3.11 I conclude that, in order to determine whether the proposed means of access to the pools will comply with Clause D1 to the extent required by sections 16 and 118, the “intended use” of the three pools must be identified (the intended uses of the individual pools can be different). The adequacy of the proposed means of access can then be assessed against the intended uses.

7.4 The pool’s intended use

- 7.4.1 The applicant has put forward the view that the access required to the pools depends on the way the business will operate. From the information supplied by the applicant, the way the business is proposed to operate can be summarised as:
- a high performance centre for swimming and water polo coaching, training and competition
 - available only to “members” who are part of specific squads or programmes
 - not available to the general public for casual use
 - people with disabilities who can be expected to use the facilities are those who will be participating in high performance squads.
- 7.4.2 The applicant has advised that the intended use of each pool is different and I summarise these, together with key design factors and proposed access provisions, below.

Table 1: The pools, their use and proposed means of access

Pool & size	Use	Proposed means of access
High performance/ water polo 34.5x25m 2.2m uniform depth Moveable bulkhead	Training and competition for high performance swimmers and water polo players Designed and built to comply with competition rules	Six sets of recessed step ladders Moveable poolside hoist
Teaching 25x11.5m 950 to 1100mm depth across the width	General training for swimming squads	Four sets of recessed step ladders Moveable poolside hoist Removable accessible stairs
Learn-to-swim 20x8m 700 to 950mm depth across the width	Learning to swim for all	Fixed (built-in) flight of shallow steps along length of pool with fixed handrails either end ⁶ Moveable poolside hoist Removable accessible stair

⁵ *Oxford English Dictionary* 3rd ed., June 2009 Retrieved January 24, 2016, from <http://www.oed.com>

⁶ I note that the flight of shallow steps along the length of the learn-to-swim pool is not shown on the drawings provided to the authority and to this determination.

- 7.4.3 In its submissions and at the hearings, the applicant placed weight on the fact the aquatic centre will be a private facility with strictly restricted and controlled activities and functions, and that no one will be able to enter the pools without first having undergone an assessment and being part of a structured programme. The applicant contrasted this scenario to a ‘community’ pool, where customers, having paid their entrance fee are more likely to have unrestricted access to the water.
- 7.4.4 In the applicant’s opinion, the proposed management practices for the aquatic centre mean it should not have ‘the same performance requirements of a community pool, due to the restricted and controlled “normal activities and functions”’. As such, in [the applicant’s] opinion the level of accessible provisions required, should be reflective of this.’
- 7.4.5 In the second draft determination I noted that the intended management practices in this case are more in the nature of a business model or preferred way of operating, are unenforceable, and may well change in response to market demand. Should an alternative, economically more viable way of operating present itself, I consider it foreseeable, and reasonable, that the applicant or some future owner or operator would adopt it.
- 7.4.6 In response to the second draft of this determination the applicant also suggested that the means of access be prescribed as a condition of future resource consents, and that the accessible stairs and hoist be nominated as a specified system within the building consent, meaning they would be checked annually as part the building warrant of fitness. I note here that a change of ownership and operation would not necessarily trigger a resource consent. In addition, though a hoist could be considered a specified system under Schedule 1(8) of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005, the relocatable stairs would not.
- 7.4.7 I also consider it relevant that some of the applicant’s practices, including the insistence that people with disabilities be physically helped into the pools, and the controlled nature of the programmes, may present a potential barrier to people with disabilities, rather than enabling access. As such, the practices may be considered to be at odds with the objectives and performance requirements of Clause D1, rather than as a means of meeting them.
- 7.4.8 I note that the aquatic centre the applicant currently operates provides the following services and activities (it is understood the proposed centre will replace the existing facility):
- Pool parties - the pool is available to large groups for functions, parties and ‘Flippaball’ training at certain times during the weekends and holidays.
 - An ability-based swim school, offering lessons for children from 6 months old through to adults.
 - In conjunction with the Halberg Disability Sport Foundation; programmes to help provide all young people, regardless of their ability, equal opportunity to enhance their lives through sport.
 - Adult ‘Aqua Fit’ classes for all ages and fitness levels. Available on a casual and regular basis.
 - Adult ‘Keep Fit’, also on a casual or regular basis.

The operation of the applicant's existing facility is more akin to a community pool in its use than the pools that are the subject of this determination as they have been described by the applicant.

7.4.9 I consider that the range of services and activities offered at the applicant's existing facility, as described above, can be taken as a representative sample of what would be "normal activities" for pools of this depth and design.

7.4.10 In the following paragraphs I consider the "intended use" of each of the pools separately and together, taking into account their design and including any reasonably foreseeable occasional use.

The high performance/water polo pool

7.4.11 The high performance/water polo pool is designed and proposed to be built to competition standard at a depth of 2.2m. Regardless of ownership or operation, users of the pool will need to be capable of being in water over their heads. Given that the users will be confident swimmers either training or competing, they are likely to be able to enter the water from the pool edge unaided⁷, either from the side of the pool or using a hoist.

The learn-to-swim and teaching pools

7.4.12 The activities that would be carried out in the teaching and learn-to-swim pools, as designed, will include a variety of activities for a wide range of ages. I consider that the range of services and activities offered at the applicant's existing facility (refer paragraph 7.4.8) can be taken as a representative sample of what would be "normal activities" for pools of this depth and design.

7.4.13 Though the difference in depth between the teaching and learn-to-swim pools is minimal, I am of the view that the activities undertaken in each one are likely to differ, particularly in terms of the age groups using them. The deeper teaching pool is more likely to be utilised by older children and adults for lessons, games, and fitness classes. Whereas the shallower learn-to-swim pool is more likely to be used by pre-school and primary school aged children for lessons and general recreation. Younger children in the learn-to-swim pool may well be accompanied in the pool by an attending adult to assist and supervise them in the water.

7.5 Compliance with Clause D1

7.5.1 In the documentation submitted in support its application for a determination, the applicant proposed to achieve compliance with Clause D1 by providing poolside hoists for all three pools. The applicant revisited this intention subsequent to the first draft determination and hearing, and again after the second draft, and now proposes to take a different approach for providing access for each of the three pools.

7.5.2 I consider that this differentiated means of providing access to the three pools is entirely reasonable. The design of the pools, and the nature of the activities that can be expected to take place in them (refer paragraphs 7.4.11 to 7.4.13), means that taking a one-size-fits-all approach to providing access is not reasonable. What will constitute reasonable and adequate provision for access in the context of one design of pool and its intended use, will not necessarily be so in another.

⁷ The applicant has stated 'Para athletes using this pool typically like to enter the pool as able bodied people direct from pool side. Referencing Olympic Athletes and their requirements/restrictions'; however, no rules or regulations governing elite disabled swimmers was provided by the applicant.

7.5.3 At present, New Zealand lacks comprehensive guidance about the exact nature of access that might be provided to different types of pools. The Acceptable Solution for Clause D1, NZS 4121, describes the requirements for access to places of assembly, entertainment and recreation; the only requirement that is relevant to pools is paragraph 12.3.1.2, which states:

12.3.1.2 Access to the pool

The swimming pool shall be available from an accessible route and unaided access to the water shall be possible from the poolside.

7.5.4 The commentary to this paragraph notes:

C12.3.1.2 A ramp that leads from the poolside into the pool is the preferred means of access to the water. A slope of 1:12 down to a water depth of 1200mm is acceptable

7.5.5 The definition of an accessible route given in NZS 4121 is essentially the same as in Clause A2 of the Building Code, and requires the route be continuous and capable of being ‘negotiated unaided by a wheelchair user, walking device or by a person with a guide dog’.

7.6 The Sport England Guidance

7.6.1 The applicant is correct in pointing out that NZS 4121 is just one means of establishing compliance. Other countries, including the United States of America⁸, Australia⁹ and the United Kingdom (in the Sport England Guidance), have produced more comprehensive guidance for swimming pool access. I consider it notable that in all of these guidelines, a variable approach to the types and numbers of means of access required is adopted, and this is dependent on the size and function of the pool.

7.6.2 In the current case, the applicant has stated that it is following the Sport England Guidance as an alternative means of establishing compliance with Clause D1. However, in my opinion, the pool access methods that it proposes to use fall short of the Sport England Guidance in some regards.

7.6.3 The Sport England Guidance is contained in two documents, as described in paragraph 5.4. The general guide on accessible sports facilities¹⁰ provides ‘advice on meeting the needs of the widest range of people in the design, operation and maintenance of sports facilities... This includes considering the needs of...older people, alongside the needs of disabled people – people with sensory, cognitive and mobility impairments, including wheelchair users’ (p.4). It points out that people with disabilities may have multiple impairments (p.6).

7.6.4 Section 15 of this guide relates specifically to swimming pools. With respect to access, the guide specifies that ‘Whatever the type and scale of pool, there should be a variety of means of access to the water, in order to accommodate all users’ (p.63). The guide then goes on to specify that ‘A fully integrated ramp and steps should meet the needs of a wide range of disabled swimmers’ (p.63), and that ‘As a minimum requirement, in addition to the provision of vertical step ladders, every pool should be provided with a flight of fixed steps...’ (p.64). Portable step units can be used ‘where a built-in flight of steps cannot be incorporated’.

7.6.5 With respect to hoists, the guide states that ‘Mechanical assistance should be available to help disabled swimmers into the pool’, but notes that some swimmers find hoists embarrassing and that they can pose ‘a serious risk to any untrained

⁸ US Department of Justice, *Standards for Accessible Design* (2010)

⁹ *Australian Disability (Access to Premises – Buildings) Standards 2010*.

¹⁰ Sport England, *Accessible Sports Facilities: Formerly known as Access for Disabled People: Updated 2010 guidance* (2010)

helper' (p.65). The guide also considers the use of pool access ladders, portable slides and chutes, and submersible platform lifts (which it supports as a dignified means of entering the water for people with limited mobility).

- 7.6.6 The second guide relates specifically to swimming pools and provides information about access to water that supplements the general guide¹¹. It states (p.30):

An appropriate combination of recessed 'easy going' steps, recessed ladders, ramp, submersible platform and/or hoist should be provided to allow easy access to and from water for all users...

Pool transfer aids should be provided for all pools. The type of aid will depend on the needs of the user. However, all pools should provide a demountable hoist and a metal socket fixing mounted into the pool surround.

Built-in ramps or walk-in steps are the preferred options to assist wheelchair users and people with walking difficulties. However, portable steps/stairs can be used to enhance existing pools and the part of the equipment available to help people with particular disabilities.

The guide then goes on to consider moveable floors and bulkheads.

- 7.6.7 Both guides also contain an identical table (pages 61 and 31 respectively), which sets out the requirements of 'pool equipment' for different types of pools. The table lists various types of equipment, including self-propelling waterproof chairs, various types of poolside hoists, and portable easy going steps, and classifies this equipment as either required or recommended for various types and sizes of pools.

- 7.6.8 The equipment listed in this table is intended to complement the fundamental requirement for fixed stairs to be provided to all types of pools, as specified in the general guide (see paragraph 7.6.4). I consider it notable that this table relates to 'pool equipment', that it does not include built-in features such as ramps, and that the equipment used for access is listed alongside such things as lockers and changing mats.

- 7.6.9 As a result, I do not think that the access that the applicant is now proposing to provide to its own pools can be stated to comply with the Sports England Guidance. However, I have included excerpts from the guidance at some length in this determination, as I consider it useful for demonstrating the requirement for multiple means of access to swimming pools for people with disabilities, and in its consideration of the forms this access might take.

7.7 Assessment for compliance

The high performance /water polo pool

- 7.7.1 It now falls to me to consider whether the means of access that the applicant is proposing to provide for the three swimming pools, as outlined in paragraph 6.10, complies with the performance requirements of Clause D1. In making this assessment, I consider it appropriate for the reasons outlined in paragraph 7.5.2 to consider each of the pools and the access that is proposed to be supplied to them separately.
- 7.7.2 Looking firstly at the high-performance/water polo pool, the proposed means of access to this pool is six sets of recessed step ladders and a moveable hoist. In the context of this particular pool and its intended use, I consider that the proposed hoist will provide reasonable and adequate access, and together with the step ladders will achieve compliance with Clause D1. In reaching this decision I consider it relevant

¹¹ *Swimming Pools: Updated guidance for 2013* (Sport England, 2013)

that users of this pool will, by necessity, need to be able to swim and must be capable of being in water that is over their heads.

The teaching and learn-to-swim pools

- 7.7.3 Turning to the teaching pool, where the proposed means of access consists of four sets of recessed step ladders, a movable poolside hoist and a set of removable accessible stairs.
- 7.7.4 What is required for this particular pool is a permanent means of access that is suitable for unaided use by people with a wide range of disabilities. A previous determination involving access to a community pool¹² considered whether a hoist and set of accessible stairs was sufficient to meet the requirement for reasonable and adequate access. I am of the view that the intended use of the teaching pool is not dissimilar to the pool considered in that determination, and that the same reasoning applies here. I conclude that the proposed means of access to the teaching pool in this case is not compliant.
- 7.7.5 In the second draft of this determination I noted that a ramp is one option that the applicant may wish to consider and the authority has also suggested that it is aware of other solutions adopted elsewhere. It is not for this determination to specify how compliance is to be achieved: that is for the applicant to propose to the Authority for its consideration.
- 7.7.6 The last pool that it falls to me consider is the learn-to-swim pool, I note that the applicant is proposing to provide three means of access to this pool; namely the fixed flight of shallow steps that run along the length of the pool with handrails at either end, the movable poolside hoist and the set of removable accessible stairs.
- 7.7.7 Taking into account the shallow depth and design of this pool, and its intended use (refer paragraph 7.4.13) I consider that, taken together, these three means of access achieve compliance with Clause D1. In reaching this decision I consider it relevant that users of this pool, being younger children with no or limited swimming skills, are likely to be subject to a much greater level of adult supervision and assistance. A child with a disability using this pool is more likely to be assisted into the pool by an attending adult should they not be able to use the shallow steps or hoist unassisted. I also consider it relevant that the attending adults will of necessity be able to support themselves and a child in the water.
- 7.7.8 I have also taken into account that there is little difference between the deeper section of the learn-to-swim pool and the shallower section of the teaching pool. This means that some users of the learn-to-swim pool would also have the option of using the teaching pool with its alternative means of access.
- 7.7.9 I consider it crucial that the shallow steps to the learn-to-swim pool are a fixed part of the pool's design and unlike the removable accessible steps are not dependent on management practices to be present in the pool and cannot be taken away. Should ownership or operation of the aquatic centre change, the learn-to-swim pool will remain compliant. I suggest consideration be given to a dual set of handrails at one end.

¹² See paragraph 5.4 of Determination 2014/038 Regarding the compliance of access for people with disabilities to a new swimming pool at the Coastlands Aquatic Centre, Paraparaumu, *Ministry of Business, Innovation and Employment*, 8 September 2014.

8. The decision

8.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- the proposed means of access to the high-performance/water polo pool and the learn-to-swim pool, as outlined in this determination, comply with Clause D1 to the extent required by Section 118 of the Act
- the proposed means of access to the teaching pool, as outlined in this determination, does not comply with Clause D1 to the extent required by Section 118 of the Act.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 February 2016.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The relevant sections of the Act

7 Interpretation

person with a disability means a person who has an impairment or a combination of impairments that limits the extent to which the person can engage in the activities, pursuits, and processes of everyday life, including, without limitation, any of the following:

- (a) a physical, sensory, neurological, or intellectual impairment;
- (b) a mental illness

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

Schedule 2 Buildings in respect of which requirement for provision of access and facilities for persons with disabilities applies

The buildings in respect of which the requirement for the provision of access and facilities for persons with disabilities apply are, without limitation, as follows:

- p) places of assembly, including auditoriums, theatres, cinemas, halls, sports stadiums, conference facilities, clubrooms, recreation centres, and swimming baths

119 Acceptable solution for requirements of persons with disabilities

(1) This section applies to—

- (a) the New Zealand Standard Specification No 4121 (the code of practice for design for access and use of buildings by persons with disabilities), together with any modifications to that standard specification in force immediately before the commencement of this section; or

...

(2) A standard specification to which this section applies is to be taken as an acceptable solution

A.2 Relevant provisions of the Building Regulations 1992 are:

CLAUSE A2—INTERPRETATION

In this building code unless the context otherwise requires, words shall have the meanings given under this Clause. Meanings given in the Building Act 1991 apply equally to the building code.

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 carparking 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.

Adequate means adequate to achieve the objectives of the building code

Clause D1—ACCESS ROUTES**Objective**

D1.1 The objective of this provision is:

...

- (c) ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings.

Functional requirement

D1.2.1 Buildings shall be provided with reasonable and adequate access to enable safe and easy movement of people.

Performance

D1.3.1 Access routes shall enable people to:

...

- (c) move into spaces within buildings by such means as corridors, doors, stairs, ramps and lifts, ...

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

...

- (c) have access to and within those spaces where they may be expected to work or visit, or which contain facilities for personal hygiene as required by Clause G1 Personal hygiene.

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

(a) ...

(b) have adequate activity space to enable a person in a wheelchair to negotiate the route while permitting an ambulant person to pass,

(c) ...

(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.

A.3 The relevant New Zealand Standard NZS4121:2001

1.5 Definitions interpretation**1.5.1 Definitions**

ACCESSIBLE means having features that permit use by people with disabilities.

ACCESSIBLE ROUTE means a route that is usable by people with disabilities. It shall be a continuous route that can be negotiated unaided by a wheelchair user, waking device or by a person with a guide dog. The route shall extend from the 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.

PEOPLE WITH DISABILITIES means people whose ability to be freely mobile or to access and use buildings is affected by mental, physical, hearing or sight impairment, such as:

- (a) An inability to walk;
- (b) Walking difficulties;
- (c) Reliance on walking aids;
- (d) Partial sightedness or total blindness;
- (e) Hearing disabilities;
- (f) Lack of co-ordination;
- (g) Reaching disabilities;
- (h) Manipulation disabilities;
- (i) Lack of stamina;
- (j) Difficulties in interpreting and reacting to sensory information;
- (k) Extremes of physical size;
- (l) Learning difficulties.

4.2 Accessible route

4.2.3 The accessible route includes paths, car parks, ramps, at least one public entrance, corridors, stairs, doorways and lifts within the building. For non-ambulatory people, the accessible route shall not incorporate any step, stairway, turnstile, revolving door, escalator or other impediment that would prevent it from being safely negotiated.

4.3 General

In order to achieve the objective of 4.1, people with disabilities shall be able to:

...

(d) move freely inside and to use the facilities within the building or facility, except as provided for in this part of the Standard;

12 – Places of assembly, entertainment and recreation

12.3.1.2 Access to the pool

The swimming pool shall be available from an accessible route and unaided access to the water shall be possible from the poolside.

C12.3.1.2 A ramp that leads from the poolside into the pool is the preferred means of access to the water. A slope of 1:12 down to a water depth of 1200mm is acceptable