

Determination

under the

Building Act 1991

No. 96/004: Access for people with disabilities in a new primary school

1. The matter to be determined

- 1.1 The matter before the Authority was whether a building consent should be issued for the construction of a new primary school complex which is on several levels but does not include lift access for people with disabilities.
- 1.2 The Authority took the view that it was being asked in effect to determine whether the building without a lift would comply with clause D1.3.4(c) of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making its determination, the Authority has not considered whether the proposed building will comply with any other provisions of the building code.

2. The parties

- 2.1 The applicant was the Ministry of Education acting through the firm of architects responsible for the design of the classroom block (“the applicant”). The other party was the territorial authority concerned (“the Council”).
- 2.2 Neither party wished to speak and call evidence.

3. The complex

- 3.1 The proposed school complex, on a sloping site, is shown as consisting of two buildings, an L-shaped East Wing and a straight West Wing arranged in the approximate shape of a U around a courtyard and connected by a bridge at level 2. The complex contains 10 classrooms, a library, a staff room (including a kitchen and staff toilets), various offices and meeting rooms, toilet facilities, and utility rooms.
- 3.2 The West Wing has two floors, the East Wing has two floors at the same levels and a small third floor at a higher level. The approximate aggregate floor areas at each level are apparently:

Level 1 (“lower ground level”): 634 m²,

Level 2 (“ground level”): 715 m², excluding covered verandahs, and

Level 3 (“upper level”): 89 m² according to the applicant, 105 m² according to the Council (the discrepancy is unimportant).

3.3 Level access from the outside is available at several points on level 1. Access from the outside to level 2 is available by steps or a ramp to the main entrance at the end of the East Wing remote from the West Wing. The school office is adjacent to the main entrance and also on level 2. From the main entrance, stairs go up to level 3 and down to level 1. There are also stairs between levels 1 and 2 at each end of the West Wing. Accessible sanitary facilities are provided on levels 1 and 2. The sanitary facilities on level 3 are not accessible.

3.4 At the request of the Authority, the applicant provided the following information about the routes of travel between various locations in the school which would be available to wheelchair users and to other people:

- (a) Between level 2 at the end of the West Wing remote from the East Wing and the nearest part of the courtyard:

Wheelchair users: 140 m, of which 100 m is under cover.

Others: 20 m, all under cover.

- (b) Between level 1 at the junction of the East and West Wings and level 2 at the main entrance in the East Wing:

Wheelchair users: 110 m, of which 70 m is under cover.

Others: 56 m, all under cover.

- (c) Between level 1 half way along the West Wing and the same point on level 2:

Wheelchair users: 135 m, of which 95 m is under cover.

Others: 46 m, all under cover.

- (d) Between level 1 half way along the East Wing and the same point on level 2:

Wheelchair users: 135 m, of which 95 m is under cover.

Others: 34 m, all under cover.

4. The legislation

4.1 The relevant legislative provisions are in the Disabled Persons Community Welfare Act, the Building Act, and either the building code (the First Schedule to the Building Regulations), or (for the reasons set out in Determinations 94/006, 95/001, and 95/008) NZS 4121 “New Zealand Standard Code of Practice for Design for Access and use of Buildings and Facilities by Disabled Persons”.

4.2 Section 25(4) of the Disabled Persons Community Welfare Act says:

(4) The provisions of this section shall apply to . . .

(n) Educational institutions, including . . . primary, intermediate, and secondary schools . . .

4.3 Section 6(2) of the Building Act says:

...(2) To achieve the purposes of this Act, particular regard shall be had to the need to -

(e) Provide, both to and within buildings to which section 25 of the Disabled Persons Community Welfare Act 1975 applies, means of access and facilities that meet the requirements of that Act to ensure that reasonable and adequate provision is made for people with disabilities to enter and carry out normal activities and processes in those buildings . . .

4.4 Clause D1 of the building code says (defined terms in italic type):

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

(b) Have access to the internal space served by the principal access . . .

D1.3.4 An *accessible route* . . . shall:

(c) Include a lift . . . to upper floors where:

(ii) *buildings* are three storeys high and have a total design occupancy of 50 or more persons on the two upper floors, and

(iii) *buildings* are two storeys high and have a total design occupancy of 40 or more persons on the upper floor . . .

4.5 The term “accessible route” is defined in clause A2 as:

Accessible route A continuous route useable 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 people with disabilities to carry out normal activities and processes within the building.

4.6 Compliance with NZS 4121 is equivalent to compliance with the corresponding provisions of the building code. The relevant provisions of NZS 4121 are:

- (a) Clause 304, which provides that, subject to certain conditions, a lift is not required “in the case of a two-storey building where the gross floor area of the upper floor is less than 400 m², or a three-storey building where the gross aggregate floor area of the upper floors is less than 500 m²”; and
- (b) Schedule D which provides that “If the provisions of this Standard do not require a lift to be installed [in a school], then the principal activities shall be located on the ground floor.”

4.7 The relevant provisions have been set out at some length because the Authority’s determination must be limited to whether or not there is complete compliance with those provisions. As discussed in Determination 96/003, there appears to be no power for the Authority or anyone else to waive or modify the provisions of the building code (or the corresponding provisions of NZS 4121) in respect of the construction of a new building.

5. The submissions

5.1 General

- 5.1.1 The application for determination included submissions from both the applicant and the territorial authority.
- 5.1.2 The Authority obtained, and copied to the parties, a report from a consultant specialising in access and facilities for people with disabilities who gave his reasons for recommending that a lift be provided to service “all 3 levels”. The territorial authority supported that report. The applicant took issue with several passages in the report, and disagreed with its recommendation.
- 5.1.3 In effect, the applicant said that the school complied with the relevant provisions of the building code, whereas the territorial authority and the consultant said that it did not.

5.2 How many storeys?

- 5.2.1 The applicant argued in effect that because level 2 is accessible from the outside without the use of stairs therefore both levels 1 and 2 are ground floors “in terms of access” so that there is no requirement for lift access between them. In other words, for the purposes of clause D1 the complex is one storey high except for level 3.
- 5.2.2 As the applicant put it:

[W]e see this school arrangement as conceptually no different from a string of classrooms up a sloping hill connected by ramped footpaths.

5.3 Principal activity

- 5.3.1 On the basis that level 3 was the upper floor of a two storey building, the applicant pointed out that its gross floor area was less than the 400 m² at which a lift would be required by clause 304 of NZS 4121 if, as the applicant contended, the principal activities of the building were located on the ground floor (in this case, levels 1 and 2).

5.3.2 In support of that contention, the applicant said:

The principal activity of a school is teaching and the rooms in which that activity occurs are on the Lower Ground and Ground floors of the building.

5.3.3 The applicant also submitted a letter from the chairman of the school's establishment board of trustees which said:

The position of the staff room [results from] our brief requiring that it be placed remote, and elevated, from the school teaching facilities. . . .

Notwithstanding the fact that no disabled staff members have been employed at the time of lodging the building consent application we have made special provision for disabled staff members. They can either utilise [a room on level 2], or else we will provide facilities in the teaching administration areas attached to each classroom.

The sole purpose for the upper floor is for use by the school staff as a lunch and refreshment area.

5.4 *Routes of travel*

5.4.1 When it provided the information about routes of travel summarised in 3.4 above, the applicant said that if, "as discussed with [the territorial authority]", a lift were to be provided adjacent to the main entrance to serve all three levels, then the route of travel identified in 3.4(a) above would be 10 m longer by way of the lift than by way of the ramps and paths.

5.4.2 The applicant also said:

Should a covered ramp be an acceptable route (instead of a lift) the [applicant] . . . would consider covering the external ramp.

6. **Discussion**

6.1 *General*

6.1.1 The Authority recognises that the provisions of the building code for access and facilities for people with disabilities apply in respect of everyone who may be expected to visit or work in the school. It is common knowledge that in today's schools, particularly today's primary schools, the pupils' care givers and other members of what is generally referred to as "the wider school community" are encouraged to visit the school. In practice, however, if reasonable and adequate access and facilities are provided for pupils and staff then they will also be available to the wider school community. The Authority reads those provisions as requiring the provision of lift access to spaces where people with disabilities may be expected to work or visit, subject to certain exceptions as provided by the building code and NZS 4121. Those spaces include not only the classrooms but also the offices and the sanitary and other facilities provided for the use of pupils and staff.

6.2 *How many storeys?*

6.2.1 The applicant compared the school to “a string of classrooms up a sloping hill connected by ramped footpaths” (see 5.2.2 above). The Authority does not find that comparison convincing. The reality is that the school clearly has three storeys. That is self-evident from the drawings submitted to the Authority. The fact that both levels 1 and 2 can be entered from the outside and that there is at least one accessible route between them does not mean that those levels may be treated for access purposes as if they were both at the same “ground level”.

6.2.2 The Authority therefore concludes that the proposed complex does not comply with clauses D1.3.4(c)(ii) and (iii) of the building code

6.3 *Principal activity*

6.3.1 If, as the Authority considers, level 3 is the top storey of a three-story building, then a lift is clearly required by both clause D1.3.4(c)(ii) of the building code and clause 304 of NZS 4121.

6.3.2 Even if the Authority had accepted that level 3 was the upper storey of a two-storey building, it would not have accepted that the principal activities of the building were located on the ground floor as required by Schedule D of NZS 4121. The applicant’s statement that “the principal activity of a school is teaching” may well be correct, but various other activities also have to be undertaken in schools. Those activities may be ancillary to teaching, but the Authority takes the view that they are none the less “principal activities” for the purposes of Schedule D of NZS 4121. As the Authority said in Determination 96/003:

6.3.1 The case turns on the interpretation of the words “the principal activities of the building shall be located on the ground floor. (There is no dispute that classroom teaching is one of the principal activities of a school or other educational institution, nor that other principal activities are carried out in such spaces as a resource room, a library, a gymnasium, an office, and so on.)

(Determination 96/003 was concerned with whether a lift was not needed in a new two storey classroom block in an existing primary school. The upper floor was to contain three classrooms. The school already included 20 classrooms accessible to people with disabilities. It was determined that a lift was not required.)

6.3.3 The Authority also notes the board chairman’s statement that facilities corresponding to those on level 3 would be provided on one of the other storeys if any people with disabilities joined the teaching staff. If it goes without question that certain facilities must be provided in a building, then the use of those facilities can properly be called one of the principal activities of the building.

6.3.4 The Authority therefore concludes that the use of the staff room is one of the principle activities of the school and that activity is not located on the ground floor.

6.4 *Routes of travel*

6.4.1 The Authority considers that the words of the building code must be interpreted on that basis that the purpose of the relevant provisions is to ensure that adequate and reasonable provision is made to enable people with disabilities to carry out normal activities in the school.

6.4.2 Whether any particular route of travel for wheelchair users can be accepted as adequate and reasonable is a matter to be decided in the light of all the circumstances of the case.

6.4.3 The mere fact that a route of travel for wheelchair users is longer and more exposed to the weather than the corresponding route for others does not necessarily establish that the wheelchair route is unreasonable. In Determination 94/004 the Authority determined that a lift in one building (“the teaching building”) provided adequate and reasonable access between the two floors of an adjacent building (“the facilities building”) to which it was connected at the upper level. In the course of that determination, the Authority said:

4.3.5 To get to the upper floor of the facilities building from the ground floor or from certain locations outside the facilities building will involve approximately 100 metres more travel by the lift than by the stairs. That is significantly less than the distance that people might have to travel between spaces within the teaching building itself, which is apparently accepted as providing adequate and reasonable access for people with disabilities.

4.3.9 The Authority therefore accepts that access to the upper floor of the facilities building by routes that include the lifts in the teaching building is:

- (a) Entirely by way of main traffic routes, and
- (b) Does not involve any prohibitively lengthy detours from the routes using the stairs.

4.3.10 The Authority considers such access to be reasonable and adequate in the circumstances of the particular buildings concerned.

6.4.4 That determination was concerned with a polytechnic building, and what is a reasonable route of travel for a polytechnic is not necessarily reasonable for a primary school.

6.4.5 In this case the lengths of the wheelchair routes and the gross disparities between the wheelchair routes and the other routes (see 3.4 above) make it impossible for the Authority to accept that the wheelchair routes are reasonable. For that reason also, the Authority concludes that the proposed complex does not comply with the building code.

6.5 *Conclusion*

6.5.1 For the reasons set out above, the Authority concludes that the school complex does not make adequate and reasonable provision for people with disabilities, and in particular does not comply with clause D1 of the building code.

6.5.2 The applicant (see 5.4.1 above) pointed out that installing a lift where it can serve levels 2 and 3 will not significantly, if at all, improve wheelchair routes between certain parts of the complex. For that reason, installing a lift at that location will not of itself bring the complex to compliance with the relevant provisions of the building code. The building code does not merely require “a lift”, it requires reasonable and adequate access. The words “a lift” in clause D1.3.4(c) must be read as meaning “a lift or lifts” in accordance with section 4 of the Acts Interpretation Act, which says that in any Act and in any rules and regulations made under any Act: “Words importing the singular number include the plural number”.

6.5.3 It is not for the Authority to decide at this point whether a lift in a more central location, but providing access between all three levels, is the appropriate way in which the school should be brought to compliance with the building code, or whether some other approach should be adopted. That is a matter for the applicant to decide and for the territorial authority to consider by way of a revised application for building consent. Only if the territorial authority refuses to grant a building consent for the revised design might the Authority be required to consider the revised design by way of another determination.

7. The Authority's decision

7.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that a building consent is not to be issued for the construction of the new school complex on the present plans and specifications because they do not comply with the building code.

Signed for and on behalf of the Building Industry Authority on this 8th day of November 1996

J H Hunt
Chief Executive