



## Determination 2016/036

# Regarding access for people with disabilities to the lower level of a proposed rowing club building at Raven Quay, Kaiapoi

### Summary

This determination considers whether a lift is required to the lower level of a proposed two-storey rowing club building. The determination considers compliance against the relevant Acceptable Solution and what constitutes reasonable and adequate access for people with disabilities to the lower level. The determination also considers access to areas adjacent the building.

### 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 this determination are:
  - the designer, D Chilton, who is the licensed building practitioner concerned with the relevant building work and who applied for the determination (“the designer”). The designer was also the agent for the owner of the building for the purpose of the building consent application
  - the owner of the building, Cure Boating Club “the owner”
  - Waimakariri District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from a difference in views between the authority and the designer as to whether a lift is required to be installed in a proposed rowing club building to provide access for people with disabilities to the lower level.
- 1.4 The matter for determination<sup>2</sup> is therefore whether the building work as proposed without a lift will comply with Clauses D1 Access routes of the Building Code (First Schedule, Building Regulations 1992) to the extent required by section 118 of the Act<sup>3</sup>.
- 1.5 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I have not considered compliance of the proposed building with any other aspects of the Act or other clauses of the Building Code.

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

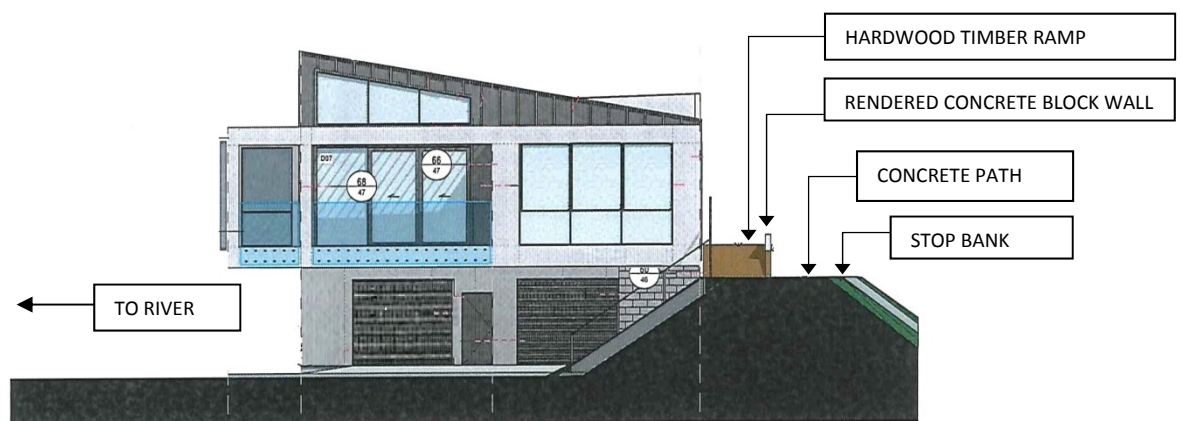
<sup>2</sup> Under section 177(1)(a) of the Act.

<sup>3</sup> In this determination references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code.

- 1.6 I 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.
- 1.7 The relevant sections of the Act and clauses of the Building Code referred to in this determination are set out in Appendix A.

## 2. The proposed building and background

- 2.1 The subject building is proposed to replace an existing building that serves as club rooms for a rowing club. The site is situated on sloping ground between Raven Quay and the Kaiapoi River. There is a stop-bank between Raven Quay and the building; the stop-bank currently has an unpaved pathway along its top and my understanding is that this will at some later date be paved. The stop-bank meets the footpath at the intersection of Raven Quay and Williams Street (“the bridge”). Access to the top of the stop-bank at the location of the building is by way of a set of existing concrete steps.
- 2.2 The proposed building consists of two levels. The plans describe the levels as first floor and ground floor. Given that first floor includes the main entrance and is at street level, for the purpose of this determination I will use the terms “street level” and “lower level” respectively. The levels consist of:
- street level: 444m<sup>2</sup> (based on plan dimensions) – providing the main entrance at street level and including a viewing deck, lounge, bar and kitchen, sanitary facilities, gym, office and store
  - lower level: 393m<sup>2</sup> (based on plan dimensions) – boat store and workshop and providing access to and from the river.
- 2.3 The plans show a ramp providing access from an “accessible route” (which I understand to be the path along the top of the stop-bank) to the main entrance, as well as a set of concrete steps from the accessible route down to a new concrete hardstand at the lower level adjacent to the river.



**Figure 1: Elevation (not to scale)**

- 2.4 The lower level includes a roller door providing access for boats and people to and from the riverside, and a single door at the northwest end into the storage area.

- 2.5 Access between floors is by way of a set of accessible internal stairs from the gym area at the street level to the lower level boat store/workshop. The designer has advised that the gym area can be shut off when the building is used for functions in order to restrict access to the gym and the boat store.

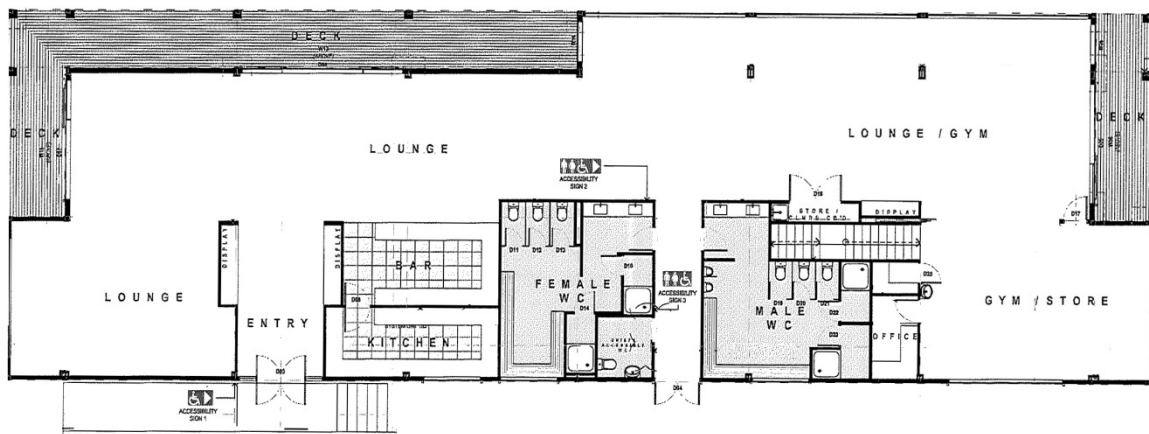


Figure 2: Street level plan (not to scale)

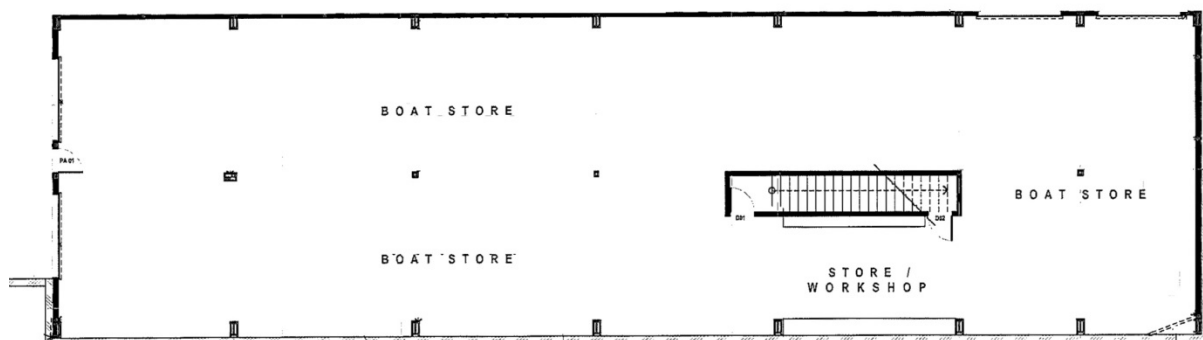


Figure 3: Lower level plan (not to scale)

- 2.6 At some time in 2015 the designer applied for a building consent.
- 2.7 A consultant acting on behalf of the authority requested further information<sup>4</sup>. In regards to access provisions between levels the consultant stated:
- ... the proposed building is two levels with an occupancy load of >40, [Clause D1.3.4 c) iii) of the Building Code] requires a mechanical lift installation. I suggest you consult with the Barrier Free trust about this design.
- 2.8 In a letter dated 19 August 2015 the designer wrote to the authority regarding the issue of a lift being required, putting forward the view that ‘there would be no benefit in putting a lift into the building for access to the boat storage area as this is not a place for public use and it is also not the intended access down to the water’s edge’. The designer went on to note (in summary):
- The rowing club does not cater for adaptive rowing for people with disabilities; it does not have the adapted boats required and there are other clubs providing this within the Canterbury Rowing Association.

<sup>4</sup> I have not seen a copy of the original letter from the consultant that raised the matter of the lift; the consultant’s views as quoted in paragraph 2.7 were expressed in a response to a request for information dated 2 December 2015.

- Rowers using the lower level will be able bodied and capable of using the stairs to reach the sanitary facilities on the street level.
- The street level will occasionally be used for functions, and the access to the gym and stairs to the lower level will be closed off during those times.
- Members of the public using the street level and who are not rowers do not need to access the boat storage on the lower level, and it is not desirable for public to have access to or through the boat storage area.
- There is currently access for vehicles and people using wheelchairs down to the water's edge from the bridge; the rowing club is not designed as a public access route to the water's edge.

2.9 An application for a determination was received by the Ministry on 29 April 2016.

### **3. The submissions and the draft determination**

3.1 With the application, the designer provided copies of:

- the request for information (RFI) from the authority's consultant, dated 2 December 2015
- the designer's letter to the authority, dated 19 August 2015
- plans and elevations of the proposed building.

3.2 In response to a request on 16 May 2016, the designer clarified the order of events regarding the dates of the RFI and the designer's letter as noted in paragraph 2.7.

3.3 A draft determination was sent to the parties and ODI for comment on 9 June 2016. The designer accepted the draft on 10 June 2016.

3.4 After a reminder on 28 June 2016, the authority responded to the draft on 14 July 2016 (in summary):

- Objective D1.1(c) 'states the people with disabilities are able to enter and carry out normal functions within buildings.' '...it is a normal function to be able to access the storage area and waterfront to be able to greet rowers and see the boats with other members of the public'
- 'The assessment of requiring a lift was based on the floor area of the building on the [street] level having a greater occupancy than 40.' '...a total design occupancy of 40 or more people on the [street level] were interpreted as being applicable to this building and a lift would be required.'
- 'Visitors to the building should be able to access the lower level of the building irrespective of their physical capabilities and this has been alluded to by the architect confirming this by providing an accessible stair between the two levels.'

3.5 The designer responded to the authority's submission on 14 July 2016, stating that the 'stair was designed as a common stairway ... and was only changed to an accessible stair during correspondence [with the authority]'. Access through the storage area was never intended as a means of access to the water's edge, and there were risks associated with the public having access to the lower level storage area.

3.6 The owner responded to the authority's submission on 15 July 2016. The owner said (in summary):

- Full access was provided to the street level.
- The lower level is at riverbed level and is purely for the storage and accessing of rowing boats, oars and coaching boats, and is for the use of Club members only. The stairs are so that Club rowers can access the toilet and changing facilities.
- 'The club does not cater for adaptive rowers but there are clubs in Christchurch that do - they require purpose built boats and facilities.'
- 'If there is ever any public use of the upstairs, [the lower level] will be locked off so as to avoid any public access to rowing plant etc.'

3.7 The ODI responded on 15 July saying it had no comment to make on the draft.

## 4. Discussion

4.1 There is no dispute that the proposed building is one to which section 118 of the Act applies under Schedule 2(f); it is a new building that houses training facilities for rowing club members, storage for boats, an office and clubrooms that will be used for functions, and associated amenities. The matter in dispute is whether a lift to the lower floor is required to satisfy the provisions of Clause D1 to the extent required by section 118.

4.2 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.

4.3 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 and processes to the fullest extent that their abilities allow. Reasonable and adequate provision by way of access is required for people with disabilities to carry out 'normal activities' associated with working in or visiting the proposed building.

4.4 In this case I consider that the 'normal activities' carried out in the building would be those activities carried out by members of the rowing club related to rowing training, storage and maintenance of the boats, the administration of the club, and the use of the club facilities and amenities – being the lounge and viewing deck, bar and kitchen area, gym, and sanitary facilities. Visitors may be expected to be present in the lounge and viewing deck areas, bar and kitchen area, and to use the sanitary facilities. The designer has submitted that when the club is used for functions the street level gym and office area, and the lower level storage/workshop area would be restricted from use by those people who are not members of the club.

4.5 The relevant clause in regards to access is Clause D1. 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.

- 4.6 Clause D1.3.4 sets out additional requirements for Accessible Routes (refer Appendix A.2), and includes the requirement for a lift in buildings two storeys high (or more) and where the design occupancy is 40 or more people on the level serviced by the lift. While Clause D1.3.4(b) refers to the provision of lifts and design occupancy in respect of “upper floors”, I am of the view that this should be interpreted as applying to any level of a building that would otherwise be inaccessible for people with disabilities who cannot use accessible stairs.
- 4.7 The proposed building consists of two levels, and the design occupancy of the street level is greater than 40 people. The proposed building is compliant in respect of accessible routes up to and within the street level of the building.
- 4.8 One means of establishing compliance with Clause D1 is by way of NZS 4121<sup>5</sup>, which is cited in the Act as an Acceptable Solution. Alternatively, I must consider whether the proposed means of access to the lower level without a lift can be considered ‘reasonable and adequate’.

#### **Acceptable Solution NZS 4121**

- 4.9 Paragraph 9.1.3.2 of NZS 4121 says ‘a lift is not required when ... buildings are not more than two storeys high and have a gross floor area of the *upper floor* of not less than 400m<sup>2</sup>’ (my emphasis). Clearly the standard contemplates entry at the lower level of a building with means of access to any floors above.
- 4.10 As noted in paragraph 4.6 above, in respect of this building I consider the lower level to be the equivalent of the “upper floor” described in paragraph 9.1.3.2, in that it is the level that would otherwise be inaccessible for people with disabilities who cannot use accessible stairs.
- 4.11 At 393m<sup>2</sup> the lower level is less than the 400m<sup>2</sup> area for which a lift is required under paragraph 9.1.3.2, accordingly when NZS 4121 is used as the means of compliance then the requirements of Clause D1 have been achieved.
- 4.12 While I have come to the conclusion that the proposed building without a lift complies with Clause D1, in the following paragraphs I consider the proposed access in terms of what is ‘reasonable and adequate’, and whether there is any contradiction in the conclusions reached.

#### **Reasonable and adequate and adequate access to the lower level**

- 4.13 In previous determinations I have considered the intended use<sup>6</sup> of part of a building and the provision of access that would be considered “reasonable and adequate” to that part of the building. For example, in Determination 2016/007<sup>7</sup> regarding access provisions to three pools within an aquatic centre, I considered that the use of each of the pools and the means of access could be considered separately.
- 4.14 In previous determinations I have considered the intended use<sup>8</sup> of part of a building and the provision of access that would be considered “reasonable and adequate” to

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

<sup>6</sup> Under section 7 of the Act, the definition of “intended use”, in relation to a building includes ‘(i) any reasonably foreseeable occasional use that is not incompatible with the intended use’

<sup>7</sup> Determination 2016/007 Regarding the code compliance of proposed access for people with disabilities to three swimming pools in a proposed aquatic centre at Merton Road, St Johns, Auckland (24 February 2016) Ministry of Business, Innovation and Employment.

<sup>8</sup> Under section 7 of the Act, the definition of “intended use”, in relation to a building includes ‘(i) any reasonably foreseeable occasional use that is not incompatible with the intended use’

that part of the building. For example, Determination 2005/166<sup>9</sup> considered that a lift to an upper floor in a meat processing plant was not required because people with disabilities could not be expected to work on or visit that part of the building. Similarly, in Determination 2016/007<sup>10</sup> concerning access to three pools in an aquatic centre I concluded that what was reasonable and adequate access to each pool was dependent on the attributes of the pool concerned.

- 4.15 The intended use of the lower level is for storage and maintenance of the boats and associated equipment. The designer has submitted that the lower level of the proposed building is not intended to be used by members of the public who are not members of the rowing club, and the current owner of the building does not have adapted boats for use by people with disabilities<sup>11</sup>.
- 4.16 I accept the designer's submission in respect of the intended use of the lower level of the proposed building. People accessing the lower level for the purpose of storing and maintaining boats and equipment need to be physically able to perform those activities. That being the case, the provision of a set of accessible stairs between levels is reasonable and adequate; a lift is not required. If the rowing club provided adaptive rowing, accessibility to the location where people enter the boat would be required along with suitable facilities, such as changing rooms, situated in a convenient location.
- 4.17 While a lift is not required to meet the requirements of the Act, I consider that the principles of accessibility should still be maximised. The designer has submitted that the intention is for the internal stairs to be designed as accessible stairs.

#### **Access to the waterfront and the hardstanding area**

- 4.18 The proposed building is located between a stop-bank and the river, with a hardstanding area around the river side of the building, providing access from the building to the water in which boats are launched. The intended purpose for the hardstanding area is for use by rowing club members to facilitate the movement of people and boats between the building and the river.
- 4.19 The authority contends that lift access is also required to the lower level to provide access to the waterfront and the hardstanding area in order for people to be able to greet rowers and see the boats with other members of the public.
- 4.20 Landscaping surrounding buildings is included within the definition of building for the purpose of sections 118 to 120, and I must consider whether without a lift within the building compliance with the performance requirements set out in Clause D1 is achieved in terms of the provision of 'reasonable and adequate access'.
- 4.21 In a previous determination (2010/089), I considered access for people with disabilities to a sunken garden within a larger landscaped area in the centre of a business park. I assessed the activities and experiences that people might be seeking when they used the gardens, and came to the conclusion that the lack of a ramp to the sunken garden would not prevent people with disabilities who are unable to negotiate the stairs from fully enjoying the experiences available within the garden. There was

<sup>9</sup> *Determination 2005/166 Access for people with disabilities to the upper floor of the AFFCO beef processing plant, Horotiu* (19 December 2005) Department of Building and Housing

<sup>10</sup> *Determination 2016/007 Regarding the code compliance of proposed access for people with disabilities to three swimming pools in a proposed aquatic centre at Merton Road, St Johns, Auckland.* (24 February 2016) Ministry of Business, Innovation and Employment.

<sup>11</sup> I take the designer references to "people with disabilities" to be those for whom the activity of rowing would not be feasible without adapted equipment. I note that the term "people with disabilities" as defined in Clause A2 of the Building Code and New Zealand Standard NZS 4121 is much broader than is used in this determination.

no experience or advantage that would be gained by a person being able to access the sunken garden that was not readily available in the immediate proximity.

- 4.22 I am of the view that a similar assessment can be made in this case. Those who are attending with club members but as spectators rather than active participants, are able to greet rowers and see the boats from the viewing deck which is accessed from the street level. In this respect there is no loss in terms of their ability to participate in 'normal activities and processes' as spectators.
- 4.23 In coming to this view, I note that I have only considered those spectators that attend with club members; there is no requirement for the rowing club to provide access to the riverside as a public amenity.
- 4.24 Ramped access to the waterfront adjacent the building would of course benefit the wider community. I strongly suggest that the owner and the local authority, who I assume to be the owner of the adjacent land, consider the provision of an accessible route in conjunction with the external steps proposed in the building consent and the paving of the pathway noted in the designer's submission.

## **5. The decision**

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building as proposed without a lift complies with Clause D1 of the Building Code to the extent required by section 118 of the Act.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 2 August 2016.

John Gardiner  
**Manager Determinations and Assurance**



## Appendix A

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

#### **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** 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

### A.2 Relevant provisions of the Building Code include:

#### **Clause A2—Interpretation**

**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**

**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:

...

- (b) include a lift complying with Clause D2 Mechanical installations for access to upper floors where:
  - (i) ...
  - (iii) buildings are two storeys high and have a total design occupancy of 40 or more persons on the upper floor, ...

A.3 Relevant provisions of NZS 4121 include:

**9.1.3.2 Two and three storey buildings**

Where 9.1.3.1 is not applicable a lift is not required when:

- (a) Buildings are two storeys high and have a gross floor area of the upper floor of less than 400 m<sup>2</sup>;
- (b) Buildings are three storeys high and have a gross floor area of the upper floors of less than 500 m<sup>2</sup>;

provided that the ground floor complies with the requirements of this Standard and the upper floors have access for ambulant people with disabilities.