

# ***Determination***

## ***under the***

### ***Building Act 1991***

#### **No. 97/002: Access and facilities for people with disabilities in the alteration of a Police station three storeys high**

#### **1. General**

##### *1.1 The matter to be determined*

- 1.1.1 The matter before the Authority is whether a lift should be installed in the alteration of a three storey Police station building in order to comply with section 38 of the Building Act.
- 1.1.2 The Authority takes the view that it is being asked in effect to determine whether the altered building, without a lift, complies as nearly as is reasonably practicable with clause D1 “Access routes” of the building code (the First Schedule to the Building Regulations).
- 1.1.3 In making its determination, the Authority has not considered whether, after the proposed alteration, the building will comply with any other provisions of the building code.

##### *1.2 The Authority’s approach to the determination*

- 1.2.1 The Authority’s approach to determinations such as this has been discussed at length in several previous determinations, see in particular Determination 97/001. Suffice it to say that:
  - (a) The Authority balances the sacrifices and difficulties of upgrading, in this case by installing a lift, against the risks and disadvantages of not upgrading, and
  - (b) The Authority takes the view that compliance with NZS 4121 is equivalent to compliance with the corresponding provisions of the building code

#### **2. The parties**

- 2.1 The applicant was the Police acting through a firm of architects, the other party was the territorial authority concerned.
- 2.2 Neither party requested the Authority to hold a hearing at which they could speak and call evidence.

#### **3. The building**

- 3.1 The plans, photographs, and other information submitted to the Authority show that the building has three storeys and that the ground floor is larger than the upper floors, apparently as a result of previous alterations completed in 1995. The Police now propose to make certain further alterations to the building. Those alterations have been discussed with the territorial authority. Although the Police have not yet formally applied for a building consent, the territorial authority has indicated that it would refuse a building consent unless a lift was provided.
- 3.2 The Authority has not been told the precise areas of the storeys, but the territorial authority estimates that each of the upper storeys has a gross area of approximately 350 m<sup>2</sup>.
- 3.3 The ground floor includes a public reception area, a cell block, sanitary facilities, including accessible toilets, rooms for various operational and office purposes, and what is shown on the plan as a “kitchen” and described in the applicant’s submissions as a “staff tea room”.
- 3.4 The middle or “first” floor contains offices and facilities, not including accessible toilets, for the Criminal Investigation Bureau. It is proposed to alter that floor to incorporate a waiting area and reception desk and make various other changes which are not relevant to this determination. After the alteration, the first floor is intended to be used by 18 staff with others will be present from time to time, but from the plans it seems unlikely that the total number will be more than 30 at any time.
- 3.5 The top or “second” floor contains rooms for various operational and office purposes, sanitary facilities, not including accessible toilets, a kitchen, and a staff cafeteria which is also used as a conference room and as a work room for major investigations. The staff cafeteria is also used by the social club. The total number of people present could be as many as 100 when the Police are undertaking a major inquiry.

#### **4. The submissions**

- 4.1 The applicant submitted that:
  - (a) That “any facilities available on an upper floor are also available on the ground floor, including interview rooms and staff tea room, disabled toilets etc, so a disabled person who cannot gain access to the upper floors would not be disadvantaged or limited in respect to the use of the building or police services”.
  - (b) The actual number of people who work on the two upper floors is 26, and “the occupancy of the entire building during an average shift, allowing for patrol officers to be present and excluding prisoners in the cell block, would be between 46 and 51 persons”.
- 4.2 The territorial authority submitted that:
  - (a) The drawings show that “the first floor will provide a waiting area and a reception area”, so that in terms of NZS 4121 a lift is required irrespective of area.

- (b) The gross aggregate floor area of the two upper floors exceeds the maximum of 500 m<sup>2</sup> at which a lift is required by NZS 4121.
  - (c) “A cafeteria on the upper floor provides facilities for well in excess of 50 people. Quite often it is used for functions and presentation of awards.”
- 4.3 The territorial authority also said that it had taken guidance from previous determinations, and mentioned in particular Determination 95/001. Unfortunately, in recent High Court proceedings Determination 95/001 was set aside by consent, so that it must be treated as if it had never been issued (see *Building Industry Authority News* No. 66, February 1997). However, guidance is available from other determinations, and the Authority draws attention in particular to Determination 93/004 in respect of the term “as nearly as is reasonably practicable” and to Determinations 96/005 and 97/001 in respect of providing lifts in the alteration of existing buildings.
- 4.4 To assist it to understand the technicalities involved, the Authority obtained a report from a building consultant with experience in the field of access and facilities for use by people with disabilities. The report was to the effect that:
- (a) It appeared to be technically feasible to install a lift.
  - (b) The design occupancy for the two upper floors, obtained by applying Table A2 of Appendix A to Approved Document C4, was approximately 170 compared with the maximum of 50 at which a lift would be required in a new building under clause D1.3.4(c)(iii) of the building code.
  - (c) The gross aggregate floor area of the upper two floors was approximately 700 m<sup>2</sup> compared with the maximum of 500 m<sup>2</sup> at which a lift would be required in a new building under clause 304 of NZS 4121.
- 4.5 The report was copied to the parties.
- 4.6 The applicant, in response to the report, submitted in effect that:
- (a) It would be difficult and expensive to install an internal lift, while an external lift would present significant security problems given the nature of Police operations.
  - (b) The theoretical design occupancies were misleading and the actual number of people likely to be present on the two upper floors at any one time was only about 35 except on the rare occasions of a major incident briefing. In any case, those present would be mainly sworn members of the Police and all able to climb the stairs.
- 4.7 The territorial authority, in response to both the report and the applicant’s submissions on the report, submitted in effect that:
- (a) The installation of an internal lift would not be unreasonably difficult.
  - (b) The numbers of people likely to be present could be increased in future without any reference to the territorial authority. People present could include non-sworn

members of the Police and various invitees or visitors including witnesses and outside caterers. For consistency, the fact that the building was currently occupied by the Police should be ignored and a lift should be installed now. What, asked the territorial authority, would be its position if the Police vacated the building? “What legislation could be brought to bear on a new owner wanting to put the building to a similar use?”

## **5. Discussion**

- 5.1 The Authority accepts that, as a matter of Police policy in accordance with statutory requirements, people with disabilities (or at least with the types of disabilities with which this determination is concerned) cannot be Police officers (“sworn members of the Police” in terms of the Police Act 1958). However, there appears to be no good reason why people with disabilities should not be civilian employees (“non-sworn members of the Police”).
- 5.2 It follows, therefore, that in terms of the Disabled Persons Community Welfare Act 1975, people with disabilities “may be expected to visit or work” on the upper floors. However, it also follows that the probability that any people with disabilities will be present on the upper floors is significantly lower than would be the case in the ordinary run of buildings.
- 5.3 The applicant’s submissions were in terms of the building code, the territorial authority’s submissions were in terms of NZS 4121. The Authority considers that NZS 4121 is in effect an alternative to the building code and also considers that the applicant is entitled to have its case considered in terms of whichever alternative is the more favourable to the applicant. Accordingly, no further consideration is given to NZS 4121.
- 5.4 The building code refers to the design occupancy. That is a concept appropriate to proposed new buildings. When considering the alteration of an existing building, the Authority takes the view that the actual maximum number of people present at any one time may be treated as the design occupancy, but only if it is reasonable to believe that number will not increase for so long as there is no further alteration and the building remains in the same use.
- 5.5 In this case, most of the people present on the upper floors will be sworn members of the Police. The number of non-sworn members and visitors present on the upper floors, even on the rare occasions when the cafeteria is used for a major incident briefing, seems likely to be significantly lower than the maximum of 50 at which a lift would be required in a new building under clause D1.3.4(c)(iii) of the building code. Thus it is reasonable to treat this building as if it had a much lower design occupancy for the purposes of the building code than would be the case for the general run of buildings.
- 5.6 The Authority therefore considers that it would be unreasonable to require the installation of a lift on the basis of the number of people likely to be present on the upper floors.
- 5.7 The Authority takes the view that the reference to “public reception areas” in clause D1.3.4(c)(iv) of the building code means all those areas to which the public needs to have access. The Authority accepts the applicant’s submissions that the public cannot gain access

to the upper floors without going through the reception area on the ground floor, and that “any facilities available on an upper floor are also available on the ground floor”.

- 5.8 Accordingly, the Authority does not consider that either of the upper floors “is to be used for the purposes of public reception areas” despite the fact that the first floor are shown on the drawings as including a “waiting area” and a reception desk.
- 5.9 The lower proportion of people with disabilities likely to be present in a Police station distinguishes this determination from the otherwise similar Determination 93/003, in which the Authority determined that a lift was to be provided in the alteration of a Government department office building.
- 5.10 The territorial authority asked “What legislation could be brought to bear on a new owner wanting to put the building to a similar use?” The Authority replies that there are very few uses similar to the current use as a Police station, except possibly use by one of the armed forces. Any other occupant will wish to change the use of the building. Under section 46 of the Building Act, the reasonable practicality of installing a lift will need to be addressed in the different circumstances which will exist at that time.

## **6. Conclusion**

- 6.1 The dominant factor is that the building is used as a Police station.
- 6.2 The applicant made no specific submissions about the disadvantages of installing a lift, but they obviously include the cost, the loss of floor space currently used for other purposes, and the inevitable disruption in the use of the building while a lift is being installed. In this case, the installation of a lift could also raise problems of security.
- 6.2 The disadvantages of not installing a lift are that:
- (a) Non-sworn members of the Police who cannot climb stairs will not be able to work on the upper floors and will not be able to use the cafeteria; and
  - (b) Other people who cannot climb stairs will not be able to visit the upper floors, and in particular will not be able to attend functions and social gatherings in the cafeteria.
- 6.2 On balance, the Authority considers that those disadvantages are not sufficient to justify the installation of a lift.

## **11. The Authority's decision**

- 11.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that, after the proposed alterations but without a lift, the building will comply as nearly as is reasonably practicable with the provisions of the building code for access and facilities for use by people with disabilities while the building is used as a Police station.

Signed for and on behalf of the Building Industry Authority on this 14<sup>th</sup> day of March 1997

J H Hunt  
Chief Executive