



Determination 2013/036

Access for people with disabilities to a school building undergoing earthquake repair at Christ's College, 33 Rolleston Avenue, Christchurch

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 Determination and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to this determination are

- Christ's College Board of Trustees (“the applicant”) as the owner of the property, acting through its architects as its agent (“the agent”)
- Christchurch City Council, carrying out its duties and functions as a territorial authority and a building consent authority (“the authority”).

1.3 The determination arises from the authority's decision to refuse to grant building consent for work to seismically strengthen the Hare Memorial Building, on the grounds that the proposed building work does not comply with the requirements in Clause D1 of the Building Code for access for people with disabilities.

1.4 Therefore, the matter to be determined² is whether the authority correctly exercised its powers of decision in refusing to grant building consent. In considering this matter, I must also consider whether the proposed building work complies with Clause D1.3.2 of the Building Code to the extent required by the Act.

1.5 In making my decision I have considered the submissions of the parties, the report of the independent expert commissioned by the Ministry to advise on the dispute (“the expert”), and other evidence in this matter. I have not considered any other aspect of the code compliance of the building work.

1.6 I have 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 The relevant sections of the Act are set out in Appendix A.

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

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

2. The building work

- 2.1 The building work consists of measures to seismically strengthen and repair the Hare Memorial Building (“the building”), which was damaged during earthquake activity in 2010 and 2011. The building has a Historic Places Trust Category 1 classification, and is listed as a Category 2 building on the authority’s City Plan. It is one of a number of historic buildings that surround a large open courtyard (known as the Quadrangle) on the Christ’s College campus adjacent to the main entrance.
- 2.2 The building is a two-storey, Tudor-style stone masonry building with a slate roof. Internally, it has native timber flooring and wall panelling. On the ground floor, the flooring is suspended approximately 600mm above ground level. The land under the building and surrounding it is flat. The building has a footprint of approximately 80m².
- 2.3 The building’s ground floor consists of two rooms, and a small entrance foyer that provides access to one of the rooms and to the stairs to the first floor. The entrance foyer forms the main entrance to the building: it has external double doors (in the building’s eastern wall) which are reached via a short flight of concrete steps from the Quadrangle. The second room at the back of the ground floor also has a single exterior door (in the buildings southern wall) which is also serviced by a flight of concrete steps. The first floor of the building is one room that extends for the full length of the building.
- 2.4 There are no toilet facilities or any other internal plumbing facilities or fixtures in the building. These facilities are provided in the School House next to the building and in other locations around the school campus.
- 2.5 Before the 2010 and 2011 earthquakes, another building abutted the rear (west end) of the building. This was extensively damaged in the earthquakes and was demolished. Temporary props are currently being used to support the building’s western end. The applicant plans to eventually construct a new building to replace that demolished; no access is planned between the two buildings.
- 2.6 The proposed work is to repair and seismically strengthen the building. This comprises extensive structural works necessitating the removal and reinstatement of internal linings and fittings. No alterations, other than the repair and seismic strengthening, are proposed.

3. The background

- 3.1 The building was built in 1915 as a library. Before the earthquakes, the building was used as a meeting room and housed a careers advisor’s office. After the proposed strengthening work is complete the applicant intends to use the building’s upstairs room as a meeting room ‘for occasional use’, and the two ground-floor rooms as administration offices, housing ‘one or two school administration personnel on a part time or full time basis’.

- 3.2 On 16 November 2012, the applicant lodged an application for building consent for the seismic strengthening work. I have not seen a copy of this application, although I have seen a copy of the agent's 'Accessible Features Report' lodged with it.
- 3.3 In this report, the agent states that '[t]he heritage impact of adding a permanent access ramp to this building would be enormous' and notes that both the Historic Places Trust and the authority's planning department 'would not accept such a proposal'. Instead, the agent proposes, as an alternative solution, that a temporary portable ramp could be 'deployed on demand' for people with disabilities wanting to access the building. Drawings and specifications for the ramp were attached, along with an 'Accessibility Campus Plan' showing the locations of all sanitary and parking facilities on the school campus, including those accessible for people with disabilities.
- 3.4 The authority requested more information on the application in a letter dated 15 January 2013. This included advice that an 'accessibility upgrade' was required under Section 112 of the Act 'regardless of the "classification" of the building', and that '[t]he portable ramp will not be acceptable and a permanent option will need to be provided (this could be positioned at the side door).'
- 3.5 The agent replied to the authority's request in a letter dated 28 February 2013, making the following points:
- It is not possible to provide a ramp to the external door in the building's southern elevation, as this thoroughfare is used by large numbers of pedestrians and is a main fire truck access route, and making it narrower would 'jeopardise safety'.
 - The option to forming a new opening in the building's northern side to install a platform lift is not feasible for heritage, cost and space reasons, and cannot be justified given the small number and low frequency of people intended to use the building. Providing a ramp on the northern elevation is 'equally problematic' for general and fire truck access reasons.
 - A compliant ramp to the main entrance would represent 22% of the building's current floor area, which makes it 'impossible to justify', given that 'it would provide access to such a small ground floor area which has never been, or is ever likely to be used as a general classroom'.
 - It is 'totally inappropriate to build any structure of any kind' in front of the building or other buildings on the western side of the Quadrangle for heritage reasons. The building has 'visual significance' and to 'compromise its appearance with...an accessible ramp would be cultural heresy'.
 - Alternative facilities for staff are available elsewhere on the school campus and will be provided in the proposed new blocks to be built; 'therefore no one will be disadvantaged if they have accessibility needs'.
 - One student currently uses a temporary ramp to access other buildings around the Quadrangle with 'minimum fuss and great success'.

The letter concludes that 'while providing limited access is possible, the practicalities and costs far outweigh the limited potential benefit' and requests the

authority to ‘exercise its discretion’ not to require a permanent ramp or lift on the grounds that ‘these are not reasonably practicable’.

3.6 In a letter dated 7 March 2013, the authority replied that it ‘does not have discretion over accessible items and [it] considers gaining accessible access is achievable in this instance’ and was still required. Further correspondence then passed between the parties, and the authority made a site visit to the building on 2 April 2013. On 11 April 2013, the authority advised in an email that ‘...the outcome is the same as previously. A means of accessible access will need to be provided to the [building].’

3.7 The application for determination was received by the Ministry on 22 April 2013.

4. The submissions

4.1 In a letter accompanying the application for a determination, the agent submitted that providing access for people with disabilities to the building ‘cannot be achieved practically and would result in significant and unacceptable heritage loss.’ The agent requested a determination about ‘whether or not an external accessible ramp must be provided to give access to the ground floor of this building’.

4.2 With the application the agent provided copies of

- plans for the proposed seismic strengthening and earthquake damage repair work
- the correspondence between the parties
- a floor plan showing the location and nature of the access options discussed by the parties, and the challenges posed by each
- a letter in support from the New Zealand Historic Places Trust dated 5 February 2013, stating that a permanent ramp ‘would introduce a construction out of keeping with the overall building design for minimal access gain’ and supporting the use of a portable ramp as an alternative
- a letter in support from a structural and civil engineering company, dated 5 February 2013, stating that it was not possible to provide access through the building’s western wall, or to create new openings in its northern or southern walls, without ‘compromising the structural integrity’ of the building.

4.3 The authority did not make a submission in response to the application.

4.4 The draft determination was issued to the parties for comment on 10 June 2013. The applicant accepted the draft without comment.

4.5 The authority responded to the draft on 24 June 2013. The authority noted that

- the consent had not been refused but had been suspended
- ‘[the authority’s] position is that the building is required to be accessible, therefore the test being used should be what is *reasonably practicable*.’

- ‘Determination 1996/003³ specifically states in [paragraph] 6.4.2(c) that “Each new building must comply in all respects. ...” This is the test against which this proposal must be considered.’
- ‘[the authority] requests that the determination is clarified to show that the building is required to be accessible, and that the proposal considered other accessible features for accessible stairs.’

4.6 In response to the authority I note the following:

- The authority advised the applicant to seek a determination if it disagreed with its stated position that an accessible route was required. The net effect of the authority’s position is that the application for consent was declined.
- The Building Act does not require this particular building to be fully accessible (refer paragraph 6.10).
- Determination 96/003 was in respect of a new building in a school complex, not an existing building that was being altered. Determination 96/003 found that the building concerned did not require an accessible route to the upper level for the building to be considered compliant. Paragraph 6.4.2 of the Determination also stated that the advice given in paragraph 6.4.2(c) was offered ‘with the emphatic warning that each case must be treated on its merits taking account of the particular circumstances of that case’.
- The authority refers to the ‘what is *reasonably practicable*’ test under section 112. The authority does not appear to have first considered the extent to which the building is required to be accessible under section 118 as discussed in paragraph 6.7.

4.7 In response to the draft determination, the ODI drew attention to a New Zealand Historic Places Trust’s 2011 publication⁴ that ‘provides constructive information about maximising physical access to ensure that heritage places remain useful for present and future generations’.

5. The expert’s report

5.1 As mentioned in paragraph 1.5, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Architects. The expert reviewed the documentation and made a site visit to the school campus on 13 May 2013. Representatives of the agent and applicant also attended. The expert provided a report on 20 May 2013, which was forwarded to the parties on 22 May 2013.

5.2 The expert outlined the relevant sections of the Act and expressed the opinion that under Section 8 of the Act the building was ‘considered as one of a group of buildings on this site’. Based on this interpretation, he went on to consider the requirements in sections 112 and 118 of the Act, and Clause D1.3.2 of the Building Code, and expressed his opinion that:

If...the “intended use” of the [building] is the same use that is duplicated in some other area or space within the school which already has an “accessible route” then,

³ Determination 96/003: Installation of a lift in a new classroom block in a primary school complex

⁴ Providing for Physical Access to Heritage Places

it can be said, that the “building” (i.e. group of buildings), does comply with the requirements of the legislation and no further accessible facilities are warranted.

5.3 Appended to the expert’s report were:

- photos of the building in its current state
- a letter dated 14 May 2013 from the applicant describing the recent measures that it has taken to improve access for people with disabilities around the school campus, and the locations of other accessible meeting facilities on the campus
- a site plan of the school, plus a list of accessible sanitary facilities.

6. Discussion

6.1 Previous determinations have established an approach for assessing the need for accessible routes and facilities in situations where buildings are part of a complex of buildings⁵. This approach was discussed in Determination 96/003, issued by the Ministry’s predecessor⁶, which states:

6.3.7 The [Ministry] agrees that the other buildings in the complex may be taken into account for some purposes. The [Ministry] has previously taken the view that the facilities available in the other buildings in the complex may be taken into account when deciding whether the building concerned complies with particular provisions of the building code: see Determination 94/004 in relation to providing access by way of a lift in an adjacent connected building, and Determination 95/003 in relation to providing accessible sanitary facilities in another building ...

6.4.2(d) If the building is part of a complex of buildings then the other buildings may be taken into account when one contains facilities not present in another.

6.2 The definition of building in section 8(1)(c) of the Act says that a building:

Includes any 2 or more buildings [that] are intended to be managed as one building with a common use and a common set of ownership requirements ...’

The school campus is clearly a building that falls within this definition.

6.3 It is not disputed that the school campus, as an education institution, comes under the buildings listed in Schedule 2 of the Act, and therefore must comply with section 118 of the Act. Section 118 requires that, if provision is being made for the construction or alteration of a building to which it applies, reasonable and adequate provision by way of access must be made for persons with disabilities who may be expected to visit or work in the building, and carry out normal activities and processes in the building: in this context ‘the building’ may be considered the school campus as a whole.

6.4 Clause D1.3.2 is the relevant clause of the Building Code, which sets out the performance requirements for access routes for people with disabilities. The matter in dispute is only in relation the authority’s requirement that ground floor of the building be made accessible from the outside.

⁵ See, for example, Determination 96/003 and 2009/27.

⁶ The Building Industry Authority (“BIA”)

- 6.5 I agree with the approach taken Determination 96/003⁷ and consider it is applicable to this situation. The intended use of the building, once strengthened is as administrative offices to be used by one or two administrative staff, and an upstairs meeting room for occasional use. The applicant has provided evidence of the facilities of a similar nature to those contained in the building located elsewhere in the campus. The building therefore has no specialist facilities that are not already provided elsewhere in the school. The limited size of the building and the lack of any sanitary facilities within it further reduce its usability and desirability as a meeting and work space.
- 6.6 Taking the above into account I consider a person is able to visit and carry out normal activities in the school without an accessible route being provided to the building. I am therefore of the view that an accessible route is not required to be provided to the building in order to satisfy the requirements of the Act and the Building Code.
- 6.7 Section 112(1)(a) requires that after an alteration an existing building is required to comply with the 'provisions of the building code that relate to ... access and facilities for persons with disabilities (if this is a requirement in terms of section 118)'. For the reasons given above, in my view the altered building, as part of a complex of buildings on the site, is not required to be accessible in terms of section 118 and therefore the requirements of section 112(1)(a) are satisfied.
- 6.8 It is noted that the exterior stairs to the South elevation of the ground floor are a new building element. I consider the new exterior stairs should have the features of an accessible stairway as they are defined and described in the Compliance Document for Clause D1 Access Routes.
- 6.9 I acknowledge the effort the school is taking to repair and strengthen the building which must be at a substantial cost. While the building has significant aesthetic and heritage values it contributes to a much lesser extent to the school's day to day function.
- 6.10 Finally, I note that the authority has stated that it has no discretion when it comes to access matters, and that the building must be made compliant simply because it is 'achievable in this instance'. The Building Act does not require the building to be made fully accessible. Section 112(1)(a) requires that access and facilities for persons with disabilities to be provided 'as nearly as is reasonably practicable' with the requirements of the Building Code. This is a matter of assessing the benefits to be gained in providing access against the costs of doing so. While some aspects of the matter as discussed above may have been absent from the agent's initial submissions to the authority, the authority has a statutory obligation to consider such aspects in its assessment of an application, and reach a decision based on its judgement of the facts of the case.

⁷ See, for example, Determination 96/003 and 2009/27.

7. Decision

7.1 In accordance with section 188 of the Act, I hereby determine that

- the proposed alterations to the building will comply with Clauses D1 of the Building Code to the extent required by the Act, and
- the authority incorrectly exercised its power of decision in refusing to grant the building consent, and I accordingly reverse that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 28 June 2013.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The relevant sections of the Building Act 2004 include:

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) ...
- (b) continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

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.

Schedule 2: Buildings in respect of which requirement for provision of access and facilities for persons with disabilities applies

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:

...

- (m) educational institutions including public and private primary, intermediate and secondary schools ...

A.2 The relevant sections of Clause D1 of the Building Code include:

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

- (a) Approach the building from the street boundary...
- (b) Have access to the internal space served by the principle access, and
- (c) Have access to and within those spaces where they may be expected to work or visit...