

Provision of ramp access on the alteration of an office building

1 THE MATTERS TO BE DETERMINED

- 1.1 The matters before the Authority originally arose out of a dispute about whether a building consent relating to certain alterations to a building should be amended by the removal of a requirement for ramp access suitable for use by people with disabilities. Subsequently, however, the matter in dispute became whether a proposed ramp complied with the provisions of the building code for access for people with disabilities.
- 1.2 In making its decision, the Authority has not considered whether the ramp or the building itself will comply with any other provisions of the building code.

2 THE PARTIES

- 2.1 The applicant was the owner acting through a firm of solicitors. The only other party was the territorial authority.

3 THE BUILDING AND THE SEQUENCE OF EVENTS

- 3.1 There is no dispute that the building is one to which section 47A of the Building Act applies.
- 3.2 The building is a two-storey office building erected in about 1968. It has no lift and no accessible toilets. The front entrance can be approached from the street either up a flight of steps or up a sealed footpath approximately 10 m long, approximately 1 m wide, at a gradient of approximately 1 in 8, and with a handrail along one side. The rear door onto a carpark is too narrow for wheelchairs and leads to only one of the two ground-floor tenancies.
- 3.3 A tenant applied for a building consent for alterations to suit its operations on the first floor. The proposed alterations consisted of internal partitioning and the installation of a new sink, at an estimated cost of \$15,000. After discussions with the tenant's architects, the territorial authority decided that it was not reasonably practicable to install a lift and accessible toilets, which would have been required if this were a new building, but that it was reasonable practicable to replace the footpath with an accessible ramp.

- 3.4 A building consent was accordingly issued for the tenant's proposed alterations plus the installation of a ramp, designed by the tenant's architects. That ramp was a "zig-zag" entirely within the boundaries of the owner's property, having three sections, each at a grade of 1 in 12, with level landings between, and with handrails and safety barriers. The estimated cost of the ramp was \$26,000.
- 3.5 The territorial authority understood that the ramp would be completed within a year of the issuing of the building consent. When that year had expired, the rest of the work under the building consent had been completed but no progress whatsoever had been made with the ramp. The territorial authority accordingly decided to issue a notice to rectify. The first the owner knew about the building consent having been issued when she received a copy of the Council's decision. The owner responded by applying for this determination.
- 3.6 In effect, the owner was asking the Authority to modify the territorial authority's decision to issue the building consent by amending that building consent so as to remove the requirement for the ramp. The consequence of that would be the withdrawal of the notice to rectify and the issuing of a code compliance certificate for the alterations without the ramp.
- 3.7 Neither party waived its right to appear and call evidence before the Authority. Accordingly, the Authority issued a draft determination to the effect that access to the building for people with disabilities was to be provided and was to comply with the relevant provisions of the building code as nearly as is reasonably practicable. The determination did not, and could not, decide that the owner must proceed with the construction of the ramp as originally proposed.
- 3.8 The owner then engaged a firm of designers to design a different ramp, and applied to the territorial authority for a building consent for that new ramp.
- 3.9 The proposed new ramp extended beyond the boundary of the owner's property and therefore did not need to be a zigzag. It had two sections, each 9 m long in plan and at a grade of 1 in 12, with a level landing 1.2 long between, and with handrails and safety barriers, all in accordance with the acceptable solution D1/AS1. Approximately a third of the ramp was on neighbouring property. The Authority was not told the estimated cost.
- 3.10 The territorial authority refused to grant building consent and the matter came back to the Authority, this time to determine whether the proposed new ramp complied with the building code as nearly as is reasonably practicable to the same extent as if it were a new building.
- 3.11 Because both parties retained their right to appear and call evidence before the Authority, the Authority sent a second draft determination to the parties. That draft was accepted by both parties.

4 THE SUBMISSIONS

- 4.1 The territorial authority submitted that the ramp did not provide reasonable access that would enable people to safely and easily approach the main entrance of the building from the

apron or construction edge of the building as required by clauses D1.2.1 and D1.3.1(a). Those clauses read:

FUNCTIONAL REQUIREMENT

D1.2.1 *Buildings* shall be provided with reasonable and adequate access to enable safe and easy movement of people.

PERFORMANCE

D1.3.1 *Access routes* shall enable people to:

- (a) Safely and easily approach the main entrance of buildings from the apron or construction edge of a building,

- 4.2 As to clauses D1.2.1 and D1.3.1, the territorial authority submitted that the ramp did not provide “reasonable access” to the building because:

“The existing main entrance steps are difficult for an infirm or elderly person to negotiate.

“The majority of pedestrian traffic would come from [parking areas on the other side of the main entrance from the ramp]. We think it is important, and consistent with D1, that people should have an option as to which entrance to use when they approach the main entrance . . . Having the start of the ramp some 26 metres away from the . . . main entrance steps is unacceptable and does not provide easy and reasonable access in our opinion.

“Other acceptable options have been discussed with . . . [the owner, who] alluded to costs being the reason . . . [for] a straight ramp extending into the neighbouring property. The matter of costs has never been substantiated to Council.”

- 4.3 The territorial authority also submitted that it was unwilling to accept a ramp that was partly on neighbouring property because the legal situation was not clear and in any case:

“ . . . it is generally very difficult for Councils to enforce matters with respect to memorandum of encumbrances (or similar legal mechanisms) . . . We believe it is more appropriate for Council to protect the public’s interest by not allowing such a legal predicament to occur.”

- 4.4 Finally, the territorial authority said:

“To conclude, Council is wanting the building to comply as is reasonably practicable with the building code by making the main floor of the building accessible. In doing so the accessibility facilities must be easily recognisable and be an obvious option for people that may find the steps difficult to negotiate and not just pay lip service to the requirement for accessibility.”

5 DISCUSSION

5.1 Clause D1.2.1

5.1.1 The territorial authority submitted that the ramp did not provide “reasonable access” in terms of clause D1.2.1 of the building code. The Authority takes the view that although clause D1.2.1 is identified as a “functional requirement”, a territorial authority may not refuse building consent on the grounds of non-compliance with such a requirement. For building consent purposes, the only relevant requirements are those headed “performance” in the building code and referred to in the Building Act as “performance criteria”.

5.1.2 The Authority bases that view on the following definitions in section 2 of the Building Act:

“Functional requirements”, in relation to a building, means those functions which a building is to perform for the purposes of this Act:

“Performance criteria”, in relation to a building, means those qualitative or quantitative criteria which the building is to satisfy in performing its functional requirements:

In other words, if a building complies with the relevant performance criteria then it satisfies the corresponding functional requirement.

5.2 Clause D1.3

5.2.1 The territorial authority submitted that the building did not comply with clause D1.3.1(a) in that it did not have an access route enabling people to safely and easily approach the building because the majority of pedestrian traffic would come to the bottom of the steps before they came to the foot of the ramp some 26 m away.

5.2.2 The Authority agrees that the ramp must not only comply with the building code but also be in a complying location.

5.2.3 However, the location is governed by clause D1.3.2, which requires that the ramp shall enable people with disabilities to “approach the building from the street boundary” so that they have “access to the internal space served by the principal access”. Because the ramp goes from the street boundary to the front door, it complies with clause D1.3.2 in that respect. There is no requirement that ramp shall be located according to the origin of pedestrian traffic.

5.3 Ramp to be constructed on land under different titles

5.3.1 In this case, the ramp is to be constructed partly on land held by the owner under one certificate of title and partly on land, whether held by the owner or someone else, under another certificate of title.

5.3.2 The Authority recognises that as a matter of law that might well involve formal easements, and it might well be that the ramp must be regarded as two abutting buildings, one on each side of the boundary. However, the Authority takes the view that it is the ramp as a whole that is required to comply with the building code.

5.3.3 The territorial authority was concerned that it might encounter difficulties if it had, in effect, to enforce the legal document under which the owner was authorised to construct part of the ramp on the neighbour's property. In the Authority's view, such hypothetical difficulties are not grounds for refusing to grant building consent for complying work.

5.4 Conclusion

5.4.1 As mentioned in 3.9 above, the proposed ramp complies with the acceptable solution D1/AS1 in Approved Document D1, and as discussed in 5.2.3 above it is situated so as to comply with the requirements of clause D1.3.2. Accordingly, the Authority takes the view that it has no choice but to reverse the territorial authority's decision to refuse building consent.

5.4.2 The Authority takes that view on the basis that under the Building Act neither the Authority nor a territorial authority may refuse building consent for building work that complies with the building code. The relevant provisions of the Building Act are:

(a) Section 34(3), which says:

(3) After considering an application for building consent, the territorial authority shall grant the consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work was properly completed in accordance with the plans and specifications submitted with the application.

There are no other relevant provisions of the Building Act that derogate from that requirement.

(b) Section 49(1) and (2), which say:

(1) The Authority may prepare or may approve, in whole or in part and subject to any modification it considers necessary or desirable, any document for use in establishing compliance with the provisions of the building code.

(2) Any document, prepared or approved by the Authority under subsection (1) of this section shall be accepted for the purposes of this Act as establishing compliance with those provisions of the building code to which it relates, but it shall not be the only means of establishing such compliance.

The Authority prepares and issues the Approved Documents under section 49.

(c) Section 50(1), which says:

(1) A territorial authority shall accept the following documents as establishing compliance with the provisions of the building code:

(d) Compliance with the provisions to that effect of a document prepared or approved by the Authority under section 49 of this Act.

6 THE AUTHORITY'S DECISION

6.1 In accordance with section 20(a) of the Building Act:

- (a) The Authority hereby determines that the proposed ramp complies with the building code, and
- (b) The Authority hereby reverses the territorial authority's decision to refuse building consent for the proposed ramp.

Signed for and on behalf of the Building Industry Authority on this 4th day of September 2002

W A Porteous
Chief Executive