



## Determination 2009/27

### Access for people with disabilities to a relocatable classroom at Churton Park School, Churton Park, Wellington



**Figure 1: Classroom 19 viewed from a carpark (Classroom 18 is adjoining and to the immediate left)**

#### 1. The matter 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 applicants are the Ministry of Education and Churton Park School Board of Trustees, (“the applicants”), acting through the project manager and the architect. The other party is the Wellington City Council (“the authority”) carrying out its duties and functions as a territorial authority or building consent authority.

1.2 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.

---

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

- 1.3 The determination arises from the decision of the authority to refuse to issue a code compliance certificate for two additional classrooms (“Classrooms 18 and 19”) at a school complex. I note that the original determination application was in respect of Classroom 19 only, but during the course of this determination, the parties have agreed that I should also include Classroom 18 in my deliberations.
- 1.4 I take the view that the matter for determination, in terms of sections 177(a) and 188<sup>2</sup>, is whether Classrooms 18 and 19 are required to comply with Clause D1.3.2 of the Building Code<sup>3</sup> (Schedule 1, Building Regulations 1992).
- 1.5 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. In making my decision, I have not considered any other aspects of the Act or the Building Code. In particular this determination considers code-compliance in terms of section 112, and my decision cannot be considered in terms of a waiver as set out in section 69.
- 1.6 I have also consulted with the Office for Disability Issues (“the ODI”), at the Ministry of Social Development, as I am required to do under section 170 of the Act.

## **2. The school buildings**

### **General**

- 2.1 The bulk of the school buildings are located on a flat site. The Administration building, Hall, and Resource building, Library, and Classrooms 1 to 13, plus three accessible toilets, are all located on this main level. All the buildings on the main level are accessible. The plan of the school is shown in Figure 2 (page 3).
- 2.2 Prior to the addition of classrooms 18 and 19, an existing block containing four classrooms (Classrooms 14 to 17), plus an accessible toilet, was located to the south edge of the school at a middle level. A covered walkway ran along the front of the 4 classrooms. These classrooms are fully accessible and are accessed from the main level by steps and a ramp approximately 21 metres long. The ramp is uncovered.
- 2.3 This four classroom block has been extended by the addition of classrooms 18 and 19. These additions involved alterations to the original block at roof level, to services, and to the covered walkway.
- 2.4 Classroom 18 is located adjacent to Classroom 17 but at a level approximately 600mm higher than the Classroom 17 floor level. Classroom 18 is accessed by steps from the covered walkway.
- 2.5 Classroom 19 adjoins, and is accessed internally through, Classroom 18. Classroom 19, which has basement storage under, is accessed by a set of external steps leading up to a covered deck. The floor level of the classroom and deck is approximately 2.4 metres above an adjacent carpark. Both Classrooms 18 and 19 are timber-framed

---

<sup>2</sup> 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.

<sup>3</sup> The Building Code is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

buildings with a specified intended life of 5 years. I have been informed by the applicant that they are intended to be removed from the site within the next four years. I note that if the buildings remain past the 5-year limitation, then the authority can issue a notice to fix to alter or remove or demolish the building. On the main and intermediate levels, the school is largely accessed by covered walkways. The access routes from Classrooms 1 to 10 and 14 to 17 to an accessible toilet are mostly covered and are accessible.

- 2.6 Excluding any ramped access (which would add approximately 30 metres to the length of travel) Classroom 19 is approximately 100 metres from the Hall and 90 metres from the Library. Including the ramp the nearest accessible toilet to Classroom 19 is approximately 45 metres away and about 40 metres of this travel would be in the open.



**Figure 2: Site plan**

### 3. Background

- 3.1 An undated building consent for Classroom 18 (Request No 171202) was issued by the authority.

The consent included the following condition:

The building must be removed, or demolished on or before 18 December 2012 (being the specified intended life of the building)

- 3.2 The building consent for the construction of Classroom 19 (No. 176533) was issued by the authority on 17 April 2008. The consent described the work as:

Stage 1 . . . Construction of a new relocatable classroom with one sink, not including the walkway, stairs or ramp.

The consent included the following condition:

The building must be removed, or demolished on [10 April 2013] (being the specified intended life of the building)

A further condition in an addendum said:

This is stage 1 of 2 stages. Stage 1 will be the construction of the classroom and verandah only, Stage 2 accessibility to the classroom will be at a later date . . .

- 3.3 Classroom 19 was finally constructed in accordance with the Stage 1 building consent. However, it was also provided with an external access stair and deck, neither of which formed part of the consent.
- 3.4 On 2 July 2008, the authority issued a notice to fix for Classroom 19 which noted that the access steps had been constructed without a building consent. The notice to fix required the builder to:

To apply for a building consent as per the condition in the . . . addendum to the Building Consent... Note: The steps must not be used until the Building Consent has been granted and all work approved by the [authority].

- 3.5 Prior to issuing the consent there had been some correspondence between the architect and the authority. The following matters arising from the correspondence are noted:

In correspondence from the architect to the authority

- The 17 permanent classrooms at the school were all wheelchair-accessible and the school currently had one pupil in a wheelchair.
- The provision of a 1:12 maximum slope ramp would be a ‘relatively major exercise’.
- Advice had been obtained from the Department regarding the implications of the Act on access to schools.
- The Ministry of Education had waived its requirement set out in its “State Schools Property Management Handbook” (“the MOE Handbook”) for wheelchair access to Classroom 19, on the grounds that ‘it provides no advantage to any disabled person, is for a temporary time period, and consequently is a waste of public money’.

- Reference was made to the identical adjoining Classroom 18 that had been approved by the authority, despite not being accessible.

In correspondence from the authority to the architect

- Classroom 19 was considered new work and not an alteration. Accordingly, the need for the building to be accessible could not be waived and the work had to comply with section 118.
- It was suggested that the consent application be amended to build Classroom 19 minus the ramp as Stage 1, so that the building work could commence. A second application could then be made for the walkway, stairs, and ramps.
- It was accepted that the consent for Classroom 18 was issued in error.
- While it could not deviate from the requirements of the Building Code, it was accepted that the provision of a ramp was 'somewhat disproportional' considering the accessible facilities already available at the school.

3.6 The application for a determination was received by the Department on 4 July 2008.

3.7 I note that the authority issued a notice to fix in respect of Classroom 18 on 15 July 2008. The notice to fix required the applicants to:

Provide an accessible route that meets the requirements of D1 to [Classroom] 18

#### **4. The submissions in response to the application**

4.1 In a submission dated 1 July 2008, the architect described the background to the matter to be decided. It was noted that a ramp at 1:12 would be 30 metres long which would be impracticable for most wheelchair users. Even if a ramp was provided, it would not be used as a person in a wheelchair would be accommodated in a classroom that had better access to the school's facilities. The architect considered the authority could view the whole school complex as one "building" under the Act, so that addition of Classrooms 18 and 19 could be treated as alterations. The authority had the power under section 118 to decide to what extent it was reasonably practicable for Classroom 19 to comply with the Building Code.

4.2 The architect forwarded copies of:

- the plans
- the building consent and PIM
- the relevant correspondence
- photographs of the building.

4.3 The authority made a submission in a letter to the Department dated 15 July 2008. The authority set out the background to the matter to be decided and also made reference to Classroom 18 and the issuing of a notice to fix that would require an accessible ramp to be installed to that particular building. The authority referred to the requirements of the Act that were considered to be relevant and were of the opinion that access was required for disabled persons who needed to visit or work in the classrooms in question. Referring to Determination 94/004, the authority noted

that the remarks made regarding a common use and ownership emphasised process rather than technical design matters. (I note at this point, that I have addressed this issue in paragraph 9.2.5). Accordingly, the authority did not accept that Classroom 19 was an alteration, which in turn restricted the authority's actions as to disabled access.

4.4 The authority forwarded copies of:

- the notice to fix Form 13 for Classroom 19
- the notice to fix for Classroom 18.

## 5. The legislation and the compliance documents

5.1 Relevant provisions of the Act are:

### **17 All building work must comply with building code**

All building work must 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.

### **49 Grant of building consent**

- (1) A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

### **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.

### **112 Alterations to existing buildings**

- (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration, the building will—
- (a) comply, as nearly as is reasonably practicable, with the provisions of the building code that relate to—
- (i) means of escape from fire; and
  - (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
- (b) continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

### **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.

### Schedule 2

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:

- (m) educational institutions, including public and private primary, intermediate, and secondary schools, universities, polytechnics, and other tertiary institutions:
- (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 Relevant provisions of the Building Code include:

#### CLAUSE A2—INTERPRETATION

In this building code unless the context otherwise requires, words shall have the meanings given under this Clause. Meanings given in the Building Act 1991 apply equally to the building code.

**Access route** A continuous route that permits people and goods to move between the apron or construction edge of the building to spaces within a building, and between spaces within a building.

**Accessible** Having features to permit use by people with disabilities.

**Accessible route** An access route usable 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 enable people with disabilities to carry out normal activities and processes within the building.

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

- (a) Approach the *building* from the street boundary or, where required to be provided, the *building* car park,
- (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...

5.3 The relevant provisions of NZS 4121<sup>4</sup> include:

#### 4.2 Accessible route

##### 4.2.2

There will be situations where the local topography will not allow an accessible route to be fully provided. Other solutions that provide reasonable and adequate access may be approved provided that the principles of accessibility are maximized in alternative designs.

#### 9.1.3.2 Two and three storey buildings

<sup>4</sup> New Zealand Standard NZS 4121: 2001 Design for access and mobility – Buildings and associated facilities

Where 9.1.3.1 [the requirement to provide a lift] is not applicable a lift is not required when:

- (a) Buildings are two storeys high and have a gross floor area of the upper floor of less than 400m<sup>2</sup>,
- (b) Buildings are three storeys high and have a gross floor area of the upper floors of less than 500m<sup>2</sup>,

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

## **6. The site meeting**

6.1 A site meeting was held on 15 July 2008 attended by the project manager, the architect, the school principal, two officers from the authority, and a representative from the Department. The means of access available to all buildings on the site were viewed as well as the two re-locatable classrooms.

6.2 The authority officers indicated that the inspections carried out by the authority on the re-locatable classrooms did not reveal any areas of non-compliance, other than the lack of an accessible ramp. However, it was noted that a building consent had not been obtained for the as-built access steps and deck. The project manager confirmed that the estimate provided for the ramp was on the basis of it being installed at an initial stage and did not take into account demolition of the existing steps and deck.

## **7. The draft determinations**

### **7.1 The first draft**

7.1.1 I forwarded a copy of the first draft determination to ODI for its comments on 23 July 2008 and to the parties on 19 August 2008.

7.1.2 The ODI responded in a memorandum to the Department dated 28 August 2008. The ODI considered that the two classrooms in question were not “additions” but should be considered as new buildings. The ODI did not accept that the draft addressed fully the interests of all persons with disabilities. The ODI were of the opinion that the applicants had not factored accessibility requirements at the beginning of the project, and did not accept the applicants’ guarantee that the classrooms would be removed within 5 years.

7.1.3 I forwarded these comments to the parties.

7.1.4 The architect accepted the draft determination on behalf of the applicants and forwarded a copy of a letter from the school principal dated 29 August 2008. The principal noted that the school had managed access for both disabled pupils and disabled parents by ensuring that these persons were centrally placed to use the school’s facilities. The school would not use the classrooms at the rear of the school



due to distance and time constraints. If a ramp had to be provided, it would not be practical for use by disabled persons.

7.1.5 The authority responded through its legal advisers in a submission dated 5 September 2008. The submission noted the authority's concern with some of the conclusions reached in the determination. In summary, the authority concluded that Classroom 19 should be treated as a new building and that the school does not currently provide access facilities that amounted to a complying route to Classroom 19.

7.1.6 In a letter dated 29 August 2008, the architect responded on behalf of the applicants to the ODI's comments described in paragraph 7.2. The architect did not agree with the ODI's contention that Classrooms 18 and 19 were "new buildings" nor the claims that proper consideration had not been given to the needs of persons with disabilities and that a proper assessment of the benefits of providing access was not determined. The applicants had considered the provision of a wheelchair access ramp prior to the application for the building consent for Classroom 19.

7.1.7 After careful consideration of the parties' and the ODI's comments and the evidence produced at the hearing, I produced a second draft determination.

## **7.2 The second draft**

7.2.1 I forwarded a copy of the second draft determination to the parties and to the ODI on 12 December 2008.

7.2.2 The applicants accepted the determination without making any further comment.

7.2.3 The authority accepted the draft but subject to the following non-contentious comments, which I have summarised:

- The authority did not agree with the view that staged consents cannot be issued with a code compliance certificate until all the stages have been completed. The authority requested that, due to the ongoing effect that the determination would have, further guidance be included in the determination regarding this matter.
- The technical interpretation of how Classroom 18 has become an extension of Classroom 17 as described in the determination, was, in the authority's opinion relative to this situation and cannot be relied upon for all future applications.
- The authority indicated that it would withdraw the notice to fix for Classroom 18. However the notice to fix for the access stairs to Classroom 19 will remain in place until an application for a certificate of acceptance is lodged.
- The authority will request the applicant to provide an assessment of the ANARP (as near as reasonably practical) upgrade under section 112 for the complex (the total class room block).

7.2.4 The ODI did not accept the determination and attached a submission dated 16 January 2009 to the option form. In summary the ODI said:

- As ramped access could easily have been installed to the classrooms at the construction stage, it could not be said that the classrooms without ramped access comply as “nearly as is reasonably practicable”.
- The use of a certificate for public use by the authority means that it was not necessary to issue the code compliance certificate.
- It was considered that the erection of Classrooms 18 and 19 could not be considered as an alteration to an existing building.
- The determination will have profound effects in that it allows for failures at the construction stage enables owners to consider that ‘relatively easy options for compliance with access requirements can be cured by reference to the determination process’. In addition, it will encourage owners of campus complexes to engage in staged developments without having proper regard for persons with disabilities.
- The draft determination should affirm the authority’s refusal to issue code compliance certificates for Classrooms 18 and 19. Also, since the certificate of public use has been issued, the territorial authority should withdraw any notices to fix that have been issued in connection with access requirements.

## **8. The hearing and site inspection**

- 8.1 The applicant requested a hearing, which was held at the school on 9 October 2008 before me. I was accompanied by a Referee engaged by the Chief Executive under section 187(2) of the Act. The hearing included an inspection of the school and the access into the two classrooms.
- 8.2 The hearing was attended by:
- the applicants represented by the school principal, a school trustee, an officer from the Ministry of Education, the architect and the project manager
  - the authority, represented by two of its officers
  - a representative from ODI
  - three other staff members of the Department and an independent legal adviser.
- 8.3 All the parties spoke at the hearing and the site visit. The evidence presented by those present enabled me to amplify or clarify various matters of fact and was of assistance to me in preparing this determination.
- 8.4 I summarise the applicants’ submissions as follows:
- Classrooms 18 and 19 were built to cover an increased roll and were required for a 5-year period until a new school was built on a different site. At that time, the two classrooms would be removed and set aside for “fire stock”.

- Discussions are held with the parents of children in wheelchairs and with parents with disabilities so that the needs of these persons are met as to access and facilities. Organisational changes were also made as to class allocations so that the appropriate classrooms and facilities could be used.
- The Education Department [the Ministry of Education] had waived the requirements set out in the MOE Handbook in this instance; however the cost to install a ramp would be the school's responsibility. The Education Department would accept certificates of public use if a code compliance certificate were not forthcoming.
- A code compliance certificate could be issued subject to being tagged as to the 5-year life of the buildings.

8.5 The authority stated:

- It was the authority's opinion that the construction was new work and therefore, access ramps were required. However, the site inspection showed that Classroom 19 could be considered as an extension to Classroom 18.
- A certificate for public use had been issued but code compliance certificates had not been issued for either classroom as it was considered that the buildings at this stage were not code-compliant.

8.6 The ODI submitted

- If the authority did not have the power to waive the access requirements, then neither did the Department.
- As the classrooms were new structures, the "benefit/sacrifice" consideration did not apply.
- There was no guarantee that the classrooms would be removed within the 5-year limitation.
- Any cost basis for installing a ramp should be that pertaining to it being included at the outset and not for installing one at this late stage.

8.7 The site inspection clarified the position of the accessible toilets and the configuration of the school as a whole.

## **9. Discussion**

### **9.1 Are Classroom 18 and 19 new work or alterations in terms of section 112?**

9.1.1 Section 8(1)(c) states that the definition of building includes:

any 2 or more buildings, that on completion of the building work, are intended to be managed as one building with a common use and a common set of ownership arrangements.

- 9.1.2 The architect is of the opinion that section 8(1)(c) applies to the school in question and that the work is an alteration in terms of section 112. The authority and the ODI do not accept this interpretation. This matter has relevance as to the approach that I might take in this matter.
- 9.1.3 I now accept that the school complex in its entirety cannot be considered as “one building”, which leaves the question of whether Classrooms 18 and 19 themselves are additions and alterations to a building. If this was indeed the case, I could consider both classrooms in terms of section 112.
- 9.1.4 As observed at the site inspection, Classroom 19 is attached directly to Classroom 18 and has an interconnecting internal access. I am of the opinion therefore, that Classroom 19 can be considered to be an “alteration” to Classroom 18 in terms of section 112.
- 9.1.5 While Classroom 18 is separated from the adjoining Classrooms 17 by a small gap, I note that the existing covered way, which is the only means of access in this particular block of Classrooms 14 to 17, is altered and extended to access Classroom 18. In addition, the existing electrical and fire alarm systems have been altered and extended to serve the two new classrooms. I am of the opinion therefore, that Classroom 18 can also be considered to be an “alteration” to Classrooms 14 to 17 in terms of section 112.
- 9.1.6 As set out in paragraph 9.2.3, I have also referred to Determination 96/003 with regard to the provision of a ramp to Classroom 19.
- 9.1.7 If building work is considered to be an alteration, it is be subject to the following criteria:
- (a) Under section 69 the Chief Executive may, by way of a determination, grant a waiver or modification of the accessibility requirements.
  - (b) Under section 112, the authority may issue a building consent for work that does not comply completely with the accessibility requirements of the Building Code, provided that it is satisfied that after the alteration the building will comply with those requirements “as nearly as is reasonably practicable”.
  - (c) Under section 177, the Chief Executive may make a determination in relation to a building consent issued under section 112, and under section 188 such a determination may incorporate waivers or modifications of the accessibility requirements.
- 9.1.8 In previous determinations issued by the antecedent of the Department, the Building Industry Authority (“the Authority”), an approach was established and discussed regarding the question of whether a building complies “as nearly as is reasonably practicable” with particular provisions of the Building Code. This approach involved the balancing of the sacrifices and difficulties of upgrading against the advantages of upgrading and follows the approach of the High Court<sup>5</sup>.

---

<sup>5</sup> *Auckland City Council v New Zealand Fire Service*, 19/10/95, Gallen J, HC Wellington AP 336/93.

- 9.1.9 I continue to hold the views expressed in the previous relevant determinations, and therefore conclude that:
- (a) The benefits would be accessibility for people with disabilities to this particular classroom in the context of the 17 classrooms that are already accessible.
  - (b) The sacrifices would be the relatively high cost of providing accessible ramps and given the building consent condition relating to the short life of the classrooms on site in this case.

## **9.2 The issuing of the building consent**

9.2.1 All building work must comply with the Building Code as set out in Section 17, while section 18 states that performance criteria additional or more restrictive to the Act cannot be required unless any other legislation specifically demands it.

9.2.2 As the complex, including Classrooms 18 and 19, is a public primary school, it is a building, which in accordance with section 118 and paragraphs (m) and (z) of Schedule 2, requires the provision of access and facilities for persons with disabilities. As such, the building comes within the ambit of Clauses D1.3.2 (b) and (c), which require a building to have at least one access route with features to enable people with disabilities to have access to the internal space served by the principal access and provide access to spaces where they may be expected to visit.

9.2.3 In respect of providing accessible ramps to Classrooms 18 and 19, I refer to Determination 96/003 that was issued by the Authority, which stated:

6.3.2 The Authority considers that those words [“the principal activities of the building shall be located on the ground floor”] must be interpreted in the context of NZ 4121 itself but also of the Disabled Persons Community Welfare Act. As its Foreword states, the purpose of NZS 4121 is “to provide design rules for those who are responsible for making buildings accessible to, and useable by people who have disabilities as required by Section 25 of the Disabled Persons Community Welfare Act”...

6.3.7 The Authority agrees that the other buildings in the complex may be taken into account for some purposes. The Authority has previously taken the view that the facilities available in the other buildings in the complex may be taken into account when deciding whether the building concerned complies with particular provisions of the building code: see Determination 94/004 in relation to providing access by way of a lift in an adjacent connected building, and Determination 95/003 in relation to providing accessible sanitary facilities in another building. The Authority therefore considers that the other buildings in the school complex may be taken into account when considering whether the building concerned complies with Schedule D of NZS 4121.

6.4.2(d) If the building is part of a complex of buildings then the other buildings may be taken into account when one contains facilities not present in another.

9.2.4 I agree with the approach taken by the Authority in Determination 96/003 and am prepared to apply it to the current matter. The architect has noted that all the classrooms and the other buildings on the site, with the exception of Classrooms 18 and 19 are provided with access for persons with disabilities. This was confirmed at the site meeting described in paragraph 8. Therefore, applying the approach taken in determination 96/003 and extending it to clauses D1.3.2(b) and (c), I consider that there are ample alternative locations where persons with disabilities can be educated without the need to require an accessible ramp to be provided for Classrooms 18 and 19. I also note that the school in question is a primary school and therefore there is

not the specialised use of spaces and scheduling difficulties that would arise in the case of a secondary school or a polytechnic.

- 9.2.5 As I have established that Classrooms 18 and 19 are alterations to the school in terms of section 112, I can also consider the sacrifices and benefits approach described in paragraphs 9.1.8 and 9.1.9. I have received an estimate on behalf of the applicant of \$25,000 to \$30,000, excluding GST, to provide a timber-framed ramp that would be approximately 35 metres long, include four landings, and would have handrails both sides. This costing includes some paving and landscaping at the lower end and building work at the higher end where the ramp meets the building. I have also taken into account the ODI submission that costs should be those at the outset of the building work, rather than those at a later date. I note also that the cost of installing the ramps would be disproportionate, taking into account the overall cost of constructing the classrooms in their present form. Accordingly, I must weigh this cost, which is the only sacrifice, against the benefits of providing disabled access to Classrooms 18 and 19.
- 9.2.6 I note that in this respect, as set out in paragraph 3.5, the authority believed that the ramp situation was 'somewhat disproportional' considering the accessible facilities available at the school. Also, according to the architect, the Ministry of Education considered that an accessible ramp to Classroom 19 'provides no advantage to any disabled person, is for a temporary time period, and consequently is a waste of public money'. In addition, these considerations are made in the context of the 5-year specified intended life of Classrooms 18 and 19.
- 9.2.7 Furthermore, in the context of "absolute" accessibility, section 4.2.2 of NZS 4121 (as described in paragraph 5.3) provides an example where, provided that the principles of access are maximised, an alternative design providing reasonable and adequate access can be considered.
- 9.2.8 Taking into account, all of the above factors, I am of the opinion that the benefits obtained from providing access to Classrooms 18 and 19 would be far outweighed by the high cost of providing such access.
- 9.2.9 On the basis of the availability of alternative classroom facilities for any person with disabilities and the cost of installing ramps to Classrooms 18 and 19 outweighing the benefits, I find that Classrooms 18 and 19 will comply with the Building Code without the addition of an accessible ramp and that the classroom block as a whole is code-compliant as nearly as is reasonably practicable.
- 9.2.10 The authority has noted that the Ministry of Education had requirements, as set out in the MOE Handbook, which were additional to those set out under the Act. In basic terms, all building work must comply with the Building Code as set out in section 17, while section 18 states that performance criteria additional or more restrictive to the Act cannot be required unless any other legislation specifically demands it. Therefore, I am of the opinion that I cannot consider requirements additional to those set out in the Act and Building Code.
- 9.2.11 I note that the authority has advised that it would not issue a code compliance certificate until both Stages 1 and 2 of the project is complete. In this respect, I refer to section 92(1) which states that a building owner can apply for a code compliance

certificate after all building work to be carried out under a building consent granted to the owner is completed. I am of the opinion that the fact that a building consent is divided into various stages to assist the construction of a building does not mean that each stage is a separate consent. Accordingly, I accept the argument of the authority that when a building consent is “staged”, a code compliance certificate can only be issued when all the stages are completed to the satisfaction of the authority.

## **10. What is to be done now?**

- 10.1 As I have decided that Classroom 19 does not require a ramp, the authority should now withdraw its notice to fix Form 13 and issue a code compliance certificate for the work covered by the Stage 1 consent No 176533. It should also amend the consent to remove the reference to Stage 1.
- 10.2 With respect to the access stairs and deck attached to Classroom 19, these have been constructed without obtaining a building consent, which I consider to be a requirement for this part of the work. Accordingly this building work cannot be subject to a code compliance certificate. However, the applicants can apply for a certificate of acceptance in terms of sections 96 to 99. If the authority is satisfied that the work is code-compliant, it can then issue a certificate of acceptance.
- 10.3 In addition, I am of the opinion that the authority should withdraw the notice to fix that it has issued for this Classroom 18, bearing in mind that Classrooms 18 and 19 are the only two classrooms that are not accessible. The authority can then amend the building consent to refer to the work as an alteration, and once the authority is satisfied that the building work is code-compliant, it can then issue a code compliance certificate.

## **11. The decision**

- 11.1 In accordance with section 188 I hereby determine that Classrooms 18 and 19 in their present form comply with Clause D1.3.2 of the Building Code.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 20 April 2009.

John Gardiner  
**Manager Determinations**