

## Determination 2008/68

### Provision of an access stair in a proposed multi-storey serviced apartment / hotel building at 51-53 Albert Street, Auckland

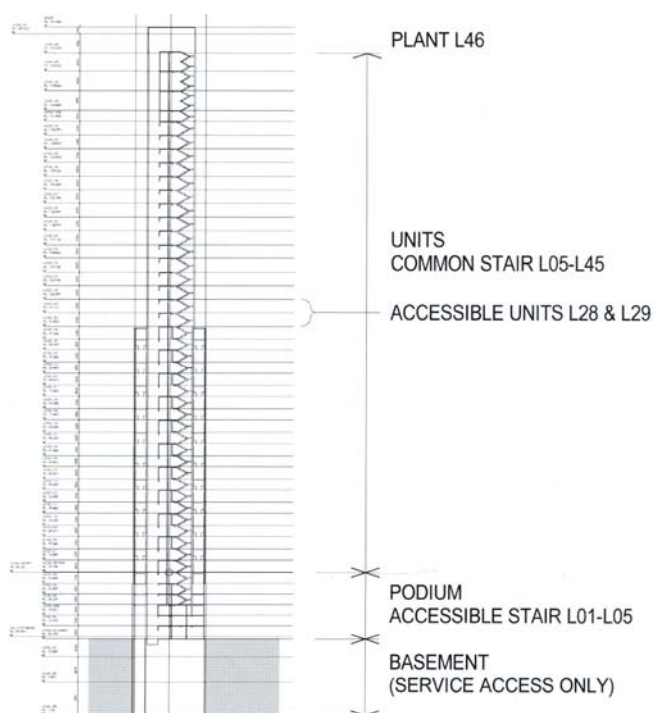


Figure 1: Diagrammatic section through the building

#### 1 The matters 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, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of the Department. The applicant is Sanctuary Developments Limited (“the applicant”) acting through a firm of architects (“the architects”). The other party is the Auckland City Council (“the authority”) carrying out its duties and functions as a territorial authority or a building consent authority.

<sup>1</sup> The Building Act 2004 is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

- 1.2 I take the view that the matter for determination is whether a new multi-storey serviced apartment/hotel building (“the building”)without an accessible stair to the upper floors complies with Clause D1 of the Building Code<sup>2</sup> (Schedule 1 of the Building Regulations 1992) (“the Building Code”).
- 1.3 In making my decision, I have not considered any other aspects of the Act or the Building Code, and in particular, that my decision cannot be considered in terms of a waiver as set out in section 67.
- 1.4 In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

## **2 The building**

- 2.1 The proposed building shown diagrammatically in Figure 1. It is 134 metres high, between the entry and top floor levels, and contains:
- a three-level basement
  - a podium with four main levels and a mezzanine
  - a tower with 41 levels, 38 of which contain one or two-bedroom units and 3 of which at levels 43 to 45, contain penthouse apartments
  - two accessible apartments on each of levels 28 and 29.
- 2.2 The proposed building has an accessible stair up to level 5 and two sets of “common stairs” for the remainder of the building. All levels are to be serviced by two high-speed lifts that have facilities for persons with disabilities, together with emergency power and lighting systems. All doors within the tower core will be electronically security controlled.

## **3. Background**

- 3.1 The proposed building is subject to a resource consent process at the present time but has not been submitted for a building consent. However at a pre-lodgement meeting, the authority was made aware of the proposal and has confirmed that it will refuse to issue a building consent on the proposed design.
- 3.2 The application for a determination was received by the Department on 22 February 2008, and on receipt of the appropriate fee, the determination process commenced on 14 March 2008.

## **4. The submissions**

- 4.1 In a submission, the architects described the proposed building and designated it as being a “multi-storey/apartment hotel” with a design purpose group SA sleeping accommodation). They also set out what was considered to be the relevant legislation. In addition, the submission noted that:

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<sup>2</sup> The Building Code is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

- all levels are to be serviced by high-speed lifts complying with the Building Code requirements for persons with disabilities, and provisions for emergency power and lighting systems
- an accessible stair will serve all the common facilities up to level 5
- two “common stairs”, which are designed for the purpose of fire egress, will serve levels 5 to 45, including the accessible units on levels 28 and 29
- all doors within the tower core will be electronically security controlled, which will restrict non-evacuation movement
- as the building will be 134 metres high between the entry and top floor, lifts would be used as a matter of course by all staff and guests. Therefore, a common stair is adequate, as no persons, either ambulant or disabled, would normally use the stairs. People with disabilities will therefore be able to carry out normal activities and functions within the building.

4.2 The applicant forwarded copies of some of the plans.

4.3 The authority noted that it did not wish to make a submission.

## 5. The legislation and the compliance documents

5.1 Relevant provisions of the Act include:

### **19 How compliance with building code is established**

- (1) A building consent authority . . . must accept any or all of the following as establishing compliance with the building code:
- (b) compliance with the provisions of a compliance document . . .

### **67 Territorial authority may grant building consent subject to waivers or modifications of building code**

- (3) The territorial authority cannot grant an application for a building consent subject to a waiver or modification of the building code relating to access and facilities for people with disabilities.

### **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.

### **119 Compliance document for requirements of persons with disabilities**

- (1) This section applies to—
- (a) the New Zealand Standard Specification No 4121 (the code of practice for design for access and use of buildings by persons with disabilities),

together with any modifications to that standard specification in force immediately before the commencement of this section; or . . .

- (2) A standard specification to which this section applies is to be taken as a compliance document.

**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:

- (f) commercial buildings and premises for business and professional purposes, including computer centres;
- (j) hotels, motels, hostels, halls of residence, holiday cabins, groups of pensioner flats, boarding houses, guest houses, and other premises providing accommodation for the public;
- (z) other buildings, premises, or facilities to which the public are to be admitted, whether for free or on payment of a charge.

5.2 The following provisions of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations are relevant to this determination:

**6 Uses of buildings for purposes of regulation 5**

- (1) For the purposes of regulation 5, every building or part of a building has a use specified in the table in Schedule 2.
- (2) A building or part of a building has a use in column 1 of the table if (taking into account the primary group for whom it was constructed, and no other users of the building or part) the building or part is only or mainly a space, or it is a dwelling, of the kind described opposite that use in column 2 of the table.

**Schedule 2: Uses of all or parts of buildings**

<b>Uses related to sleeping activities</b>		
<b>Use</b>	<b>Spaces or dwellings</b>	<b>Examples</b>
SA (Sleeping Accommodation)	spaces providing transient accommodation, or where limited assistance or care is provided for people	motels, hotels, hostels, boarding houses, clubs (residential), boarding schools, dormitories, halls, wharehau

5.3 Relevant provisions of Clause D1 include:

**D1.1** The objective of this provision is [to]:

- (c) Ensure that *people with disabilities* are able to enter and carry out normal activities and functions within *buildings*.

**D1.3.3** Access routes shall:

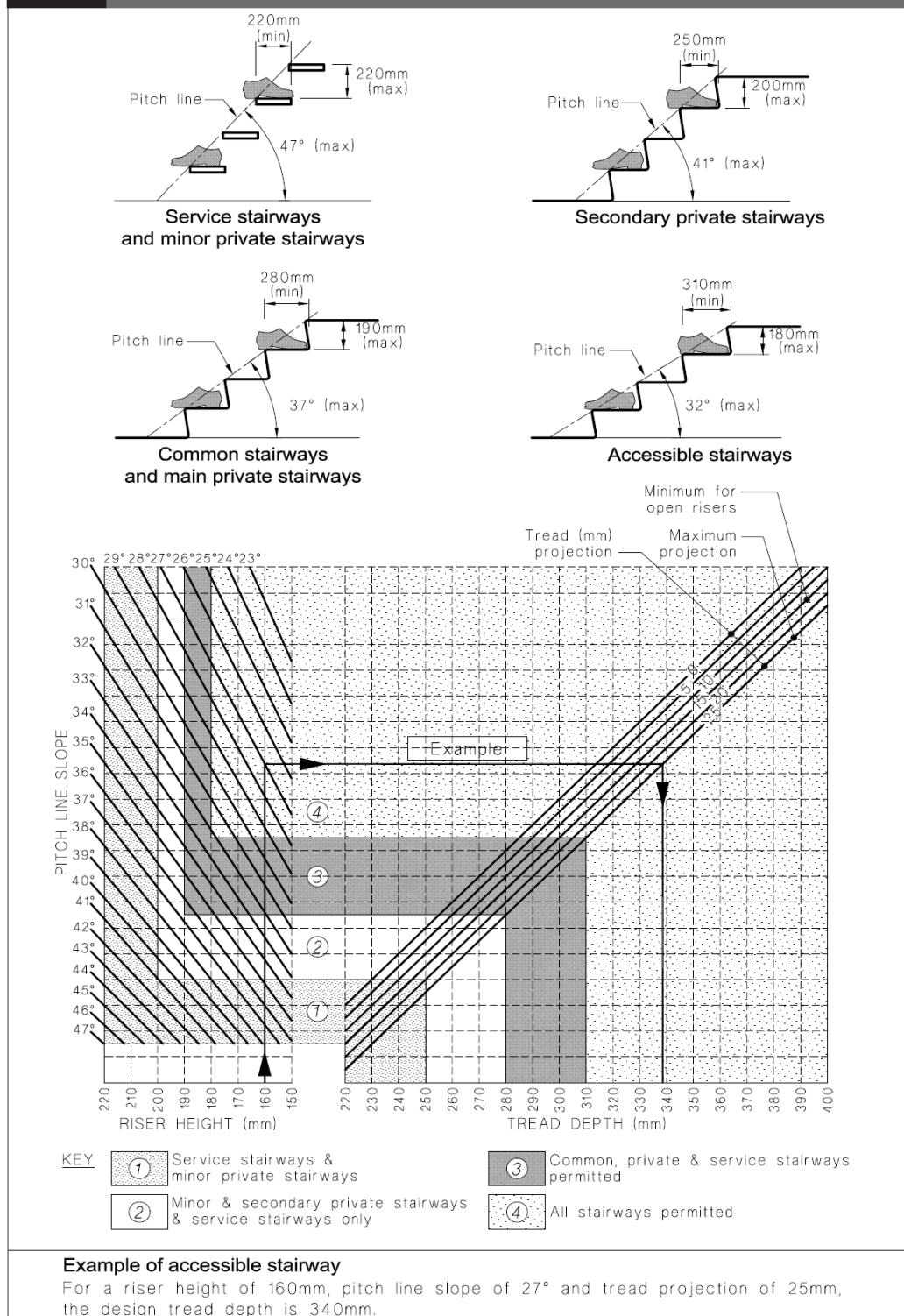
- (e) Include stairs to allow access to upper floors irrespective of whether an escalator or lift has been provided.

5.4 Relevant provisions of approved Document D1/AS1 include:

**Accessible stairway** A stairway having features for use by people with disabilities. Buildings required to be accessible shall have at least one accessible stairway leading off an accessible route whether or not a lift is required.

**Common stairway** A stairway which is used, or intended to be used, by public whether as of right or not, and is not a private stairway, service stairway or accessible stairway.

**Figure 11: Pitch, Risers and Treads for Stairs**  
Paragraphs 4.1.1, 4.1.4, 4.4.2, 4.5.1 a) and Figure 17



## **6. The draft determination**

- 6.1 I prepared a draft determination which was sent to the Office for Disability Issues ("ODI"), at the Ministry of Social Development, by way of consultation and to the parties for comment on 26 May 2008.
- 6.2 The ODI responded in a letter to the Department dated 9 June 2008. The ODI agreed with the reasoning in the draft and considered it was irrelevant that all floors also will be serviced by high-speed lifts. An accessible stair was necessary to enable persons with ambulant disabilities to move between floors during ordinary use and to assist egress during any emergency where the lifts are out of action.
- 6.3 The authority accepted the determination without making any further comment.
- 6.4 The architects responded in a letter to the Department that was dated 17 July 2008, stating that the applicant did not accept the draft determination. The response requested that the determination addressed whether the objective of Clause D1 could be met without strict adherence to the performance requirements of that clause. The submission noted that emergency access is not a "normal" function of a building and only a common stair is required for the G4 egress requirements. It was considered that the determination extended the stair access requirements beyond that of fire egress to that of providing access for everyday use. The submission concluded that the decision made in the determination would have a major impact on the design of buildings.

## **7. Discussion**

### **7.1 General**

- 7.1.1 In summary, the applicant has submitted that an accessible stair is not required above level 5 of the building because:
- all levels are serviced by high speed lifts with provisions for persons with disabilities
  - all doors within the tower core will be security controlled
  - the height of the building would ensure that the lifts rather than the stairs would be used by all staff and guests, irrespective whether such persons are ambulant or disabled.
- 7.1.2 The submission also confirms that the project is a serviced apartment/hotel building with a design purpose group SA (sleeping accommodation).
- 7.1.3 In its submission regarding the draft determination, the applicant was of the opinion that emergency access was not a "normal" function of a building and the building was only required to have a common stair to comply with the requirements of Clause C4. The submission also queried whether the objectives of Clause D1 could be obtained other than by strict adherence to the performance requirements of Clause D1.

## 7.2 Is the building one to which Schedule 2 applies?

7.2.1 As set out in paragraph 7.1.2, the architects have described the building as a “service apartment/hotel with a design purpose group SA”. In my opinion, this clearly places the building within the description “hotel” in paragraph (j) of Schedule 2.

7.2.2 The applicant has submitted that as appropriate lifts have been installed, staff and guests would use these in preference to an accessible stair. However, having concluded that the building comes within Schedule 2, an accessible stair must be provided to serve the entire height of the building. I also note that such a stair is also required so as to make egress easier if someone requires assistance in times of emergency when the lift is not operating.

7.2.3 In response to the applicant’s query as to whether strict adherence to the performance criteria of Clause D1 is required, I refer to Section 7 of the Act. The definition in that section of “performance criteria” in relation to a building

means qualitative or quantitative criteria that the building is required to satisfy in performing its functional requirements.

7.2.4 In accordance with this definition, I consider that I cannot distinguish the performance criteria of Clause D1 in favour of the generalised requirements of its objectives. Therefore, I must apply the requirements of Clause D1.3.3 that requires that an access route shall:

Include stairs to allow access to upper floors irrespective of whether an escalator or lift has been provided.

7.2.5 In regard to the applicant’s argument regarding “normal” activities and functions, I note that the reference to an “emergency when the lift is not functioning” in paragraph 7.2.2 was just one additional consideration, over and above the other activities and functions that a people with disabilities would carry out in the building. In addition, the definition of “intended use” of a building in Clause A2 includes:

(c) Activities taken in response to fire or any other reasonably foreseeable emergency — but does not include any other maintenance and repairs or rebuilding.

7.2.6 In light of my comments set out in paragraphs 7.2.3 to 7.2.5, I am still of the opinion that Schedule 2 applies to the building. Therefore, I consider that it is not necessary for me to consider:

- section 118(2), which does not limit the consideration of buildings that are intended to be used for, or associated with, 1 or more of the purposes set out in schedule 2.
- paragraph (f) of Schedule 2 as to whether the building is a “commercial building” and a premises for “business”.

## **8 The decision**

- 8.1 In accordance with section 188 I hereby determine that the building requires an accessible stair to service all floors of the projected building in order for it to comply with the requirements of Clause D1 of the Building Code.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 24 July 2008.

John Gardiner  
**Manager Determinations**