

Access and facilities for people with disabilities in a new motel

1 THE MATTERS TO BE DETERMINED

1.1 The matters before the Authority arise out of a dispute about access and facilities for people with disabilities in a new motel complex still under construction.

1.2 The Authority has been specifically asked to determine, in respect of the units intended to be suitable for use by people with disabilities, whether the following comply with the building code (the First Schedule to the Building Regulations 1992):

(a) A bathroom containing a soil fixture that opens directly into a kitchen.

(b) A convertible sofa bed.

(c) The kitchen facilities and layout.

(d) Access to the reception area.

1.3 In addressing the above, the Authority has also considered the more general question of whether the units intended to be suitable for people with disabilities do in fact comply with the relevant provisions of the building code so as to, in the words of section 6(2)(e) of the Building Act 1991:

Provide, both to and within buildings to which section 47A of this Act applies, means of access and facilities . . . to ensure that reasonable and adequate provision is made for people with disabilities to enter and carry out normal activities and processes in those buildings.

1.4 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 territorial authority concerned. The other party was the owner acting through a firm of solicitors. The building certifier concerned was treated as an “appropriate person” in terms of section 19(1)(b).

2.2 Neither the applicant, the owner, nor the building certifier wished to speak and call evidence.

3 THE BUILDING AND THE SEQUENCE OF EVENTS

- 3.1 The motel complex contains 22 units, including the manager's unit. Two of the units have features intended to permit their use by people with disabilities ("the accessible units"). Each unit has two storeys, except that the manager's unit also has a semi-basement containing, amongst other facilities, the office and reception area. The units are to be individually owned under unit titles.
- 3.2 The Authority was not given detailed plans of the units other than the manager's unit and the accessible units. However, it appears that each of the other units has a living room, a kitchen, and a dining room on the ground floor, with two bedrooms and toilet and shower facilities on the upper floor.
- 3.3 The only differences with the accessible units is that they are larger and have accessible toilet and shower facilities on the ground floor, with the kitchen area correspondingly reduced, and there is a convertible sofa bed in the living room. The relevant facilities are described in more detail below.
- 3.4 The territorial authority issued a building consent for the complex on the basis of a building certificate from a building certifier. The certifier stamped the plans with several endorsements to the effect that specific items were to comply with NZS 4121.
- 3.5 Work on the project was duly commenced, but before it was completed, the building certifier's insurance, and consequently the scope of its approval by the Authority, was amended. The territorial authority was then advised by the building certifier that the project fell outside its revised scope so that it was no longer in a position to carry out inspections and issue a code compliance certificate.
- 3.6 The territorial authority considered that the plans and specifications as certified by the building certifier did not comply with the provisions of the building code in the respects detailed above, and asked the owner to amend the plans and specifications accordingly.
- 3.7 The owner did in fact make some amendments to improve access and facilities for people with disabilities, including amendments to the reception facilities in the manager's unit, but they were not acceptable to the territorial authority.
- 3.8 The territorial authority then submitted the dispute to the Authority for determination.
- 3.9 In the course of the determination, the owner commissioned a report ("the consultant's report") from a consultant specialising in access and facilities for people with disabilities. As a result of that report, the owner proposed further amendments to the plans. However, the territorial authority was not satisfied with those amendments. The territorial authority did not explain its reasons for considering that the amendments would not bring the building to compliance with the provisions of the building code for access and facilities for people with disabilities. The Authority recognised that further delay was undesirable, and made this determination in the light of the documents before it, particularly the amended plans, without the benefit of the territorial authority's detailed reaction to those amendments.

4 THE SUBMISSIONS

- 4.1 The applicant's submissions are summarised in the detailed discussion of the matters for determination in 5.2 to 5.5 below.
- 4.2 The owner's submission was confined to the argument that the development has been constructed in accordance with plans and specifications certified by the building certifier, and that the territorial authority must accept that certificate in accordance with section 50 of the Building Act. In those circumstances, the owner argued, the Authority has no jurisdiction in respect of the territorial authority's acceptance of the building certifier's certificate. That submission is discussed in 5.1 below.

5 DISCUSSION

5.1 The Authority's jurisdiction

- 5.1.1 The Authority takes the view that under sections 17(1)(a) and 18 it is entitled to determine whether proposed building work complies with the building code irrespective of whether a building certifier has issued a certificate in respect of those matters. Admittedly, section 17(1)(b) refers only to certain decisions by the territorial authority and does not mention any decisions by a building certifier. Nevertheless, the Authority takes the view that Parliament cannot have intended that the Authority should be able to correct a territorial authority's interpretation of the building code but not that of a building certifier. Accordingly, the Authority does not accept the owner's submission that it has no jurisdiction to make this determination.
- 5.1.2 Although the individual units are to be owned under unit titles, the Authority takes the view that it is not a multi-unit dwelling, to which section 47A would not apply, but a motel to which that section does apply.
- 5.1.3 As it said in Determinations 95/003, 2000/2, and 2001/10, the Authority takes the view that it has no power to waive or modify the requirements of the building code for access and facilities for people with disabilities in respect of a new building to which section 47A applies.
- 5.1.4 The consultant's report addressed the facilities, identified in the applicant's submissions and various other facilities also. The owner appears to have generally, if not entirely, followed the report's recommendations in the amended plans.
- 5.1.5 The Authority notes that section 47A must be read together with section 7(2), which in effect forbids any performance requirement additional to or more restrictive than those of the building code. Section 47A(1) requires that reasonable and adequate provisions "shall be made for people with disabilities who may be expected to visit or work in the building and carry out normal processes in that building". However, section 7(2) means in effect that compliance with the building code must be accepted as being reasonable and adequate in that respect.

- 5.1.6 The Authority takes the view that section 47A(3) gives NZS 4121 “and any amendment thereof” the same status as a document for establishing compliance with the building code issued under section 49 (an “Approved Document”). Thus, as it said in Determination 95/008 and several subsequent determinations, the Authority takes the view that an owner or designer may choose to follow either NZS 4121 or the Approved Documents in order to establish compliance with a particular provision of the building code for access and facilities for people with disabilities.
- 5.1.7 Taking all the foregoing into account, the Authority discusses below the specific matters submitted for determination, namely whether the following comply with the building code:
- (a) A bathroom containing a soil fixture that opens directly into a kitchen (see 5.2 below).
 - (b) A convertible sofa bed (see 5.3 below).
 - (c) The kitchen facilities and layout (see 5.4 below).
 - (d) Access to the reception area (see 5.5 below).

5.2 Toilet facilities opening directly into the kitchen area

- 5.2.1 The applicant’s submission was to the effect that accessible toilet facilities opening directly into the kitchen area was contrary to clause G1 “Personal hygiene”, specifically clauses G1.1(a) and G1.3.2(b) and (e). The point was not addressed in the consultant’s report.
- 5.2.2 The Authority takes the view that clause G1.1, and the corresponding provisions in the other clauses of the building code, which set out the objectives of the main clause concerned, are not mandatory but explanatory, linking each of the clauses of the building code to the corresponding provisions of section 6 (purposes and principles) of the Building Act. Section 48(1) of the Building Act makes it clear that it is the performance requirements of the building code that are mandatory.
- 5.2.3 The relevant performance requirement is:
- G1.3.2** Sanitary fixtures shall be located, constructed and installed to:
- (b) Avoid risk of food contamination,
 - (e) Avoid affecting occupants of adjacent spaces from the presence of unpleasant odours, accumulation of offensive matter, or other source of annoyance,
- 5.2.4 The relevant provisions of the acceptable solution G1/AS1 are:
- 3.2.1** In household units, at least one door shall be provided between a soil fixture and a kitchen or a place for food storage.

3.2.2 In buildings other than household units, no space containing a soil fixture shall open directly into:

- a) A space used for the storage, preparation, sale or consumption of food, see Figure 10, or
- b) An office or other work areas (as in factories), see Figure 10.

5.2.5 A motel unit is not a ‘household unit’ as defined in the Building Act, and therefore the units concerned do not comply with G1/AS1.

5.2.6 However, G1/AS1 gives a general solution only, and does not consider different types of buildings. In this case, it is relevant that:

- (a) The danger of food contamination and the problems of sanitary fixtures as sources of annoyance are not significantly different for a motel unit than for a household unit; and
- (b) Any additional separation between the bathroom and the rest of the motel unit would be to the disadvantage of people with disabilities using the unit.

Accordingly, the fact that this particular building does not include a provision required by G1/AS1 does not mean that the building does not comply with clause G1 of the building code.

5.2.6 The Authority concludes that the motel unit complies with the performance requirements of clause G1 of the building code.

5.3 Convertible sofa bed

5.3.1 The applicant submitted that it was contrary to clause D1.1(c) to provide a convertible sofa bed, saying:

“... it is unreasonable for persons with disabilities should be expected to assemble and disassemble sleeping facilities while others have the advantage of purpose-built sleeping facilities on the upper level.

“Furthermore persons with disabilities would be deprived of the living room once the convertible sofa bed has been assembled, an area which is available at all times for other users.”

5.3.2 The consultant’s report did not address the question of the sofa bed, but did recommend:

“In downstairs living/bed area of both units, provide built-in storage for clothing and luggage”.

The amended plans followed that recommendation.

5.3.3 The Authority considers that using a sofa bed in the living room does not amount to “carrying out normal activities” in the motel.

5.3.4 The Authority notes that there is no performance requirement for furniture such as beds in clause D1 or anywhere else in the building code.

5.3.5 However, the Authority considers that section 47A(1) clearly requires that the user of an accessible unit be able to “carry out normal activities” in the building. In the Authority’s view, a prime function of a motel is overnight sleeping, requiring that a fully accessible bed be provided in an accessible unit.

5.4 Kitchen facilities and layout

5.4.1 The applicant submitted:

“The proposed kitchen layout . . . does not comply with Clause D1.1(c).

“It is the view of the [territorial authority] that the project falls short of providing complying facilities in respect to [clauses] 14.7.4, 14.7.4.2, 14.7.4.3, 14.7.4.4, 14.7.4.5, 14.7.4.6, 14.7.4.9, 14.7.4.10, and 14.7.4.11.”

5.4.2 The owner’s amendments to the plans take account of those provisions of NZS 4121, and they are discussed in the consultant’s report.

5.4.3 The Authority does not address compliance with NZS 4121, but confines the determination to compliance with the building code.

5.4.4 The relevant performance requirement of the building code is in clause G3 “Food preparation and prevention of contamination”:

G3.3.5 Where facilities are provided for people with disabilities they shall be accessible.

5.4.5 In the Approved Documents, acceptable solution G3/AS1 contains the requirements for accessibility shown on the next page.

5.4.6 The amended plans provide a 1500 mm turning circle and comply with paragraph 1.5 of G3/AS1 and must therefore be accepted as complying with the building code.

5.5 Access to the reception area

5.5.1 The mandatory performance requirements for access to the reception area are specified in clause D1.3.2 of the building code:

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

- (a) Approach the building from the street boundary or, where required to be provided, the building car park,
- (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.

territorial authority] argues that this is unreasonable and contrary to NZS 4121:2001 Section 14.6.2.

“[The applicant] believes . . . to comply with the intent of Section 47A of the Building Act 1991, person with disabilities should be entitled to the same convenience as any other guest.”

5.5.4 The consultant’s report says:

“ . . . the ‘basement’ level reception area is accessible from the street boundary. If the normal processes and activities carried out at reception can also be carried out at the sliding window to be provided at the upper (ground) level rear entry to reception area, I believe this to be adequate in this particular case.”

5.5.5 The owner advised the Authority that the basement area will receive arrivals and enquiries from the public, and as all apartments are on the ground level all guests will be encouraged to use the ground level reception area during business hours. It will have a computer and desk and an electric buzzer and speakerphone will connect the two levels.

5.5.6 Accordingly, the Authority considers that the level route between the accessible units and the ground floor reception area satisfies clause D1.3.2 of the building code, and it is irrelevant that there is no such route to the basement reception area.

6 CONCLUSIONS AND COMMENTS

6.1 The Authority concludes that:

- (a) The toilet facilities provided comply with clause G1 of the building code.
- (b) The convertible sofa bed provided is not a reasonable and adequate provision for people with disabilities to carry out normal activities in the motel.
- (c) The amended kitchen layout and facilities provided comply with clause G3 of the building code.
- (d) The access to the reception area complies with clause D1 of the building code.

6.2 This determination is similar to Determination 99/001 in that it illustrates the importance, at the design stage, of taking full account of the building code’s requirements for access and facilities for people with disabilities. The owner failed to do so, and the territorial authority rightly challenged it. The owner then, sensibly but belatedly, sought expert advice and amended the original design to bring the building to compliance with the relevant provisions. It is unfortunate that the owner did not obtain such advice at an earlier stage.

6.3 It is also unfortunate that the building certifier did not ensure that the plans and specifications specified all details necessary for compliance with the provisions of the building code for access and facilities for people with disabilities. In this case, the building certifier merely stamped the plans with endorsements to the effect that specific items were to comply with NZS 4121. The Authority regards such endorsements as totally unacceptable. Such

endorsements amounts to admissions that the building certifier or territorial authority does not have reasonable grounds for being satisfied as to compliance and therefore should never have issued a building certificate or building consent as the case may be. The same comments apply to any other provisions of the building code.

7 THE AUTHORITY'S DECISION

- 7.1 In accordance with section 20 of the Building Act, the Authority hereby determines that the amended plans for the building comply with the provisions of the building code for access and facilities for people with disabilities.

Signed for and on behalf of the Building Industry Authority on this 19th day of August 2003.

R Martin
Acting Chief Executive