



Determination 2015/060

Regarding the compliance of concrete exterior stairs at Unit 9A Gunns Crescent, Cashmere, Christchurch

Summary

This determination confirms the extent of compliance required by the Act for a set of external concrete stairs that serve as the access route to a dwelling. The three flights of stairs were replaced due to damage caused by earthquake activity, and the majority of the building work was carried out as exempt building work under Schedule 1(2)(a). The determination discusses the term “apron or construction edge” as it is used in Clause D1.3.1(a) and as it applies in this case.



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 Licensed Building Practitioner concerned with the relevant building work, R Turner, who applied for the determination (“the builder”)
 - the owner of the building, C Hargrave (“the owner”), acting through an agent (“the owner’s agent”)
 - Christchurch City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from a dispute between the builder and the owner of the building in relation to the replacement of a set of exterior stairs as part of earthquake repairs undertaken on the property. The owner does not believe the stairs as built comply with the Building Code.²

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

² First Schedule, Building Regulations 1992

- 1.4 The matter to be determined³ is therefore whether the stairs comply with Clause D1 of the Building Code to the extent required by the Act.
- 1.5 I note that any matters relating to workmanship or contractual issues are outside the matters that can be considered under section 177 of the Act; the owner has the option to lay a complaint to the Building Practitioners Board under section 315 of the Act if the owner believes this is warranted.
- 1.6 In making my decision, I have considered the submissions of the parties and the other evidence in this matter.

2. The building work

- 2.1 The building work consisted of a replacement of a set of exterior concrete stairs to an existing dwelling. The dwelling is located on the north side of a moderately sloping hill and has two levels. The lower level is a single garage entered via the driveway. Access to the main entrance to the dwelling at the upper level is via an exterior concrete stairway integrated into a raised garden. It is this concrete stairway that is the subject of this determination.
- 2.2 The stairs are in three flights (referred to as the first, second and third flights from the driveway respectively). The second and third flights of the existing stairs were damaged as a result of the Canterbury earthquake sequence and needed replacement. The first flight (the lowest) was not damaged; however the builder replaced this flight for consistency.
- 2.3 The third flight of stairs joins the patio which leads to the entrance to the house. The patio barrier continues down the third flight of stairs and provides a handrail to that flight. The first and second flights do not have a handrail installed.
- 2.4 From the landing between the second and third stairway, another set of steps provides access to a path leading around the back of the house. This set of steps is not considered in this determination.
- 2.5 In a submission provided by the owner (refer paragraph 4.3.1) a joiner engaged by the owner described the stairs as follows:
1. Driveway degree is 12 degrees to the first rise. The first step is 900mm wide the left hand side is 85mm right hand side is 185mm, off the driveway.
 2. 1st flight of stairway consists of 5 rises, with a pitch of 17degrees, going of 450mm and 130mm rise.
 3. 2nd flight of stairway consists of 5 rises, with a pitch of 28degrees, going of 355mm and 180mm rise.
 4. 3rd flight of stairway consists of 8 rises, with pitch of 27degrees going of 310mm and bottom stop of 155mm rise remaining steps vary between 145mm-150mm rises.
 5. The steps of the second landing (leading to the back pathway) consist of 3 rises, with a pitch of 25degrees, going of 400mm and 175mm rise.

3. Background

- 3.1 On 1 July 2013 the builder was engaged by the owner's insurer ("the insurance company") to scope the building for repairs. The scope of repairs described the building work to the stairs as:

³ Under section 177(1)(a)

Remove, replace concrete steps adjacent to foundation (exposed aggregate finish)

Remove, replace 2nd flight of concrete steps (1st flight from drive undamaged)

The scope of work was agreed to by the parties and a repair contract entered into.

3.2 On 19 March 2014 the authority approved a Building Act exemption application (no. BCN/2014/3691) for the repair works under Schedule 1(2)(a) of the Act.

3.3 At some time in July 2014 construction commenced for earthquake repairs to the property. The third flight of stairs was demolished to gain access to repairs to the foundation area and the builder started work on the stairs sometime in August 2014.

3.4 On 28 November 2014 the architects engaged to assess remediation of access stairs to the property wrote to the builder. In summary the architects described the scope of the work and provided the following dimensions for the stairs as built:

1st flight: Risers @ 130mm, Treads @ 450mm

Landing [between 1st and 2nd flight]: 1050 x 1250mm

2nd flight: Risers @ 177mm, Treads @ 355mm

3.5 The architect noted the builder had used a template of the existing rise, tread and landing dimensions for the purpose of re-building without modifying the existing ascent or route. The architect considered that section 112(1)(b) applied to the rebuilt steps and also referred to the replacement as exempt building work under Schedule 1(2). The architect considered the addition of a handrail represented an 'upgrade' and while prudent there was no obligation for the handrail to be erected.

3.6 On 8 April 2015 the authority emailed the insurance company. The email sets out the authority's views and appears to include comment from the architect (summarised in the table below):

Table 1

	Authority	Architect
Building Act requirements	1 st & 2 nd flights are new building work and required to comply with the current Building Code	Scope was for 2 nd flight only, and was considered repair work not new work.
Handrail	Required under D1.3.3(j) and in D1/AS1 6.0.1	Is prudent to install
Uniformity of risers for consecutive flights	D1.3.3(f) requires uniformity within and for consecutive flights. D1/AS1 requires uniformity within flight within +or -5mm	Missed the requirement in D1.3.3 and relied on D1/AS1 which does not use the term consecutive flights. However, 1 st and 2 nd flights might be considered independent given that the landings give access to other areas and not just the next flight.
Exemption	The two new stair flights and landing were not part of the consent exemption.	Assume strategy was 'like-for-like' repair

Compliance	The two new flights do not comply with the Building Code	Complies as an alteration under s112(1)(b) ⁴
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- 3.7 On 14 April 2015 the builder sought advice from an officer of the Ministry. The builder notes two of the flights were replaced due to earthquake damage, but the builder replaced the bottom flight for consistency. The stairs were profiled and heights transferred before any demolition work was completed.
- 3.8 On 14 April 2015 the owner emailed the builder, in relation to the stairs noting that there was no exemption from the authority for the rebuild of the steps and they do need to comply with the Building Code and need to be 'redone to comply'.
- 3.9 On 16 April 2015 the builder emailed the authority seeking advice in relation to the handrails, which the builder noted he was 'happy to install at my cost' to the first and second flights and noting that an officer of MBIE had advised the steps complied in regards to the treads and risers.
- 3.10 On 17 April 2015 the authority responded noting the following (in summary):
- The authority does not consider the stairs were 'repaired' but were replaced/rebuilt, and therefore they must fully comply with the current Building Code.
 - The authority does not consider section 112 applies, as that section is only invoked when a building consent is involved which is not the case here.
- 3.11 The Ministry received an application for determination on 18 May 2015.

4. The submissions

4.1 The builder

- 4.1.1 The builder provided a written synopsis of building work with the application for determination. In summary:
- Prior to the existing stairs being demolished the builder took a template and transferred critical levels of the existing stairs profiles to enable replacement in the same position.
 - The existing first flight measured from mid-point 130mm rise with 450mm tread. The landing measured 1.050m x 1.250m and the second flight 177mm rise with 355 tread.
 - The builder notes he treated each flight as separate and therefore complying with D1/AS1, however further communication with the authority indicates the stairs consist of consecutive flights therefore requiring uniform construction.
 - The first two flights are well over the minimum requirements for tread rise and going, the builder did not consider them to be a hazard.
 - Following advice from an officer of the Ministry the builder is happy to install a handrail. The builder noted this offer has been rejected by the owner.

⁴ The architect referred to section 23(1)(b) of the Building Amendment Act 2013 which amended section 112(1)

4.1.2 The builder provided the following documentation with the application:

- the ‘Scope of Work and Repair Methodology’ dated 23 September 2013 agreed to by the builder, the insurance company, the owner, and the architects.
- building plans
- the exemption from the requirement to obtain building consent, issued by the authority
- correspondence between the architects and the builder dated 28 November 2014
- various correspondence between the builder, the owner and the authority dated between 8 April 2015 to 17 April 2015.

4.2 The authority

4.2.1 On 26 May 2015 the authority provided the following comments in response to the determination application:

- The authority noted it has not made any formal decision on compliance of the stairs. There was a discretionary exemption from building consent approved for repair work on the dwelling; however this did not include any consideration of the stairs.
- Clause D1.3.3(f)(ii) notes the phrase ‘and for consecutive flights’ whereas the Acceptable Solution D1/AS1 at 4.1.3 does not mention the requirement for consecutive flights. The authority considers the code clause to take precedence, and consecutive flights should have uniform riser heights within reasonable tolerance; guidance on this interpretation would be appreciated.
- In relation to D1.3.3(g) the authority offers no comment on the ease of seeing the leading edge of the tread, but notes that with an outdoor private situation an acceptable level of contrast between the tread and riser would occur due to natural shading and weathering.
- The authority considers this is a new stair as it has been completely replaced, and therefore a handrail is required.

4.3 The owner

4.3.1 On 9 June 2015 the owner provided a written submission, various photographs of the stairs, and a report from the joiner engaged by the owner which provided the dimensions of the flights of stairs (refer paragraph 2.5). In summary the owner submitted that:

- the access to the garden is from the driveway or street not from the first flight landing area, and
- the owner considers the access route from the driveway onto the first flight is dangerous as it is uneven and not level with the drive.

4.3.2 On 10 June 2015 the owner provided a medical form relating to an ankle injury described as ‘fallen down stairs and caught ankle on landing’ dated 25 January 2015.

4.4 The first draft determination and subsequent correspondence

4.4.1 A draft determination was issued to the parties for comment on 30 July 2015. The draft concluded that:

- a) The building work was required to comply to the extent set out in section 17 of the Act.
 - b) The three consecutive flights and landings between formed the access route to the main entrance of the building; accordingly D1.3.3(f)(ii) applies.
 - c) The stairs do not comply with Clause D1.3.3(f)(ii) in regards to the uniformity of rise for consecutive flights.
 - d) The bottom step of the first flight falls outside the tolerance of +/- 5mm described in paragraph 4.1.3 of D1/AS1.
 - e) The first and second flight of stairs do not comply with Clause D1.3.3(j) due to the lack of a handrail.
- 4.4.2 The owner requested a copy of the report produced subsequent to the site visit (“the site visit report”) (refer paragraph 4) and queried aspects of possible remedies, but made no comment in regards the conclusions in the draft determination.
- 4.4.3 The builder set out a proposed scope of works in an email to the authority on 19 August 2015 that was also copied to me. In response to the expert’s site visit report, the builder emailed on 21 August 2015 noting that the bottom step of the first flight (see item “d” above) was within the tolerance set out in D1/AS1, and the draft determination was incorrect in regards non-compliance of that flight, and in an email on 21 August 2015 the builder requested the determination be corrected.
- 4.4.4 By email on 24 August 2015 the authority provided clarification regarding what it considered was included in the exemption from building consent that it approved. The authority noted that the general description in the application for exemption did not include reference to the replacing of the stairs, but that notwithstanding the description of the work the drawings included
3. remove, replace concrete steps adjacent to foundation with new treated timber and handrail
 4. remove, replace 2nd flight of concrete steps, replacing with treated timber and handrail.
- 4.4.5 The authority noted that there was no indication in the application or plans that the first flight of steps from the driveway was to be replaced, and the authority is of the view that the replacement was not exempt under any clause in Schedule 1, and a certificate of acceptance will be required for this work. The authority also stated that
- The second flight is in a location where the possible fall, even if it did collapse, would be less than 1.5 metres, so [the authority] consider that this would not have required building consent under exemption 24. Whether it was exempt under clause 2 or 24, compliance with the Building Code was still required.
- ## 4.5 The second draft determination
- 4.5.1 I amended the draft determination as I considered appropriate. The error noted by the builder was corrected, and the discussion was expanded regarding exempt building work and the relevant Building Code requirements, and the definitions of the terms “apron” and “construction edge” and their application in this case.
- 4.5.2 A second draft determination was issued to the parties for comment on 7 September 2015.
- 4.5.3 By email on 7 September 2015 the builder accepted the second draft.

- 4.5.4 The owner and authority accepted the draft without further comment in responses received on 20 and 21 September 2015 respectively.

5. The site visit report

- 5.1 A referee engaged by the Chief Executive under section 187(2) of the Act, and who is also a registered architect carried out a site visit on 6 July 2015. The referee carried out a site visit to observe the building work that is the subject of this determination, and provided his comments and photographs to me.
- 5.2 The referee produced a site visit report that was provided to me on 19 August 2015. This report was forwarded to the parties on 21 August 2015.
- 5.3 The site visit report described the three flights of stairs and provided measurements that confirm the measurements described by others (see paragraphs 2.5 and 3.4), with the additional note that the stairs are 900mm wide for all three flights.
- 5.4 The report also commented on the non-compliance of the risers in consecutive flights and the lack of a handrail. In regards to the bottom step and the transition to the sloping driveway, the report noted that the reason for the variation in riser height of the first step is that the driveway has been reinstated to a slope across the face of the riser rather than being essentially flat in the vicinity of the riser as it was prior to the building work being carried out.
- 5.5 In response to the builder's submission on 21 August 2015 (refer paragraph 4.4.3) I later requested clarification of the measurements of individual risers within the third flight of stairs. The referee responded by email on 21 August 2015 (which was forwarded to the parties) noting that the risers referred to were within the range of 145mm to 155mm.

6. Discussion

6.1 The extent of compliance required by the Act

- 6.1.1 The building work to the stairs is an alteration to an existing building, and consists of a replacement of the full set of stairs (as opposed to a repair of individual steps or parts of the stairway). The majority of the building work has been carried out as exempt building work under Schedule 1(2)(a).
- 6.1.2 The issue of whether exempt building work is required to comply fully with the Building Code has been addressed in Codewords articles⁵ and Guidance documents issued by the Ministry, including Guidance on house repairs and reconstruction following the Canterbury earthquake sequence⁶, and is the approach taken in previous determinations⁷.
- 6.1.3 The replacement stairs, being new building work, must comply with the Building Code to the extent required by the Act under section 17. The requirement under section 17 that building work comply with the Building Code applies regardless of whether consent is required.

⁵ Codewords issue no. 27 (April 2008) and no. 17 (January 2007), available at <http://www.building.govt.nz/codewords-index>

⁶ See for example: Building work that does not require a building consent, Third edition 2014 available at <http://www.building.govt.nz/building-technical-guidance>, and Repairing and rebuilding houses affected by the Canterbury earthquakes (December 2012), available at <http://www.building.govt.nz/guidance-on-repairs-after-earthquake#intro>

⁷ See for example: paragraph 7.4 Determination 2011/093: The issuing of a code compliance certificate for a relocated house and associated alterations at 75 Bartholomew Drive, Grandview, Hamilton (*Department of Building and Housing*) 21 October 2011, and 2008/062: Dispute over a building consent for alterations to a house due to the slope of the roof at 6 The Cliffs, Nelson (*Department of Building and Housing*) 18 July 2008

- 6.1.4 An alternative interpretation to the extent of compliance referred to in section 17 would be that the section is to be read in such a way that the level of compliance with the Building Code is to be found in other provisions in the Act, meaning that section 17 has no effect itself. Using this approach, building work for which consent is sought would still need to comply with the Building Code (section 49) but it would leave the compliance of exempt work under Schedule 1 to be determined by the provisions of Schedule 1. (I note that while some provisions in Schedule 1, such as (1) and (2)(b), can be read as containing their own standard for building work, many other exemptions are silent.)
- 6.1.5 However I maintain the view that the words “to the extent required by this Act” in section 17 recognise that some provisions of the Act, such as section 67 and 112, alter that requirement and section 17 should be read subject to those provisions. I consider this approach is consistent with the following:
- Section 4(2)(q) requires the Minister, the Chief Executive, and a territorial authority or regional authority in exercising their powers under the Act ensure that owners, designers, builders, and building consent authorities are each accountable for their role in ensuring that “building work for which a building consent is not required complies with the building code.”
 - Section 14B(b) provides “an owner is responsible for ... ensuring that building work complies with the building consent, or if there is no building consent, with the building code.”
 - Section 14E(2)(b) provides “a builder is responsible for ... ensuring that building work not covered by a building consent complies with the building code”
- 6.1.6 The architect has referred to compliance to the extent required by section 112. I note here that as the majority of the building work was carried out under an exemption granted by the authority it is section 42A(2) that applies to that work, rather than section 112 (refer paragraphs 3.5 and 3.6). The effect of section 42A(2) is essentially that the building after the alteration must continue to comply with the Building Code if it did so before the work began or must continue to comply to at least the same extent as it did before the work began. This requirement is in respect of the building as a whole after the alteration and is not applied to the new building work (in this case the stairs).

6.2 Access route

- 6.2.1 The Clause D1 requirements for stairs apply to stairs on access routes. The definition of an ‘access route’ in both Clause A2 of the Building Code and in D1/AS1 is:
- 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
- 6.2.2 The term "apron" and "construction edge" is also used in Clause D1.3.1(a):
- Access routes shall enable people to:*
- (a) safely and easily approach the main entrance of *buildings* from the apron or *construction edge* of a *building*,
- 6.2.3 In the absence of a definition in the Building Code, the ordinary and natural meanings of the phrases “apron” and “construction edge” can be looked at in light of the purpose of the text.

- 6.2.4 In relation to a building, the Oxford Dictionary defines the term “apron” as ‘A small area adjacent to another larger area or structure’⁸. In applying this definition to a typical dwelling for example, an apron may consist of adjacent building elements such as courtyards, patios, stairs, decks and pathways.
- 6.2.5 Construction is defined in the Building Code as having a corresponding meaning to “construct”, which means “in relation to a *building*, includes to build, erect, prefabricate, and relocate.” I consider the term “construction edge” refers to the outer limit of the construction, and includes building work and site work.
- 6.2.6 The term “construction edge” will be defined by the scope of building work and is the extremities or outer edges of the building work. In respect of the definition of Access Routes and in particular D1.3.1(a), the construction edge is the furthest point of the access route from the main entrance to the building.
- 6.2.7 Given that the functional requirement D1.2.2 refers to access routes avoiding conflict between vehicles and pedestrians, and Clause D1.3.1(d) and (e) apply to vehicle access, there may be more than one access route from the construction edge.
- 6.2.8 On this property there are two access routes; namely a driveway providing vehicle access to the garage, and the stairs and patio that give pedestrian access to the main entrance. I note here that the driveway also provides the only pedestrian access from the footpath to the stairs.
- 6.2.9 In regards to the definitions of “access routes”, “apron”, and “construction edge” in relation to the subject property and in respect of Clause D1, I hold the view that:
- There are two access routes (both of which have been replaced during the building work):
 - the driveway is a shared vehicle/pedestrian access route
 - the three flights of stairs and associated landings and patio form a pedestrian access route to the main entrance.
 - The apron includes a number of building elements adjacent to the dwelling, including the patio at the main entrance, the pathway that leads to the rear, and the concrete yard at the rear of the house.
 - The construction edge for the building work carried out in association with the access routes is the end of the driveway adjacent the footpath.
- 6.2.10 It could be argued that the requirements in Clause D1.3.1(a) only apply to the uppermost flight of stairs being physically or immediately adjacent to the dwelling as providing access from the apron. However, I am of the view that it would make no sense to restrict the requirements of an access route to a single flight in a series of consecutive flights that provides the main or indeed only pedestrian access to a building, and it is the construction edge, being the outer limit of the access route, that applies in this case.
- 6.2.11 The architect put forward the view that the lower flights of stairs could be considered ‘independent’, i.e. not consecutive for the purposes of the Building Code, on the basis that the landings provide access to other areas and not just the next flight. However, the definition of access route in the Building Code does not limit the access route to serving only the movement between the apron or construction edge

⁸ <http://www.oxforddictionaries.com/definition/english/apron> accessed 28 July 2015

and the building. I consider that, as in this case where there is only one route for a pedestrian to reach the main entrance, such an interpretation could potentially undermine the objective of Clause D1.

6.3 Compliance with Clause D1 of the Building Code

6.3.1 An access route:

D1.3.3 Access routes shall:

...

(f) have stair treads, and ladder treads or rungs which:

(i) provide *adequate* footing, and

(ii) have uniform rise within each flight and for consecutive flights,

(g) have stair treads with a leading edge that can be easily seen,

...

6.3.2 For the purpose of establishing what would be considered a “uniform rise” I refer to paragraph 4.1.3 of the Acceptable Solution D1/AS1, which states:

4.1.3 Uniformity – Riser height and tread depth for all steps in one flight, shall be uniform within the tolerance of ± 5 mm measured at the centreline on straight flights and at the *pitch line* on curved and spiral flights.

I note here that the Acceptable Solution does not refer to consecutive flights; however I consider this omission does not lessen the requirement of Clause D1.3.3(f)(ii).

6.3.3 The evidence from the owner is that each flight has a different riser height and tread depth (refer paragraph 2.5). I accept this evidence as correlating with the evidence from the builder relating to the existing stair dimensions which he replaced in the same position using a template from the existing stairs and that from the architect (refer paragraph 3.4).

6.3.4 For ease of reference the following table refers to the three flights of stairs and compares the dimensions against those set out in Table 6 of D1/AS1 for a common or main private stair :

Table 2

	Number of rises	Tread depth as-built	D1/AS1 min. tread depth	Riser height as-built	D1/AS1 max. riser height
Flight one	5	450mm	280mm	130mm	190mm
Flight two	5	355mm		180mm	
Flight three (bottom step)	8	310mm		155mm	
Remaining steps				145-150mm	

6.3.5 While the individual flights comply with the minimum tread depth and riser heights set out in D1/AS1, there is a significant variation in both the riser height and tread depth between the three flights of stairs; with the greatest difference in risers being 50mm between the first and second flights. There appear to be no features, such as extensive landings between the flights, which would mitigate the effects of the

differing dimensions from one flight to another. Accordingly I consider the stairs do not comply with Clause D1.3.3(f)(ii).

- 6.3.6 In respect of the uniformity within the individual flights, I confirm that the risers fall within the tolerance of +/- 5mm described in paragraph 4.1.3 of D1/AS1 when measured at the centreline.
- 6.3.7 In relation to a handrail on the first and second flights, I note the builder has agreed to install this at his own cost. I consider a handrail is required under Clause D1.3.3(j) to new building work. I do not consider this matter at issue for the purposes of this determination.

6.4 General comment: The exemption

- 6.4.1 There has been some discussion between the parties as to what building work was covered by the exemption approved by the authority under Schedule 1(2)(a) of the Act.
- 6.4.2 While I note the authority's comment that the application for exemption was limited in terms of the description on the application, it is my view that the accompanying drawings clearly indicate, in items 3 and 4 of the notes titled "exterior north elevation", that both the third flight (adjacent to the building foundation) and the second flight of stairs were to be completely replaced. In addition the drawings note the driveway was to be rebuilt, with the notation stating 'uplift existing asphalt drive, dispose, prepare base course, lay new asphalt drive ...'. The first flight did not fall within the discretionary exemption that had been approved by the authority under Schedule 1(2)(a) as it was not detailed in the plans supporting the application for exemption.
- 6.4.3 The architect has referred to the building work being a "like for like repair", which I take to mean the architect holds the view that it could potentially fall within Schedule 1(1) "General repair, maintenance and replacement". And the authority has set out its view that the first flight of stairs was not exempt 'under any clause in Schedule 1'.
- 6.4.4 Schedule 1(1)(2) provides for 'Replacement of any component or assembly incorporated in or associated with a building, provided that- (a) comparable component or assembly is used; and (b) the replacement is in the same position'. It is arguable whether a new set of stairs complying with the Building Code (i.e. with uniform risers for consecutive flights) could be considered a replacement in the same position and therefore could fall within the exemption in Schedule 1(1)(2).
- 6.4.5 The authority has also referred to the exemption in Schedule 1(24) for building work in connection with a deck, platform, bridge, boardwalk, or the like from which it is not possible to fall more than 1.5 metres even if it collapses', stating that the second flight of stairs would be exempt under this section. I disagree with this view; I do not consider that a flight of stairs to a dwelling would fall within the exemption as a 'deck, platform, bridge, boardwalk, or the like'. The authority has also stated that it would not consider the first flight would fall within any exemption; and yet it would appear to meet the same criteria used by the authority in reference to exemption under (24) in that 'event if it did collapse, [the fall] would be less than 1.5 metres'.

6.5 What happens next?

6.5.1 After the first draft determination was issued to the parties there was some correspondence between the parties regarding possible solutions to the issue of non-compliance and the responsibilities of those involved. I provide the following clarification of some of those issues:

- It is not for the determination to provide a solution to resolve the issue of non-compliant building work. The determination only considers whether the as-built stairway complies.
- It is my suggestion that any proposals for remediation are put to the authority for it to confirm compliance before any building work is carried out. This would be a requirement if the building work is not exempt.
- It is for the authority, not the Ministry, to carry out any necessary inspections.

7. The decision

7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the stairway does not comply with Clause D1.3.3 of the Building Code.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 28 September 2015.

John Gardiner
Manager Determinations and Assurance