

# *Determination*

## *under the*

### *Building Act 1991*

#### **No. 93/001 Facilities and access for people with disabilities in a retail development**

##### **1. The matter to be determined**

- 1.1 The matter before the Authority was a dispute arising from a territorial authority's refusal to issue a building consent in respect of proposed provisions to be made for facilities for people with disabilities in the alteration of a building. The building concerned is an existing building which after alteration will be used for commercial retail shopping.
- 1.2 The Authority takes the view that it is being asked to determine under Part III of the Building Act 1991 whether, after the proposed alteration, the building will comply as nearly as is reasonably practicable with the provisions of the New Zealand Building Code for facilities and access for people with disabilities, and in particular whether a lift is required to serve all 3 levels of the building.
- 1.3 In making its determination, the Authority has not considered whether the plans comply with any other provisions of the New Zealand Building Code.
- 1.4 The documents submitted to the Authority show that the existing building is on a sloping site and has floors at four levels, with a lift serving all levels. After the proposed alteration the building will be reduced to three levels, with a lift serving the middle and top levels but not the bottom level. There will be access for people with disabilities from the street to the middle and top levels. Car parking will be provided at all three levels.
- 1.5 The lowest level will be used for staff car parking only. Additional staff car parking will be provided at the middle level. Visitors car parking will be provided immediately adjacent to street level and at both the middle and upper levels. A suitable proportion of parking spaces provided at both the middle level and street level will be accessible for staff with disabilities and visitors with disabilities. All accessible parking spaces and accessible routes from those spaces to the entrance to the building are understood to comply with Clauses D1.3.2, D1.3.4 and D1.3.6 of the building code.

- 1.6 The territorial authority considers that it cannot grant a building consent for the proposed building work because after the alteration the building will not comply with Clause D1.3.4(c)(ii) of the New Zealand Building Code, which requires a lift to service all levels of the building.
- 1.7 As both parties accepted that a lift serving all three levels was needed for complete compliance with the New Zealand Building Code, the Authority was not required to address the question of whether a building that has three floor levels each accessible from the street comes within the meaning of the term “buildings are three storeys high”, nor the question of whether a route that goes out of a building, along a street, and then back into the building at a different level can qualify as an accessible route between levels.
- 1.8 Neither of the parties wished to speak or call evidence in support of their submissions.

## **2. Discussion**

- 2.1 The Authority notes that under section 25 of the Disabled Persons Community Welfare Act, reasonable and adequate provision is to be made for people with disabilities “who may be expected to visit or work in” the building concerned. The Authority also notes that the objective of the relevant provisions of the New Zealand Building Code is to “ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings”. The Authority considers that objective applies in respect of both customers and staff of the building.
- 2.2 The Authority notes that, after the proposed alteration, both of the upper levels will be provided with car parking and access for people with disabilities, whether visitors or staff. The only part of the building not fully accessible will be the small bottom level reserved for staff car parking.
- 2.3 The Authority considers that, after the proposed alteration, the building will comply as nearly as is reasonably practicable with the provisions of the New Zealand Building Code for access and facilities for people with disabilities. Furthermore it considers that despite the lift not serving all three levels, the building will nevertheless include reasonable and adequate provision by way of access and parking provisions, from the other two levels, for people with disabilities visiting or working in the building.

## **3. The Authority’s decision**

- 3.1 In accordance with section 20(a) of the Building Act 1991, the Authority hereby reverses the decision of the territorial authority so that a building consent is to be issued in respect of the alteration without a lift servicing the

bottom level; but in compliance with the other provisions of the New Zealand Building Code, and in particular other requirements for facilities and access for people with disabilities.

**Signed for and on behalf of the Building Industry Authority on the Tenth day of June 1993.**

J H Hunt  
Chief Executive