



## Determination 2014/038

# Regarding the compliance of access for people with disabilities to a new swimming pool at the Coastlands Aquatic Centre, Paraparaumu

### 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“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
- Kāpiti Coast District Council, as the owner of the aquatic centre, acting through the Aquatic Facilities Manager (“the applicant”)
  - Kāpiti Coast District Council, carrying out its duties as a territorial authority and building consent authority, acting through its Building Controls section (“the authority”)
- 1.3 I consider the Ramp Equal Access Coalition Team (“REACT”), the Wellington Paraplegic and Physically Disabled Trust Board (“WPPDT”), and the Kāpiti Accessibility Advisory Group (“KAAG”) to be persons with an interest in this matter.
- 1.4 As the matter of access for people with disabilities to the main pool was addressed in mediation through the Office of the Human Rights Commission (“HRC”), I have provided a copy of the draft determination to HRC. I have also forwarded a copy of the draft determination to the Office for Disability Issues (“ODI”), at the Ministry of Social Development, by way of consultation under section 170 of the Act.
- 1.5 This determination arises from the construction of an aquatic centre that was constructed with only a self-operated hoist (“the hoist”) to provide access for people with disabilities. REACT held the view that without a ramp the pool did not comply with section 118 of the Act nor Clause D1<sup>2</sup> of the Building Code (Schedule 1 of the Building Regulations 1992). After construction a removable ramp was installed.

<sup>1</sup> The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.dbh.govt.nz](http://www.dbh.govt.nz) or by contacting the Ministry on 0800 242 243.

<sup>2</sup> 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 The matters to be determined<sup>3</sup> are in regards to the requirements under section 118 of the Act in respect of an accessible route, and in particular
- whether the hoist as installed to the main pool would be sufficient by itself to comply with Clause D1; and
  - whether the hoist together with the removable ramp complies with Clause D1; and
  - whether the hoist together with a set of removable stairs complies with Clause D1.
- 1.7 In making my decision, I have considered the submissions of the parties and persons with an interest, and the other evidence in this matter. I have not considered the requirements of the Act or the Building Code in relation to any other aspects of the aquatic centre, nor have I considered the compliance of the stairs or ramp as constructed other than as providing an accessible route into the pool.
- 1.8 REACT and WPPDT made a joint application for a second determination<sup>4</sup> in relation to the issuing of the building consent and consent amendments in respect of access to the main pool for people with disabilities. That matter forms a separate determination and is not considered further in this determination.
- 1.9 The issue of access into the main pool has previously been the subject of mediation through the Human Rights Commission. I have no jurisdiction under other enactments and this determination considers only building matters relating to the Building Act and its Regulations.
- 1.10 The relevant sections of the Act, clauses of the Building Code, and paragraphs from NZS 4121<sup>5</sup> referred to in this determination are set out in Appendix A.

## **2. The building work**

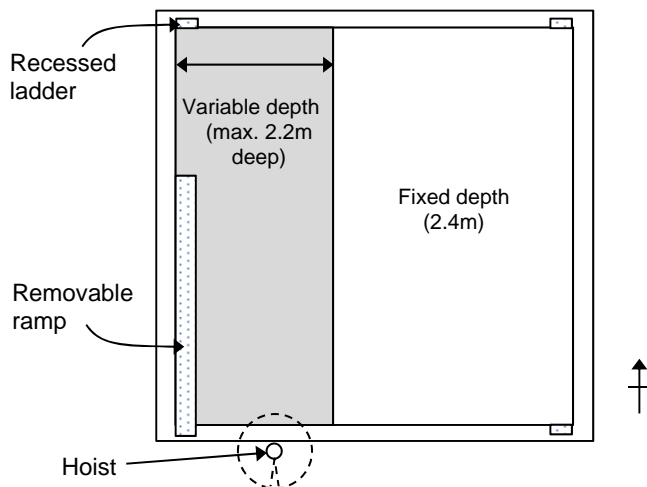
- 2.1 The aquatic centre has three pools: the main swimming pool, a ‘programmes’ pool, and a small ‘toddlers’ pool.
- 2.2 The main swimming pool (access into which is the subject of this determination) is approximately 25m x 25m with three sets of recessed ladders. A portion of the pool floor is able to be varied in depth; it has a moveable floor that can be raised to the height of the surrounding floor level or lowered to 2.2m. The remainder of the pool is 2.4m deep with a 3m sloping section between the fixed floor and variable floor (refer figure 1 over page).

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<sup>3</sup> Under section 177(1)(a) of the Act

<sup>4</sup> Determination 2014/040: Regarding the issue of a building consent and subsequent amendments in respect of access for people with disabilities to a new swimming pool at the Coastlands Aquatic Centre, Paraparaumu (*Ministry of Business, Innovation and Employment*) 8 September 2014

<sup>5</sup> New Zealand Standard NZS 4121: 2001 Design for access and mobility – Buildings and associated facilities



**Figure 1: Approximate site plan indicating hoist and ramp positions**

- 2.3 I have taken the side of the pool where the hoist is installed as being the southern end; the hoist is positioned approximately 6m along the south pool wall (typically in the third lane across). The hoist has a solid bucket seat, a lifting capacity of 150kg, and a push button control allowing it to be operated by the user. It rotates 360° and the seat of the hoist can be lowered to a short distance below the surface of the water.
- 2.4 The removable ramp is approximately 15.4m long and 1.2m wide, with a 1:12 slope, a non-slip surface, and handrails on both sides that run the full length of the ramp. There is a 1.2m landing located 9m down the ramp. When in use the ramp is positioned along the west wall of the pool. The ramp is constructed in sections and is on wheels; it is able to be removed from the pool by raising the moveable floor to the height of the surrounding floor level. When not in use the sections of the ramp are stacked and stored in a nearby bay on the pool concourse. Aquatic wheelchairs are available for those people who require them to enter the pool by way of the ramp.
- 2.5 In general use the swimming lanes in the main pool run north/south and the ramp is in place with the variable floor depth at 1.2m. The lanes painted on the pool floor run east/west. The start blocks are located along the eastern edge of the pool.
- 2.6 The main pool is largely used by members of the public, swim clubs and schools. Normal activities in the main pool include lane swimming, learning to swim programmes, aqua-jogging/walking, and activities such as aquatic fitness classes. During the school holiday period there are also activities catering to children.
- 2.7 The programmes pool is 9m x 15m and in a separate room from the main pool. It has a sloping floor from 0.7m to 1.2m and a permanent ramp at the southern (shallow) end of the pool. Normal activities in the programmes pool include learning to swim programmes and scheduled activities for children and adults. The temperature of the water in the programmes pool is 32 degrees, which is warmer than the main pool.

- 2.8 At the time the application for determination was made, current management of the facility's schedule included removing the ramp once a week and repositioning the lanes to east/west to allow for the moveable floor to be lowered to its deepest setting and the pool used for training by groups of competitive swimmers for a fixed period of time; during this time the pool remained open to members of the public. The applicant has stated that the removal or installation of the ramp and reconfiguring the pool takes approximately 45 minutes.
- 2.9 The stairs, initially installed before the ramp, were used at times when the ramp was removed but the floor remained at 1.2m depth. The stairs are 5m long, have 120mm risers, 500mm deep treads, and handrails on both sides for the full length of the stairs.

### **3. The background**

- 3.1 The supporting documentation dated 22 September 2011 provided for the building consent stated the means of compliance for clause D1 as being NZS 4121. The drawings did not show accessible features to the main pool. On 2 December 2011, the authority issued building consent No. 110466 for the aquatic centre building, and the associated pools and plant.
- 3.2 Members of the community became aware that the pool would not have ramp access, and in April 2013 a complaint was laid with HRC regarding access to the main pool.
- 3.3 An amendment to the consent was applied for on 23 May 2013, the drawings for which indicate a hoist to the main pool, and the pool opened in August 2013.
- 3.4 The complaint laid with HRC was settled through mediation on 7 June 2013.
- 3.5 On 4 July 2013 the authority issued a certificate of public use, and the pool opened on 10 August 2013 with a hoist in place and a set of removable stairs to the main pool (refer paragraph 2.9). No amendment to the consent was made to include the stairs, and the stairs were removed when the ramp was installed.
- 3.6 On 7 September 2013 the authority granted an amendment to the building consent (11046C) for construction of a new removable ramp to provide for access to the main pool. The ramp was installed at some time in February 2014.
- 3.7 On 28 February 2014 the authority granted an amendment to the building consent (110466D) for the installation of the hoist. The hoist had already been installed and the purpose of the amendment was 'to align the documentation with the as-built work'.

## **4. Submissions**

### **4.1 The application**

- 4.1.1 The Ministry received an application for a determination on 24 February 2014. The applicant provided copies of
- a recently submitted application for an amendment to the building consent for the installed hoist, dated 17 February 2014, which included information from the manufacturer of the hoist
  - photographs of a person using the hoist.
- 4.1.2 The authority acknowledged the application but made no submission in response.
- 4.1.3 On 3 March 2014 a copy of the application was forwarded to the representative acting on behalf of REACT.
- 4.1.4 I sought further information from the applicant by email on 9 March 2014, including information on the ramp and any related management practices on its use, and an officer of the Ministry and a consultant undertook a site visit on 13 March 2014. The applicant forwarded the relevant information on 14 March 2014.
- 4.1.5 I received a letter dated 13 March 2014 from the Mayor of Kāpiti requesting that KAAG be included as a person with an interest in the matter (refer paragraph 1.3).

### **4.2 WPPDT submission**

- 4.2.1 On 6 April 2014 I received a detailed submission from the current President of WPPDT which included a summary of the background of events including changes in planning and stating WPPDT's concern that the authority's application for determination was sought to give approval for the removal of the ramp at any time including when it is open to the public. I have summarised the main points made in the submission as follows:
- The use of a ramp is the best, most universal and inclusive means of providing unaided access into the pool with ease, safety and dignity.
  - A hoist alone would not achieve compliance; the ramp is an essential part of the facility's access provisions.
  - People with disabilities, mobility impairment, and older people would be discriminated against in terms of their rights to enjoy the normal activities undertaken in the pool, including social, recreation, health, and community benefits.
  - Ramp access needs to be provided whenever the pool is open to the public; it should only be removed when the pool is not available to the public, such as for competitive swimming meets or pool maintenance.
  - The authority has obligations to the elderly and people with disabilities; the pool is a new facility and is expected to last at least 50 years.
  - The population of the area over the age of 65 is twice the national average<sup>6</sup>, with a disproportionately high rate of residents with disabilities and frailty.

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<sup>6</sup> Reported by the authority's disability reference group from figures taken from the 2006 Census.

4.2.2 WPPDT also submitted that in removing the ramp the authority would not only breach the Act and Building Code, but would also be in breach of the Human Rights Act, the UN Convention on the Rights of Persons with Disabilities, as well as the authority's own policies and the Government's 'No Exceptions Strategy'<sup>7</sup>. WPPDT stated that the intent of the provisions of those Acts and Regulations is to promote equity and to proactively remove the obstacles people with disabilities face participating in everyday community life.

4.2.3 In regards to the hoist alone providing access to the pool the WPPDT submitted:

- For many disabled people using a hoist 'will be too much hassle and with little [dignity]'.
- Many people like to discretely enter and exit the pool; using the hoist draws attention and this may be unwanted by some people for reasons such as disfigurement, negative body-image etc.
- People with weight issues may not fit in the hoist seat.
- If a person cannot weight bear on their legs they may have difficulty in transferring into the hoist seat.

### 4.3 REACT submission

4.3.1 On 7 April 2014 I received a detailed submission from REACT which included details on the background of events and set out REACT's view of the matter. The submission noted REACT's concern that in seeking a determination on the compliance of the hoist alone the applicant's intention may be to remove the ramp 'whenever it suits them – including busy public holiday periods.'

4.3.2 I have read and taken into account the submission by REACT. The following is a summary of the main points raised in the submission:

- The relevant legislation cannot be interpreted in isolation; context and meaning is achieved through considering the total accessibility framework for people with disabilities, parliamentary intent in the enactments, and the relevant facts of the case.
- People with disabilities are clearly expected and entitled to use the main pool.
- The demographics of the local community include higher numbers than the national average of older persons and people with varying levels of disability and this is likely to increase over time.
- The applicant did not plan for people with disabilities in the pool's design and construction; the omission and limited space with 1.2m depth cannot be fixed by retrospectively abrogating people's rights.
- NZS 4121 makes only one recommendation for preferred access from the poolside into the water and that is by ramp; the purpose built ramp is now in use and with the ramp the main pool complies and is the only public pool in the district with ramp access.

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<sup>7</sup>No Exceptions Strategy and Implementation Plan 2005-2009 (*SPARC (now Sport New Zealand (Sport NZ) the Government organisation responsible for sport and recreation)*) June 2005.

- The provision of a ramp is “reasonable” as the easiest, safest, most independent, dignified, equitable, inclusive, and best practice means of access.
  - The hoist alone is insufficient to cater for access for people with mobility impairment:
    - The majority of people currently using the hoist usually do so with assistance.
    - The hoist is not ‘easy to use’ (in terms of Clauses D1.2.1 and D2.2) given the need to transfer chairs.
    - Though potentially the hoist could be used unaided, the limitations of some users mean the hoist cannot be used unaided.
    - The hoist requires the availability of trained staff which is a management practice and not enforceable.
  - The programmes pool while it has a ramp does not provide reasonable and adequate access to carry out ‘normal’ activities in the aquatic centre for reasons including its limited size, availability, different functionalities and conflict with other users.
  - Use of the main pool for specialised activities such as underwater water polo and underwater hockey are arguably not ‘normal’ or ‘usual’ activities compared to casual swimming; the design of the pool to cater for sporting clubs and sporting events over general use by people with disabilities is indirectly discriminatory; principal user(s) of the pool include people with disabilities.
- 4.3.3 The submission commented on ramp access to the main pool having been included in the planning design and accessibility audits. REACT also acknowledged that the design of the moveable floor meant that the area at 1.2m depth was at a premium, particularly so during school holidays and public holidays, but noted that people with disabilities are part of the public and should also have access during those times.
- 4.3.4 The submission referred to a number of previous determinations on access issues. REACT also provided copies of the following:
- Correspondence and various letters printed in local newspapers and media articles. Minutes of meetings, speech notes, and correspondence from other groups supporting the installation of a ramp.
  - Sections of the Act and clauses of the Building Code, extracts and articles from the UN Convention on the Rights of Persons with Disabilities<sup>8</sup>, and other related legislation.

#### **4.4 The first draft determination and further submissions**

- 4.4.1 I issued a draft determination to the parties and persons with an interest for comment on 14 April 2014. The draft concluded that the provision of a hoist alone did not comply with Clause D1 but the hoist in combination with the ramp did comply.
- 4.4.2 The Office for Disability Issues responded by email on 28 April 2014, noting that it supported the conclusion stated in the draft that the hoist installed to the main pool would not be sufficient by itself to comply.

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<sup>8</sup> Adopted on 13 December 2006; New Zealand as a signatory state signed on 30 March 2007 and ratified on 25 September 2008

- 4.4.3 The HRC responded by letter dated 6 May 2014, noting that its approach is based on Article 9 of the UN Convention on the Rights of Person with Disabilities. The HRC is of the view that pool access provided solely by use of a hoist would effectively discriminate against people with disabilities, mobility impairments and older people, and could not be said to equate with equity of access. HRC raised concerns about the frequency and length of time the ramp could be removed and how decisions to remove the ramp would be made, and that clarity was required in the determination regarding this issue.
- 4.4.4 On 7 May 2014, the applicant responded to the draft determination, noting that it did not accept the findings of the draft and would make a submission on the matter. The applicant's submission was received on 30 June 2014 and included: photographs of a person using the hoist; an email in support of the hoist as an access feature; a plan dated January 2011 detailing the ramp between the variable and fixed floors, and two photographs of the stairs originally installed.
- 4.4.5 The applicant submitted the following (in summary):
- The use of the programmes pool was broader than was stated in the draft determination, including a range of therapeutic activities where the warmer water temperature was beneficial. A removable handrail has been installed in the programmes pool.
  - The purpose of the application was to establish whether the main pool was compliant without the ramp and with only the hoist; if so it would give the pool management flexibility to remove the ramp 'at limited times if appropriate for the use of the pool at that time'.
  - A ramp does not provide 'unaided access' for those people who use a wheelchair, as the aquatic wheelchair will need to be removed from the pool and then returned for the person to leave the pool; the hoist provides unaided access as it can be self-operated. Some people prefer the hoist to the ramp.
  - Having the waterproof wheelchair taken out of the pool, and having to call for assistance for it to be returned in order to leave the pool would draw more attention than the alternative of using the hoist.
  - The aquatic wheelchair and the hoist are both rated for 150kg.
  - Transfers onto the hoist seat are safer and easier as the hoist seat height can be adjusted by the user to suit.
  - The ramp referred to in the design documentation (refer paragraph 4.3.3) is the sliding ramp that bridges the difference in level between the moving floor and the fixed floor. This is not an access ramp.
- 4.4.6 The applicant also submitted the following in regards to the stairs that had originally been installed (in summary):
- People with disabilities, mobility impairment, and older people were able to access the pool by way of the low rise stairs, and the stairs were providing access prior to the installation of the ramp.
  - The stairs were easier to navigate than the ramp for some users as they are shorter, provided a flat surface for foot falls, and the rails on both sides could



be grasped; in contrast the ramp is required to be 1.2m wide which is too wide to grasp both rails.

- Other than Tuesday evenings, when the movable floor is lowered, the stairs provide a reliable, easy, safe, and orderly access route for all users.
- The stairs in combination with the hoist provide reasonable and adequate access.

4.4.7 The applicant acknowledged that the ramp is best for some people with limited mobility, but considered that it is very difficult to provide access to a pool that is suitable for everyone in the community.

4.4.8 The applicant also queried whether it was ‘reasonable’ for the ramp to be out of the pool (for four hours on Tuesday evenings) while it was still open to the public, to enable competitive swimmers to train in a competition set up. (I have addressed this question at paragraph 5.3.9)

4.4.9 In an email on 3 June 2014, the authority advised that it would make no response to the draft determination.

#### **4.5 New matter to be considered**

4.5.1 The applicant’s submission referred substantially to the use of a set of stairs in combination with the hoist, and relied on the use of the stairs in establishing ‘reasonable and adequate’ access. I wrote to the parties on 5 June 2014 proposing that this be considered in the determination as a new matter, i.e. whether the provision of the hoist and stairs together comply with Clause D1 of the Building Code.

4.5.2 A submission was received from REACT on 29 June 2014 in which it disagreed that the stairs and hoist together are sufficient for the required access obligations. REACT also holds the view that when the main pool is open to the public it would not be ‘legally permissible’ for the ramp to be removed at prescribed times. REACT provided a detailed submission which, in part, reiterated the views put forward in previous submissions. I have not repeated the reiterated points in the summary below.

4.5.3 REACT submitted the following general points (in summary):

- The building is a new building and there is no statutory allowance for the access facilities to be reduced to “as near as reasonably practicable” which is a lower standard.
- During the time the applicant proposes to remove the ramp (refer paragraph 4.4.8) the main pool is still open to members of the public. Removing the ramp during this time would reduce compliance to “as near as reasonably practicable”. There are options available to the applicant to configure the pool for training without reducing accessibility.
- The programmes pool is not a substitute for the main pool. There is indirect discrimination in the expectation that those unable to access the main pool can use the relatively small area of the programmes pool in the same way they would have used the main pool.

- In line with Article 9 of UN Convention on the Rights of Persons with Disabilities, the applicant must be proactive in ensuring and maximising disability access, rather than taking a minimalist approach.
- The applicant was responsible for the specifications, configuration, and design of the pools; no consent was sought in respect of the hoist or stairs. The problematic design and physical constraints of the pool should not be at the expense of access for people with disabilities.
- The ramp conforms to the specifications set out in NZS 4121. The ramp is not only for the benefit of those using wheelchairs but provides the best access for people with various disabilities.
- The width of the ramp allows for users to pass each other safely and with ease.
- The ability to transfer to an aquatic wheelchair from a hoist in the changing room and then access the pool provides for the greatest level of independence.

4.5.4 In regards to the use of stairs REACT submitted the following (in summary):

- If the hoist and stairs combination had been acceptable means of access there would not have been the complaint laid with HRC.
- The stairs do not meet NZS 4121 as an accessible route; although stairs might be used by some people with some types of disability they are not the best and universal way of providing disability access. For new buildings steps should only be built in conjunction with ramps and inclines.
- Neither of the two accessibility assessments undertaken found the pool was accessible with the stairs and hoist.

4.5.5 REACT also referred to the HRC mediation, noting that the outcome included the following terms: two aquatic wheelchairs will be provided for use in the various pools, and there will be a policy dealing with aquatic wheelchairs in the pools. REACT noted that the mediation made no reference to the use of stairs as an alternative to the ramp.

4.5.6 The applicant made a further submission by email on 1 July 2014, noting there is one flat landing 1.2m long located 9m down the ramp, and that a hoist was installed to an accessible change room after the aquatic centre was opened.

## **4.6 The second draft determination and further submissions**

4.6.1 On 28 July 2014 I sent a copy of the second draft determination to the parties, ODI and HRC for comment.

4.6.2 A response was received from the authority and applicant on 11 and 13 August 2014 respectively; both accepted the draft without further comment.

4.6.3 On 13 August 2014 I received a further joint submission from REACT and WPPDT accepting the decision set out in the second draft determination. The submission included a report titled “Accessibility Assessment’ dated December 2010 and a follow up report dated August 2011. The December 2010 assessment made a number of recommendations regarding access; in respect of access to the main pool that ‘Ideally, ramped access should be provided...’ The recommendation went on to discuss recommendations in regard to hoists if they were to be provided, noting that

‘it does not met (sic) the “unaided” requirement of the accessible route...’ The August 2011 report noted, in table form, that: the previous report should be referred to; the ramped entry to the programme pool ‘appears ok’, and some items to be checked.

- 4.6.4 The submission from REACT and WPPDT made the following points (in summary):
- There remain unaddressed issues of pool side support rails, provision of sling hoists, and the position of the current hoist as canvassed in the HRC mediation.
  - The articles contained in the UN Convention on the Rights of Persons with Disabilities are expressed in New Zealand’s legislation, and the authority is bound to act in accordance with that legislation.
  - The main pool is where most ‘therapeutic’ activities are scheduled to take place; the programmes pool was never designed with ‘therapy’ in mind but was designed as a children’s/learner’s pool.
  - The provision of the hoist is not adequate in that it does not address significant problems with vertigo, balance, motion sickness, anxiety, lack of co-ordination, manipulation and reaching disabilities etc.
  - There needs to be an appropriate and legally enforceable binding covenant or undertaking in respect of the management practices around the removal of the ramp.
- 4.6.5 The submission requested a number of minor amendments to wording and also requested that the determination set out the legal requirements for disability access in respect of new public buildings and why the lower threshold of ‘as nearly as reasonably practicable’ does not apply.
- 4.6.6 In an email on 25 August 2014, HRC advised it would make no comment on the second draft determination.
- 4.6.7 No further comment was received from the authority or KAAG.
- 4.6.8 ODI responded by email on 4 September 2014, noting that it supported the decision in the second draft and the position that ‘where the swimming pool is closed for public use, then removal of the ramp will not deny any disabled person from reasonable and adequate access to the swimming pool.’
- 4.6.9 I have taken into account the submissions received and I have amended the determination as I consider appropriate.
- 4.6.10 I note here that the determination does not consider the issues that were canvassed in the HRC mediation (refer paragraph 4.6.4); the matters for determination are those set out in the application, with the addition of the stairs raised in the applicant’s submission to the first draft (refer paragraph 4.5).

## **5. Discussion**

### **5.1 General**

- 5.1.1 There is no dispute that the aquatic centre is a building to which section 118 of the Act applies under Schedule 2(p); the centre is a new building that houses swimming baths to which members of the public are admitted.

5.1.2 The matter in dispute is the access required to the main pool to satisfy the provisions of Clause D1 to the extent required by section 118. I need to consider whether ‘reasonable and adequate’ access will be achieved by the use of:

- the removable ramp and the hoist
- the hoist on its own
- the removable stairs and the hoist.

5.1.3 Section 118 of the Act says:

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.

5.1.4 I note that ‘reasonable and adequate access’ is not defined in the Act. Clause A2 of the Building Code defines “adequate” as being adequate to achieve the objectives of the Building Code.

5.1.5 Clause D1.3.2 requires that at least one access route shall have features to enable people with disabilities to approach the building from the street boundary, have access to the internal space served by the principal access, and have access to and within those spaces where they may be expected to work or visit. Clause D1.3.3 sets out the requirements for Access Routes, and Clause D1.3.4 sets out the additional requirements for Accessible Routes.

5.1.6 I have considered the facility as a whole with the other pools available, particularly the programmes pool. I note that the depth and general use of the main swimming pool and the programmes pool differ; the programmes pool is unlikely to be used by an adult for such activities as lane swimming, aqua-jogging and the like, and there are specific programmes for adults that are run in the main pool. I consider that reasonable and adequate access is required to the main pool for people with disabilities to carry out ‘normal activities’ associated with the aquatic centre.

## **5.2 The ramp and the hoist**

5.2.1 The applicant has requested I determine whether the provision of the hoist along with the removable ramp complies with Clause D1.

5.2.2 Section 119 states that NZS 4121 is to be taken as a compliance document. Section 12 of that Standard describes the requirements for access to places of assembly, entertainment and recreation; the only requirement that is relevant to the pool is paragraph 12.3.1.2, which states:

12.3.1.2 Access to the pool

The swimming pool shall be available from an accessible route and unaided access to the water shall be possible from the poolside.

The commentary to this paragraph notes:

C12.3.1.2 A ramp that leads from the poolside into the pool is the preferred means of access to the water. A slope of 1:12 down to a water depth of 1200mm is acceptable

- 5.2.3 It is important to note that in this instance the provision of the ramp is not generally reliant on a person requesting the ramp be put in place i.e. it is not of such a temporary nature that it is only put in place on request and is otherwise removed. The applicant has advised it takes approximately 45 minutes to remove the ramp and reconfigure the pool, and that at the time of the application being made the ramp was removed once a week for four hours (refer also paragraph 4.4.8). I have discussed management practices in relation to the ramp being in place in paragraphs 5.3.9 and 0 below.
- 5.2.4 In response to the submission of the applicant that the ramp was a barrier to use for some people who found the stairs easier; I am of the view that a ramp, being the preferred means of access identified in NZS 4121, meets the needs of the widest range of users in line with the principles of universal design for accessibility.
- 5.2.5 As the provision of the ramp is in accordance with the recommended means of compliance in the commentary to paragraph 12.3.1.2 in NZS 4121, it is deemed an Acceptable Solution under Section 119. Therefore when the ramp is in place, compliance with the Building Code is achieved in respect of access for people with disabilities to the main pool.
- 5.2.6 I have not considered the compliance of the ramp in terms of its construction and characteristics. However, as NZS 4121 and D1/AS1 do not offer prescribed solutions that are specific to swimming pools, I have included in Appendix B information from Australian and American Standards that may provide further guidance on accessible ramps to swimming pools.

### **5.3 The hoist alone**

- 5.3.1 The applicant has also requested I determine whether the provision of the hoist as installed to the main pool would be sufficient by itself to comply with Clause D1.
- 5.3.2 The clear intention of the Building Act is that buildings must not be constructed in such a way as to prevent people with disabilities from carrying out normal activities to the fullest extent that their abilities allow. Provisions for access are not only for people who use wheelchairs, but for people with a variety of disabilities.
- 5.3.3 The inbuilt recessed ladders would not be suitable for many people with disabilities, and so the question then becomes whether the hoist alone provides 'reasonable and adequate' access.
- 5.3.4 I am of the view that access by way of the hoist alone is possible for a broader range of people to use other than only those who use wheelchairs. However, the hoist is unlikely to be suitable for a range of people with such disabilities as defined in NZS 4121; for example, those with a lack of co-ordination, or manipulation disabilities. In addition the hoist can be only be used by one person at a time; as well as limiting general access to the pool due to availability this would be restrictive in terms of evacuation if more than one person required the use of the hoist to leave the pool.
- 5.3.5 From the features described in Clause D1.3.4 it appears the use of a hoist is not contemplated, nor is a hoist offered as a solution in NZS 4121. The use of a hoist (or "pool lift") is included in Australian and American Standards, and I have appended those for the information of the reader (refer Appendix B). It is noted that both standards base the access required on the length of the pool perimeter.

- 5.3.6 In this case, it is my opinion that the use of a hoist alone does not constitute ‘reasonable and adequate’ access for people with disabilities. Accordingly, in terms of section 118 of the Act, I consider the hoist alone does not comply with Clause D1 in regards to access for people with disabilities.
- 5.3.7 The applicant has queried whether it is ‘reasonable’ for the ramp to be out of the pool (for example for four hours on Tuesday evenings) while it is still open to the public, to enable swimmers to train in a competition environment.
- 5.3.8 I acknowledge that the layout and design of the pool facility as constructed has presented a problem to the applicant in terms of its use by a broad range of community groups, and requires the ramp be removed, the lane ropes reconfigured and the pool set at the maximum depth when the pool is used for swimming training.
- 5.3.9 When the pool is open to the general public there is a requirement that it has reasonable and adequate provision of access for people with disabilities. However, there may be situations where the main pool is booked for a specific purpose and not available for use by members of the public. In those instances I consider the ramp may be removed if it was not required by the group using the pool. In those situations, as the general public does not have access to the main pool, any disabled users are not placed at a disadvantage in that there is no disparity in how ambulant and non-ambulant members of the public will be able to use the facilities in the aquatic centre.

#### **5.4 The stairs and the hoist**

- 5.4.1 The applicant’s submission in response to the first draft determination brought into question whether the provision of the hoist together with the removable stairs would comply with Clause D1. I have concluded that the hoist alone does not satisfy the requirements of Clause D1, the question then becomes whether an accessible route is provided with a combination of both the hoist and removable stairs.
- 5.4.2 While the stairs could provide reasonable and adequate access for some users, they do not meet the definition of an accessible route.
- 5.4.3 In considering the access provided by the hoist and removable stairs together I have taken into account the purposes and principles of the Act (sections 3(a)(ii) and 4(2)(k)) the Regulations, and the principles of universal design for accessibility.
- 5.4.4 Inherent in the proposed combination of hoist and stairs as an accessible route is the fact that people who are unable to negotiate the stairs are left with the hoist as the sole method of access to the main pool. It could be argued that the hoist meets the definition of an accessible route in that it can be negotiated unaided by a person in a wheelchair, and I consider it likely that there are people who would be satisfied with this means of access into the pool. However, there will be people unable to use the stairs who for whatever reason would be unwilling to use the hoist, but where a ramp provides an unchallenging and familiar means of access.
- 5.4.5 Taking this into account I am of the view that the combination of hoist and stairs does not comply with Clause D1 to the extent required by section 118.

## 5.5 Management practice at the pool

- 5.5.1 The ramp was included in an amendment to the original consent and after the pool's construction. I acknowledge that there are concerns regarding the ramp being removable and reliant on management practices to ensure it is in place when the pool is open to members of the public.
- 5.5.2 I have previously considered management practices in a number of past determinations, such as Determination 2011/112<sup>9</sup> in which I stated:
- 4.4.1 In essence, buildings must comply with the performance criteria in the Building Code in their intended use, and this includes both current and future owners of the property. As a result, management practices cannot be used to achieve compliance (except in limited circumstances dictated by statute), because current owners cannot vouch for the behaviour of future ones."
- 5.5.3 I note that those previous determinations were in relation to the fencing of swimming and spa pools at private homes. I consider that public swimming pools, and other environments such as early childhood centres, are unique environments with a number of legislative and other requirements that rely heavily or solely on management practices to, for example, ensure the safety of people using the pools or the safety of the children in the childcare centre. Indeed the Fencing of Swimming Pools Act 1987 waives the need for safety barriers to pools where 'persons are employed and present to provide supervision of the pool whenever the pool is available for use'.
- 5.5.4 The matter of the amendment to the building consent for the installation of the ramp and the associated management practices is considered in further detail in a separate determination concerning the exercise of the authority's powers of decision in issuing the building consent and subsequent amendments (refer Determination 2014/040).
- 5.5.5 Both parties have made submissions raising reliance on management practices in regards to assistance with the use of the hoist and with the use of aquatic wheelchairs i.e. having a staff member 'stationed' at the hoist who is responsible for overseeing use of the hoist and assisting when needed, and the need for the aquatic chair to be removed from the pool and later returned for the user to leave the pool. I consider both practices form part of normal management of a public swimming pool.
- 5.5.6 Finally, I note that the decision herein is only in relation to this particular case and set of circumstances, and should not be taken to mean that a removable ramp to a new public pool is an acceptable means of providing an accessible route in the general case. It is clear from the submissions that the need to address access after the pool's construction, with the installation of a removable ramp, has caused difficulties for the pool owner. The provision of access ramps into pools that do not adversely affect a pool's use has been successfully carried out in construction of other aquatic centres, and I believe a similar outcome could have been achieved in this case if a suitable solution had been developed at the design stage.

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<sup>9</sup> Determination 2011/112 Compliance of a pool barrier with a gate opening inwards to the immediate pool area (Department of Building and Housing) 22 December 2011.

## **7. The Decision**

7.1 In accordance with section 188 of the Building Act 2004 I hereby determine that

- the hoist as installed to the main pool would not be sufficient by itself to comply with Clause D1 to the extent required by the Act under section 118; and
- the provision of the hoist along with the removable ramp complies with Clause D1 of the Building Code to the extent required by the Act under section 118; and
- and provision of a hoist in combination with the removable stairs would not comply with Clause D1 to the extent required by the Act under section 118.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 8 September 2014.

John Gardiner  
**Manager Determinations and Assurance**



## Appendix A

### A.1 The relevant sections of the Act

(sections 3(a)(ii) and 4(2)(k))

#### 3 Purposes

This Act has the following purposes:

(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—

...

(ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and ...

#### 4 Principles to be applied in performing functions or duties, or exercising powers, under this Act

...

(2) In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:

...

(k) the need to provide, both to and within buildings to which section 118 applies, facilities that ensure that reasonable and adequate provision is made for persons with disabilities to enter and carry out normal activities and processes in a building:

#### 7 Interpretation

*person with a disability* means a person who has an impairment or a combination of impairments that limits the extent to which the person can engage in the activities, pursuits, and processes of everyday life, including, without limitation, any of the following:

(a) a physical, sensory, neurological, or intellectual impairment:

(b) a mental illness

#### 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 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:

p) places of assembly, including auditoriums, theatres, cinemas, halls, sports stadiums, conference facilities, clubrooms, recreation centres, and swimming baths

**119** Acceptable solution 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 an acceptable solution

## A.2 Relevant provisions of the Building Regulations 1992 are:

**CLAUSE A2—INTERPRETATION**

In this building code unless the context otherwise requires, words shall have the meanings given under this Clause. Meanings given in the Building Act 1991 apply equally to the building code.

**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.

**Adequate** means adequate to achieve the objectives of the building code

**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.

**Functional requirement**

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

**Performance**

**D1.3.1** Access routes shall enable people to:

...

(c) move into spaces within buildings by such means as corridors, doors, stairs, ramps and lifts, ...

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

...

(c) have access to and within those spaces where they may be expected to work or visit, or which contain facilities for personal hygiene as required by Clause G1 Personal hygiene.

**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) ...
- (d) contain no thresholds or upstands forming a barrier to an unaided wheelchair user,
- (e) have means to prevent the wheel of a wheelchair dropping over the side of the accessible route,
- (f) have doors and related hardware which are easily used,
- (g) not include spiral stairs, or stairs having open risers,
- (h) have stair treads with leading edge which is rounded, and
- (i) have handrails on both sides of the accessible route when the slope of the route exceeds 1 in 20. The handrails shall be continuous along both sides of the stair, ramp and landing except where the handrail is interrupted by a doorway.

### A.3 The relevant New Zealand Standard NZS4121:2001

#### **1.5 Definitions interpretation**

##### 1.5.1 Definitions

ACCESSIBLE means having features that permit use by people with disabilities.

PEOPLE WITH DISABILITIES means people whose ability to be freely mobile or to access and use buildings is affected by mental, physical, hearing or sight impairment, such as:

- (a) An inability to walk;
- (b) Walking difficulties;
- (c) Reliance on walking aids;
- (d) Partial sightedness or total blindness;
- (e) Hearing disabilities;
- (f) Lack of co-ordination;
- (g) Reaching disabilities;
- (h) Manipulation disabilities;
- (i) Lack of stamina;
- (j) Difficulties in interpreting and reacting to sensory information;
- (k) Extremes of physical size;
- (l) Learning difficulties.

#### **4.2 Accessible route**

4.2.3 The accessible route includes paths, car parks, ramps, at least one public entrance, corridors, stairs, doorways and lifts within the building. For non-ambulatory people, the accessible route shall not incorporate any step, stairway, turnstile, revolving door, escalator or other impediment that would prevent it from being safely negotiated.

#### **4.3 General**

In order to achieve the objective of 4.1, people with disabilities shall be able to:

...

(d) move freely inside and to use the facilities within the building or facility, except as provided for in this part of the Standard;

## **12 – Places of assembly, entertainment and recreation**

### 12.3.1.2 Access to the pool

The swimming pool shall be available from an accessible route and unaided access to the water shall be possible from the poolside.

C12.3.1.2 A ramp that leads from the poolside into the pool is the preferred means of access to the water. A slope of 1:12 down to a water depth of 1200mm is acceptable

## Appendix B

### B.1 Relevant section of the US Department of Justice 2010 Standards for Accessible Design (the ADA guidelines)

(Note: the ADA guidelines refer to a ramp as “a sloped entry” and a hoist as “a pool lift”)

#### **242 and 1009 Swimming Pools, Wading Pools, and Spas**

**Accessible Means of Entry to Pools.** Section 242 of the 2010 Standards requires at least two accessible means of entry for larger pools (300 or more linear feet) and at least one accessible entry for smaller pools. This section requires that at least one entry will have to be a sloped entry or a pool lift; the other could be a sloped entry, pool lift, a transfer wall, or a transfer system (technical specifications for each entry type are included at section 1009).

...

**242.2 Swimming Pools.** At least two accessible means of entry shall be provided for swimming pools. Accessible means of entry shall be swimming pool lifts complying with 1009.2; sloped entries complying with 1009.3; transfer walls complying with 1009.4; transfer systems complying with 1009.5; and pool stairs complying with 1009.6. At least one accessible means of entry provided shall comply with 1009.2 or 1009.3.

**EXCEPTIONS:** 1. Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, no more than one accessible means of entry shall be required provided that the accessible means of entry is a swimming pool lift complying with 1009.2 or sloped entry complying with 1009.3.

...

**Advisory 242.2 Swimming Pools.** Where more than one means of access is provided into the water, it is recommended that the means be different. Providing different means of access will better serve the varying needs of people with disabilities in getting into and out of a swimming pool. It is also recommended that where two or more means of access are provided, they not be provided in the same location in the pool. Different locations will provide increased options for entry and exit, especially in larger pools.

...

(I note that the ADA guidelines also provide useful guidance on hoists – refer section 1009.2 Pool lifts)

### B.2 Relevant sections of Australian Disability (Access to Premises - Buildings) Standards 2010

#### **D3.10 Swimming pools**

- (1) Not less than one means of accessible water entry/exit in accordance with Part D5 must be provided for each swimming pool required by Table D3.1 to be accessible.
- (2) An accessible entry/exit must be by means of:
  - (a) a fixed or movable ramp and an aquatic wheelchair; or

- (b) a zero depth entry at a maximum gradient of 1:14 and an aquatic wheelchair; or
  - (c) a platform swimming pool lift and an aquatic wheelchair; or
  - (d) a sling-style swimming pool lift.
- (3) Where a swimming pool has a perimeter of more than 70 m in length, at least one accessible water entry/exit must be provided by a means specified in paragraph (2) (a), (b) or (c).

...

## **Part D5 Accessible water entry/exit for swimming pools**

### **D5.1 Scope**

This Part contains the requirements for types of accessible water entry/exit for swimming pools.

### **D5.2 Fixed or moveable ramp**

A fixed or moveable ramp must:

- (a) have a slip-resistant surface; and
- (b) have a maximum gradient of 1:14; and
- (c) have handrails complying with the requirements for ramps in AS 1428.1, installed on both sides of the ramp; and
- (d) have kerbs in accordance with the requirements for ramps in AS 1428.1; and
- (e) extend to a depth of not less than 900 mm and not more than 1 100 mm below the stationary water level; and
- (f) have landings in accordance with the requirements for ramps in AS 1428.1, with a landing located at the bottom and top of each ramp and a landing must be located at a level between 900 mm and 1 100 mm below the stationary water level.