

Accessible counters in a commercial building

1 THE MATTER TO BE DETERMINED

- 1.1 The matter before the Authority is a dispute about whether counters for the use of the public in a commercial building should include features to permit use by people with disabilities.
- 1.2 The Authority takes the view that it is being asked to determine whether, in respect of the activities and processes undertaken at the counters, the building makes adequate and reasonable provision for people with disabilities in compliance with sections 6(2)(e) and 47A of the Building Act 1991 and clause G5.3.4 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 Act or of the building code.

2 THE PARTIES

- 2.1 The applicant is the territorial authority, the only other party is the owner of the building concerned.

3 THE BUILDING

- 3.1 The building concerned is a new building intended to provide banking and other facilities for the public. It has one storey of approximately 200 m² gross floor area containing two public counters, a meeting room, desks, and staff facilities including accessible toilet facilities.
- 3.2 In June 2003, the territorial authority granted the building consent for plans and specifications showing that the counters, or part of them, would be suitable for use by people with disabilities.
- 3.3 Construction commenced at the beginning of August 2003. However, in the course of construction the owner departed from the approved plans and specifications for the counters. In October 2003 the territorial authority issued a notice to rectify, but after discussions and negotiations that notice was lifted. The owner then proposed that instead of the counters being accessible, banking services would be made available to wheelchair users in the “Personal Banker” room shown in Figure 1 below (“the proposal”).

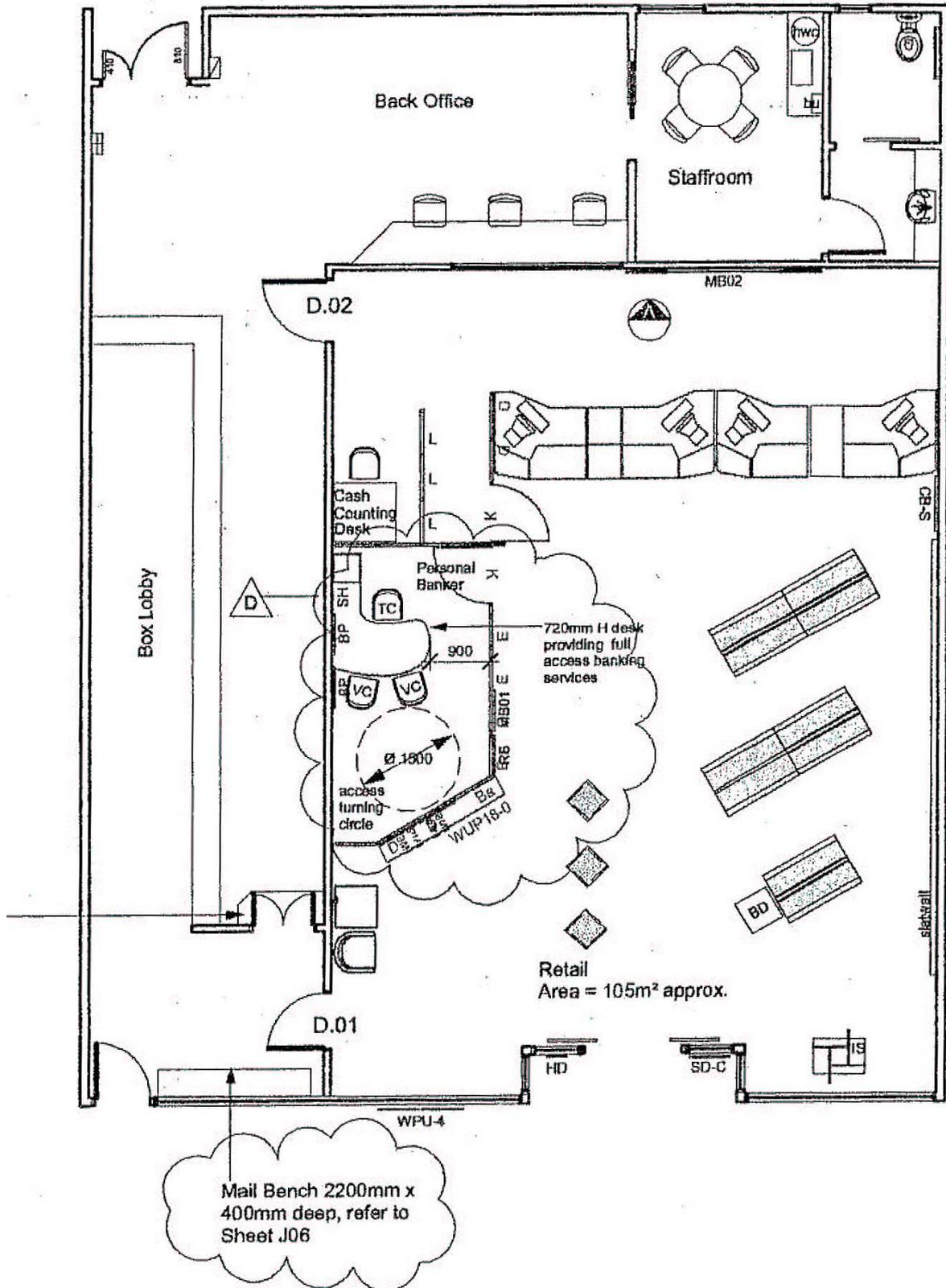


Figure 1: The Proposal

3.4 The territorial authority was not satisfied that the proposal complied with the building code, refused to grant a code compliance certificate, and applied to the Authority for this determination in November 2003. The owner completed the building in accordance with the proposal. The building came into use shortly after the application for determination.

4. THE LEGISLATION, THE APPROVED DOCUMENT, AND NZS 4121

4.1 The relevant provisions of the Act include:

6. Purposes and principles

(2) To achieve the purposes of this Act, particular regard shall be had to the need to—

- (e) Provide, both to and within buildings to which section 47A of this Act applies, means of access and facilities that meet the requirements of that Act 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:

7. All building work to comply with building code—(1) All building work shall comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

(2) Except as specifically provided to the contrary in any Act, no person, in undertaking any building work, shall be required to achieve performance criteria additional to or more restrictive in relation to that building work than the performance criteria specified in the building code.

47A. Access and facilities for persons with disabilities to and within buildings—(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 by way of access, parking provisions, and sanitary conveniences, 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.

(3) Any provision that is made to meet the requirements of disabled persons in accordance with New Zealand Standard Specification No 4121¹ . . . shall . . . be deemed to be one of the documents establishing compliance with the building code for the purposes of section 49 of this Act.

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

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

4.2 Clause A2 of the building code says:

Accessible Having features to permit use by *people with disabilities*.

4.3 Clause G5.3.4 of the building code says:

Provisions	Limits on application
G5.3.4 Where reception counters or desks are provided for public use, at least one counter or desk shall be accessible.	Performance G5.3.4 applies only to Communal Residential, Communal Non-Residential, and Commercial buildings.

¹ The current version is New Zealand Standard 4121:2001 “Design for access and mobility – buildings and associated facilities” (“NZS 4121”).

4.4 Acceptable solution G5/AS1 refers to NZS 4121, which provides²:

C11.1.1

Requirements for reception counters and desks need to ensure that people with disabilities are able to carry out normal processes and activities expected at that counter or desk.

C11.1.3

Where security is a requirement, consideration should be given to the innovative use of step-down counters, security grilles or toughened glass.

11.1 Public counters and desks

11.1.1 General

Reception counters and desks for public use on an accessible route shall have at least one space for use by people in wheelchairs as visitors and staff working in the reception area (see figure 36) Such a space shall be at least 900 mm wide.

11.1.2 Other forms of counters and desks

Additional examples of public counters such as in public bars, shops, supermarket checkouts shall comply with 11.1.1 as shown in figure 37.

11.1.3 Screens

Wholly transparent screens on counter tops shall be provided with a clearly visible contrast strip.

Figures 36 and 37 of NZS 4121 are reproduced on the following page.

5 THE SUBMISSIONS, THE EXPERT'S REPORT, AND THE HEARING

5.1 The parties' submissions

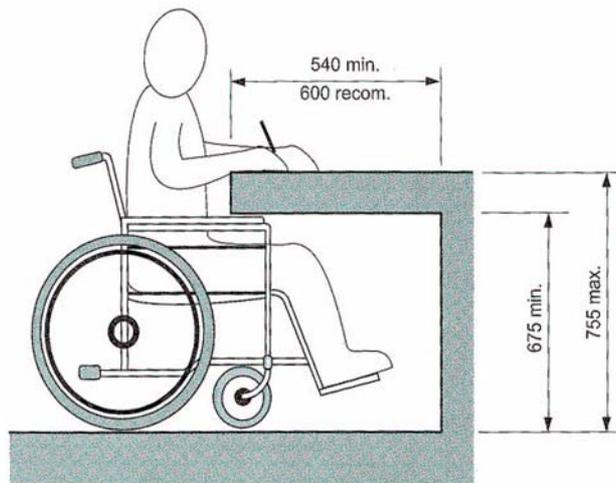
5.1.1 The territorial authority submitted relevant correspondence and other documents, and set out the course of events, including:

Council made contact with [a member of an organisation concerned with accessibility issues, who is also a member of the Authority] who did not think the separate room met the intent of the building code and [a member of the Authority's staff] who "indicated that this whole area needed to be sorted out".

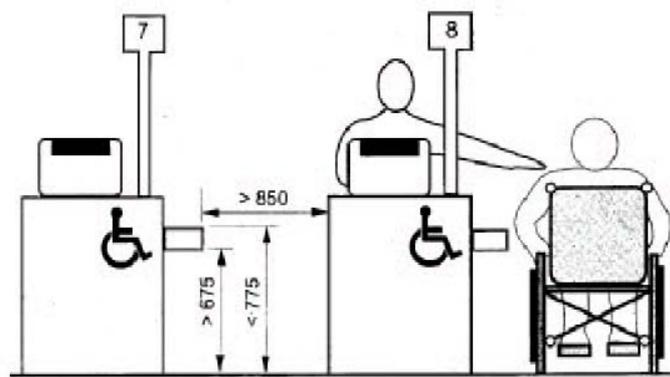
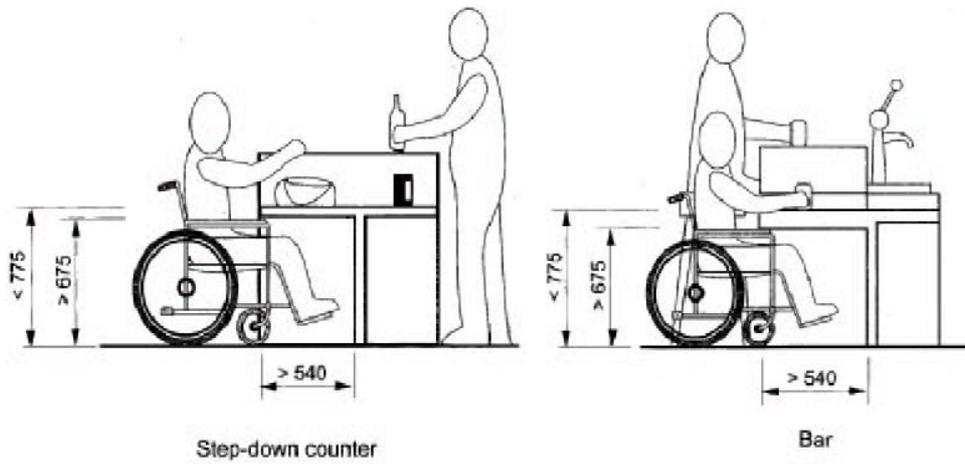
5.1.2 In that correspondence, the owner said:

- (a) The lower counter heights required for accessibility would "greatly compromise the real issue of security for the staff".
- (b) "In addition to the personal banking/disabled person's desk, we also provide write up desks for writing forms and other documents by all members of the public including disabled persons."
- (c) "Branches New Zealand wide have in place Customer Service Representatives and/or Personal Bankers who provide all services (including teller functions) to customers with disabilities. This service is provided in meeting rooms"

² Reproduced from NZS 4121 by permission of Standards New Zealand. NZS 4121 can be purchased from Standards New Zealand at www.standards.co.nz.



NZS 4121 Figure 36 - Public counters and desks



Checkout counter

NZS 4121 Figure 37-Public counters

- (d) “. . . the room [shown in Figure 1 on page 2 above] includes a compliant accessible desk, door width, and turning circle in accordance with NZS 4121:2001. Please note that in our view, this solution complies with the Act and is not put forward as a ‘modification’ in terms of the Act.”
- (e) The proposal for access and facilities for people with disabilities were those provided in 280 of the owner’s other premises and “strikes a balance between . . . security and . . . NZS4121”. The owner had investigated the design of its counters “to meet international ‘best practice’ for banking facilities”.

5.2 Submission from a non-party

- 5.2.1 The Authority also received a submission, through the owner’s solicitor, from an association representing the distribution industry and including amongst its membership “the major supermarkets and general merchandise chains, specialised chains, department stores, and hundreds of owner operators spread throughout the country”. The submission said:

The Association totally supports the provision of proper access for the disabled to retail outlets and believes such provision is in the interests of its members as well as the disabled.

It believes that a flexible approach is required in order to maximise proactive efforts by retailers to provide this access.

. . . NZS 4121 is not the only way of complying with section 47A. While it is quite appropriate for a standard to specify in detail matters such as measurements for fixtures and fittings, it is important that the standard is seen as a method of complying with the requirements, not as the requirements themselves.

The requirement in the Building Code (G5.3.4) in respect of reception counters is that where reception counters or desks are provided for public use, at least one counter or desk shall be accessible.

The Association agrees with the submission by [the owner] . . .

. . . Although perhaps not strictly relevant in [the owner’s] situation, it has become a feature of modern retailing that the customer is not simply received and served at a counter. The customer is normally received and attended to well before concluding a transaction at a counter or desk.

Another feature is that payment is now rarely made by cheque written out at a counter. It is more often made by use of a handheld electronic device on a flexible extendible cord.

These features contribute to the shopping process presenting less barriers to the disabled. It is submitted that such advances in retailing should be borne in mind when interpreting the requirements of the Act and Code. Counters have less significance in the retailing process than they used to do.

5.3 The expert’s report

- 5.3.1 The Authority engaged an expert on access and facilities for people with disabilities to report on the proposal. That report referred to photographs and a sketch of the then almost-completed counters supplied by the territorial authority, and outlined relevant requirements of the Act, the building code, and NZS 4121. The report said:

[The owner proposed to provide] write-up desks, separate from and additional to their counter facility. However, there is no guarantee that writing will never be required at the counter. This is an important consideration with respect to [statutory requirements for accessibility], where the Building Code Clause G5.3.4 requires at least one reception counter or desk to be

accessible. This Clause still has to accommodate the “normal activities and processes” requirement of the *Act* If use of counters and desks are part of the normal activities and processes then both an accessible counter and an accessible desk are required. If there were no counters, serviced write-up desks would be acceptable.

It is concluded that the . . . counters . . . do not comply with the *Act*, Building Code (particularly Clause G5.3.4) and NZS 4121 requirements for an accessible portion of a public counter.

5.3.2 The report was copied to the parties.

5.4 The parties’ further submissions

5.4.1 The owner, through its solicitors, did not comment specifically on the expert’s report, but said:

Clause [sic] 47A of the Act provides generally for reasonable and adequate access to buildings by persons with disabilities who may be expected to visit or work in that building and carry out normal activities and processes in that building. That is also a matter to which particular regard must be had under section 6(2)(e).

Access must only be reasonable and adequate. It is implicit in that requirement that it does not require access that is identical to that provided for non disabled people. There is no requirement under these provisions for the normal activities and processes of customer service to be carried out over a counter if they can reasonably and adequately be provided over a desk.

Similarly, there can be no requirement for disabled customers to be served in the same room as the counters if the customer services can be reasonably and adequately provided in an adjacent room. Members of the public, both disabled and non disabled, receive customer services every day in meeting rooms at banks throughout the country.

. . . clause G5.3.4 . . . is specific

Where reception counters or desks are provided for public use, at least one counter or desk shall be accessible. [Owner’s emphasis.]

In the present case there is a desk and a counter provided for public use.

Therefore, one of them must be accessible. As the rule is in the alternative, it matters not whether it is the desk or the counter that is accessible.

It does not say that where a desk and a counter are provided both must be accessible. . .

In the event that this determination is not made [the owner] seeks a waiver under section 47A(2) in the following terms:

“[The owner] is granted a waiver in respect of compliance with the code in this case in order to provide for the adequate health and safety of its employees and in view of the fact that adequate provision for the disabled to conduct business in the premises has been made in any event.”

5.4.2 The territorial authority, responding to both the expert’s report and the owner’s submissions, said:

A [recent] visit to [the building] revealed that the door to the separate office outlined by [the owner] as their alternative means of compliance was closed and without any signage. For staff to access this office they must come from behind the counter and unlock a security door.

There is a writing desk to one side of the reception area, for customer use, final transactions are carried out at the main reception counter. . . .

It is our understanding that access and facilities for people with disabilities in new buildings cannot be waived.

5.4.3 The owner responded to that by saying:

The “office” is in fact the meeting room which has been referred to in previous correspondence.

The reference to the unlocking of a security door specifically refers to the access door to the secure zone behind the counter NOT the meeting room door

. . . transactions [do not have to be carried out at the main counters but] can be made within the meeting room, which contains an on-line banking system identical to that accessed at the main counters.

5.5 The hearing

5.5.1 Having considered the submissions, the Authority prepared a draft determination which was sent to the parties.

5.5.2 The territorial authority accepted the draft. The owner did not accept the draft, and requested a hearing.

5.5.3 The territorial authority chose not to appear at the hearing. The owner was represented by its solicitors.

5.5.4 The owner’s submissions were confined to matters of statutory interpretation, and can be summarised as:

- (a) The Authority could not go beyond the words of the legislation, and
- (b) If the building physically complied with the provisions of the building code for access and facilities for people with disabilities, then the Authority could not take account of the possibility that the building might be managed so that the facilities were not in fact available.
- (c) “If someone with disabilities finds that they are receiving treatment which is less than they would expect in a property which is capable of serving their need, they have a right to take a complaint under the Human Rights Act. . . .That is not a matter within the jurisdiction of the BIA.”

5.5.5 As to the Human Rights Act, the Authority takes the view that:

- (a) The fact that action may be taken under the Human Rights Act does not mean that the Authority cannot take action under the Building Act.
- (b) In this case, the Human Rights Act is relevant only to actual mismanagement, it is not relevant to ensuring that the building itself contains the required access and facilities for people with disabilities.

5.5.6 The other submissions outlined in 5.5.4 above are discussed below in relation to the items concerned.

6 DISCUSSION

6.1 Submissions from a non-party

- 6.1.1 The Authority takes the view that as a matter of law this determination is binding only on the parties and only in respect of the building concerned.
- 6.1.2 Nevertheless, the Authority recognises that people considering other buildings will frequently use a determination for guidance. The Authority therefore tends to set out its reasoning in more detail than may be strictly necessary for the particular case, in the hope that the reasoning, as distinct from the conclusions, will be of use as an example of the process of arriving at a decision in a different case involving comparable circumstances.
- 6.1.3 The Authority has therefore carefully considered the association's submissions outlined in 5.2 above even though the association is not a party to the determination. In response to those submissions, and also to corresponding submissions from the owner, the Authority observes that in its opinion:
- (a) Advances in retailing, or any activity that affects the use of buildings, must indeed be borne in mind, but so must the extent to which such advances actually affect both new and existing buildings. In the experience of Authority members, they (as members of the public) are not received and attended to before they conclude their transactions in all, or even a majority of, retailing chains.
 - (b) NZS 4121 is indeed only one way of complying with the relevant provisions of the building code. However, in considering other ways of complying ("alternative solutions"), NZS 4121 may be used as a guideline or benchmark, as may the acceptable solutions issued by the Authority under section 49 of the Act.
 - (c) There is indeed no requirement for a counter rather than a desk, or one room rather than another, to be accessible, provided that what is provided is reasonable and adequate.
- 6.1.4 The Authority has considered the association's submission in this case. However, that is not to be taken as a precedent, and the Authority reserves the right to reject submissions from anyone who is not a party and who, in the Authority's opinion, is not an "appropriate person" in terms of section 19(1)(b) of the Act.

6.2 Previous involvement

- 6.2.1 As to the fact that a member of the Authority and a member of the Authority's staff were consulted (one telephone call to each from the territorial authority) before the application for determination, the Authority is satisfied that there has been no breach of natural justice in the fact that each of them subsequently played a part in the processing of the determination. The owner did not dispute that view at the hearing.

6.3 Waiver

- 6.3.1 The owner requested that the Authority grant a waiver if it did not determine that the proposal complied with the building code, and the territorial authority responded that the relevant provision could not be waived in respect of a new building, see 5.4.1 and 5.4.2 above.
- 6.3.2 As it has said in previous determinations³, the Authority takes the view that sections 34(7) and 47A(2) of the Act authorise the Authority to grant waivers or modifications of the provisions of the building code for access and facilities for people with disabilities in respect of the alteration of an existing building only, and not in respect of the construction of a new building. Accordingly, the owner's request for a waiver is not discussed below.

6.4 Security considerations

- 6.4.1 The owner emphasised that it was concerned that accessible counters would "greatly compromise the real issue of security for the staff".
- 6.4.2 In a previous determination⁴, the Authority said, in respect of different problems arising from the provision of access and facilities for people with disabilities:
- The Authority has every sympathy for those owning a difficult site which they wish to develop. Such sites can pose considerable design problems. Nevertheless, designers must recognise the need to overcome those problems in order to comply with the law, and specifically with the requirements of the Act for reasonable and adequate access and facilities for use by people with disabilities.
- 6.4.3 In the circumstances of this present determination, the Act's requirements for access and facilities for people with disabilities cannot be ignored or overridden for the sake of security. The designer's task is to provide for both. That is specifically recognised in commentary clause C11.1.3 of NZS 4121 (see 4.4 above).

6.5 Accessible desks instead of accessible counters

- 6.5.1 There was no dispute that the desks concerned complied with NZS 4121.
- 6.5.2 The Authority notes that whereas clause G5.3.4 of the building code says:
- Where reception counters or desks are provided for public use, at least one counter or desk shall be accessible . . .
- clause 11.1.1 of NZS 4121 says:
- Reception counters and desks for public use . . . shall have at least one space for use by people in wheelchairs.

³ Determinations 2000/2, 2001/10, and 2003/1.

⁴ Determination 99/001.

The Authority takes the view that the difference in wording between “counters or desks” and “counters and desks” is of no practical significance. The essential point is that people with disabilities must be able to carry out the normal activities and processes for which counters or desks or both are provided.

- 6.5.3 The owner argued that where both counters and desks are provided, only “one of them must be accessible”.
- 6.5.4 In the draft determination, the Authority said that it accepted that view, but only in circumstances where the counters and desks concerned are real alternatives serving the same purpose. At the hearing, the owner submitted that there was “no basis for adding this qualification”, and in any case the qualification was inappropriate in this factual situation.
- 6.5.5 In the draft determination the Authority took the view that the counters and the “write up” desks mentioned in 5.1.2(b) served different purposes. The desks were primarily for customers to “write up” documents before presenting them at the counter where the transactions concerned would take place. The fact that a desk was accessible would not enable people with disabilities to carry out the normal activities and processes that were undertaken at a counter.
- 6.5.6 At the hearing, the owner contested that view, saying:
- [The owner] has never made a distinction between what the draft determination calls “a *write up desk*” and a “*counter*”. A person with disabilities will be able to use the desk to write up documents or to be attended upon at the desk for the purposes of service. . . [T]he Act does not require that *identical* provision has to be made for persons with disabilities, only that it be adequate and reasonable.
- 6.5.7 The Authority accepts that argument, but for reasons set out in 6.8.6 below does not consider that in this particular case the desks do in fact make adequate and reasonable provision for people with disabilities to carry out normal activities and processes in the building.

6.6 One room rather than another

- 6.6.1 The main feature of the proposal was not the provision of accessible write up desks as an alternative to counters, but that activities carried out at the counters could also be carried out in a separate room (“the Personal Banker room” shown in Figure 1) that contained an on-line banking system identical to that accessed at the main counters.
- 6.6.2 In the draft determination, the Authority recognised that the Personal Banker room was of adequate size, and was prepared to accept that it contained an accessible desk at which people with disabilities could use any of the customer banking facilities available at the main counters. Nevertheless, the Authority did not accept that the Personal Banker room was a reasonable and adequate alternative to the main counters. For the reasons set out in 6.8 below, the Authority continues to be of that opinion.

6.6.3 In written submissions presented to the hearing, the owner said:

From [the draft determination] it is clear that the building as constructed complies with the Building Code. It has an accessible desk for people with disabilities. Those people with disabilities can undertake any banking operation at that desk.

It is there that the matter should end.

6.6.4 The submissions then argued that the Authority's jurisdiction extended to physical matters of compliance with the building code and not to management matters. That point is discussed in 6.7 below.

6.6.5 For reasons set out in 6.8.8 below, the Authority does not consider that in this particular case the Personal Banker room does in fact make adequate and reasonable provision for people with disabilities to carry out normal activities and processes in the building.

6.7 Physical considerations and management considerations

6.7.1 The owner submitted:

. . . The relevant function [of the Authority] is under section 12(1)(c), it is:

(c) *Determining matters of doubt or dispute in relation to building control.*

There is no ability, and hence no jurisdiction, for the Authority to look at the *use or occupation* of a building.

That is supported by section 47A. It states:

47A. *Access and facilities for persons with disabilities to and within buildings*

(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 by way of access, parking provisions, and sanitary conveniences, 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."*

The section is specific. The jurisdiction is restricted to considering matters of *building control*, that is access, parking and sanitary conveniences. There is no ability to consider whether or not a particular occupant of the premises will operate the in a certain way. . . .

6.7.2 Although the owner framed the argument in terms of "use" and "occupancy", it is discussed below in terms of "management".

6.7.3 For example, the owner argued, if a building complied with the building code it was not relevant that the owner might block a fire exit door. The Authority's task was to determine whether the building complied with the building code, not to make premature judgements as to how the owner might manage the building.

6.7.4 The reply to a question from the Authority about compliance schedules regulating the day-to-day management of buildings was that compliance schedules in effect required certain aspects of a building's management to be monitored, but that did not mean that the Authority could pre-judge that the building would not be properly managed as regards people with disabilities.

6.7.5 The Authority observed that the Personal Banker room was the only private space in the bank, the only space that could be used as a meeting room, so that it could be used

by people with disabilities only when it was available. The response was to the effect that availability depended on the use and management of the room, and the Authority could not take that into account. It would make no difference if the Personal Banker room had been identified as the manager's office, the only question that the Authority could consider was whether the room itself physically complied with the provisions of the building code for access and facilities for people with disabilities.

6.7.6 In other words, the owner argued that:

- (a) The Authority must consider the physical configuration of the building, and specifically compliance with the building code; but
- (b) The Authority could not take into account the management processes involved in providing services in the building.

6.8 The Authority's views and conclusions

6.8.1 The question of whether or to what extent the Authority could take account of management practices has arisen in previous determinations only insofar as the Authority has been unwilling to grant waivers or modifications of building code requirements in reliance on management practices⁵. The question of whether a facility that complied with the building code was in fact "reasonable and adequate" has arisen⁶ only when there was a "gross disparity" between the proposed wheelchair route and other routes.

6.8.2 The Authority notes that section 18 of the Act limits the matters that the Authority may determine to "whether or not, or to what extent, particular building work or proposed building work (including any actual or proposed demolition) complies with all of the provisions, or with any particular provision, of the building code . . .".

6.8.3 The Authority also notes that, as was mentioned for the owner, section 47A(1) of the Act refers to "reasonable and adequate provision by way of access, parking provisions, and sanitary conveniences" (emphasis added). However, even if the emphasised words do in fact restrict the provisions required under section 47A to "access" in the sense of routes of travel, parking provisions, and sanitary conveniences, there is no such restriction in section 6(2)(e).

6.8.4 The Authority is not a Court and is not prepared to discuss legal questions as to whether section 47A prevails over section 6, and if so whether various provisions of the building code are not in fact authorised by the Act. Nevertheless, the Authority must make a decision as to the extent of its jurisdiction.

6.8.5 For that purpose, the Authority takes the view that:

- (a) The concept of access for people with disabilities is not confined to routes of travel but includes suitability for use.
- (b) Whether access and facilities for people with disabilities comply with the building code must be considered in the context of the need to "ensure that

⁵ Determinations 92.1102, 2001/10, and 2004/01.

⁶ Determination 96/004.

reasonable and adequate provision is made for people with disabilities to enter and carry out normal activities and processes in . . . buildings” (section 6(2)(e) of the Act).

- (c) Where separate facilities for a particular process or activity are provided for people with disabilities, they are not required to be identical to, but must provide a reasonable and adequate alternative to, the other facilities provided for that process or activity.
- (d) Whether facilities are reasonable and adequate is a matter of extent and degree that requires consideration of both features that permit use by people with disabilities and features that prevent such use.
- (e) Most if not all acceptable solutions take some account of management considerations in the sense that the required outcome will be achieved with normal or usual management practices. Nevertheless, the Authority accepts that, for the purposes of deciding whether a building complies with the building code, the Authority cannot take account of the possibility, or even probability, that the owner of a building might choose to manage it in such a way that people with disabilities will be unable to avail themselves of complying access and facilities intended for their use.
- (f) However, in considering whether a building provides adequate and reasonable access and facilities for people with disabilities, the Authority may take account of any physical features of the building that would effectively prevent the owner from having any choice other than to manage it in such a way that people with disabilities will be unable to avail themselves of complying access and facilities intended for their use.

6.8.6 Applying those views to the “write up desks”, the Authority concludes that:

- (a) The services provided at the desks are significantly different from those provided at the counters in at least the following respects:
 - (i) Rather than going to a counter in the usual way, customers with disabilities will have to attract the attention of a bank officer and indicate that they need attention.
 - (ii) The bank officer will have to come out from behind the counter and go back and forth between the desk and the counter to use a computer and to access money, forms, and so on ordinarily provided over the counter.
- (b) Those differences will apply however the owner chooses to manage the banking procedures.
- (c) The consequence is that public attention will be drawn to people with disabilities as receiving special attention rather than simply going about their business by carrying out normal banking activities and processes. Furthermore, when there is a queue at the counter, a person with disabilities could well have to wait until the queue clears rather than being attended to on a “first come, first served” basis.

- 6.8.7 The write up desks therefore provide facilities that are significantly different from and inferior to those provided by the counters. The Authority considers that the disparity is so great that the desks cannot be said to provide a reasonable and adequate alternative to the counters.
- 6.8.8 Applying the views set out in 6.8.5 above to the Personal Banker room, the Authority concludes that although the room itself complies with clause G5.3.4 of the building code, nevertheless the physical features of the building as a whole mean that:
- (a) The services provided in the room are significantly different from those provided at the counters in at least the following respects:
 - (i) Rather than going to a counter in the usual way, customers with disabilities will have to attract the attention of a bank officer and indicate that they need attention. That will apply however the owner chooses to manage the banking procedures.
 - (ii) The bank officer will not be able to attend to the customer if the room is in use for meetings or to provide personal banking services to another customer. To a certain extent, that will depend on how the owner chooses to manage the banking procedures, by scheduling meetings, making appointments for personal consultations, and so on. However, the owner cannot schedule in advance the occasions on which people with disabilities need to use the services provided at the counters.
 - (iii) The bank officer will have to go back and forth between the room and the counter, although to a lesser extent than with the write up desks, if for no other reason than to access money from the secure area behind the counters.
 - (b) Again, the consequence is that public attention will be drawn to people with disabilities as receiving special attention rather than simply going about their business by carrying out normal banking activities and processes. Furthermore, when there is a queue at the counter, a person with disabilities could well have to wait until the queue clears rather than being attended to on a “first come, first served” basis.
- 6.8.9 The Personal Banking room therefore provides facilities that are significantly different from and inferior to those provided by the counters. The Authority considers that the disparity is so great that the Personal Banker room cannot be said to provide a reasonable and adequate alternative to the counters.

7 WHAT IS TO BE DONE?

- 7.1 It is not for the Authority to decide how the building is to be brought to compliance with the provisions of clause G5.3.4 of the building code. That is a matter for the owner to propose and for the territorial authority to accept or reject, with any of the parties entitled to submit doubts or disputes to the Authority for another determination.

8 THE AUTHORITY'S DECISION

- 8.1 In accordance with section 20 of the Act, the Authority hereby determines that the building does not comply with clause G5.4.3 of the building code.
- 8.2 The Authority accordingly confirms the territorial authority's decision not to issue the code compliance certificate for the building.

Signed for and on behalf of the **Building Industry Authority** on 25 November 2004.

A handwritten signature in black ink, appearing to read 'J. Ryan', with a large loop at the bottom.

John Ryan
Chief Executive