



Determination 2014/054

The provision of an accessible route and accessible facilities in a new building at a meditation centre at 153 Burnside Road, Kaukapakapa

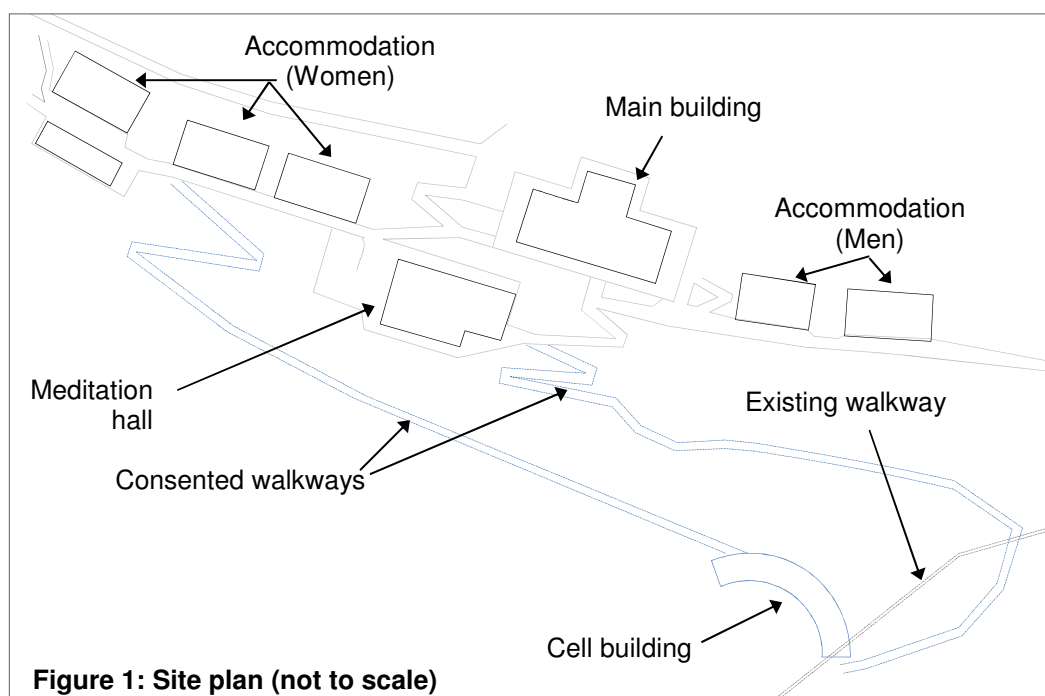
1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are
 - the owner of the meditation complex, the Vipassana Foundation Charitable Trust (“the applicant”)
 - Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 The Office for Disability Issues (“the ODI”) at the Ministry of Social Development has been included as being a department with which the Chief Executive must consult under section 170 of the Act.
- 1.4 This determination arises from the decision of the authority to refuse to amend a building consent to remove the accessible routes to and the accessible facilities in a new meditation building (“the cell building”).
- 1.5 The consented work includes a ramped access route to the cell building, car parking and accessible sanitary facilities adjacent to the cell building, and two accessible cells within the building (referred to in this determination together as the “accessible facilities” and described further in paragraph 2). The applicant holds the view that the complex already caters for people with disabilities and that the cell building should not be required to have accessible facilities.
- 1.6 The matter to be determined, in terms of section 177(1)(a) of the Act, is therefore, whether the cell building without the accessible facilities would comply with Clause D1.3.2 of the Building Code (Schedule 1, Building Regulations 1992) to the extent required by section 118 of the Act.
- 1.7 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. I have not considered the compliance of the accessible facilities or other rooms or buildings described as being accessible.

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

2. The building work

- 2.1 The building work consists of a cell building and associated pathways set within the grounds of an existing complex. The complex is used as a meditation centre, with 1 day to 10 day residential courses available to the public.
- 2.2 The cell building is a detached single level building containing 14 individual meditation rooms (“cells”) and two store rooms. The cells are approximately 2.4m x 1.5m. The building is semi-circular in plan and a wide veranda runs along the outer face; the cells are accessed from the veranda. The consented plans indicate two further levels of cells are planned to be consented at a later date.
- 2.3 Access to the cell building is by way of:
- an existing access road (to be upgraded) that connects with the main vehicle access way serving the complex
 - two proposed walking tracks leading from separate areas of the main complex; these are designed at 1.2m wide and have 1:12 gradient
 - an existing walking track.
- 2.4 The complex is situated on a 41ha steeply sloping rural site in the Makarau valley. The existing buildings within the complex include:
- a two-storey building (“the main building”), which contains
 - Ground floor: office and staff dining, personal hygiene facilities, a laundry, five accommodation rooms including one accessible room with accessible shower/WC
 - First floor: kitchen and dining
 - five accommodation blocks
 - one women’s ablution block
 - a meditation hall
 - separate ‘support buildings’ such as manager’s residence and workshop.



3. Background

- 3.1 The authority issued a building consent (No. ABA 1010243) for the cell building on 3 November 2011 based on a set of plans that included an accessible path to the cell building, an accessible toilet en route near the cell building, and two cells within the building.
- 3.2 It appears that at some time in 2011 the applicant sought a waiver relating to access and facilities for people with disabilities. The authority responded on 25 August 2011, referring the applicant to section 67(3) and section 69 of the Act.
- 3.3 The complex is used as a meditation centre, with 1 day to 10 day residential courses available to the public.
- 3.4 The applicant advised that students meditate together in the meditation hall or on their own in separate rooms depending on the course schedule. Prior to the construction of the cell building, students have been allocated spare accommodation rooms adjacent to their sleeping rooms for the purposes of solo meditation.
- 3.5 The applicant had identified two accommodation rooms in the main building which would be provided for the purposes of solo meditation for a person with a disability who is unable to access the cell building; the meditation hall would also be available for that purpose.
- 3.6 The Ministry received an application for a determination on 24 July 2014.
- 3.7 On 7 August 2014 I sought further information from the applicant. An architect acting on behalf of the applicant responded on 14 August 2014. The architect provided copies of the consent drawings and noted that the cell building is under construction.
- 3.8 The architect confirmed that the applicant wished to have the requirement to provide accessible facilities (car parks, ramps, toilet facilities, and cells) removed from the building consent, and that on completion of the cell building able-bodied persons would have the use of the cell building while persons with a disability would have the use of 'an adjacent accommodation room as their individual cell for meditation'.
- 3.9 On 18 August 2014 I sought clarification from the architect as to the accommodation rooms that would be available to a person with a disability for the purposes of solo meditation. The architect responded on 19 August 2014 stating that two rooms on the ground level of the main building would be the most appropriate for this purpose as those rooms are fully accessible.

4. The initial submissions

- 4.1 In a covering letter to application the applicant described the use of the complex and provided information on current and proposed practices. The applicant submitted that:
- The siting of the cell building was dictated by the lack of availability of suitable sites on the property given the topography.
 - A person with a disability is provided appropriate access to all essential buildings and facilities (including the meditation hall and the dining room) and a private accessible accommodation room and bathroom.

- Students have previously been provided with an additional room to use exclusively for meditation, adjacent to the one used for sleep and rest; the construction of the cell building will free up accommodation spaces.
- 4.2 In regards to the consented walkways and vehicle access for a person with a disability to get to the cell building, the applicant submitted that students may use the cell building up to four times a day and that:
- having a student use a vehicle to access the cell building would be disruptive, and would cause a disturbance or distraction for themselves and others
 - the walkways are circuitous and challenging (the elevation is approximately 20m uphill and 250m in length).
- 4.3 The applicant provided copies of
- a typical daily schedule
 - a plan of the main building
 - site plan including the cell building.
- 4.4 The authority acknowledged the application but made no submission in response. In an email on 5 September 2014 the authority advised that a meeting was proposed ‘to see if it is possible to resolve the issues’ and that the authority would make no submission until that meeting had been held.

5. The site visit

- 5.1 On the 24 October 2014 I took the opportunity to visit the site. I was accompanied by a Referee engaged by the Chief Executive under section 187(2) of the Act. The purpose of the visit was to view the physical layout of the centre in order to more fully understand the site and the operational aspects of the centre and how they impact on the access of people with disabilities. At the visit questions of clarification were asked of a representative of the owner and the designer.

6. The draft determination and submissions received

- 6.1 A draft determination was issued to the parties for comment on 9 September 2014.
- 6.2 The draft determination found that the cell building without accessible facilities does not comply with Clause D1.3.2 to the extent required by section 118 of the Act. The draft determination found the cell building operated as a specialist facility providing individual space for solo meditation in an environment where the students are not distracted or disrupted and are located away from other buildings in the centre.
- 6.3 The main building, which the applicant nominated as providing meditation rooms for those with disabilities, houses a number of rooms with a variety of uses such as a kitchen, office, and laundry. The normal activities carried out in the proposed cell building are not provided for in the nominated rooms in the main building.
- 6.4 On 18 September 2014 the applicant provided a submission in response to the draft determination and attached amended plans for the accommodation rooms. In summary the applicant contended that:
- It is accepted the noise levels in the main building would not offer a quiet, private space comparable to the cell building, and have the potential to be

disruptive to meditation in a way the cell building would not, and is therefore not an equitable solution.

- The applicant proposed to retrofit two of the accommodation rooms ‘to be most suitable to dual use as solo meditation room/accommodation room’ one on the male side and one on the female side to be fully accessible cells when needed by a wheelchair-bound person.
- The door of both rooms would be replaced with a clear opening of no less than 760mm and the bed made removable offering a turning circle of 1.5m. The ramp to deck and to door ratio is at a gradient of 1:12. The noise levels, ease of access and comfort of the retrofitted accommodation rooms would be either equal to or better than those in the cell building.
- Historically only two persons in wheelchairs have attended courses in the last 20 years, the applicant suggests two retrofitted accommodation rooms will be sufficient. If it were the case there were more applicants than places available for a wheelchair bound person, the management would negotiate the transference of someone’s application to another available course. It is common for students to transfer to other course dates.
- In relation to management practice, matching the needs of students to the limitations of the available facilities is common practice for the management of the centre; the management should be able to deal with rare situations creatively using resources available.
- The centre has ramps available, either as a principal route or an alternative to stairs, lighting levels are appropriate and visual and hearing aid equipment is available. The hall, dining rooms, toilets and showers are friendly to most people with disabilities.
- The applicant contends there is a significant difference in cost between retrofitting the two accommodation rooms and the building of ramps to the new cell building, the centre is run solely on donations from students.
- The nature of the course is to promote a sense of individuals working in isolation, there being a requirement for students to refrain from all contact with other students. The disabled person would not feel a sense of deprivation from a group.

6.5 On 19 September 2014 ODI accepted the draft determination and submitted the following comments, in summary:

- There is a clear expectation that access for disabled people must be provided in all new or altered buildings where the public may use and carry out normal activities. It is not acceptable to grant exemptions on the basis that few disabled persons used a facility in the past.
- Exemptions should not be granted on the basis of cultural practices, traditions or beliefs.
- The development of the proposed solution is accepted, provided that disabled people retain their dignity and equality of opportunity on an equal basis with others.

- The importance of the UN Convention on the Rights of Persons with Disabilities was reiterated, in particular those Articles regarding accessibility and participation in cultural life, recreation, leisure and sport.

6.6 On 24 September 2014 the authority accepted the draft determination without comment.

6.7 I have taken account of the submission received by ODI and the proposal by the applicant and amended the determination where appropriate.

7. Discussion

7.1 Clause D1.3.2 is the relevant clause of the Building Code, which sets out the performance requirements for access routes for people with disabilities. The matter in dispute is in relation the authority's requirement that the cell building must be made accessible.

7.2 It is not disputed that the cell building is a 'premise or facilities to which the public are to be admitted, whether for free or on payment of a charge', and as such comes under the buildings listed in Schedule 2 of the Act and must comply with section 118 of the Act.

7.3 Section 118 requires that, if provision is being made for the construction or alteration of a building to which it applies, reasonable and adequate provision by way of access must be made for persons with disabilities who may be expected to visit or work in the building, and carry out normal activities and processes in the building.

7.4 The authority has granted the consent with the accessible facilities set out in the plans (refer Figure 1). I observe that the ramped access routes are a significant length, and the length of a ramped route must also be considered when deciding whether the route is reasonable or adequate.

7.5 The applicant wishes to have the requirement to provide the accessible facilities to the cell building removed from the consent. He has submitted that in order to provide for the needs of a person with a disability to carry out their solo meditation, a room in the main building would be made available and that students also have the option of using the meditation hall. In this context, and in order for the requirements of the Act to be satisfied, the requirement for accessible routes and facilities to the cell building would need to be considered in respect of the complex as a whole.

7.6 The definition of building in section 8(1)(c) of the Act says that a building:

Includes any 2 or more buildings [that] are intended to be managed as one building with a common use and a common set of ownership requirements ...'

7.7 Previous determinations have established an approach for assessing the need for accessible routes and facilities in situations where buildings are part of a complex of buildings². This approach was discussed in Determination 96/003³, which stated:

6.2.1 Section 3(2)(b)⁴ of the [former] Building Act provides in effect that in certain cases 2 or more buildings come within the definition of "building" for the purposes of a building consent, a code compliance certificate, and a compliance schedule. This is such a case. Does that mean that the construction of the new classroom is to be treated as being an alteration to an existing building rather than as the construction of a new building?

² See, for example, Determination 96/003 and 2009/27.

³ Determination 96/003 Installation of a lift in a new classroom block in a primary school complex

⁴ Section 3(2)(b) of the former Act corresponds to section 8(1)(c) of the current Act.

6.3.7 The [Ministry] agrees that the other buildings in the complex may be taken into account for some purposes. The [Ministry] 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 ...

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.

- 7.8 I agree with the approach taken Determination 96/003. I consider that the cell building in this case is a new building and section 8(1)(c) is not applicable to this situation, but that I can take into account the facilities available in the other buildings in the complex.
- 7.9 In Determination 96/003 the subject building was a two-level class room block in a primary school and the determination considered whether a lift was required to access the upper level. The rooms in the upper level were a replication of those on the ground level, with the ground level rooms being accessible, i.e. the normal activities to be carried out in the upper level were the same as the other classrooms within the school that were accessible. That determination concluded that the use of 23 accessible classrooms, out of a total of 29 classrooms, would be sufficient to ensure that reasonable and adequate provision was made for people with disabilities to take part in normal activities within the school.
- 7.10 In terms of the “normal activities and processes” the meditation centre operates as a specialist facility providing individual space for solo meditation in an environment where the students are not distracted or disrupted. I note all meditation courses adhere to a strict “noble silence” principle, which is a silence of body, speech and mind and no communication between students.
- 7.11 The cell building is a detached building located within the grounds of the meditation centre. The cell building is located away from other buildings in the centre, and individual cells are specifically designed to provide a quiet and private space for meditation.
- 7.12 Following the issue of the draft determination, the applicant nominated two rooms, one each in each of the women’s and men’s accommodation blocks to be altered as accessible meditation rooms. Previously the main building had been nominated for this use (refer paragraph 3.5). The alteration involves the replacement of the doors for a clear opening of at least 760mm, and removable beds being installed to offer a turning circle and accessible ramp access provided with a gradient of 1:12.
- 7.13 In my view the level of noise and disruption to those meditating will be minimal in the altered accommodation blocks rooms compared to those rooms initially proposed in the main building. The accommodation blocks are used solely for sleeping or solo meditation. There are no other uses in the accommodation blocks that could cause disruption and I consider the “normal activities” carried out in the proposed cell building can be provided for in retrofitted accommodation rooms.
- 7.14 In relation to the number of accessible meditation rooms being provided in the accommodation blocks; in my view providing one women’s and one men’s accessible room is reasonable. The courses are limited to the number of students who can attend, and the ability for the same course to be offered several times throughout a year means students will often be required to attend an alternative

course due to numbers. I note that using past statistics regarding the number of disabled people historically attending the courses is not a robust argument as the situation may change in the future.

- 7.15 I have not considered the compliance of the proposed work to alter the accommodation blocks; nor the accessible routes between the altered rooms, the main building, and the meditation hall: I leave the compliance of these features to the authority to assess as part of the application to amend the original consent.

8. The decision

- 8.1 In accordance with section 188 of the Building Act 2004, I hereby determine that, in principle, the cell building without accessible facilities will comply with Clause D1.3.2 to the extent required by section 118 of the Act with the alteration to the existing accommodation blocks as proposed by the applicant to provide meditation facilities.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 5 November 2014.

John Gardiner
Manager Determinations and Assurance

APPENDIX

A.1 Relevant clause of the Building Code:

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, or which contain facilities for personal hygiene as required by Clause G1 Personal hygiene.

Performance D1.3.2 shall not apply to *housing, outbuildings, backcountry huts, ancillary buildings*, and to *industrial buildings* where no more than 10 people are employed.

A.1 Relevant section of the Act

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](#)