

# Determination 2025/026

## An authority's decision to refuse to grant a waiver of the Building Code for multiple isolated steps on access routes

129 Ilam Road, Ilam, Christchurch

### Summary

This determination considers an authority's decision to refuse to grant a building consent subject to a waiver from Building Code clause D1.3.3(i) for the proposed construction of isolated steps between multiple bedrooms and prefabricated 'pods' containing sanitary fixtures at a multi-storey university student accommodation building. The determination will consider the intended use of the building and whether the steps are on access routes.

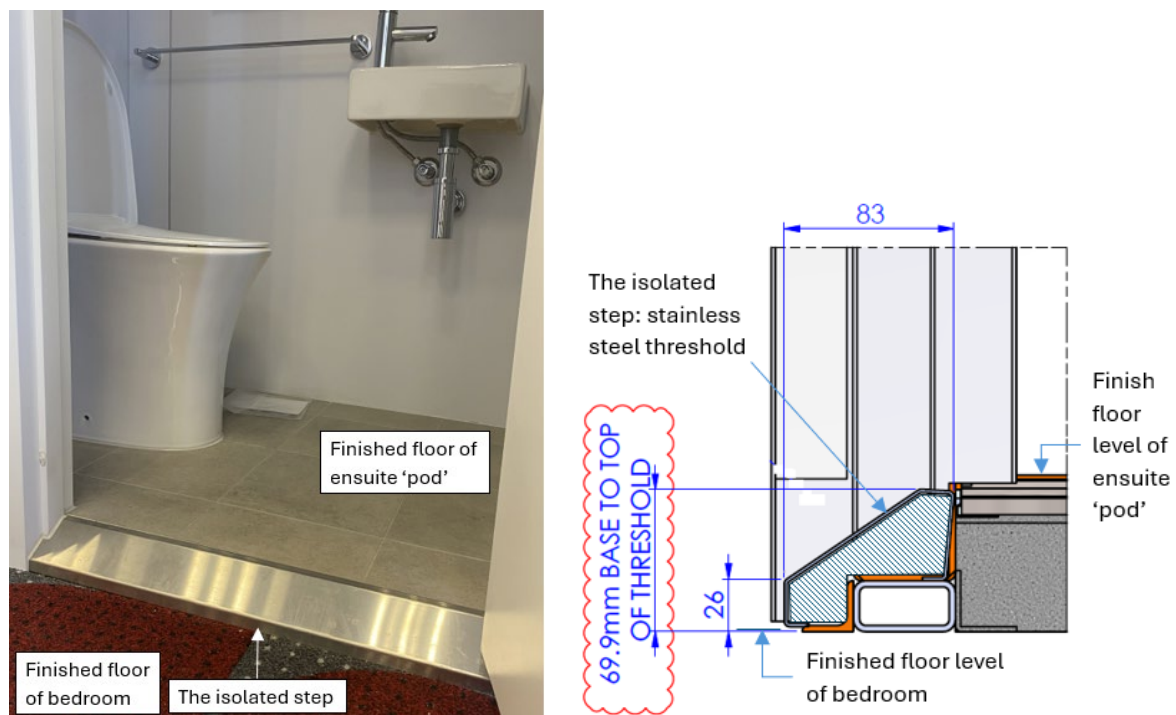


Figure 1: The bedroom and ensuite 'pod' arrangement with isolated step

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at [www.legislation.govt.nz](http://www.legislation.govt.nz). Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at [www.building.govt.nz](http://www.building.govt.nz).

## 1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Andrew Eames, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.<sup>1</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. University of Canterbury, the owners of the property (“the owner”), who applied for this determination
  - 1.2.2. Christchurch City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The item of dispute relates to the proposed construction of isolated steps between 270 individual bedrooms and adjoining prefabricated ensuite ‘pods’ (where each ‘pod’ contains several sanitary fixtures) at a new multi-storey student accommodation building.<sup>2</sup> The construction of the building is the subject of a building consent.<sup>3</sup>
- 1.4. The owner applied to the authority for a waiver<sup>4</sup> from clause D1.3.3(i) regarding the proposed construction of the isolated steps. However, the authority did “not consider it [was] reasonable to grant the building consent with a waiver of D1.3.3(i)”.<sup>5</sup>
- 1.5. The matter to be determined, in terms of section 177(1)(b) and (3)(a), is the authority’s decision to refuse to grant an application for a building consent subject to a waiver from clause D1.3.3(i) for the isolated steps. The determination will consider the intended use of the building and whether the isolated steps are on access routes.

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<sup>1</sup> The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

<sup>2</sup> The matter to be determined does **not** include the 13 accessible bedrooms and their individual adjoining accessible shower rooms.

<sup>3</sup> Number BCN/2024/8150, stage 3 of 3.

<sup>4</sup> Pursuant to section 67.

<sup>5</sup> I note the building consent has subsequently been granted by the authority based on another proposal to construct internal ramps between each of the student bedrooms and the adjoining ‘pods’; however, the compliance of this proposal is outside the matter to be determined.

## 2. The building work and background

- 2.1. The new student accommodation building is intended to provide facilities for 283 students, including 270 standard bedrooms and 13 accessible bedrooms. Each standard bedroom is served by an ensuite constructed using a prefabricated modular 'pod' ("**the pods**"). The pods contain a toilet, wash-hand basin, and a shower.
- 2.2. Access into each pod is from the adjoining standard bedroom. The finished floor level of the pods is approximately 70mm higher than the finished floor in the standard bedroom, creating an isolated step. The original proposal to form the isolated step involved the use of a proprietary angled stainless-steel threshold at the door opening to the pods (refer to figure 1)<sup>6</sup>.
- 2.4. On 15 October 2024, the owner lodged an application for building consent with the authority for the construction of the student accommodation building.<sup>7</sup> The application relied on demonstrating compliance with Building Code Clause D1 *Access routes* based on Acceptable Solution D1/AS1.<sup>8</sup>
- 2.5. On 22 November 2024, the applicant applied to the authority for a 'Waiver for compliance under [clause] D1.3.3(i)' in relation to the proposed isolated steps. However, on 4 December 2024, the authority refused the applicant's application for a waiver.

## 3. Submissions

### The applicant

- 3.1. The applicant submits (in summary):
  - 3.1.1. The building is student accommodation, intended for long-term residence under an annual contract similar to rental accommodation (rather than a hostel intended for shorter occupation periods) where occupants would become familiar with their surroundings, reducing the risk of tripping.
  - 3.1.2. In previously consented examples in New Zealand, the building classification for a hall of residence is 'Communal Residential'.

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<sup>6</sup> Figure 1 has been reproduced from the building consent plans. The dimensions are in millimetres. The photograph is of a prototype of the proposed construction.

<sup>7</sup> I have not received a complete copy of the application for building consent, including the Form 2, and all the plans and specifications that accompanied the application.

<sup>8</sup> Acceptable Solution D1/AS1, second edition, amendment 6, effective on 1 January 2017.

- 3.1.3. The proposed angled threshold design is in accordance with the design requirements from NZS 4121<sup>9</sup>, providing a practical solution to safeguard people from injury, although it 'is not a standard design' of the pods.
- 3.1.4. The stainless-steel threshold is visually contrasting compared to the adjoining floor finishes (dark coloured tiled bathroom floor and the bedroom carpet), which clearly defines the change in level.
- 3.1.5. The design does not obstruct the access route within the bedroom, and the functional requirement of free movement is met.
- 3.1.6. If the ensuite bedroom is classified as a 'household unit'<sup>10</sup> then the angled threshold is a compliant solution under item 1.3.1 of Acceptable Solution D1/AS1. However, if the student accommodation falls under 'specialist accommodation'<sup>11</sup> then the angled threshold is a variation (ie an 'alternative solution' to D1/AS1).
- 3.1.7. The standard installation method for the bathroom pods involves surface fixing the pods to a flat slab. Avoiding a recessed slab in the bedrooms was a deliberate decision informed by lessons learned from failures at other projects around New Zealand where recessed slabs created issues with moisture and potential mould accumulation that are difficult to address once the pods are installed.
- 3.1.8. Similar angled thresholds have been approved for other building consent applications granted by another building consent authority for projects including hotels and student accommodation buildings.
- 3.1.9. The owner approached an accessibility consultant for comment; it endorsed the use of the 70mm high 'stepped entry'.

## The authority

- 3.2. The authority submits (in summary):
  - 3.2.1. Clause D1.3.3(i) requires that 'Access routes shall not contain isolated steps', and this is applicable to the intended use of this building, which is classified as 'communal residential'. The limits on application for this clause do not apply to communal residential buildings.
  - 3.2.2. The authority does not consider it reasonable to grant a waiver of clause D1.3.3(i) because this performance requirement is fundamental to meeting

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<sup>9</sup> New Zealand standard NZS 4121:2001 *Design for Access and Mobility – Buildings and Associated Facilities*, sub-paragraph 7.1.4.2 'ramped thresholds'.

<sup>10</sup> The owner referred to the definition of 'household unit' in Acceptable Solution D1/AS1.

<sup>11</sup> The owner was referring to the term 'specialised accommodation' used in sub-part (b) of the definition of 'household unit' in Acceptable Solution D1/AS1.

the objectives of clause D1 to 'safeguard people from injury during movement into, within and out of buildings' and the functional requirement that 'buildings shall be provided with reasonable and adequate access to enable safe and easy movement of people'.

- 3.2.3. A sudden and isolated change of level on an access route, such as the proposed 70mm step, creates a risk of injury that can be prevented in the design of a new communal residential building.
- 3.2.4. The extent of the non-compliance is significant, as the isolated step feature would be replicated in 270 locations within the building and increases the likely risk of injury for the occupants.
- 3.2.5. Reasonably practicable solutions exist to meet the performance requirements of clause D1.3.3(i). This is demonstrated by the design of the accessible accommodation units in the same building.<sup>12</sup>
- 3.2.6. While the applicant has stated the use of the building is comparable to a 'household unit', the Building Code definition<sup>13</sup> of a 'household unit' expressly excludes hostels, boarding houses, or other specialised accommodation, which is the relevant classification for student accommodation. Although the students may stay for extended periods of time and become familiar with the isolated steps, the units could also be used by other persons for more transient accommodation (eg during summer breaks) who would be unfamiliar with the building.
- 3.2.7. There are no special or unique circumstances justifying non-compliance with the Building Code requirement to avoid isolated steps on access routes. The applicant's reasoning for not using a recessed floor structure to accommodate the pods could be readily mitigated with other design solutions.
- 3.2.8. In this case the granting of a waiver to clause D1.3.3(i) would not be consistent with the principle in Section 4(2)(b) of the Act, which emphasises the need to ensure that any harmful effect on human health resulting from the use of building designs is prevented or minimised.

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<sup>12</sup> Based on constructing level thresholds between the 13 accessible shower rooms adjoining the accessible bedrooms.

<sup>13</sup> Clause A2 *Interpretation*.

## 4. Discussion

- 4.1. The matter to be determined is the authority's decision to refuse to grant an application for a building consent subject to a waiver of the Building Code (pursuant to section 67)<sup>14</sup> requested by the owner in its building consent application.
- 4.2. The owner proposed to incorporate isolated steps on the access routes between multiple student accommodation bedrooms and their adjoining ensuite facilities ('pods') which would otherwise be prohibited by clause D1.3.3(i). Therefore, the owner requested the authority waive the requirements of D1.3.3(i) in relation to all 270 individual isolated steps.
- 4.3. Building Code Clause D1 *Access routes* provides a general set of requirements to safeguard people from injury, for example, during movement into, within and out of buildings.<sup>15</sup>
- 4.4. Clause D1.3.3(i) is one of these requirements. It provides:

**D1.3.3**            Access routes shall:

...

(i)            not contain isolated steps,

...

- 4.5. The authority refused to waive clause D1.3.3(i) in the manner requested by the owner on the basis it "does not consider it reasonable to grant the building consent" with such a waiver.

### The use of the building

- 4.6. First, I need to consider the intended use (linked to classified use<sup>16</sup>) of the building and how this may impact on the requirements to comply with clause D1 in this case.
- 4.7. Previous determinations have considered the inter-relationship between intended use and classified use of a building.<sup>17</sup>

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<sup>14</sup> Section 67(1) provides territorial authorities with a discretionary power to waive or modify the Building Code as part of the building consent process. This caters for situations where requiring strict compliance with the Building Code would be inappropriate or unreasonable.

<sup>15</sup> Refer to clause D1.1(a) in addition to the functional requirement D1.2.1.

<sup>16</sup> Clause A1

<sup>17</sup> For example, previous determination 2018/065 *Regarding the classified use of buildings used as accommodation under the Recognised Seasonal Employer Scheme* (dated 19 December 2018), refer to sub-section 5.2 of that determination.

- 4.8. In this case the building is one intended to be used for students to reside in where limited assistance or care is extended to the principal users.<sup>18</sup> This is evident in the building consent plans which detail a 'reception' area and 'staff' facilities (kitchen, lockers, toilet)<sup>19</sup>; these indicate the students are provided with a measure of assistance or care by staff working from the building.
- 4.9. This aligns with the classified use of 'communal residential'<sup>20</sup>, and applies to a residential building under 'community service', an example of which includes 'hall of residence'<sup>21</sup>. Although both parties refer to 'communal residential' in their submissions, I note the owner has also considered whether the building is possibly a 'household unit' or other 'specialist accommodation'. However, I have already reached the conclusion the student accommodation is one to which the principal users (the students) are provided with assistance or care by staff. Therefore, the appropriate classified use is 'communal residential'.
- 4.10. Having determined the classified use, I consider how this may affect compliance with clause D1, specifically whether the 'limits of application' set out in clause D1.3.3(i) apply.<sup>22</sup> The classified use of 'communal residential' ('community service') is not included in the 'limits of application' associated with clause D1.3.3(i), therefore, the new student accommodation building in this case is subject to the requirements of that clause.

## Access routes

- 4.11. I will now consider if the access routes within the building extend to the pods.
- 4.12. Clause A2 *Interpretation* defines an 'access route' as 'a continuous route that permits people...to move...between spaces within a building', and clause D1.3.1(c) provides 'access routes shall enable people to...move into spaces within buildings by such means as corridors, doors, stairs, ramps and lifts'.
- 4.13. The only means of entering the pods is from each of the adjoining bedroom spaces. Each bedroom is accessed from a corridor, and each floor of the building is accessed via internal stairs and lifts which connects the ground floor to all upper levels. These features provide a continuous route for persons to move within the building, between floors, and access the individual bedroom spaces and the pods.
- 4.14. Each pod is a separate space and construction from that of the adjoining bedrooms ie they are separated by walls and a door (albeit the pods are connected to services

<sup>18</sup> Clause A2 *Interpretation* defines 'principal user' as 'a member of the primary group for which a building was constructed....', in this case, the students residing in their accommodation building.

<sup>19</sup> For example, as detailed on building consent plan RE53\_A1-101 Revision H, dated 11 September 2024.

<sup>20</sup> Clause A1 *Classified Uses*, item 3.0.

<sup>21</sup> Clause A1, item 3.0.2.

<sup>22</sup> Performance D1.3.3(i) shall not apply with detached dwellings or within household units of multi-unit dwellings, or to outbuildings and ancillary buildings.

provided throughout the building, for example, electrical and water supplies, mechanical ventilation, and foul water plumbing).

The pods do form part of the access route to allow people to enter and use the sanitary fixtures contained within them. Therefore, clause D1.3.3(i) does apply.

### **Factors to consider when granting a waiver or modification**

- 4.15. I consider that Building Code requirements may be waived or modified under section 67(1) where there are compelling reasons to do so, and where it is appropriate and reasonable in the circumstances.<sup>23</sup>
- 4.16. Determination 2015/010 describes general factors to consider when deciding whether to waive or modify the Building Code.<sup>24</sup> These are (in summary):
- 4.16.1. Whether the related objective and functional requirements in the Building Code are met despite the proposed building work not complying with performance criteria.
  - 4.16.2. The extent to which the proposed building work does not comply with the Building Code and the consequences of such non-compliance.
  - 4.16.3. Whether there are any other reasonably practicable solutions which would result in the proposed building work complying fully with the Building Code.
  - 4.16.4. Any special or unique circumstances which justify the waiver or modification.
  - 4.16.5. The extent to which the waiver or modification is consistent with the purposes and principles of the Act.

### **Whether the related objective and functional requirements are met despite the waiver**

- 4.17. The objective for clause D1.3.3(i) is set out in clause D1.1(a); this is to safeguard people from injury during movement into, within and out of buildings. The functional requirement for clause D1.3.3(i) is set out in clause D1.2.1; that buildings shall be provided with reasonable and adequate access to enable safe and easy movement of people.
- 4.18. Isolated steps present an injury risk as they create a sudden change in level that can cause a person to stumble and fall. The design of the isolated steps includes short, smooth, sloping metal surface. As such, a person could trip, slip and fall when

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<sup>23</sup> Previous determinations have taken this approach, for example, 2015/010 and 2023/040.

<sup>24</sup> Determination 2015/010, paragraph 7.3.3.



exiting the pods, in the same way they are likely to lose their footing, trip, and fall forwards when accessing the pods.

- 4.19. I am of the view the isolated steps fall short of meeting the objective and functional requirements that relate to clause D1.3.3(i). I consider it likely persons would trip and fall meaning avoidable injuries can occur. Consequently, if the waiver was granted, people would not be safeguarded from injury or be provided with safe and easy movement between the standard bedrooms and the pods.

#### **Extent and consequences of non-compliance with the Building Code**

- 4.20. Clause D1.3.3(i) explicitly prohibits the use of isolated steps. The requested waiver would negate that prohibition entirely so should be treated carefully. If granted, the requested waiver would result in tripping hazards where, in the usual course of events, they would not exist. Tripping and falling will can result in injury.
- 4.21. I have also taken into consideration there would be 270 isolated steps on multiple access routes throughout the building. These would affect a similar number of persons residing in the student accommodation, as well as any visitors and staff.
- 4.22. I consider the extent and consequences of the non-compliance have not been addressed to the extent that would justify a waiver or modification

#### **Other reasonably practicable solutions**

- 4.23. Although I have not been provided with the relevant design detailing, a “level ensuite threshold” solution is being used between the accessible bedrooms and their adjoining accessible shower rooms. As such, it appears there is another reasonably practicable solution which would not contravene clause D1.3.3(i).
- 4.24. I have taken into consideration the owner’s submission regarding apparent issues with moisture and potential mould accumulation on other projects using similar pods.<sup>25</sup> However, that does not necessarily mean an appropriate design solution to address such issues is unachievable, nor is it clear what features of the construction would prevent other solutions.

#### **Special or unique circumstances**

- 4.25. I consider there are no special or unique circumstances which support waiving D1.3.3(i) in the manner requested by the owner.

#### **Consistency with the purposes and principles of the Act**

- 4.26. The purposes and principles in the Act are relevant when considering whether to waive clause D1.3.3(i) under section 67(1).

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<sup>25</sup> Refer to paragraph 3.1.7.

- 4.27. In respect of section 67(1) an authority should take into account the purposes in section 3 and the principles in section 4.
- 4.28. Having considered the purposes in the Act, I find the specific requested waiver in this case is inconsistent with section 3(a)(i); this provides the setting of performance standards for buildings to ensure that people can use buildings safely and without endangering their health. In this regard, I have already noted the risks posed to people's health and safety from the proposed isolated steps.<sup>26</sup>
- 4.29. Further, I consider the requested waiver is inconsistent with the principle in section 4(2)(b). That principle requires territorial authorities and other specified entities to 'ensure that any harmful effect on human health resulting from the use of particular building products, building methods, or building designs, or from building work, is prevented or minimised'. I consider the design for the isolated steps would likely, on the basis of the normal activities and use expected within the bedrooms and the pods, have a harmful effect on human health, such as injuries from tripping, and falling.

**Conclusion (whether the requested waiver is appropriate)**

- 4.30. Applying the factors above to the circumstances in this case, the test under section 69 is not met. Therefore, I confirm the authority's decision to refuse to grant the building consent subject to the waiver requested by the owner.

**A further matter**

- 4.31. I note the owner refers to examples of other buildings in New Zealand where similar pods and isolated steps have been constructed. The matter for determination is specific to this case and limited to the construction of the new student accommodation building at Ilam Road and the decision by the authority to refuse to grant a building consent subject to a waiver of clause D1.3.3(i) related to that property. Although examples of similar construction elsewhere can provide some context to the issue, they are not a deciding factor in this determination.

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<sup>26</sup> Refer to paragraphs 4.18

## **5. Decision**

- 5.1. In accordance with section 188 of the Building Act 2004, I confirm the authority's decision to refuse to grant the building consent subject to a waiver from clause D1.3.3(i) for the isolated steps on the access routes between the student accommodation standard bedrooms and the adjoining ensuite pods.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 5 June 2025.

**Andrew Eames**

**Principal Advisor Determinations**