



Determination 2013/069

Regarding the refusal to issue a code compliance certificate for a new medical centre at 40 Charles Street, Kaiapoi, because of the height of the door handles.

1. The matters 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 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 the determination are
 - the owner of the building, F.P.B. Properties Ltd (“the applicant”), and
 - Waimakariri District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 I have also copied this determination to the Office for Disability Issues (“the ODI”) Ministry of Social Development, by way of consultation under section 170.
- 1.4 The application for this determination arises from the construction of a new medical centre with door handles set at 1400mm above floor level. The authority is of the view that the door handles do not comply with Clause D1 of the Building Code² (Schedule 1, Building Regulations 1992) and accordingly has refused to issue the code compliance certificate.
- 1.5 The matter to be determined³ is therefore whether the authority was correct to refuse to issue the code compliance certificate. In order to make this decision I must consider whether the door handles as installed comply with Clause D1 Access Routes of the Building Code.
- 1.6 In making my decision, I have considered the submissions by the parties, a report prepared by an independent expert engaged by the Ministry (“the expert”), and the other evidence in this matter.

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 In this determination, unless otherwise stated, “sections” are sections of the Act and “clauses” are clauses of the Building Code.

³ Under section 177(1)(a) and 177(2)(a)

2. The building work

- 2.1 The building work considered in this determination consists of door handles installed in a new medical centre.
- 2.2 The medical centre is one of three tenancies in the new building. The medical centre is accessed from a carpark via a single-leaf door that swings in both directions leading into a central reception/waiting area. Passages to the right and left of the waiting area lead to consulting and associated rooms. There is an accessible toilet at the end of each passage.
- 2.3 The door handles that are subject to determination are installed as follows:
- Entry door – D shape with the lowest portion at 950mm above floor level and the highest at 1265mm above floor level.
 - Accessible toilet doors – Lever handle at 1400mm above floor level, with internal push snib lock in handle. Door is unlocked by turning the handle.
 - Consulting and remaining rooms – Lever handle at 1400mm above floor level, with internal push snib lock in handle for those that are lockable from the inside.

3. Background

- 3.1 The building work was undertaken to replace an existing facility that had been badly damaged during earthquake activity in September 2010.
- 3.2 The building consent application form, dated 15 July 2011, notes the Acceptable Solution D1/AS1 as the means of compliance with Clause D1. However, the specification listed under 'CA 10 Doors' notes that 'Handles to all Medical Centre doors shall be 1.4m high' and the floor plan (revision C dated 9 August 2011) under the heading 'door notes' also refers "All door handles to Medical Centre doors are to be 1400mm high".
- 3.3 The authority wrote to the building designer on 21 June 2011 raising the issue of the height of the door handles (I have not seen a copy of this letter).
- 3.4 The building designer responded by letter of 10 August 2011, stating that the means of compliance with Clause D1 would be the Acceptable Solution D1/AS1.
- 3.5 The drawings are stamped as approved on 12 August 2011, and the authority issued the building consent No. 110944.
- 3.6 It appears that the authority carried out a final inspection, and on 14 May 2013 wrote to the applicant regarding a number of items outstanding that required attention prior to the issue of the code compliance certificate. Item 8 was noted as:
8. The height of the door handles cannot be considered for an alternative solution. Please re fit the door handles to comply with NZ4121^[4] (*sic*) ...
- A code compliance certificate cannot be issued until all of these items have been addressed to [the authority's] satisfaction.
- 3.7 The Ministry received an application for a determination on 23 July 2013.

⁴ New Zealand Standard NZS 4121:2001 Design for access and mobility: Buildings and associated facilities. NZS 4121 was specifically endorsed by Parliament in the Building Act as being a compliance document, compliance with which will be deemed to be compliance with the Building Code

4. The submissions

- 4.1 In a covering letter dated 10 July 2013, the applicant noted that the design of the building was carried out in consultation with the doctors that would be using the centre, and that the doctors' concern was that young children would be able to reach the door handles and leave a room while a consultation was underway. A statement from one of the doctors noted that lower height handles had been a problem in the past in another centre with not being able to keep children in consulting rooms, and that in one instance in the 1970s a child had left a consulting room, run out of the building, and was hit by a car. A statement from a second doctor noted that in his experience at another centre with doors at the same 1400 height there had been 'no issues related to the door handle height'.
- 4.2 The applicant stated that patients using wheelchairs had been consulted about the height of the door handles and that 'tests have shown that they can easily reach the door handles as fitted'. The applicant also noted that:
- at no time outside of normal office hours would any member of staff or any person be alone in the building
 - no unauthorized person enters the consulting or treatment rooms without the express invitation from a member of the staff
 - no child of any age or physical condition is ever left alone in a consulting or treatment room
 - professional staff must be able to move between rooms to monitor and consult with colleagues without hindrance or possible intrusion.
- 4.3 The applicant provided copies of:
- correspondence from the authority refusing to issue the code compliance certificate (refer paragraph 3.6)
 - specifications from the building consent documentation
 - statements from two doctors explaining the safety concerns relating to door handles at a lower height
 - the building consent No. 110944
 - the floor plan for the centre
 - the fire safety design report used in the building consent application.
- 4.4 The authority acknowledged the application but made no submission in response.
- 4.5 A draft determination was issued to the parties and ODI for comment on 3 September 2013.
- 4.6 The authority and ODI accepted the draft without further comment in responses dated 9 September and 13 September 2013 respectively.
- 4.7 In a response received on 8 November 2013, the applicant did not agree with the 'details' of the draft determination and considered that many points expressed in the application's covering letter were not addressed. The applicant did not expand on these views or provide any further information as to why the door handles as installed should be considered compliant with the Building Code.
- 4.8 The applicant enclosed a letter dated 2 December 2011 from the authority which indicated that a final inspection had been carried out and that noted three items

requiring attention prior to the issue of a code compliance certificate. The matter of the height of the door handles was not noted in that letter.

5. The expert's report

5.1 As referred to in paragraph 1.6, I engaged an expert to assist me. The expert is a member of the New Zealand Institute of Architects and a specialist in access matters. The expert was engaged to assess the door handles as installed against the requirements of the Building Code and provide a report. The expert made a site visit on 27 August 2013 and provided a report dated 29 August 2013, a copy of which was sent to the parties on 3 September 2013.

5.2 The expert provided a general description of the building and specifically the door handles as installed, as well as some of the background to the dispute. I have included that information in paragraphs 2 and 3.

5.3 Commenting on the compliance of the door handles the expert noted

- the height of the door handles do not comply with the compliance document D1/AS1 called up in the consent application as the means by which compliance was to be achieved, nor do they accord with NZS 4121
- the consent documents should have been amended to align with the statement from the designer as to the method of compliance (refer paragraph 3.4) prior to the consent being issued by the authority
- the entry door handles comply with NZS 4121 and D1/AS1 and are therefore deemed to be compliant with the Building Code
- though there may be wheelchair users who are able to reach and operate the door handles at 1400mm high, the Building Code requires that the majority of likely users would be able to reach and manipulate them. (The expert provided anthropometric data on reach zones of people in wheelchairs from two separate websites⁵ which support the view that the comfortable common reaching zone ranges from 900-1200mm.)
- section 69 of the Act prohibits any waiver or modification of the Building Code for new buildings in respect of access for people with disabilities.

5.4 The expert also noted that the safety concerns set out by the doctors in the application for determination may apply to the consultation and treatment rooms but do not appear to provide a rationale for the height of the door handles to the accessible toilets and other non-consultation rooms.

6. Compliance of the door handles

6.1 One of the key features of the Act is the emphasis placed on the reasonable and adequate provision of access and facilities for people with disabilities, in respect of buildings in which people with disabilities could be expected to visit or work and carry out normal activities and processes (section 118). The Act's requirements ensure that any new building to which section 118 applies (that is a building that falls within Schedule 2 of the Act) is built with reasonable and adequate access and facilities for persons with disabilities

⁵ A United Nations website and a website providing information on a 'code of practice reflecting current statutory requirements and best practice within the United Kingdom'.

- 6.2 The medical centre is a public building clearly falling within section 118 and Schedule 2 of the Act, and is therefore required to be accessible for persons with disabilities.
- 6.3 Compliance with the Building Code is able to be achieved by way of an Acceptable Solution, in this case D1/AS1, which is a prescriptive design solution that provides only one way of complying. I accept that the handle to the entrance door at the height installed is in accordance with D1/AS1 and NZS 4121 and therefore complies with the building Code
- 6.4 As the remaining door handles do not comply with D1/AS1, they must be considered as an alternative solution, entailing an assessment against the performance requirements of Clause D1 taking into account whether there are any mitigating features that might cause the handles to comply at the height installed. It appears that there are no such compensating features in the design and I am of the view that compliance with Clause D1 has not been achieved in this case.
- 6.5 I acknowledge the concerns relating to child safety in this environment. However, I consider that there are other practical design solutions available to the applicant that would not compromise the performance requirements of Clause D1 but that will satisfy the need to manage the safety of the children during consultations when supervising adults are not able to restrict the child's movements.

7. The code compliance certificate

- 7.1 The applicant has applied for a determination in respect of the authority's decision to refuse to issue a code compliance certificate. Under section 94(1) of the Act, a building consent authority must issue a code compliance certificate if it is satisfied on reasonable grounds that the building work complies with the building consent.
- 7.2 Under section 49(1) of the Act a building consent authority can only grant building consent if it is satisfied on reasonable grounds that the provisions of the Building Code would be met if 'the building work were properly completed in accordance with the plans and specifications that accompanied the application'.
- 7.3 I note that in this case the building consent contains conflicting information; the specifications and notes in the floor plan indicate that the door handles were to be installed at 1400mm high but the building consent application and subsequent information provided by the designer state that compliance was to be achieved by way of compliance with D1/AS1.
- 7.4 It is arguable that the door handles as installed comply with the specifications included in the approved consent documents. However, when considering the issue of a code compliance certificate for a building consent for which there is conflicting or inadequate detail provided to establish compliance with the Building Code, I am of the view that the second step is to consider whether the completed building work complies with the Building Code. I note also that the building consent was issued after confirmation was received that the Acceptable Solution D1/AS1 was to be used as the means of achieving compliance.
- 7.5 I have concluded that the door handles installed at 1400mm high do not comply with the performance requirements of Clause D1, and accordingly I consider the authority was correct to refuse to issue the code compliance certificate.

8. What is to be done now?

- 8.1 I suggest the applicant carry out the remedial work required to bring the building into compliance with Clause D1; I consider this can be done in conjunction with the addition of a design solution to ensure the safety of children on the premises. I note that the authority is able to issue a notice to fix under section 164 requiring the building owner to bring the building work into compliance with the Building Code if no remedial action is taken.

9. The decision

- 9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the door handles as installed do not comply with Clause D1 of the Building Code and according I confirm the authority's decision to refuse to issue a code compliance certificate for Building Consent No. 110944.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 26 November 2013.

John Gardiner
Manager Determinations and Assurance

Appendix A: The relevant legislation

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.

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.

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:

- (l) medical and dental surgeries, and medical and paramedical and other primary health care centres:

69 Waiver or modification may only be granted by chief executive in certain cases

- (1) This section applies to a waiver or modification of the building code that relates to—
- (a) an existing building to which section 118 applies; and
 - (b) access and facilities for use by persons with disabilities.
- (2) If this section applies, the chief executive may grant a waiver or modification only in a determination issued under subpart 1 of Part 3
- (3) If this section applies, the chief executive may grant a waiver or modification only in a determination issued under subpart 1 of Part 3

A.2 Relevant provisions of the Building Code are:

Clause D1—Access routes

Objective

D1.1 The objective of this provision is:

...

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

Limits on application

Objective D1.1(c) shall apply only to those *buildings* to which section [118] of the Act applies.

Functional requirement

D1.2.1 *Buildings* shall be provided with reasonable and adequate access to enable safe and easy movement of people.

...

Performance

...

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

...

(f) have doors and related hardware which are easily used,

A.3 The relevant provisions of compliance document D1/AS1 include:

7.0.5 Door handles – Accessible doors shall be openable with one hand and have a lever action operation for handles, locks and latches. Handles shall be between 900mm and 1200mm above floor level. Pull handles and push plates are acceptable only where doors are not latched.

A.4 The relevant provisions of NZS 4121⁶ include:

2.2 Function and context of use

...Through section 47A of the Building Act [now section 118 of the 2004 Act] this standard is deemed to be one of the documents establishing compliance with the Building Code (NZBC). As such it is only one way of meeting the performance requirements of the NZBC. Designers may use 'alternative solutions' provided they can show the alternative meets the performance requirements.

7.3.7 Door handles and hardware

Door handles and related hardware and accessories shall comply with the following requirements:

- (a) Handles shall be between 900 mm and 1200 mm (optimum 1000 mm) above the finished floor level...

⁶ New Zealand Standard NZS 4121: 2001 Design for access and mobility – Buildings and associated facilities