

Determination

under the

Building Act 1991

No. 93/002: Facilities and access for people with disabilities in a bank

This determination was made available to the parties in draft form so that they should have the opportunity to comment on matters not raised in their submissions. The parties have agreed to the terms of the determination. This determination should therefore be read as being limited to its specific circumstances.

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 and access for people with disabilities in the alteration of a bank building.
- 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 alterations, 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. In making its determination the Authority has not considered whether the plans comply with any other provisions of the New Zealand Building Code.
- 1.3 The plans submitted to the Authority show that the building has two stories, each 650m² in area. Both floors are to have a classified use of commercial and are to be used to provide banking services. The major public reception area is to be on the ground floor, which is to have toilet facilities for people with disabilities. There is also a staff room on the ground floor. There is another public reception area on the upper floor, but the Authority understands that any customer services to be provided on the upper floor can be duplicated on the ground floor. Also on the upper floor is a room intended to be used for meetings and seminars for members of the applicant's staff, not necessarily staff working in the building. The applicant submits that "no more than 15 people would be involved" and that the meetings and seminars can be held on the ground floor in the interview room or the staff room. The plans do not include all relevant details of the stairs, the ramp at ground floor

level, or the toilet facilities at ground floor level. The plans do not indicate whether there is any parking associated with the building.

1.4 The territorial authority considers that if no lift were provided then after the alteration the building would not comply as nearly as is reasonably practicable with clauses D1.3.4(c)(iii) and (iv) of the New Zealand Building Code. Those clauses respectively require a lift to be provided to:

(a) The upper floor of a two storey building having a design occupancy of 40 or more persons on the upper floor; and

(b) All upper floor public reception areas in banks.

1.5 The applicant contends that:

(a) The design occupancy on the upper floor is fewer than 40 persons; and

(b) “Although the provision of a lift would be technically possible, it would be difficult and prohibitively expensive. Given that it is possible to provide adequate services and facilities to disabled customers and staff on the ground floor of the premises, the Bank considers that it is not reasonably practicable in the circumstances to require a lift”

2. Discussion

2.1 General

2.1.1 The Authority notes that under section 25(1) of the Disabled Persons Community Welfare Act 1975 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.

2.1.2 The Authority notes that in respect of the alteration of any existing building the Authority is empowered, under section 25(2) of the Disabled Persons Community Welfare Act, to provide for a waiver or modification of all or any of the requirements of section 25 of that Act “if, having regard to all the circumstances, the Authority determines that it is reasonable to grant the waiver or modification”. The Authority does not view this application as being for such a waiver or modification, but accepts that section 25(2) establishes the test to be applied, namely that the Authority must decide, having regard to all the circumstances, whether it is reasonable to confirm, reverse, or modify the territorial authority’s refusal to issue a building consent.

2.2 *Facilities for customers*

- 2.2.1 As the upper floor is to be used for the purpose of a public reception area, then under clause D1.3.4(c)(iv) of the New Zealand Building Code a lift would be required if it were a new building. The Authority considers that the objective of that requirement is to make public reception areas accessible to wheelchair users and any other customers whose disabilities prevent them from using the stairs.
- 2.2.2 In this case, the customer services located on the upper floor can be made available to customers on the ground floor. A lift is therefore not necessary for customers wishing to make use of those services.
- 2.2.3 The Authority considers, however, that even if the installation of a lift is not justified, access is required for ambulant people with disabilities wishing to use the upper floor. That means in particular that attention must be paid to the suitability of the stairs for use by ambulant people with disabilities.

2.3 *Facilities for staff*

- 2.3.1 The Authority is not persuaded that the ground floor provides a suitable alternative venue for staff meetings or seminars.
- 2.3.2 The situation, therefore, is that if a lift is not provided then staff members whose disabilities prevent them from using the stairs will have access to all staff facilities but will be unable to work on the upper floor or to attend meetings or seminars. The Authority considers those to be the two significant respects in which the building, if altered as proposed without a lift, will fail to achieve the objectives of the legislation outlined in 2.1.1 above.

2.4 *Facilities on the ground floor*

- 2.4.1 In respect of both customers and staff, the Authority considers that wheelchair users should be able to carry out normal activities and functions on the ground floor. That means in particular that adequate access, clearances, and turning areas must be provided. Adequate signs will be necessary to identify the availability on the ground floor of those customer services provided predominantly on the upper floor. Attention will also need to be paid to the existing ramp and to the design of and access route to the proposed toilet facilities for people with disabilities. If there is parking provided it should include spaces suitable for use by people with disabilities.

2.5 *Provision of a lift*

- 2.5.1 The applicant recognises that “the provision of a lift is technically possible”. The Authority does not put any great weight on that, the question is not whether it is technically possible to provide a lift but whether, having regard to all the circumstances, the building, after the proposed alterations, 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.

2.5.2 The applicant submitted that providing a lift would be “difficult and prohibitively expensive” but did not supply cost estimates and did not identify the nature of the difficulties. The Authority takes the view that those costs and difficulties are relevant to its decision and should be considered in relation to the extent to which the building will fail to comply with the New Zealand Building Code if a lift is not provided.

2.6 *Design occupancy*

2.6.1 Clause D1.3.4(c)(iii) of the New Zealand Building Code requires a lift to be provided in a two storey building having a design occupancy of 40 or more persons on the upper floor. The phrase “design occupancy” is not defined.

2.6.2 The applicant submits that it “will have approximately 20 staff on the upper floor and it is not envisaged that there will ever be a total of more than 30 persons on the floor at any one time”. In other words, it submits that the design occupancy is fewer than 40 persons. That submission appears to overlook the possibility of staff from other branches attending a meeting or seminar while customers are being dealt with by the staff working on the upper floor.

2.6.3 In this determination the Authority adopts no particular interpretation of the phrase “design occupancy”. For the purposes of this determination it is sufficient to take account of the disadvantages for staff if a lift is not provided.

2.7 *Conclusions*

2.7.1 The Authority must decide, having regard to all the circumstances, whether, if a lift is not provided, the building, after the alteration, 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. The only respect in which it will not comply (assuming that the matters mentioned in 2.2.3 and 2.4.1 above are satisfactorily addressed) is that there will be no lift. The result of that non-compliance will be that staff whose disabilities prevent them from using the stairs will not be able to work or to attend meetings or seminars on the upper floor. On the information supplied by the applicant, that means that the work places of “approximately 20” members of the applicant’s staff would not be accessible to wheelchair users, and that the proposed meetings and seminars will have to be held elsewhere if they are to be attended by staff members who are unable to use the stairs.

2.7.2 Even without specific information about the costs and difficulties of providing a lift, the Authority concludes that it is not reasonable to require the applicant to provide a lift in order to make approximately 20 work places available to wheelchair users and

to ensure that meetings and seminars for small numbers of staff, including staff from other branches, can always be held in the building.

- 2.7.3 That conclusion depends on there being no significant increase in the number of work places on the upper floor proposed by the applicant, and in the meetings and seminars being limited to the small numbers anticipated by the applicant. Conditions to that effect are discussed in 2.8 below.

2.8 *Conditions*

- 2.8.1 Section 46(1) of the Building Act provides that an owner of a building has a duty to advise the territorial authority in writing if it is proposed to change the use of the building. Section 46(2) provides that the use of the building shall not be changed unless the territorial authority is satisfied that in its new use the building will comply as nearly as is reasonably practicable with various provisions of the New Zealand Building Code, including the provisions for access and facilities for people with disabilities.

- 2.8.2 The applicant's submissions in respect of the numbers of staff members working or attending seminars or meetings on the upper floor are in effect submissions as to the intended use of the building. It therefore seems appropriate for the bank building to be identified as a building for use as a bank having work places for no more than a specified number of staff members on the upper floor and having facilities for meetings and seminars for specified numbers of staff members on the upper floor. That intended use should appear on the building consent and subsequent documents such as the code compliance certificate, the compliance schedule, and the building warrant of fitness.

- 2.8.3 The applicant's submissions did not state specific numbers, using the words "approximately" and "anticipates". The Authority considers that specific numbers are necessary, and that it is reasonable to expect the applicant to limit the number of work places on the upper floor to 25 and the number of staff members attending any meeting or seminar to 20. If all work places were occupied at the same time as a meeting was being held, then there could be 45 people on the upper floor plus any customers also present at that time. That is more than is contemplated by clause D1.3.4(c)(iii) of the New Zealand Building Code for a new building, but the Authority considers that it amounts to compliance as nearly as is reasonably practicable in the circumstances.

- 2.8.4 To ensure that those limitations are brought to the attention of those having the day-to-day management of the building, and to provide positive assurance that there has not been an unacceptable increase in the number of work places, the Authority considers that the compliance schedule for the building should include a procedure for inspections and reports on the number of work places and the numbers of staff members attending meetings or seminars on the upper floor.

2.8.5 The Authority makes no decision as to whether the Building Act empowers it to impose the condition as to the compliance schedule outlined above. As mentioned above, that condition has been accepted by the applicant. Even if the condition is legally severable from the compliance schedule, the Authority considers that it will serve the intended purpose as a matter of agreement. That agreement might not be binding on any purchaser from the applicant, but any purchaser other than another bank would have to advise the territorial authority of a change of use as mentioned in 2.6.1 above. The Authority is not concerned about the remote possibility that another bank might purchase the building and fail to observe the condition.

3. The Authority's decision

3.1 In accordance with section 20(a) of the Building Act the Authority hereby modifies the decision of the territorial authority to the effect that a building consent shall be issued in respect of the alterations, without a lift, but otherwise in compliance with the provisions of the New Zealand Building Code for access and facilities for people with disabilities, on condition that:

(a) In all other respects the building, and in particular:

(i) The stairs,

(ii) The ramp,

(iii) The design of and access to the proposed toilet facilities, and

(iv) The parking, if any

shall be brought as nearly as is reasonably practicable to compliance with the New Zealand Building Code to the approval of the territorial authority, provided that any doubts or disputes in that regard may be referred to the Authority for further determination.

(b) Adequate signs shall be provided on the ground floor, to the satisfaction of the territorial authority, identifying the availability on the ground floor of those customer services provided predominantly on the upper floor;

(c) The building consent for the alterations, and subsequent documents issued under the Building Act, shall include the entry:

Intended use(s) [*In detail*]: Banking with fewer than 25 work places for staff on the upper floor and having facilities for meetings and seminars to be attended by not more than 20 persons on the upper floor.

- (d) The compliance schedule for the building shall include procedures for regular inspections, and reports on the number of work places on the upper floor and the numbers of persons attending meetings or seminars on the upper floor.

Signed for and on behalf of the Building Industry Authority on this 27th day of September 1993

J H Hunt
Chief Executive