

Determination

under the

Building Act 1991

No. 94/004: Access for people with disabilities by way of a lift in an adjacent building

1. The matter to be determined

- 1.1 The matter before the Authority was whether a proposed building two storeys high is to be provided with a lift when there will be a lift in a proposed adjacent building that will be linked to the building under consideration by covered access routes at each level.
- 1.2 The applicant was the owner of both of the buildings, the other party was the territorial authority concerned.
- 1.3 The Authority takes the view that it is being asked in effect to determine whether the building concerned, without a lift, would comply with clause D1 of the New Zealand Building Code (the First Schedule to the Building Regulations 1992) if there was an accessible route (as that term is defined in clause A2 of the New Zealand Building Code) to the upper floor of the building through an adjacent building.
- 1.4 In making its determination, the Authority has not considered whether the proposed building will comply with any other provisions of the New Zealand Building Code.

2. The buildings

- 2.1 The two buildings are each to be part of a tertiary educational institution. Construction is to be undertaken in stages, so that the building concerned could be in use without lift access to the upper floor for some months while the adjacent building is still in the final stage of its construction. For those months the building concerned would clearly not comply with the New Zealand Building Code, but that is a matter to be considered by the territorial authority in relation to the issuing of a code compliance certificate, and is not considered relevant to the matter to be determined.
- 2.2 The building immediately concerned, "the facilities building", is to contain the following facilities:
 - (a) Ground floor: Student cafeteria and associated kitchen, student lounge, student health and counsellor's office, and toilet facilities.

- (b) Upper floor: Staff lounge, staff meeting room, shop for staff only, three offices for staff members, and a students' association office.

2.3 The adjacent building, "the teaching building", is a U-shaped building three storeys high that contains the usual types of lecture theatres, laboratories, and other rooms to be expected in an educational institution. There is to be a lift located approximately at the base of each upright of the U adjacent to the main entrances to the teaching building. The facilities building will be adjacent to one upright of the U, and the other upright is to be adjacent to an existing building and connected to that building, as it is to the facilities building, by covered access at the ground and first floor levels.

3. The parties' contentions

3.1 The applicant contended that:

- (a) The facilities building and the adjacent building should be treated as one building for the purpose of complying with clause D1 of the New Zealand Building Code.
- (b) There would be "minimal" traffic between the two floors of the facilities building because of the stratification of use with students on the ground floor and staff on the upper floor.

3.2 The territorial authority contended that:

- (a) "There is nothing within the Building Act covering what is considered a substantial attachment between the two buildings for them to be considered one building for the purpose of assessing disabled access" but that it was reasonable to apply "a formula used in the past by the Council to assess such situations, which is *to be considered as one building, both buildings are to be attached by at least one third of the length of the wall over the full height of the building*", and by that formula the two buildings could not be considered to be one.
- (b) "It is also considered unreasonable to expect people with disabilities to have to exit [the facilities building], cross to the [teaching building], access the lifts to the second floor, and then negotiate their way through the building and enclosed walkway to access the upper floor of the [facilities building]."

4. Discussion

4.1 General

4.1.1 There is no dispute that the facilities building comes within clause D1.3.4(c)(iii) of the New Zealand Building Code, which reads as follows (italics omitted):

D1.3.4 An accessible route . . shall:

- (c) Include a lift . . . to upper floors where:

- (iii): buildings are two storeys high and have a total design occupancy of 40 or more persons on the upper floor.

4.1.2 The dispute is as to whether access by way of the lifts in the teaching building would in fact qualify as an accessible route as defined in clause A2 of the New Zealand Building Code.

4.2 *Separate buildings*

4.2.1 As to the contention that the facilities building and the teaching building should be treated as one building, the Authority notes that section 3(2) of the Building Act provides as follows:

(2) For the purposes of a building consent, a code compliance certificate, and a compliance schedule the term "building" also includes -

- (b) Any 2 or more buildings which, on completion of any building work, are intended to be managed as 1 building with a common use and a common set of ownership arrangements.

4.2.2 The facilities building and the adjacent building appear to come within that definition if it is accepted that the common use is use as a tertiary educational institute irrespective of the fact that one building will be used for staff and student facilities and the other will be used for teaching. However, the Authority considers that section 3(2) relates less to technical matters of design and construction than to whether a single building consent, code compliance certificate, and compliance schedule may be issued in respect of two or more buildings.

4.2.3 The Authority has not been told whether the facilities building and the teaching building are in fact to be constructed under a single building consent and to be issued with a single compliance schedule. However, the Authority does not consider that to be relevant in respect of access for people with disabilities. In any case, clause D1.3.4 of the New Zealand Building Code requires an accessible route to include a lift, it does not specifically require that the lift shall be in the same building.

4.2.4 For completeness, the Authority records that it does not accept the territorial authority's "formula" for assessing whether adjacent buildings are to be considered as one building as being relevant in respect of access for people with disabilities.

4.3 *Reasonable access*

4.3.1 The question of whether the proposed access is reasonable arises from the fact that clause D1.3.4 must be interpreted in the light of its objectives as stated in the New Zealand Building Code itself and ultimately in the Building Act and the Disabled Persons Community Welfare Act 1975, both of which refer to "reasonable and adequate" provisions for people with disabilities.

4.3.2 The territorial authority contends that it is unreasonable to expect people with disabilities to have to exit the facilities building, cross to the teaching building, access the lifts to the second

floor, and then negotiate their way through the teaching building and enclosed walkway to access the upper floor of the facilities building.

- 4.3.3 The applicant emphasises that the facilities building is stratified into student uses on the ground floor and staff uses on the upper floor, as detailed in 2.1 above, and contends that therefore there will be little interfloor traffic.
- 4.3.4 The Authority considers that neither party has adequately addressed the question of access to the upper floor by people coming not from the ground floor but from outside the building.
- 4.3.5 To get to the upper floor of the facilities building from the ground floor or from certain locations outside the facilities building will involve approximately 100 metres more travel by the lift than by the stairs. That is significantly less than the distance that people might have to travel between spaces within the teaching building itself, which is apparently accepted as providing adequate and reasonable access for people with disabilities.
- 4.3.6 Whether that extra travel is acceptable will depend to a certain extent on the numbers of people who will need to use the lift and the frequency with which they are likely to do so. Queried on that point, the applicant replied that it was difficult to estimate specific numbers of persons needing to move between the floors but it would probably be only two or three a week.
- 4.3.7 The Authority places little reliance on that estimate, which appears to take into account only students visiting the students' association office on the upper floor. The Authority considers that attention must also be paid to access for staff members to and from the upper floor. In any event, the numbers travelling between floors could well change in the future if different rooms in the facilities building are put to different uses, which seems far from unlikely.
- 4.3.8 However, the fact that there are to be accessible toilets on each floor of the facilities building indicates that travel between floors will not be a frequent necessity.
- 4.3.9 The Authority therefore accepts that access to the upper floor of the facilities building by routes that include the lifts in the teaching building is:
- (a) Entirely by way of main traffic routes, and
 - (b) Does not involve any prohibitively lengthy detours from the routes using the stairs.
- 4.3.10 The Authority considers such access to be reasonable and adequate in the circumstances of the particular buildings concerned.

4.4 *Availability of the lifts*

- 4.4.1 One point not mentioned by the parties is whether access through the teaching building will in fact be available at all times that the facilities building is in use. The teaching building might well be closed and locked outside teaching hours, but at times when people with disabilities might wish to go to the upper floor of the facilities building. No doubt staff with rooms in the teaching building would be provided with keys or other means of after-hours

admittance to that building, and a corresponding means of access will need to be made available to anyone who may be expected to use the facilities building but is unable to use the stairs. The same consideration would apply if the upper floor of the facilities building were to be hired for outside use.

- 4.4.2 That is a management matter, and in a previous determination (No. 92.1102) the Authority observed that "the Building Act does not cover the management of buildings, and assurances as to future management will rarely be enforceable under the Act". Nevertheless, the Authority considers that in this case any such practice, once established, would be effectively irrevocable because of pressure from those affected. The owner has given a formal undertaking that access to the teaching building will be available to those people who are unable to use the stairs in the facilities building.

5. The Authority's decision

- 5.1 In accordance with section 20(a) of the Building Act the Authority hereby reverses the territorial authority's decision so that a building consent is to be issued for the facilities building without a lift, when there will be a lift provided in the proposed, linked teaching building.

Signed for and on behalf of the Building Industry Authority on this 24th day of August 1994

J H Hunt
Chief Executive