



Determination 2017/025

Regarding access and facilities for people with disabilities to a hypothetical public dive pool

Summary

This determination considers whether an accessible route is required for a deep water pool that is part of a public swimming pool facility. The determination discusses the requirement for an accessible route, both in terms of the deep water pool only and in terms of it being one of a number of pools within the facility, and the normal activities carried out in those pools.

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 applicant, Mr J Strawbridge, Technical Manager for Barrier Free New Zealand, is a person with a direct interest in the matter as it relates to access and facilities for people with disabilities within a building.

1.3 I have also forwarded a copy of a draft of this determination to the Office for Disability Issues (ODI), at the Ministry of Social Development, by way of consultation under section² 170 of the Act.

1.4 The determinable matter in this case does not concern a proposed or constructed building, meaning there is no specific site or design plans that are considered in this determination. The application was made in regards to a hypothetical dive pool in a public aquatic facility, and whether

... public “Dive Pools” require ramped access and/or other accessibility features such as platform lifts to meet the requirements of [section 118 of the Act] and the Building Code?

(I take the term “dive pool” to mean a deep water pool that is used for springboard and/or platform diving.)

1.5 The matter for determination³ therefore is whether a deep water pool (“the dive pool”) with the intended use as described by the applicant and without an accessible route for people with disabilities would comply with Clause D1 Access Routes of the Building Code (First Schedule, Building Regulations 1992) in accordance with section 118 of the Act. I have not considered access to the dive platforms or springboards that may be associated with the dive pool.

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.

² In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

³ Under section 177(1)(a) of the Act.

- 1.6 In making my decision, I have considered the submissions of the applicant and the other evidence in this matter.
- 1.7 The relevant sections of the Act and clauses of the Building Code referred to in this determination are set out in Appendix A.

2. The hypothetical dive pool and the submissions

- 2.1 The application was received on 28 November 2016.
- 2.2 After receiving the application, I requested the applicant provide further information on the use of the dive pool and the type of pool facility for which the determination was being sought. The applicant submitted the following detail as regards the use of the pool:
- ... a dive pool which may be associated with the following useages (*sic*):
 - Swimming – community use and event warm up only
 - Diving – full competition to FINA standard
 - Water Polo – community use
 - Canoe Polo – community use and training
 - Synchronised Swimming – full competition to FINA standard
 - Scuba dive training
 - Aquatic leisure toys for specific events
- Of these possible uses only 'diving' is unique to the dive pool, all other useages listed above are able to be carried out in other pools within the facility.
- 2.3 A draft of this determination was issued to the applicant and ODI for comment on 22 March 2017.
- 2.4 The applicant responded on 22 March 2017, accepting the draft subject to minor amendment.
- 2.5 In a response received on 5 April 2017, ODI agreed with the conclusion in the draft and noted 'it should not be assumed that a person using a wheelchair or [with a] mobility impairment would not use facilities like other people, such as a dive pool. Therefore an accessible route should be provided on an equal basis with others'
- 2.6 I have amended the draft as I consider appropriate.

3. Discussion

3.1 The legislative requirements for access

- 3.1.1 Under Schedule 2(p) of the Act, a swimming facility such as that described by the applicant is one to which section 118 of the Act applies.
- 3.1.2 The matter in question is whether the hypothetical dive pool, as described by the applicant, without an accessible route would satisfy the provisions of Clause D1 to the extent required by section 118.
- 3.1.3 Section 118 of the Act says:

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^[4] 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.

- 3.1.4 The clear intention of the Building Act is that buildings must not be constructed in such a way as to prevent people with disabilities from carrying out normal activities and processes to the fullest extent that their abilities allow.
- 3.1.5 Presuming that the pool facility contemplated is a new building, it would be required to comply with the Building Code and no waivers or modifications with respect to provisions for people with disabilities would be permitted.
- 3.1.6 The relevant clause in regards to access is Clause D1. 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. Clause D1.3.3 sets out the requirements for Access Routes, and Clause D1.3.4 sets out the additional requirements for Accessible Routes.
- 3.1.7 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.
- 3.1.8 Section 118 requires reasonable and adequate provision by way of access for people with disabilities to carry out “normal activities” associated with working in or visiting the building. In considering what the “normal activities and processes” are, the “intended use” of the building⁵ must be taken into consideration. Section 7 of the Act includes in the definition of intended use ‘any reasonably foreseeable occasional use that is not incompatible with the intended use’.
- 3.1.9 In this case I take the “normal activities” that would be carried out in the dive pool to be those activities identified by the applicant (refer paragraph 2.2) undertaken by members of the public and the associated activities of staff. The applicant indicated that the dive pool would be one of a number of pools within the facility and, with the exception of diving, all of the activities identified by the applicant would be able to be carried out in other pools within the facility.
- 3.1.10 For the purpose of this determination it must be assumed that a compliant accessible route is provided to all of the other pools within the facility.

3.2 Access to the dive pool

- 3.2.1 In forming a view as to whether the dive pool complies with Clause D1 without an accessible route into the pool, I have first considered the use of the pool on its own.

⁴ “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.

⁵ Section 16 of the Act provides “The building code prescribes functional requirements for buildings and the performance criteria with which buildings must comply in their intended use.”

The dive pool only

- 3.2.2 In previous determinations⁶ I have considered certain circumstances and buildings where people with disabilities cannot be expected to carry out “normal activities” within the building or in particular areas of the building. One of the factors is whether the building is open to the general public or whether the building’s users are expected to be fully fit: for example a building or area of a building may be restricted to use by personnel who are by necessity of their role/employment required to be physically fit and able. Where it can reasonably be expected that people with disabilities will require access to and from the building’s spaces, even only on occasions, an accessible route is required.
- 3.2.3 In determinations 2016/007 and 2016/021⁷ I considered the compliance of proposed access to swimming pools in an aquatic centre. The determinations considered what constitutes reasonable and adequate access for people with disabilities to the different pools in terms of the pools intended uses. In Determination 2016/007 I considered access to a ‘high performance/water polo pool’ with a depth of 2.2m; the proposed means of access was six sets of recessed step ladders and a moveable hoist. In paragraph 7.4.11 I stated:
- 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 unaided, either from the side of the pool or using a hoist.
- 3.2.4 In this instance, although a person who uses a wheelchair is unlikely to be using the dive pool for the purpose of platform/springboard diving, the intended use of the pool includes a variety of other activities that a person who uses a wheelchair may undertake. I am of the view that where such a pool is used by members of the public for activities that can be undertaken by people with disabilities, the pool requires a means of unaided access into it.

The dive pool in conjunction with other pools

- 3.2.5 The applicant has also described the hypothetical facility as containing other pools, and with the exception of platform/spring board diving all of the activities undertaken in the dive pool would be capable of being carried out in at least one of the other pools.
- 3.2.6 It may be argued that a deep water pool, such as the hypothetical dive pool considered herein, can comply with Clause D1 of the Building Code without an accessible route into the pool if other pools in the facility provide for the same activities to be carried out and are accessible to people with disabilities. However that would depend heavily on the intended uses of all of the pools within the complex and the management and operation of the pools.

⁶ See for example *Determination 2001/10 Access to an air traffic control tower* (5 September 2001) Building Industry Authority, *Determination 2005/166 Access for people with disabilities to the upper floor of the AFFCO beef processing plant, Horotiu* (19 December 2005) Department of Building and Housing, and *Determination 2013/039 Regarding the provision of access from the seawall to the adjacent beach* (15 July 2013) Ministry of Building, Innovation and Employment.

⁷ *Determination 2016/007: Regarding the code compliance of proposed access for people with disabilities to three swimming pools in a proposed aquatic centre* (24 February 2016) Ministry of Building, Innovation and Employment and *Determination 2016/021: Regarding the compliance of proposed access for people with disabilities to one of three swimming pools in a proposed aquatic centre* (17 June 2016) Ministry of Building, Innovation and Employment.

- 3.2.7 In Determinations 2016/007 and 2016/021 I came to the view that in order to determine whether the proposed means of access to the pool would comply, the “intended use” of the relevant pools must be identified. I was then able to consider the aquatic facilities as a whole, the use of the various pools within, and the adequacy of the provisions for access against the intended uses for each of the pools.
- 3.2.8 I am of the view it is unlikely that there would be circumstances in New Zealand where a deep water pool would not be used for other activities that would undertaken by people with disabilities, regardless of the presence of other swimming pools. I note though that what is considered “reasonable and adequate provision for access” may be different for each pool within a pool facility and therefore the features for providing access to each pool may also differ.
- 3.2.9 As this case is hypothetical, the assessment described in paragraph 3.2.7 above is unable to be carried out. However, I provide the following general comments:
- In regards to establishing compliance where a building is one of a complex of buildings (or as in this case a pool within an aquatic centre containing other pools), consideration must be given to whether or not there is specialised use of the spaces and/or scheduling difficulties that would prevent a person with a disability from taking part in the activities available to others.
 - No person with a disability should be deprived of the ability to carry out normal activities and to do so with or alongside others carrying out those same activities due to the design of the building.

4. The decision

- 4.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the hypothetical public dive pool in its intended use as described by the applicant for this determination would not comply with Clause D1 of the Building Code to the extent required by section 118 of the Act without an accessible route into the pool.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 April 2017.

John Gardiner

Manager Determinations and Assurance

Appendix A

A.1 The relevant sections of the Act

7 Interpretation

intended use, in relation to a building,—

(a) includes any or all of the following:

- (i) any reasonably foreseeable occasional use that is not incompatible with the intended use:
- (ii) normal maintenance:
- (iii) activities undertaken in response to fire or any other reasonably foreseeable emergency; but

(b) does not include any other maintenance and repairs or rebuilding

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.

17 All building work must comply with building code

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

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

A.2 Relevant provisions of the Building Code include:

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.

Adequate means adequate to achieve the objectives of the building code

Clause D1—Access Routes

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.