



Determination 2012/033

Provision of lift access in the alterations to an existing two-storey administration building at the National Training Centre for the New Zealand Fire Service at 77 Te Huaki Crescent, Rotorua

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department.

1.2 The parties to the determination are:

- the New Zealand Fire Service (“the applicant”) as the owner, acting through a firm of architects
- Rotorua District Council (“the authority”), carrying out its duties and functions as a territorial authority and a building consent authority.

1.3 This determination arises from the decision of the authority not to issue an amended building consent for alterations and additions to an existing administration building unless the proposed lift size was increased.

1.4 I therefore take the view that the matter to be determined² is whether the authority was correct in its decision to refuse to issue an amendment to the building consent.

1.5 In taking this view, I must also consider whether the lift that is proposed to be installed in the building is required to comply with the access for persons with disabilities provisions of Clause D1—Access routes of the Building Code (Schedule 1 of the Building Regulations 1992)³.

¹ The Building Act, Building Code, Compliance Documents, past determinations and guidance documents issued by the Department are all available at www.dbh.govt.nz or by contacting the Department on 0800 242 243

² Under sections 177(1)(b) and 177 (2)(a) of the Act

³ In this determination, unless otherwise stated, references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code.

- 1.6 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I have also forwarded a copy of this draft determination to the Office for Disability Issues (“the ODI”), at the Ministry of Social Development by way of consultation under section 170 of the Act.
- 1.7 In this determination, I have referred to the following legislation and New Zealand Standards, the relevant parts of which are included in Appendix A:
- The Building Act 2004
 - The Building Code
 - NZS 4121:2001 Design for Access and Mobility – Buildings and Associated Facilities (“NZS 4121”)

2. The building work

- 2.1 The building work concerns the installation of a new lift within an existing two-storey administration building, to which a two-storey addition is in the process of construction. The building is located within a complex that serves as the national training centre for fire fighters.
- 2.2 The addition contains, on ground level, ablutions (including accessible facilities), gymnasium, drying facilities, a lecture room, and mess area. Level 1 of the addition contains office space and 6 lecture rooms.
- 2.3 The existing building contains, on ground level, reception, ablutions, mess area, office space (offices and open plan), and an appliance bay. Level 1 of the existing building contains three lecture rooms and associated breakout rooms.
- 2.4 The new lift is proposed to be installed in the existing building opening off the main entry; the body of the lift is located in the appliance bay. The lift, as described in the proposed amendment, is a “platform lift” with lift dimensions of 1500 x 1000⁴: the lift platform is enclosed on all four sides. The lift controls are located in the centre of the lift side wall. The lift has a single-swing power-operated landing door on each level that opens and closes automatically. The door has a clear opening width of 900mm, and is fitted with a fire-rated glass panel.
- 2.5 When complete the total area of the building on Level 1 will be approximately 900m².

3. Background

- 3.1 On 13 October 2010, the authority issued a building consent (No 65678/ P30787 /P30847) for Stage 1 additions and alterations to the building. The consented work included a 1400 x 1400 lift.
- 3.2 On 18 August 2011, the architects provided details relating to an amendment to the building consent that the authority has referred to as “Stage 2 – Revised lift type,

⁴ All dimensions in millimetres

LPG storage tank size and Location Amendment”. This proposal included a 1500 x 1000 lift car.

3.3 In a letter dated 23 August 2011, the authority requested further information from the architects regarding the installation of the lift.

3.4 The architects responded in a letter dated 30 September 2011, noting that the proposed lift had been designed and detailed to be an ‘Alternative Acceptable Solution’ because:

- The existing building was compliant with the Building Code with a lift not provided.
- The increased area to Level 1 floor required the installation of a lift, however, the lift installation is constrained by the existing building plan.
- The lift must be located adjacent the main entry of the existing building to meet NZFS security requirements.
- The proposed lift, and the associated building work, has less impact on the building structure, with savings in cost and installation.
- The proposed lift ‘functions as an accessible lift’ for all users whether they have disabilities or not.

3.5 In a letter to the architects dated 4 October 2011, the authority noted that it required certain additional details and amendments to ensure that code-compliance was achieved. The comments of the authority included:

- The type of lift as detailed did not comply with NZS 4121, Appendix C. This was because the lift controls were only situated on one side of the lift, and there was only one entry/exit door. A 1400 x 1400 lift was required if only one entry/exit door was provided.

3.6 The NZFS wrote to the architects on 28 October 2011, advising that:

- Level 1 of the building is to be ‘used solely for training of fire fighters, and on occasions training for allied emergency service operational staff ... and is not intended to be used for social purposes’
- The building ‘will provide facilities for the disabled with toilets and showers on the ground floor.’
- ‘Disabled staff could conceivably be employed on reception duties or general office duties.’
- ‘It is policy that all operational firefighters and all training officers ... must revalidate these same fitness competencies ... every two years. It is essential that all trainers ... are fully able to demonstrate all firefighting scenarios.’
- Visitors to the centre are met at reception and are accompanied while on site. Visitors are normally maintenance personnel, other NZFS personnel, or short-term visitors. Apart from maintenance personnel, visitors are accommodated in the ground floor facilities.

3.7 The application for a determination was received by the Department on 16 November 2011.

4. Submissions

4.1 In a letter to the Department dated 9 November 2011, the architects described the building, noting that it was accepted that a lift was required because of the increased floor area of Level 1. The architects also noted:

- A 1500 x 1000 lift was 'deemed' to be an 'alternative solution'. The authority had stated that it could not approve an alternative solution under the Act in relation to 'disabled access'.
- The proposed lift car size was larger than the minimum 1400 x 900 allowed in NZS 4121, Appendix C 'for existing buildings with restricted areas'.
- The same lift has been installed on other buildings in New Zealand. The lift car will accommodate a person using a wheelchair as well as an assistant and 'provides the same functionality' as a 1400 wide lift.
- The lift is to be installed in a location where space is limited and 'is already encroaching into the existing appliance bay where space is at a premium'.
- Visitors to the training centre have restricted access and are accompanied through the building if required.
- All relevant requirements for people with disabilities are provided on the ground floor.
- The NZFS requires all fire fighters and training officers to be able bodied, and must pass regular tests for strength, fitness, agility, and the like.

4.2 The applicant forwarded copies of:

- some of the plans relating to the building and the training complex
- the correspondence with the authority.

4.3 In a file note dated 17 November 2011 the authority described the background to the dispute. The authority noted:

- Clarification had been sought of the owners how compliance with Clause D1.3.4(c) would be achieved with the smaller lift.
- A 1400 x 1400 lift 'will allow the user to turn within the lift space to allow forward facing entry / exit'.
- 'A platform lift of [1000 x 1500] will comply with NZS 4121 [A]ppendix C' provided it had doors at both ends, and 'all relevant controls and signal devices'.

4.4 The authority's file note also stated that it had refused the building consent amendment to install the proposed lift as the lift did not meet the provisions of section 112 for the following reasons:

- The cost of installing a compliant lift was ‘insignificant in terms of the overall cost of [the] project’.
- It was unreasonable for a person using a wheelchair to have to back into or out of the lift, and wheelchairs users may not be able to ensure that the access route is clear of obstructions.

The authority also forwarded a copy of notes taken in regard to a meeting held on 18 October 2011 between the parties that discussed the issues relating to the lift installation, and the application of Appendix C of NZS 4121.

- 4.5 The lift supplier and installer provided a detailed submission and Producer Statement Design Review to the authority, dated 24 November 2011, noting the lift’s features and confirming its view of the lift’s compliance with the Clause D1.3.4. The submission considered the lift’s suitability for use by those in wheelchairs. The submission described the lift as suitable for buildings that required a ‘low-rise, low-speed, low-load’ solution.
- 4.6 The consultants also considered the proposed lift in terms of compliance with Clause D2 and carried out a detailed analysis in this respect. The review concluded that the lift ‘complies with the Performance Requirements as set out in the NZBC D2’.
- 4.7 The draft determination was issued to the parties, and the ODI, for comment on 4 January 2012. The parties accept the determination without comment.
- 4.8 In a letter to the Department dated 20 January 2012, the ODI commented on the draft determination. The ODI concluded that:
- We note that in the present case, both the trainees and trainers who will be using the second storey of the training facility are required to demonstrate general fitness and agility relevant to the Fire Service activities.
- However, we do not think it should be assumed that all current and future trainers would necessarily be “able-bodied”.
- People, with appropriate training skills, who happen to have mobility impairments, may reasonably be expected [to] require access to the facility.
- This being the case, it would be appropriate for the proposed lift to be required to comply with the statutory accessibility requirements.
- 4.9 In an email to the Department, dated 26 March 2012, the architects noted that no work had commenced in the lift area and that the shaft had been designed to accommodate a 1400 x 1400 lift.

5. Discussion

5.1 General

- 5.1.1 There does not appear to be any disagreement between the parties that the increased area of the first floor requires the installation of a lift in order to comply with Clause D1.3.4(c).

5.1.2 The matter in dispute concerns the size and configuration of the lift that is now being proposed as an amendment to the approved consent. The applicant is of the opinion that a lift car size of 1500 x 1000 is adequate; and the authority has stated that a lift size of 1400m x 1400 is required. However, the authority would accept the smaller size lift providing the lift had certain features (see paragraph 4.3).

5.1.3 In deciding whether the proposed lift complies with Clause D1, I need to consider:

- the attributes of the particular building in which it is being installed
- the nature of the building's occupants
- whether a wheelchair user can use the lift without assistance
- whether a person in a wheelchair can use the lift while permitting an ambulant person to pass.

5.2 The application of the legislation

5.2.1 The building is one to which section 118 applies, and is a building that falls within Schedule 2 of the Act. Therefore, adequate provision needs to be made for persons with disabilities to carry out 'normal activities and processes' within the building.

5.2.2 The building comes within the ambit of Clauses D1.3.2 (b) and (c), which require a building to have at least one access route with features to enable people with disabilities to have access to the internal space served by the principal access, and provide access to spaces where they may be expected to visit.

5.2.3 The provisions of the Act that apply to alterations to existing building are contained in section 112, (refer Appendix A): this is discussed in paragraph 5.6.

5.3 The building and its intended use

5.3.1 The building is part of the national training facility for New Zealand Fire Service, and the building is also used by allied emergency services personnel. I accept the applicant's argument that the building is to be used by trainers and trainees, and that both are required to be fully fit. However, it is perfectly conceivable that from time to time trainers and trainees may experience injuries that could affect their mobility. It is also reasonable to expect non-ambulant visitors would visit the building to lecture trainees, and similar.

5.3.2 The applicants are of the view that, in the case of this building, the stairs will provide the primary means of access to Level 1. I accept this position.

5.4 The features of the proposed lift

5.4.1 While the lift is less than the 1400 x 1400 size described in Clause 9.2.2.1 of NZS 4121, it is greater than the 900 x 1400 size described in Appendix C of NZS 4121. The proposed lift is 1000 x 1500 and has the other features described in Appendix C; being a 900 wide door that is power-operated, the lift controls are centrally located, and the lift is enclosed by four walls.

- 5.4.2 The lift supplier and installer says that the proposed lift provides a ‘low-rise, low-speed, low-load’ solution that was able to accommodate wheelchair users and meet the requirements of Clause D1.3.4.
- 5.4.3 I note that the lift only runs between two levels, meaning no person exiting the lift would need to move past any person remaining in the lift.

5.5 Standard ISO lift car sizes

- 5.5.1 International Standard ISO 4190-1: Lift (Elevator) installation: Part 1, describes dimensions for lift Classes I to IV. The lift car applicable to this situation is described in the Standard as ‘Class I - General purpose lifts’. For lifts with door widths 900 and over, the lift car sizes range from 1100 x 1400, to 2000 x 1500. All lift cars in this Class are considered to be able to take wheelchairs, with lift cars 2000 x 1400 and greater allowing a wheelchair to execute a 3-point turn.
- 5.5.2 I note that the proposed lift falls within the range of sizes described as an accessible lift in ISO 4190-1. I note that both the British and Australian standards require lifts to be a minimum of 1100 x 1400 for wheelchair users.

5.6 The ‘as nearly as is reasonably practicable’ test under section 112

- 5.6.1 Section 112(1)(a)(ii) of the Act requires that altered buildings must comply with the Building Code ‘as nearly as is reasonably practicable’ with respect to the provision of access and facilities for people with disabilities.
- 5.6.2 The architects have designed the alterations to the existing building to accommodate a 1400x1400 lift, and this proposed work formed part of the approved consented. No work has commenced in this area, and I have not received any information from the applicant, or the architects, that what has been designed cannot be built.
- 5.6.3 In my view this must be taken to mean that it is reasonably practicable install a 1400x1400 lift. I also note that proposed 1000x1500 lift intrudes into the existing appliance garage by the 1500 dimension, and that this does not appear to be causing a difficulty. In addition, the smaller lift described in Appendix C of NZS 4121 is to be used in circumstances ‘when it is not reasonably practicable to comply with [a 1400x1400 lift]’. The acceptance of a lift 900x1400 under Appendix C of NZS 4121 is to be done in circumstances when it is not practical to do anything else: in my view that is not the case here.
- 5.6.4 In my opinion, the test of what is ‘as nearly as is reasonably practicable’ under section 112(1)(a)(ii) has not been properly applied by the applicant in this instance. In addition, the section 112 test would normally be applied by an authority before consent is granted.

5.7 Conclusions

- 5.7.1 The compliance of the lift must be considered in relation to the building in which it is being used, taking into account the nature of the building’s occupants, the degree to

which the proposed lift is able to be used without assistance, and whether a person in a wheelchair can use the lift while permitting an ambulant person to pass.

- 5.7.2 The building is not one that is open to the general public. The building's users that are expected to access Level 1 in the normal course of events are required to be fully fit: in this instance the stairs provide the primary means of access to Level 1.
- 5.7.3 However, there will be occasions when it can reasonably be expected that those with disabilities will require access to and from Level 1, therefore the attributes of the proposed 1000x1500 lift must be considered against the requirements of Clauses D1.3.2 and D1.3.4(b).
- 5.7.4 I accept that the lift is 'low rise, low-speed, and low use'. The lift has the attributes of a lift smaller than 1400x1400 described in Appendix C of NZS 4121 (refer paragraph 5.4.1) and must be considered able to be used by wheelchair users. The lift serves two levels only: there will be no conflict between users remaining in the lift and those needing to enter or exit the lift.
- 5.7.5 I conclude that the proposed lift, for use in this particular building, will meet the requirements of Clause D1.3.2 and D1.3.4(b).

6. The Decision

- 6.1 In accordance with section 188 of the Building Act 2004, I reverse the decision of the authority to refuse to issue the amendment to building consent.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing
on 2 May 2012.

John Gardiner
Manager Determinations

Appendix A: The relevant legislation and New Zealand Standard

A.1 Relevant provisions of the Act are:

17 All building work must comply with building code

All building work must 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.

19 How compliance with building code is established

- (1) A building consent authority must accept any or all of the following as establishing compliance with the building code:
 - (b) compliance with the provisions of a compliance document . . .

67 Territorial authority may grant building consent subject to waivers or modifications of building code

- (3) The territorial authority cannot grant an application for a building consent subject to a waiver or modification of the building code relating to access and facilities for people with disabilities.

112 Alterations to existing buildings

- (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration, the building will—
 - (a) comply, as nearly as is reasonably practicable, with the provisions of the building code that relate to—
 - (i) means of escape from fire; and
 - (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
 - (b) continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

117 Definitions for sections 118 to 120

In sections 118 to 120, unless the context otherwise requires, building includes--

- (a) parts of a building (including driveways, access ways, passages, within and between complexes and developments, and associated landscaping(if any); and
- (b) any premises or facilities.

118 Access and facilities for persons with disabilities to and within buildings

- (1) If provision is being made for the construction or alteration of any building to which members of the public are to be admitted, whether for free or on payment of a charge, reasonable and adequate provision by way of access, parking provisions, and sanitary facilities must be made for persons with disabilities who may be expected to—
 - (a) visit or work in that building; and
 - (b) carry out normal activities and processes in that building.
- (2) This section applies, but is not limited, to buildings that are intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2.

119 Compliance document for requirements of persons with disabilities

- (1) This section applies to—
- (a) the New Zealand Standard Specification No 4121 (the code of practice for design for access and use of buildings by persons with disabilities), together with any modifications to that standard specification in force immediately before the commencement of this section; or . . .
- (2) A standard specification to which this section applies is to be taken as a compliance document.

Schedule 2

The buildings in respect of which the requirement for the provision of access and facilities for persons with disabilities apply are, without limitation, as follows:

- (g) central, regional, and local government offices and facilities⁵;
- (z) other buildings, premises, or facilities to which the public are to be admitted, whether for free or on payment of a charge.

A.2 Relevant provisions of the Building Code are:

CLAUSE A2—INTERPRETATION

Access route A continuous route that permits people and goods to move between the apron or construction edge of the building to spaces within a building, and between spaces within a building.

Accessible Having features to permit use by people with disabilities.

Accessible route An access route usable by people with disabilities. It shall be a continuous route that can be negotiated unaided by a wheelchair user. The route shall extend from street boundary or carparking area to those spaces within the building required to be accessible to enable people with disabilities to carry out normal activities and processes within the building.

Clause D1—ACCESS ROUTES**PERFORMANCE**

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

- (a) ...
- (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...

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

- (a) ...
- (b) have adequate activity space to enable a person in a wheelchair to negotiate the route while permitting an ambulant person to pass,
- (c) include a lift complying with Clause D2 Mechanical installations for access to upper floors where:
 - (i) ...
 - (iii) buildings are two storeys high and have a total design occupancy of 40 or more persons on the upper floor, or

A.2 The relevant sections of NZS 4121 include:

⁵ The New Zealand Fire Service Commission is a Statutory Entity as defined in the Crown Entities Act 2004

9.2.2 Lift cars

9.2.2.1 Size

Lifts serving an accessible route shall have a minimum interior clear space of 1400 mm by 1400 mm as shown in figure 26.

Comment on Clause C9.2.2.1

The minimum dimensions of the lift car as shown in this Standard allow an attendant and other passengers to use the lift at the same time as a wheelchair user. This size does not allow many wheelchairs to turn through 180°.

Appendix C Design for access and mobility - alterations to buildings

(Normative)

C6 Lifts (refer to 9.2.2.1)

This clause provides for the circumstances under which smaller lifts may be installed or continue to be used in existing buildings. It applies when it is not reasonably practicable to comply with the lift requirements of 9.2.2.1.

C6.1 Reduced lift car size

Two sizes are given:

- (a) For use by a wheelchair user alone, the lift car shall be at least 900 mm by 1400 mm.
- (b) A car size of 900 mm by 1575 mm allows room for a person accompanying and will accommodate some scooters.

C6.2 Controls

When C6.1 is used the operating controls shall be placed in the centre of the lift sidewall.

Comment on Clause CC6.2

Controls are preferred on both sides of the lift as there is no room to manoeuvre a wheelchair once it is in the car.