

Access and facilities for people with disabilities in the alteration of a commercial building

1 THE MATTER TO BE DETERMINED

- 1.1 The matter before the Authority is a doubt about whether a lift is required in the alteration of an office building.
- 1.2 The Authority takes the view that it is being asked to determine whether the proposed provisions for access for people with disabilities comply as nearly as is reasonably practicable with clause D1.3.4(c) of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making its determination the Authority has not considered any other aspects of the Building Act 1991 or of the building code.

2 THE PARTIES

- 2.1 The applicant was the owner of the building acting through a firm of property specialists. The other parties were the building certifier and territorial authority concerned.

3 THE BUILDING

- 3.1 The building is the head office of a large business. It is on a sloping site and has two floor levels, referred to as the “lower ground floor” and the “upper ground floor”. Access between floors is by three sets of stairs. The main entrance and reception are on the lower floor, but there is level access from the parking area to the upper floor. The Authority was not told the length of the external paved route between entrances, but it is clearly much longer than the route between floors by way of one or other set of stairs.
- 3.2 The upper floor has a gross floor area of more than 3,000 m² and a design occupancy of over 300 people.

4 THE LEGISLATION AND NZS 4121

4.1 The relevant provisions of the Building Act are:

(a) Section 38:

No building consent shall be granted for the alteration of an existing building unless the territorial authority is satisfied that after the alteration the building will—

- (a) Comply with the provisions of the building code for means of escape from fire, and for access and facilities for use by people with disabilities [(where this is a requirement in terms of section 47A of this Act)], as nearly as is reasonably practicable, to the same extent as if it were a new building; and
- (b) Continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

(b) Section 47A(1) and (4):

(1) In any case where provision is being made for the construction or alteration of any building to which the public are to be admitted, whether on payment or otherwise, reasonable and adequate provision . . . shall be made for persons with disabilities who may be expected to visit or work in that building and carry out normal activities and processes in that building.

(4) The provisions of this section shall apply to, but shall not be limited to, buildings, and parts of buildings . . . that are intended to be used for or associated with one or more of the following purposes:

- (f) Commercial buildings and premises for business and professional purposes, including computer centres:

4.3 The relevant provisions of the building code are:

D1 ACCESS ROUTES

OBJECTIVE

D1.1 The objective of this provision is to:

- (c) Ensure that people with disabilities are able to enter and carry out normal activities and functions within buildings.

D1.3.2 At least one access route shall have features to enable people with disabilities to:

- (b) Have access to the internal space served by the principal access, and
- (c) Have access to and within those spaces where they may be expected to work or visit, or which contain facilities for personal hygiene . . .

D1.3.4 An accessible route, in addition to the requirement of Clause D1.3.3, shall:

- (c) Include a lift complying with Clause D2 “Mechanical Installations for Access” 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 . . .

- 4.4 For the reasons set out in Determination 95/008, the Authority takes the view that compliance with NZS 4121 is to be accepted as establishing compliance with the corresponding provisions of the building code. The relevant provisions of NZS 4121:2001 for an office building are in its clause 9.1.3.2:

. . . a lift is not required where:

- (a) Buildings are two storeys high and have a gross floor area of the upper floor of less than 400 m²;

5. THE SUBMISSIONS

- 5.1 Neither the building certifier nor the territorial authority made any specific submissions. However, the building certifier, apparently at an early stage of the design process, offered the opinion that:

“ . . . in order to comply as nearly as is reasonably practicable with the provisions of the building code for access and facilities for people with disabilities a lift is to be installed between the ground and first floor. . . . In assessing this requirement I have also given consideration to similar situations in which a Determination has been sought under the Building Act 1991. (Determinations 2002/8 and 2002/5)”

(That is described as an opinion rather than a decision because the Authority takes the view that building certifiers do not have the power to decide whether an existing building, after an alteration or a change of use etc, complies as nearly as is reasonably practicable with particular provisions of the building code.)

- 5.2 The applicant submitted that:

- (a) “ . . . the building should be treated as two single level ground floors rather than a ground and upper level, in which case a lift would not be a requirement.”
- (b) “With the operation of this business . . . there would be little or no need for disabled people to interact with people on the other floor. Similarly, if disabled people are visitors . . . there would be no requirement for them to travel to the upper-ground floor from reception as meeting rooms are available and use of them is encouraged.”
- (c) “We believe as per NZBC D1.1(c), the objective is to ensure that people with disabilities are able to enter and carry out normal activities and functions within the building. We believe the obligations under this section are able to be met.”
- (d) With the alteration and refurbishment taking place within the exterior bounds of this building the design occupancy remains substantially unaltered, and as such we consider this a second course of action under Section 38 of the Building Act which states that the territorial authority is to be satisfied that the building will continue to comply with the other provisions of the building code to at least the same extent as before.”

6 DISCUSSION

- 6.1 If the building is to be treated as being of only one storey, or as the applicant put it as “two single level ground floors” then obviously a lift is not required. However, if it is treated as being a two storey building then the upper floor has more than seven times the design occupancy at which clause D1.3.4(c) requires a lift, and more than nine times the gross floor area at which NZS 4121 requires a lift.
- 6.2 Whether a building such as the one concerned should be treated as being of only one storey has been discussed in several previous determinations, most recently in Determination 2002/5. In Determination 99/003 the Authority reviewed previous determinations on the point. As the Authority originally said in Determination 96/004, the fact that two levels were each accessible from the outside without the use of stairs did not mean that those levels were to be treated for access purposes as if they were both at the same “ground level”. In this determination, as in Determinations 96/004 and 2002/5, the gross disparity between the external route between floor levels and the internal routes by stairs makes it impossible for the Authority to accept that the external route amounts to reasonable provision for access by people with disabilities.
- 6.3 Accordingly, the building is to be treated as having two storeys.
- 6.4 As to the operation of the business being such that there is “little or no need” for people with disabilities to “interact with people on the other floor”, the real question is whether it is a normal activity for people working in the building to travel between floors. Given that there are three sets of stairs between the floors, the answer must be that it is a normal activity. People who cannot use stairs should also be able to travel between floors without having to go outside.
- 6.5 In any case, the operation of the building is a management matter, and as the Authority said in Determinations 92.1102 and 94/004, “the Building Act does not cover the management of buildings, and assurances as to future management will rarely be enforceable under the Act”.
- 6.6 The applicant’s submission that “people with disabilities are able to enter and carry out normal activities and functions within the building”, see 5.2(c) above is not accepted for the reasons set out in 6.3 and 6.4 above.
- 6.7 The Authority takes the view that the applicant’s reference to a “second course of action under section 38”, see 5.2(d) above, is misconceived. Section 38(b) requires the building to “continue to comply with the other provisions of the building code to the same extent as before the alteration” (emphasis added). That is additional to, not an alternative to, the section 38(a) requirement that the building shall comply with certain provisions of the building code “as nearly as is reasonably practicable to the same extent as if it were a new building”.
- 6.8 From the drawings submitted, and in the absence of any acceptable submissions to the contrary, the Authority considers that it is reasonably practicable to install a lift.

7 THE AUTHORITY'S DECISION

- 7.1 In accordance with section 20 of the Building Act, the Authority hereby determines that under section 38 of the Building Act a lift is to be installed in order for the building to comply with the provisions of the building code for access and facilities for people with disabilities, as nearly as is reasonably practicable, to the same extent as if it were a new building.

Signed for and on behalf of the Building Industry Authority on this 31st day of January 2003.

Barry Brown
Presiding Member