

Determination

under the

Building Act 1991

No. 94/005: Access for people with disabilities in a bank building one storey high

1. The matter to be determined

- 1.1 The matter before the Authority was whether, in the proposed alteration of a bank building, provisions should be made so that the staff facilities, including toilet facilities, may be used by people with disabilities that prevent them from using stairs.
- 1.2 The applicant was the owner of the building, 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 access to the staff facilities for people unable to use stairs, will comply with clauses D1.3.2(c), G1.3.1, and G1.3.4 of the New Zealand Building Code (the First Schedule to the Building Regulations 1992) as nearly as is reasonably practicable to the same extent as if it were a new 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.
- 1.5 In this determination, the word "lift" is used to mean any form of mechanical installation for access complying with clause D2 of the New Zealand Building Code.

2. The building

- 2.1 The building is one storey high, but the floor is on two levels, with a step of approximately 1200 mm between them. The two levels are referred to as "the ground floor" and "the mezzanine floor", although strictly speaking there are not two floors but merely a change of level in the ground floor. The total gross floor area is approximately 244 square metres with the mezzanine portion being approximately 74 square metres.
- 2.2 All customer facilities are to be in the "banking chamber" on the ground floor, and the mezzanine floor is to contain staff work places, a storeroom, copying facilities, a staffroom, and toilet facilities.

- 2.3 The toilet facilities include two toilets, one for use by both male staff and people with disabilities. The Authority accepts, without having seen detailed drawings, that the toilet concerned, apart from the question of access to it, is suitable for use by people with disabilities.
- 2.4 The only internal access from the ground floor to the mezzanine floor is by way of a flight of steps.
- 2.5 The plans submitted with the application show work places for 14 staff, but the applicant stated on one occasion that there would be "only 10 staff" and on another that "the staff numbers within this Branch are less than 10".

3. The parties' contentions

- 3.1 The applicant contended that it was not reasonably practicable to provide access to the mezzanine floor for people who cannot use the steps because:
- (a) Ramp access would:
 - (i) "take up too much commercial space", and
 - (ii) "look cumbersome".
 - (b) The provision of a lift would:
 - (i) "represent an increase of over 8% to our alterations budget",
 - (ii) "is unjustified for a small branch of only 10 staff", and
 - (iii) had the same problems as for a ramp "with regard to lack of space and aesthetics".
 - (c) An accessible toilet cannot be provided on the ground floor because:
 - (i) "the cash count room [must] be adjacent to the tellers for security reasons, which means that there is not enough room to provide a Disabled Toilet on the Banking Chamber Level without a major demolition of the mezzanine level",
 - (ii) "a major demolition of the mezzanine level [and the] need to pump the foul water up to the existing sanitary sewer pipe at the rear of the building . . . would be extremely costly and beyond what we would describe as 'reasonably practical'".
- 3.2 The territorial authority accepted that the provision of a ramp was impracticable but contended that "the installation of a simple lifting platform electrically operated is a viable alternative". It observed that "This type of lift is manufactured locally and at reasonable cost".

4. Discussion

- 4.1 It is not disputed that the building concerned is a building to which section 25 of the Disabled Persons Community Welfare Act 1975 applies, and that therefore if it were a new building it would be required under that Act to make reasonable and adequate provision for people with disabilities to carry out normal activities and processes in the building. If it were a new building, therefore, there would be no doubt that access for people with disabilities would be required to all parts of the ground floor, including the mezzanine floor. In practice, one would normally expect a ramp to be provided wherever there was a change of level.
- 4.2 Specifically, the fact that the building is one to which that section 25 applies means that if it were a new building clauses D1.3.2 and G1.3.4 of the New Zealand Building Code would also apply, and that under clause G1.3.1 the people for whom sanitary fixtures are to be provided would include people with disabilities. The question to be decided, therefore, is whether, after the proposed alteration, that building will comply with those provisions as nearly as is reasonably practicable as required by section 38(a) of the Building Act 1991.
- 4.3 The Authority has some difficulty in making that decision because the applicant has largely relied on assertions, as quoted in 3.1 above, without specific details. It would have been of assistance to the Authority, for example, if the applicant had submitted sketch plans showing possible configurations of the building with ramp access, or with all of the mezzanine floor area excavated so as to provide a level floor throughout the building, or with a lift, together with estimated costs.
- 4.4 The Authority gave careful consideration to the submission that no more than 10 people will be employed in the building, with its implication that it would be unreasonable to require the applicant to incur significant expenditure in providing access for people unable to use stairs who might be among those 10 persons from time to time. The Authority notes that section 25 of the Disabled Persons Community Welfare Act does not apply to certain buildings in which 10 or fewer people are employed. However, the Authority also noted that there appeared to be sufficient space available for more than 10 people to work in the building, and considered that there could be no certainty that the number of staff would not be significantly increased. The fact that only a few, although perhaps more than 10, staff are likely to be employed in the building is a factor to be taken into account but is not decisive if other factors indicate that it would not be unreasonable for the building alterations to be re-designed so that people unable to use the steps were able to use the staff facilities and therefore were not prevented from being employed in the building.
- 4.5 In the absence of such detailed submissions, the Authority considers that, in terms of the applicant's submissions as outlined in 3.1 above:
- (a) In respect of ramp access:
 - (i) In the absence of detailed submissions it is not clear how much space would in fact be taken up by a ramp. The Authority considers that in this case the ramp could be of less than the usual 1200 mm wide because there is no

need to allow for an ambulant person to pass a wheelchair on the ramp. If only 10 staff are to be employed it appears that some of the work stations could be dispensed with in order to make floor area available for a ramp.

- (ii) As stated in determination No. 92.1102, the Authority "does not consider that a wish to achieve an appropriate appearance justifies a waiver of the requirements of the New Zealand Building Code". On that basis, the Authority considers that the applicant's submission that a ramp would "look cumbersome" to be irrelevant for the purposes of this determination.

(b) In respect of the provision of a lift:

- (i) The addition of 8%, or even more, to the cost of the alterations is not considered to be unreasonable in comparison to the benefits of making it possible for people with disabilities to be employed in the building.
- (ii) For the reasons indicated in 4.4 above, the Authority does not agree that the installation of a lift "is unjustified" on the basis of the number of people likely to be employed in the building.
- (iii) As to space and aesthetic problems:

The Authority does not accept that the space that would be taken by a lift suitable for use by someone in a wheelchair would be such as to significantly detract from the suitability of the building for its intended use. As stated in determination No. 94/002, a lift that does not fully comply with the dimensional requirements of New Zealand Standard 4121 "Code of practice for design for access and use of buildings for disabled persons" could be acceptable in such cases as this.

As mentioned in (a)(ii) above, the Authority considers aesthetic problems to be irrelevant for the purposes of this determination.

(c) As to the installation of an accessible toilet on the ground floor:

- (i) That would not solve the problem of access to the staffroom and the rest of the mezzanine floor.
- (ii) The applicant's justified desire to provide appropriate security in its building cannot justify a failure to comply with the requirements of the Building Act and is therefore irrelevant for the purposes of this determination.
- (iii) In the absence of any cost estimates, the Authority does not know what the applicant means by saying that providing an accessible toilet on the ground floor "would be extremely costly". However, the Authority is prepared to assume that the provision of a ramp or a lift would be preferable options.

4.6 Accordingly, the Authority considers that it would be reasonably practicable to provide access to the mezzanine floor for people who are unable to use the steps. Such access could, at the applicant's option, be provided either by a ramp or by a lift.

5. The Authority's decision

5.1 In accordance with section 20(a) of the Building Act the Authority hereby confirms the territorial authority's decision to refuse building consent for the proposed alterations without provision for access to the mezzanine floor for people who are unable to use the steps.

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

J H Hunt
Chief Executive