

Access for people with disabilities in a new fish processing factory

1 THE MATTER TO BE DETERMINED

- 1.1 The matter before the Authority is a dispute about whether a lift is required in a new two storey fish processing factory.
- 1.2 The Authority takes the view that it is being asked to determine whether a lift is required in order to provide access and facilities for people with disabilities in accordance with clauses D1.3.2 and D1.3.4(c)(iii) of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making its determination the Authority has not considered any other aspects of the Building Act 1991 or of the building code.

2 THE PARTIES

- 2.1 The applicant was the owner of the building acting through a firm of engineers and architects. The other party was a building certifier.
- 2.2 Neither the applicant nor the building certifier wished to speak and call evidence.

3 THE BUILDING

- 3.1 The building is for the exclusive purpose of receiving, processing, freezing, and despatching fish and related by-products. It is a new two storey building adjacent to the existing building housing the applicant's corporate headquarters.
- 3.2 On the ground floor, processing staff are engaged in:
- Driving trucks and forklifts.
 - Unloading fishing vessels.
 - Filleting fish.
 - Washing fish bins.
 - Working in freezer tunnels.
 - Packing fish.
 - General factory duties.
- 3.3 The upper floor contains:
- A carton make up area.
 - An administration office.

- A viewing gallery that allows the fish processing to be observed, by “corporate visitors” and others, without entering the “clean area”.
- Lunch rooms with a kitchen, locker rooms, and toilet facilities for staff.

3.4 The total area of the upper floor is well in excess of 400 m², and the total design occupancy is approximately 60 process and carton make-up staff, 6 office staff, 2 kitchen staff, and an unknown number of “corporate visitors”.

3.5 Access between the floors is by stairs, there is no lift.

3.6 The building certifier told the applicant:

. . . the requirement for a lift would appear mandatory based on both floor areas and occupancy numbers.

As this is a new building, the requirement to provide a lift can only be resolved by an application for a waiver or modification related to access and facilities for people with disabilities to the Building Industry Authority by means of a determination. (Refer section 34(7) Building Act).

4 THE LEGISLATION AND NZS 4121

4.1 The relevant provisions of the Building Act are:

(a) Section 7(1):

(1) All building work shall 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.

(b) Section 34(7):

(7) Notwithstanding subsection (4) of this section, in relation to any building to which section 47A of this Act applies, a waiver or modification relating to access and facilities for use by people with disabilities shall only be granted by the Authority in a determination issued under Part III of this Act which is in accordance with the requirements of the said section 47A.

(c) Sections 47A(1) to (4):

(1) In any case where provision is being made for the construction or alteration of any building to which the public are to be admitted, whether on payment or otherwise, reasonable and adequate provision . . . shall be made for persons with disabilities who may be expected to visit or work in that building and carry out normal activities and processes in that building.

(2) Notwithstanding the provisions of subsection (1) of this section, in respect of the alteration of any existing building or premises, the Building Industry Authority may at any time by determination under Part III of this Act provide for a waiver or modification from all or any of the requirements of this section if, having regard to all the circumstances, the Building Industry Authority determines that it is reasonable to grant the waiver or modification.

(3) Any provision that is made to meet the requirements of disabled persons in accordance with New Zealand Standard Specification No 4121 . . . shall . . . be deemed to be one of the documents establishing compliance with the building code for the purposes of section 49 of this Act.

(4) The provisions of this section shall apply to, but shall not be limited to, buildings . . . that are intended to be used for or associated with one or more of the following purposes:

- (y) Factories and industrial buildings where more than 10 persons are employed:

4.2 The relevant provisions of the building code are:

- (a) Clause 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, and
- (c) Have access to and within those spaces where they may be expected to work or visit

- (b) Clause D1.3.4:

An accessible route, in addition to the requirement of Clause D1.3.3, shall:

- (c) Include a lift complying with Clause D2 . . . where:
 - (iii) buildings are two storeys high and have a total design occupancy of 40 or more persons on the upper floor
- (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.

4.3 The relevant provisions of NZS 4121:2001 are in its clause 9.1.3.2:

. . . a lift is not required where:

- (a) Buildings are two storeys high and have a gross floor area of the upper floor of less than 400 m²;
- (b) Buildings are three storeys high and have a gross floor area of the upper floors of less than 500 m²;

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

5 THE SUBMISSIONS

5.1 The applicant submitted that in most of the production areas staff need to stand on platforms and must climb one or two steps to their work stations. They wear protective clothing. The floor is a “clean area” where staff must comply with hygiene requirements including the washing of gumboots and aprons. Thus processing staff must be able to “reach out, step back, turn-around, climb up and down and lift various weight fish, either loose or in cardboard cartons”.

- 5.2 Similarly, submitted the applicant, carton make-up staff need to move pallets of carton blanks on a manual pallet truck, load and unload the carton-making machine, and feed made-up cartons into chutes to the process floor.
- 5.3 Therefore, submitted the applicant, the work of processing and carton-make-up staff cannot be done by people with disabilities that would prevent them from using accessible stairs.
- 5.4 The applicant said:
- . . . when considering the applicability of the lift provisions . . . the number of staff relevant to the consideration is . . . the six office staff and perhaps the kitchen staff, which is less than the NZS 4121 trigger level of 10. In addition the first floor area is in excess of the 400 m² trigger level but that which relates to the administrative staff is less than 100 m². It is understood that there has been under consideration determinations relating to similar queries for armed forces staff and air traffic control staff, both of whom are required to be able bodied to fulfil their duties. The difference in this case is considered to be the mix of a small number of people, less than the lift trigger number, whose positions are not limited to able bodied individuals, with the able bodied staff.
- 5.5 The building certifier made no specific submissions.

6 DISCUSSION

6.1 The Authority's jurisdiction

- 6.1.1 As it said in Determinations 95/003, 2000/2, and 2001/10, the Authority takes the view that it has no power to waive or modify the requirements of the building code for access and facilities for people with disabilities in respect of a new building to which section 47A applies.

6.2 General

- 6.2.1 In respect of buildings to which section 47A does apply, the Authority has frequently said¹ that it takes the view that:
- (a) The provisions of the building code for access and facilities for use by people with disabilities do not apply to the whole or to any part or portion of a building to which the general public does not have access, in which people with disabilities, solely because of their disabilities, cannot work, and which, for some specific reason, will not be visited by people with disabilities.
 - (b) It is important not to underestimate the extent to which people with disabilities are capable of overcoming those disabilities. The clear intention of the Building Act is that buildings must not be constructed in such a way as to prevent people with

¹ See Determinations 95/003, 95/006, 95/008, 97/009, and 99/011 and the Authority's statement "Access and Facilities for People with Disabilities" published in *Building Industry Authority News* N. 23, June 1993.

disabilities from undertaking work which they are capable of undertaking or from visiting buildings which they are capable of visiting.

6.3 Does section 47A apply to the building?

6.3.1 The Authority considers that the building comes within section 47A(4)(y) and is therefore a building to which section 47A applies.

6.4 Can people with disabilities that prevent them from climbing accessible stairs be expected to visit or work in the building?

6.4.1 The applicant contended in effect that a lift was not needed because people with disabilities that prevented them from climbing accessible stairs were prevented, solely by those disabilities, from working as processing or carton make-up staff. The “determinations relating to similar queries for armed forces staff and air traffic control staff” mentioned by the applicant were Determinations 95/003 and 2001/10.

6.4.2 The Authority places no weight on that submission because disabilities that prevent people from climbing accessible stairs will not prevent them from working as office staff and kitchen staff or from being corporate visitors. However, the Authority observes that the fact that someone cannot use accessible stairs does not necessarily mean that they cannot operate a truck or a forklift.

6.4.3 Furthermore, Determinations 95/003 and 2001/10 do not support the applicant’s contention because:

- (a) Determination 95/003 concerned the provision of accessible toilet facilities in a building for use only by members of a “ready reaction unit” of the armed forces. The Authority concluded that the building code’s requirements for accessible toilets did not apply because people with disabilities of the types relevant to the determination could not be members of the armed forces and therefore could not visit or work in the building.
- (b) Determination 2001/10 concerned the need for a lift in an air traffic control tower. The Authority decided that the building was one to which section 47A applied, and therefore that it must include reasonable and adequate access and facilities for those people with disabilities who “may be expected to visit or work in the building”. However, although it was possible that some people who could not use accessible stairs might be capable of being pilots or air traffic controllers, there would be so few of them that they could not be said to be “expected” to work in the tower.

6.5 Should process and carton-making staff be ignored when calculating the design occupancy of the upper floor?

6.5.1 The applicant contended in effect that only the 6 office staff and 2 kitchen staff, and not the 60 process staff, should be considered in calculating the design occupancy of the upper floor (corporate visitors were not mentioned in this contention). On that basis the design occupancy would be only 8 and a lift would not be required by clause D1.3.4(c).

6.5.2 In Determination 2001/4 the Authority considered a similar question in relation to a building in which only a proportion of those present on the upper floor could be expected to be people who could not use accessible stairs. However, that determination was in respect of an existing building and turned on whether there was a change of use. The Authority took the view that there was not, but in case it was wrong observed that the fact that only a specific number of the people on the upper floor could be wheelchair users “does not affect the design occupancy for the purposes of clause D1.3.4(c) of the building code” but was one of the factors to be considered when deciding whether it would be reasonably practicable to install a lift if there was a change of use of that building. That is not the question with this determination, where the building is a new one and the question is whether it needs a lift in order to comply with the building code.

6.6 Conclusion

6.6.1 The Authority concludes that:

- (a) The fish processing factory with which this determination is concerned is a new building to which section 47A applies and therefore to which the provisions of the building code for access and facilities for people with disabilities apply.
- (b) The Authority has no power to waive or modify the provisions of the building code for access and facilities for people with disabilities in respect of a new building.
- (c) The design occupancy and the area of the upper floor are such that a lift is required in accordance with both the clause D1.3.4(c) of the building code and clause 304.1 of NZS 4121.

7 THE AUTHORITY'S DECISION

7.1 In accordance with section 20 of the Building Act, the Authority hereby confirms the building certifier's decision that a lift is required.

Signed for and on behalf of the Building Industry Authority on this 19th day of December 2001

W A Porteous
Chief Executive