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Submission No 58

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Submission to the Inquiry on the Draft Disability (Access to Premises – Buildings) Standards.

Prepared for: House Standing Committee on Legal and Constitutional Affairs
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About the Disability Council of NSW

The Disability Council of NSW was established under the terms of Section 16 of the Community Welfare Act 1987 to advise Government in NSW on issues affecting people with disability and their families. We also give advice to the Australian Government on the effect of policy on people with disability living in NSW.

Council members are appointed by the NSW Governor on the recommendation of the Minister for Disability Services. Members are selected on the basis of their experience of disability and their understanding of issues, their knowledge of service delivery and their ability to reflect and advise on government policy. The majority of Council members are people with disability.

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Summary of Recommendations

Omitted building elements.

1. Omission of Class 2 Buildings (Apartments buildings and the like)

Council believe that the Committee should support the re-inclusion of Class 2 buildings in the Premises Standard and require, at a minimum, that the common areas of all new Class 2 buildings be made accessible to people with a disability as per the draft Access Code (2004) requirements. Ideally, the access provisions for the common areas of Class 2 buildings should mimic the proposed requirements for Class 3 developments.

Council would support the phasing in of access improvements for the common areas of existing Class 2 buildings, noting that the unjustifiable hardship provisions would still apply in these instances.

Alternatively, Council would welcome the development of a separate Disability (Access to Premises – Residential) Standard. This Standard could solidify the work currently occurring with regards to improving the lifetime accessibility of Class 1a buildings through the application of universal design principles, while introducing minimum requirements for the access to common areas in a Class 2 building.

2. Absence of wayfinding provisions.

Council would ask that a commitment is given to further research to establish whether a suitable set of deemed-to-satisfy provisions can be established in the area of wayfinding.

Council would also ask for the Committee to clarify whether complaints regarding wayfinding issues will still be possible under the Disability Discrimination Act (1992), once the Premises Standards are enacted.

3. Absence of deemed-to-satisfy provisions for emergency egress

Rather than delaying the introduction of the Premises Standards Council would encourage the Committee to request further research into emergency egress provisions for people with a disability.

Council would ask the Committee to re-consider the exemption that has been applied to fire isolated stairs. Council believe that the full access provisions for stairways, as stated in the Access Code, should also apply to fire isolated stairs.

4. Accessibility of emergency egress alarms for people who are hearing impaired.

Council would ask the Committee include a requirement for visual emergency alarm systems in the emergency egress provisions stated in the final Premises Standards.

Issues concerning the consistency and reliability of triggers

5. National consistency of the 'trigger' for application of the Premises Standard.

Council would ask the Committee to investigate whether the variation in the application of a Building Approval is substantially different between States and Territories and whether these variations impact on the effectiveness and application of the Premises Standard.

6. Concerns regarding the owner upgrade trigger and lessee concession.

Council recommend that the Committee seek reassurance from the Property Council of NSW and the Australian Building Codes Board that the typical 'building upgrade' and 'green building upgrade' cycle is in fact routinely initiated by the building owner and occurs the 5-7 year period cited.

Considerations for the Review process

7. The mechanics of the Review Process

Council would ask the Committee to support a 3-year Review period for the Premises Standard to enable any key issues to be addressed and an assessment of progress to be undertaken. Council would ask that the Committee establish and adopt the criteria for the Review with the final Premises Standards.

Council would recommend that the Committee seek to adopt a more stringent review process to assess the level of building upgrade work undertaken by building owners and whether this work actually triggered the application of the Premises Standards.

Issues concerning the Scope of Standards

8. Persons to whom Standards apply

As 'building owners' are also responsibilities in ensuring a building complies with the requirements of the Access Code, Council would ask the Committee to include this reference under Section 2.2 (1). Council also recommend that a definition of 'building or property owner' as provided for (2), (3) and (4) be detailed.

Council believe that Part 2.2 (2) would be clearer if referred to 'any consent authority'.

Council believe the text under each descriptor in Part 2.2 (1),(2), (3) and (4) should be amended and read: 'The list includes, but is not limited to those who might be a' building certifier, building manager etc.'

Issues concerning Exemptions and Concessions

9. 4.1 Layout of the unjustifiable hardship provisions

Council encourages the Committee to consider relocating the 'cost based' circumstances to the end of the section and promote the discussion on technical, heritage, evidence of good faith etc to the beginning of the section on unjustifiable hardship in line with the intent of the Premises Standards.

10. Interpretation of 4.1 (f) Exceptional technical factors

Council encourages the Committee to include 'regional and remote locations' as a separate point and to make it clear that this factor alone does not constitute a generic exemption from improving access to an existing building or incorporating the requirements of the Access Code in a new building.

11. Interpretation of 4.1 (j) Detriment suffered by parties

Council believe that the 'building owner' should be included under part 4.1 (j).

12. Interpretation of 4.1 (k) heritage significance

Council would encourage the Committee to consider re-wording this clause to reflect the practice and terminology used by the Heritage sector in determining the appropriateness of alterations to heritage buildings. i.e. 'whether the application of the Premises Standards requirements would impact on the elements of the buildings which have significant heritage value.

13. Interpretation of 4.1 (l) with regards to the 'less onerous means concession'

Council would ask the Committee to clarify the intent of this Clause and make it clear that the 'less onerous means' concession is only available once a claim of unjustifiable hardship is deemed valid. Council would also ask the Committee to make it clear that the 'less onerous access' provisions must still support equitable, dignified and safe access for people with a disability.

Comments on the Access Code for Buildings

Consistency of referenced documents

14. Lack of consistency in the document when referring to people with disability.

We recommend that the Committee adopt a uniform approach to how people with a disability are cited throughout the Premises Standards.

15. Lack of technical consistency between Disability Standards.

Council would ask the Committee to give further consideration to harmonising the dimensional requirements between complimentary Disability Standards. Council are supportive of adopting the enhanced dimensional requirements as detailed in AS1428.2 for accessways, ramps and stairways (i.e. 90th percentile wheelchair size and user dimensions).

16. Limitations of the recently released Draft Australia Standards.

Council would ask that the Committee refer the issue of consistency in the listed standards to Standards Australia.

17. Absence of 'means of access' from the Access Code performance requirements.

Council would ask that the Committee ensure that the above references concerning the provision of access as stated in the current Building Code of Australia's DP1 be re-stated in the Access Code's performance requirement DP1.

Concerns regarding general building access requirements

18. Concession for Class 1b buildings (dwellings used for short-term holiday accommodation)

Council recommend that the Committee review the provisions for Class 1b buildings to ensure fairness and certainty for operators and people with a disability. In brief Council would encourage the Committee to consider:

- Providing a concession from the requirements of the Premises for operators of existing Class 1b B & B accommodations where 1 or 2 bedrooms were available for short-term rental.
- For all new purpose built 1b accommodation (i.e. caravan parks and eco-lodges) that the principle used to determine the level of access provision in Class 3 buildings be applied. i.e. between 1-4 rooms, cabins or the like at least one must be made accessible.
- That the trigger for the Premises Standard in smaller scale B & B accommodation and the like be where 3 or more rooms are made available.

19. Interpretation of requirements for Class 3 buildings (Hotels)

Council believe the access requirements for a Class 3 building require further clarification. Council encourage the Committee to include a reference which states that where a Class 3 building (hotel) features a unique common access facility that access to and within the facility must also be provided.

20. Provision of access to and within 7a buildings (carparks)

Council would suggest that the Committee consider re-wording this requirement to state that access must be provided to and within all levels of a carpark including those levels which feature accessible parking spaces.

21. Access to and within the common facilities in a 9b building (theatres, live venues, auditoriums and the like)

Council would ask that the Committee provide further clarification with regards to the areas within a 9b building which are required to be accessible.

That the Committee clarify the requirements for access to tiers and platforms of seating and require, at a minimum, that the stairways, ramps and the like incorporate key features including:

- Tactile ground surface indicators (TGSIs)
- Handrails compliant with the current provisions as stated in the draft Access Code
- Luminance contrasting, slip resistant strips on the step nosing to enhance detectability for people who are blind or vision impaired.

22. Ratio of sole unit occupancy units in a Class 9c building (aged-care facility)

Council would ask that the Committee review the ratio of sole occupancy units required to be accessible in a Class 9c development.

Council would recommend that all SOU's be designed to be accessible however, at a minimum, would encourage increasing the ratio's to better reflect the current and anticipatory needs people living in an aged-care development.

23. Concession given to Class 10b developments (Swimming pools)

Council would recommend that the Committee review the concession given to swimming pools which have a perimeter of less than 40 meters. Council would support a reduction in the concession to cover only pools with a perimeter of less than 20 meters.

Council would also ask the Committee to consider how an 'unjustifiable hardship' defence could be utilised in instances where an existing pool facility is available in a Building class which requires access to common amenities for guests and residents.

24. Access to buildings - Accessway and doorway provisions.

Council recommend that the Committee include a reference in Part D 3.3 (b) which states that an accessible path of travel must be provided where an accessible entrance is located away from the inaccessible entrance.

Council further recommend that Part D3.3 (5) specify that the clear door opening of 850mm applies to the active door leaf.

25. Possible implications of Part D3.4 Exemptions

Council would encourage the Committee to consider including only the areas of a building where there is a clear risk to a person with a disability in the exemptions.

26. Implications of the exemption from providing access to the upper floors of small buildings (Classes 5, 6, 7b or 8)

Council would ask the Committee to include a note of clarification with regards to access requirements for small buildings. The clarification should state that although physical access (i.e. lift access) to the upper floors of the building may not be required access provisions for people with a disability who are not wheelchair users must be incorporated on each level of the building.

27. Accessible parking provisions

Council recommend that the Committee re-consider the practicalities of Clause D3.5 (b) with regards to the valet parking provision.

Council would encourage the Committee to consider the application of a 1:1 ratio for Class 1b and Class 3 buildings which would result in an accessible parking space being provided for each accessible room.

Council recommend that the Committee consider increasing the percentage of accessible parking spaces provided for specific building classes most notable Class 9a (Hospitals, nursing homes, medical clinics and the like).

Council would ask that the Committee consider including a requirement specific with regards to the location of accessible parking spaces and the accessibility of carpark entrance and egress systems.

28. Scope of Signage provisions

Council would ask that the Committee specify that signage proposed for locations listed in Part D3.6 (a) – (f) must feature Braille and tactile elements.

Council encourage the Committee to consider extending the information contained on directional Braille and tactile signage to include the actual distance to the feature or amenity.

Council would ask that Part 3.6 (d) be extended to requiring Braille and tactile signage on both the main entrance door and the actual cubicle to indicate the presence of an ambulant toilet cubicle.

Council would encourage the Committee to consider whether additional Braille and tactile signage is required as part of the wayfinding system for people who are blind or vision impaired. i.e. numbering all rooms with both the floor level and room number.

29. Hearing Augmentation

That the Committee clarify the definition of screening and include a provision for hearing augmentation in each of the locations described in D3.7 (1) regardless of whether a gap is present or not..

That the Committee accept the Deaf Forum's recommendation that the number of receivers required is based on a 10 percent provision for room types and situations stated in D3.7 (2) (i) – (iv).

30. Tactile indicators

Council would recommend that the Committee include a requirement for tactile indicators to be installed:

- On fire-isolated stairways*
- On stairways in Class 9b buildings (theatres, auditoriums etc)*
- Where step ramps are installed*
- On relevant design features in both Class 3(motels) and Class 9a (hospitals, clinics) buildings.*

31. Wheelchair seating in Class 9b assembly buildings

Council recommend that the Committee consider including additional text in Part D3.9 with regards to the preferred location for wheelchair accessible seating in 9b venues other than cinemas. I.e. theatres, live venues, auditoriums.

32. Concession for unisex accessible toilet amenities

Council would ask the Committee to consider introducing a provision that requires that unisex accessible toilet amenities be located within 50 metres of an inaccessible toilet block on levels where there is more than one set of toilet amenities.

33. Concessions for lifts.

Council would ask the Committee to seek further advice on the suitability of each lift type, specifically those which require key activation and constant pressure, for use by people with a disability.

Council would recommend that the Committee seek to include information within the Access Code on the circulation space requirements for each lift type.

Comment on the Administrative Protocol

Council feel that the content and function of the Administrative Protocol requires further refinement to ensure that the role and function of the Access Panel and the mechanism to establish the Panel is clarified.

Council however wish to stress to the Committee that the discussion on the Administrative Protocol should not impede the finalisation of the Premises Standard.

Introduction

The Disability Council of NSW welcomes the release of the draft Disability (Access to Premises Standards – Buildings Standards) and the opportunity to provide comment on these Standards.

As the official ministerial advisory committee to the NSW Government on disability issues we are committed to ensuring that the Premises Standards reflect the intent and objectives of the Disability Discrimination Act (DDA, 1992) and the UN Convention on the Rights of Persons with Disabilities. In brief, this means we are committed to standards that support equitable, safe and dignified access for people with a disability to buildings and services which are open to the public.

We are also committed to the development of Standards, which support the NSW Government's commitment to enhancing service provision and the participation of people with a disability in daily life. *Stronger Together: A new direction for disability services 2006-2016* details the NSW Government's commitment to injecting an additional \$1.3 billion to support greater assistance and opportunity for people with a disability to participate in all aspects of daily life. This historic commitment of funding is backed by a whole-of-government commitment to the better coordination and delivery of services for people with a disability. *Better Together: A new direction to make NSW Government services work for people with a disability and their families: 2007-2011* is a strategy which brings together all NSW Government agencies that provide services to people living with a disability. The strength of this strategy is the commitment that agencies have made to ensure that service planning and delivery are improved and better co-ordinated to enhance the participation of people with a disability. We therefore support the development of a Premises Standards that underpins and fosters equitable, dignified and independent access for people with a disability to the community.

According to the ABS, 1 in 5 people in Australia have a disability¹. As the nature and level of disability within this population is diverse, it is important that any Premises Standard reflects the broader needs of this community. Equally, it must acknowledge and plan for the impacts that the ageing the population will have on the incidence of disability in Australia and hence the level of access which will be required to support healthy and active ageing.

The impact of poor built environment access on the lives of people with a disability is tangible and real. For many people with a disability the level of access that the built environment provides profoundly affects whether they can access leisure and social opportunities, housing, employment, transport choices and health and medical services. It would be difficult for many people to imagine not being able to go to a favourite restaurant due to a lack of physical access or, on a very base level, not being able to access a toilet in a public building as the facility was either absent or difficult to access. We are therefore committed to ensuring

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that the proposed Premises Standard improves the level and predictability of building access for all people including people with a disability.

Equally, we acknowledge that creating accessible buildings and built environments is not without difficulty. We are however committed to ensuring that arguments of cost, technical issues and viability are appropriately weighted against the benefits to the Australian community of providing buildings and built environments which are accessible to all.

The Disability Council of NSW is appreciative of the opportunity to comment on the draft Disability (Access to Premises – Buildings) Standards. It is evident that positive progress has been made in many parts of the Premises Standard however it is not without its flaws. After 9 years of negotiation, Council are keen for the Premises Standard to be finalised and enacted through the Parliamentary process and our comments are not intended to impede this process. We also acknowledge that some of the issues raised cannot be addressed directly by the Committee or resolved during this inquiry and subsequent review phase. We are however committed to ensuring that the issues are detailed and relayed for further consideration.

Finally, it is Council's firm view that a move towards a legislative framework that improves built environment access for all people, inclusive of people with a disability is both necessary and vital. For too long the onus for change has rested on the shoulders on those people with a disability empowered enough to make complaints under the Disability Discrimination Act (1992). This contrasts firmly with the unpinning principles of the UK Disability Discrimination Act (1995) which introduced a series of anticipatory duties on those providing goods, facilities or services to the public or those selling, letting or managing premises. The duties, introduced in three stages are as follows:

- Since December 1996 it has been unlawful for service providers to treat people with a disability less favourably than a person without a disability;
- Since October 1999 service providers have had to make 'reasonable adjustments' for people with a disability in the way a service is provided (i.e. additional help or service related changes);
- Since October 2004, service providers have to make other 'reasonable adjustments' to overcome (where applicable) the features of their premises which present a physical access barrier.²

Whilst we are not proposing a similar set of duties be introduced it is clear, with the signing of the UN Convention, that the responsibility for improving the accessibility of the built environment now equally rests in the hands of Government. Whilst the right to individual complaint will not be lost by the introduction of the Premises Standards, a systemic improvement to the accessibility of the built environment will only be achieved if nationally recognised Standards are enacted.

² <http://www.ukdda.com/uk-disability-discrimination-act-1995.php>

Base assumptions underpinning this submission

The Australian Government is committed to:

1. Promoting, protecting and ensuring the full and equal participation of people with a disability.
2. Fulfilling their obligations under the Disability Discrimination Act (DDA, 1992).
3. Fulfilling the inherent obligations of the UN Convention on the Rights of Persons with Disabilities, specifically, Articles 4, 9 and 19, which relate to access in the built environment for people with a disability.

ARTICLE 9 - ACCESSIBILITY

1. *To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate **measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.***

These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- (a) *Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*
 - (b) *Information, communications and other services, including electronic services and emergency services.*
2. *States Parties shall also take appropriate measures to:*
 - (a) *Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;*
 - (b) *Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;*
 - (c) *Provide training for stakeholders on accessibility issues facing persons with disabilities;*
 - (d) *Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;*
 - (e) *Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;*
 - (f) *Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;*

- (g) Promote access for persons with disabilities to new information and communication technologies and systems, including the Internet;*
- (h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.*

ARTICLE 19 - Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;*
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*
- c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

Comments on the Draft Disability (Access to Premises – Buildings) Standard

Omitted building elements.

34. Omission of Class 2 Buildings (Apartments buildings and the like)

Council are deeply concerned by the removal of Class 2 buildings from the current Premises Standard. We believe it is contrary to the access and service provision obligations of the Disability Discrimination Act (DDA, 1992) and Articles 4, 9 and 19 of the UN Convention on the Rights of Persons with Disabilities to exclude, at a minimum, the common area of Class 2 apartment blocks from requiring access for people with a disability.

The draft Access Code for Buildings released in 2004 for public comment included Class 2 buildings and a requirements for access to be provide to the common areas. In brief, this provision required access into and around the common areas of Class 2 buildings where one of more-sole occupancy units were made available for short-term rental.

As stated in the Draft Access Code, the following areas were required to be accessible to people with a disability.

Class 2

Common areas [in buildings where one or more sole-occupancy units are made available for short term rent]

From a pedestrian entrance *required* to be *accessible*, to the entrance doorway of each *sole-occupancy unit* located on not less than one level.

To and within not less than 1 of each type of room or space for use in common by the residents, including a cooking facility, sauna, gymnasium, *swimming pool*, common laundry, games room, individual shop, eating area, or the like.

Where a ramp complying with AS 1428.1 or a passenger lift is installed-

- (i) to the entrance doorway of each *sole-occupancy unit*; and
- (ii) to and within rooms or spaces for use in common by the residents

located on the levels served by the lift or ramp.

Under the draft Access Code (2004), concerns regarding the cost and technical feasibility of retrofitting an existing Class 2 building to provide access were addressed under the unjustifiable hardship provisions of the Premises Standard. Concessions were also discussed with regards to small 2 and 3 storey walk-ups where there were no common

facilities on the upper floor. In this instance the upper floors were not required to be made accessible.

It is the view of Council that the inclusion of this provision in the draft Access Code (2004) displayed a firm commitment to improving access to residential opportunities for people with a disability whilst similarly protecting individuals and body corporate's from possible discrimination complaints under the Disability Discrimination Act (DDA).

A Class 2 building is most often defined as a place where a number of private individuals have ownership. There are however instances where it could be viewed otherwise. An example is where an apartment is made available to the public for short-term lease or rental (i.e. a holiday apartment). In this instance the building is essentially, 'open to members of the public' and would therefore fall under the provisions of Section 23 of the DDA. This section states that it is unlawful to discriminate against a person with a disability by refusing to provide access to areas which the public are entitled to use. In the case of a rental apartment therefore both the individual leasing the apartment and the Body Corporate could be held liable in a discrimination claim for failing to make the common areas of the apartment block, i.e. the BBQ area, a common laundry, a gym etc accessible to those leasing the rental apartment.

The Australian Human Rights Commission have also expressed the view that there is clear liability for complaints against a Body Corporate who refuses to provide access to the common areas used by an owner/occupier under Section 27 of the DDA (Clubs and incorporated associations). As further detailed by the AHRC, assuming a Body Corporate is covered by the definition of 'club or incorporated association', the commission believes it would be possible for a person with a disability who is a owner/occupier to make a complaint against the Body Corporate if it acted in a way which denied them access to common areas within the complex (i.e. BBQ area, gymnasiums, etc) which other owner/occupiers were free to enjoy. Interestingly, the Commission is also of the view that this same principle could apply to a situation where a member of the Body Corporate required access be provided through the principle entrance to the complex in order for them to gain access to the door of their unit/apartment.³

There is case precedent specific to claims lodged against Body Corporate's for failing to improve access to the common (i.e. public areas) of apartment blocks and the like. Under Section 24 of the DDA, which covers access to goods, services and facilities an owner/occupier who had a disability could claim discrimination if the Body Corporate obstructed access improvements or failed to address access issues raised by the individual. Whilst lodged under anti-discrimination legislation in QLD the decision of Anti-Discrimination Tribunal Queensland in C v A [2005] QADT 14 (August 2005) has significance in this decision. The determination indicated that the Body Corporate had a responsibility for improving access to the common areas of the apartment block to enable the complainant, who was an owner/occupier who had a disability, to gain better access. In short, the Body Corporate had a obligation to ensure an accessible path of travel was

provided for its member. Council raises this discussion to highlight the need for the Premises Standard to address, at a minimum, the common areas of Class 2 Buildings to reduce the possibility of litigious action against Body Corporates and individuals.

It is also clear that both the Commonwealth and State Government's are committed to supporting people with a disability and older people to live, as independently as possible, in private housing options in the community. Hence developing a Premises Standard that fails to address even the common areas of a Class 2 building could be viewed as contrary to expressed Government commitments.

Internationally, countries such as Canada, the USA, the UK and Norway already contain a requirement for the common areas of apartment blocks to be accessible to people with a disability. In most cases this includes access:

- *from the boundary line to the front entrance,*
- *from a parking area into the building,*
- *where provided, to a central lift access,*
- *to the letterbox and garbage disposal area, and, where practicable*
- *to common recreational areas (i.e. swimming pools, BBQ areas, common outdoor spaces, gymnasiums etc).*

Nationally, there is strong evidence that many local Council's and Shires also currently require the common areas of Class 2 buildings to be made accessible. In NSW for example this requirement has been enforced via inclusion in many Local Development Control Plan's concerning residential or accessible design. In addition to access to the common areas it is common that a certain percentage of units/apartments (between 10 – 25%) are also required to be 'adaptable'. Whilst these requirements are not uniformly applied by Council's around NSW evidence of 'accessibility requirements' for Class 2 buildings is apparent. Requirements in other State's and Territories are as follows:

VICTORIA

- *A number of local councils have introduced similar accessibility requirements to NSW for Class 2 buildings.*

QUEENSLAND

- *The Department of Housing inform us that all new Class 2 buildings incorporate access requirements for the common areas of apartment blocks.*
- *There is evidence also that a number of local Councils have introduced accessibility requirements for Class 2 buildings similar to those in Victoria and NSW.*

WA

- *The Disability Services Commission inform us that a number of local Council's require the common areas of Class 2 Buildings to be accessible. The Commission also indicates that nearly all Class 2 public housing developments incorporate accessibility in the common areas and the application of universal design features.⁴*

⁴ For details on the top ten Universal Design please refer to the ANUHD website www.anuhd.org.

ACT

- *The ACT currently has a requirement in their Territory Planning Code which requires that all new Class 2 buildings provide access to the common areas.*

Movement in the design and development sectors towards developing more accessible Class 2 Buildings is also evident. A number of larger scale residential builders including Lend Lease, Meriton, Stocklands have, and continue to, develop Class 2 buildings that feature accessible common areas and a percentage of adaptable units. Evidence of this is clear on the access housing website which lists adaptable apartments in a range new Class 2 developments around Australia. All the apartments listed are located in Class 2 buildings which also feature accessible common areas. Council believe that a national code that provides consistency in the interpretation of access to, and within, Class 2 buildings would be welcomed as the subtle differences in Council requirements often result in poor design outcomes.

It would therefore be contrary to current residential design practices therefore if the Premises Standard failed to address, at a minimum, access to the common areas of new and extensively renovated Class 2 buildings. It is however relevant to highlight that the lack of consistency in the accessibility requirements between States and Territories is problematic as this leads to:

- 1) The level of access varying significantly from one Class 2 development to another limiting the predictability of these environments for people with a disability.
- 2) For each Class 2 building, design, development and certifying professionals are required to continually investigate which access features apply as the requirements are often local Government specific.

Council believe that including the Class 2 buildings in the Premises Standard would be welcomed by the design, development and certifying authority as there would be a level of consistency and certainty as to what requirements applied. Most importantly, people with a disability would also be assured that any newly built Class 2 buildings would consistently incorporate the same level of access in the common areas.

Council would also like to highlight to the Committee that there is considerable movement in the area of accessible residential design (Class 1a) largely being driven by the broader acceptance of universal design by key housing stakeholders. A universally designed home incorporates a range of low cost accessibility improvements to make the home accessible to all potential home occupants regardless of age or ability. For example:

- The Queensland Government's commitment to enhancing the sustainability and accessibility of housing in Queensland is well documented and showcased in the Smart and Sustainable Homes Program. This initiative was the first in Australia to address the issue of social sustainability in housing design i.e. the accessibility features that support a person in the home environment. The program supports a triple-bottom line approach to housing design and development (economic, environment and social sustainability).

- The Victorian Government has also made a strong commitment to enhancing the accessibility of Class 1b buildings. Recent initiatives include the launch of the Build for Life website which demonstrates low cost/no cost accessibility features which can be incorporated into the design of the home environment.
- The Housing Industry Association (HIA) has been working closely with the Australian Network for Universal Design to incorporate key accessibility features into the GreenSmart Housing Protocol. Under the title 'Universal Design' the protocol introduces builders and home occupants to elements which constitute accessible residential design.
- LANDCOM in NSW have recently released a series of design guidelines for residential design and have expressed a commitment to ensuring that 25% of housing in new land release areas will be designed and built to incorporate key accessibility elements.
- Further, at a recent luncheon held by Prime Ministerial wife Ms Therese Rein, the Property Council of Australia indicated that they were in the process of developing a 5-point plan to improve the accessibility of residential design.

It is the view of Council that including a requirement in the Premises Standard for access to the common areas of Class 2 buildings therefore is a logical step and would solidify existing local government and industry practices and promote national consistency. Extending the provision for access to Class 1a buildings would also be desirable however we appreciate that the scope of the DDA does not extend to private residences at present.

Recommendations

Council believe that the Committee should support the re-inclusion of Class 2 buildings in the Premises Standard and require, at a minimum, that the common areas of all new Class 2 buildings be made accessible to people with a disability as per the draft Access Code (2004) requirements.

Ideally, the access provisions for the common areas of Class 2 buildings should mimic the proposed requirements for Class 3 developments. However, at a minimum the common area access should reflect international practice and include access:

- *from the boundary line to the front entrance,*
- *from a parking area into the building,*
- *(where applicable) to a central lift access,*
- *to the letterbox and garbage disposal area, and to*
- *to common recreational areas (i.e. swimming pools, BBQ areas, common outdoor spaces, gymnasiums etc).*

Council would support the phasing in of access improvements for the common areas of existing Class 2 buildings, noting that the unjustifiable hardship provisions would still apply in these instances.

Alternatively, Council would welcome the development of a separate Disability (Access to Premises – Residential) Standard. This Standard could solidify the work currently occurring with regards to improving the lifetime accessibility of Class 1a buildings through the application of universal design principles, while introducing minimum requirements for the access to common areas in a Class 2 building.

35. Absence of wayfinding provisions.

Council are pleased that the current draft Premises Standard makes reference to certain elements that support a person who is blind or vision impaired to safely find their way in and around a building (i.e. wayfinding). Whilst the draft Premises Standard covers some wayfinding elements such as Braille and tactile signage, luminance contrast, lighting and the application of tactile ground surface indicators it fails to address other elements which form part of the wayfinding system used by people who are blind or vision impaired. Further, wayfinding is not just about individual elements but how these elements are connected to create a wayfinding system for people who are blind or vision impaired.

A wayfinding system includes, but is not limited to, the basic layout of a building and site, interior and exterior landmarks which assist a person to locate building features, signage (including tactile and Braille elements), Braille and tactile floor and room numbering, spoken directions, building information boards and maps, colour coding (as in a carpark) and the concept of a continuous, logical path of travel in and around a building.

Council acknowledge that research was undertaken in 2002, by the Australian Buildings Codes Board, CRC Construction Innovation and other key stakeholders, to determine an appropriate set of deemed-to-satisfy solutions with respect to the variety of elements which constitute a wayfinding system. Whilst the report identified a range of features which could improve wayfinding in buildings it was considered to lack a clear of deemed-to-solutions that could be brought into the Premises Standard. Council would however encourage the Committee to provide scope within the final Premises Standards to incorporate further wayfinding provisions as, and when, deemed-to-satisfy provisions are established.

Given the limited coverage of wayfinding elements, Council believe clarification is also required as to whether individuals could still lodge complaints with regards to wayfinding issues not covered under the proposed Premises Standards (i.e. information boards in buildings, directional signage within buildings, room numbering, lighting etc). Appreciating that the internal fitout of a building has not been addressed in the draft Standards, it is imperative that the opportunity to lodge a complaint under the DDA is still available.

Recommendations

Council concur that establishing a set of universally acceptable deemed-to-satisfy provisions is difficult and requires further consultation and research. Council however would ask that a commitment is given to further research to establish whether a suitable set of deemed-to-satisfy provisions can be established in the area of wayfinding.

Council would also ask for the Committee to clarify whether complaints regarding wayfinding issues will still be possible under the Disability Discrimination Act (1992), once the Premises Standards are enacted.

36. Absence of deemed-to-satisfy provisions for emergency egress

Council wish to stress that urgent research is required to develop suitable deemed-to-satisfy solutions with regards to emergency egress for people with a disability. It is unacceptable to develop a Standard to improve the access into a building for people with a disability without provided detailed provisions for emergency egress. Further, whilst the draft Access Code proposes a number of performance requirements in *Part D Access and Egress*, deemed-to-satisfy provisions are absent. Council believe research is required to address emergency egress issues including, but not limited to:

- Value of creating 'areas of safe refuge' for people who use a wheelchair or have a significant ambulatory impairment.
- Use of fire-rated lifts to evacuate people with a disability from the upper levels of multi-storey buildings.
- Accessibility of emergency communication systems (i.e. use of both audible and visual alarm systems in buildings).

As stated in the Society of Fire Safety, Queensland Chapter submission and most recently by Mr Ivan Donaldson (Australian Building Codes Board) and the Public Inquiry, the community has strong views with respect to safe egress from buildings for people with a disability. Further, there appears to be learning's from the World Trade Centre bombing which provide opportunity to re-evaluate and codify the use of lifts for the emergency evacuation of people with a disability. Council would encourage the Committee to support further collaboration between the Australian Building Code's Board and the National Institute for Standards and Technology (NIST) in the USA with regards to the learning's that can be transferred and used to inform the BCA and Access Code provisions.

Council are also concerned that current emergency egress provisions focus only on the needs of people who are wheelchair users rather than on the broader needs of the disability community. For example, the draft Access Code (Part D.3.3) excludes fire stairs from complying with the requirements for stairs as detailed in AS1428.1. In functional terms this means that the stairs are not required to feature handrails on both sides of the stairs, slip resistant, contrasting strips on the nosing to enhance detectability or feature tactile ground surface indicators to alert people who are blind or vision impaired to the stairs. It is critical that the safe access needs of people who are blind and vision impaired are considered in the design of emergency egress stairways. Whilst it could be argued that fire-stairs are used 'only in emergency situations' and thus assistance would be available, there are many instances where fire stairs are used as a primary accessway between floors in a multi-storey building for ease and convenience. Council therefore believe that the requirements for general access stairways as stated in the draft Standards are applied to emergency egress stairways.

Recommendation

Council acknowledge that developing deemed to-satisfy solutions requires more extensive research and consultation. Rather than delaying the introduction of the Premises Standards Council would encourage the Committee to request further research into emergency egress provisions for people with a disability.

Council would ask the Committee to re-consider the exemption that has been applied to fire stairs. Council believe that the full access provisions for stairways, as stated in the Access Code, should also apply to fire stairs.

37. Accessibility of emergency egress alarms for people who are hearing impaired.

Council are also deeply concerned that the current emergency egress requirements stated in the draft Standards fail to address the need for visual emergency alarm systems to alert deaf or hearing impaired persons during an emergency evacuation. These systems essentially utilise flashing lights to supplement the audible emergency tones which are activated during an emergency situation. In ensuring that all people with a disability are provided with a safe and equitable means of egress it is critical that this omission be addressed in the final Premises Standards.

Recommendation

Council would ask the Committee include a requirement for visual emergency alarm systems in the emergency egress provisions stated in the final Premises Standards.

Issues concerning the consistency and reliability of triggers

38. National consistency of the 'trigger' for application of the Premises Standard.

Council are concerned as to whether similar building works in different states would consistently trigger the need for a Building Approval and thus the application of the Premises Standard. Whilst the variations between States may be minimal Council are concerned that this may undermine the intent of the Standard to achieve national consistency.

Recommendation

Council would ask the Committee to investigate whether the variation in the application of a Building Approval is substantially different between States and Territories and whether these variations impact on the effectiveness and application of the Premises Standard.

39. Concerns regarding the owner upgrade trigger and lessee concession.

Council agrees, in principle, to the concession given to lessees in Part 4.3 of the draft Premises Standards. This concession provides that for lessees of a building who undertake new building works within their tenancy the requirements of the Premises Standard only apply to the leased space. There is no requirement for lessees to upgrade the principle entrance to the building work and the path of travel to the new building work. This requirement is only triggered when the building owner submits an application for approval for new building work.

Council, as a member of the Attorney General's Disability Access Reference Group (DARG), contributed to the current draft Premises Standards and the discussion on this concession. We feel it's important to highlight to the Committee that the disability sector representatives agreed to this concession based on assurances from industry representatives that the natural cycle of building owner initiated upgrades would trigger the entrance and path of travel requirements of the Premises Standard within a 5-7 years.

Industry also indicated that the current 'green building upgrade' cycle and the works associated this cycle often triggered the need for a building approval and were typically initiated by the building owner. Again, it was suggested that this natural building upgrade cycle would trigger the full application of the Premises Standards and thus the upgrade of the entrance and path of travel, toilets, lifts etc within an existing building by the building owner.

Council are however concerned that that the lessee concession may be used by some building owners who wish to avoid the Premises Standards 'new building works' trigger. Council are concerned that some building owners may seek to encourage lessees to submit applications for new building works on their behalf to avoid having to undertake more extensive access improvements to the building as required by the Premises Standard.

Council believe that the review process discussed in Part 5.1 of the Draft Premises Standard may provide a way to assess whether the industry assurances proved accurate.

In our opinion, the review could seek to assess whether:

- Owner initiated building upgrade works actually triggered the requirements of the Premises Standard within 5-7 years.
- 'Green building' upgrade cycles triggered the need for a building approval and thus the application of the Premises Standards.
- The lessee concession was being abused by building owners choosing to avoid the 'new building works' trigger in the Premises Standards.

Recommendations

Council recommend that the Committee seek reassurance from the Property Council of NSW and the Australian Building Codes Board that the typical 'building upgrade' and 'green building upgrade' cycle is in fact routinely initiated by the building owner and occurs the 5-7 year period cited.

Council would recommend that the Committee seek to adopt a more stringent review process to assess the level of building upgrade work undertaken by building owners and whether this work actually triggered the application of the Premises Standards.

Considerations for the Review process

40. The mechanics of the Review Process

Council are supportive of a review process being integrated within the Premises Standards. We are however concerned that the Review criteria has not been established and thus the effectiveness of the process could be compromised. We believe that the criteria for the Review needs to be established and adopted with the final Premises Standards to ensure that the aims of the Review are in line with the expected outcomes of the Premises Standards.

Council are also concerned that the Review timeframe may be too lengthy and result in necessary changes to the Premises Standard being delayed. For example, a 5-year review was introduced as part of the Disability (Access to Public Transport) Standards introduced in 2002. The Review was undertaken in 2006/07 however to date the findings of this are yet to be released despite extensive consultation. Council would therefore support a 3-year Review period to ensure that both the practical design and development issues (which may arise) and also vital issues that impact on the lives of people with a disability can be addressed.

In our work with the DARG, Council and the disability representatives supported a Review process which assessed, in essence, whether the builder initiated upgrade cycle for existing buildings had actually resulted in the broader application of the Premises Standards access provisions. We proposed a Review process which assessed whether selected building elements had been upgraded. It was felt that this form of review would also help to assess:

- The level of owner initiated building upgrade works that had actually triggered the requirements of the Premises Standard.
- Whether the 'Green building' upgrade cycles was resulting in the Premises Standards requirements being triggered.
- Whether the lessee concession was being abused by building owners hoping to avoid the Premises Standards 'new building works' trigger.

The Review process proposed by Council and the disability sector representatives was as follows:

- *An accessibility compliance target for existing buildings be developed. Similar to the Disability Standards for Accessible Public Transport (2002) the Premises Standards could set a compliance target for existing buildings. For example: 25% of existing buildings to include all 'critical building access elements' within 3 years of the Premises Standard being enacted.*

The 'critical building access elements' would include:

- *the principle entrance being made accessible.*
- *a clear and accessible path of travel provided to each common access building element including, but not limited to:*

- *carparking facilities (if open to the public) and the access pathway/s from the parking area into the building*
- *at least one unisex accessible toilet facility and the access pathway/s to the amenity. (At a minimum, this amenity should be available on the entrance floor of the building).*
- *lift access and the access pathway/s to the lifts from the principle entrance/s.*
- *presence of Braille and tactual signage as detailed in the Access Code*
- *inclusion of hearing augmentation as detailed in the Access Code*

To assess compliance a formal review of the accessibility status of existing buildings would be undertaken three (3) years after the Premises Standard is enacted. The formal review would assess the presence of the 'critical building access elements':*

** The formal review could become a function of each State's Access Panel.*

In the event that the three (3) year review found:

- *the upgrade cycle of existing buildings had not met the compliance target set for the 'critical building access elements', and/or*
- *no major works had been undertaken by the owner to trigger the requirements of the Premises Standard and/or*
- *no works had been undertaken to improve the 'critical building access elements', the building owner would be required to upgrade the 'critical building access elements' within the three (3) years which follow the review. Owners would be required to submit a Building Upgrade Plan (similar to the current DDA Action Plan). The Building Plan would detail how and when the 'critical building access elements' would be upgraded over the next five years to provide compliance with the Premises Standards.*

Owners would be required to submit a yearly update on the progress of the access improvements.

The Building Access Plan would not provide a safe-haven from a disability discrimination complaint. It would however exist as a valued and submittable document against such a claim.

Recommendations

Council would ask for the Committee to support a 3-year Review period for the Premises Standard to enable any key issues to be addressed and an assessment of progress to be undertaken.

Council would ask that the Committee establish and adopt the criteria for the Review with the final Premises Standards.

That the Committee a process where Access Panels are charged with reviewing and approving Building Upgrade Plans in instances where no building works have been undertaken by the building owner within the first 3 years.

Issues concerning the Scope of Standards

41. Persons to whom Standards apply

Part 2.2. (1) states a range of people who are responsible for matters in the Access Code for a relevant building. Council are concerned that the 'building owner' is absent from the list.

Part 2.2(2) relates to the person who is responsible for the building approval process. Council are concerned that the resulting definition excludes a large number of agencies, organisations and government bodies who also provide approvals.

Each of the definitions under (1) (2), (3) and (4) of Part 2.2 provides a description of relevant job roles that meet this definition under the heading 'for example'. Council are concerned that an individual may have multiple responsibilities with regard to a building or fall outside the listed descriptions

Recommendations

As 'building owners' are also responsibilities in ensuring a building complies with the requirements of the Access Code, Council would ask the Committee to include this reference under Section 2.2 (1). Council also recommend that a definition of 'building or property owner' as provided for (2), (3) and (4) be detailed.

Council believe that Part 2.2 (2) would be clearer if referred to 'any consent authority'.

Council believe the text under each descriptor in Part 2.2 (1),(2), (3) and (4) should be amended and read: 'The list includes, but is not limited to those who might be a' building certifier, building manager etc.'

Issues concerning Exemptions and Concessions

42. 4.1 Layout of the unjustifiable hardship provisions

Council acknowledge that, whilst not necessarily intentional, the financial circumstances which could be used as the basis for assessing unjustifiable are listed first (a) – (e) and (h). This format implies that financial justification has some level of precedence over assessing whether the access provisions are technically and locationally achievable or whether a 'level' of access improvement is possible.

Recommendation

Council encourages the Committee to consider relocating the 'cost based' circumstances to the end of the section and promote the discussion on technical, heritage, evidence of good faith etc to the beginning of the section on unjustifiable hardship in line with the intent of the Premises Standards.

43. Interpretation of 4.1 (f) Exceptional technical factors

This part of the unjustifiable hardship clause concerns the technical factors which may impact on whether access improvements are possible. Council are concerned by the

reference to 'regional and remote locations' in this section. Many older people and people with a disability live and reside in areas which would be deemed regional and/or remote. The necessity for access is therefore not reduced and could be seen to be more important in smaller towns and villages. Our concern is that this reference infers that a 'blanket exemption' applies to buildings and businesses in regional and remote areas.

Recommendation

Council encourages the Committee to include 'regional and remote locations' as a separate point and to make it clear that this factor alone does not constitute a generic exemption from improving access to an existing building or incorporating the requirements of the Access Code in a new building.

44. Interpretation of 4.1 (j) Detriment suffered by parties

This part of the unjustifiable hardship clause infers that the assessment of unjustifiable hardship should consider the possible detriment/s which providing compliance with the Premises Standards may create for a range of stakeholders. In the interests of fairness Council believe that the 'building owner' should be included in this discussion.

Recommendation

Council believe that the 'building owner' should be included under part 4.1 (j).

45. Interpretation of 4.1 (k) heritage significance

Council are aware of the concerns that the heritage sector have with regards to the impacts of the Premises Standard on the preservation of significant heritage buildings and elements. We do however have concerns that the terminology cited in the Premises Standard does not reflect current the practices or terminology used by the Heritage Industry when determining appropriate improvements (access related or otherwise) to a heritage building. Council feel that the term 'heritage value' is too broad and wish to see the concession only apply to building elements of 'significant heritage value'.

Council however wish to highlight to the Committee that many heritage buildings contain services or functions that may need to be accessed by people with a disability. For example, in NSW most hospitals are collocated in heritage buildings, whilst many university, TAFE, school buildings, galleries and libraries are also located in heritage buildings. It is important therefore that this concession is effectively interpreted and refers to 'elements of heritage significance'.

Recommendation

Council would encourage the Committee to consider re-wording this clause to reflect the practice and terminology used by the Heritage sector in determining the appropriateness of alterations to heritage buildings. i.e. 'whether the application of the Premises Standards requirements would impact on the elements of the buildings which have significant heritage value.

46. Interpretation of 4.1 (l) with regards to the 'less onerous means concession'

This part of the unjustifiable hardship clause suggests that unjustifiable hardship should be considered as the basis for achieving access by 'less onerous means'. Council are concerned that this Clause could be 'unjustifiably' used to avoid the full application of the Premises Standards. Council are also concerned that this Clause makes no reference to the fact that even if access is provided by 'less onerous means' it must still support the equitable, dignified and safe access for people with a disability.

Further, Council feel that further this Clause does not make it clear that even if major physical access improvements are deemed too onerous, other less onerous access improvements are still required to be undertaken. i.e. installing a low rise platform lift at a principle entrance to address the current stairway access may be deemed too onerous however the stairs would still need to be ungraded to include complaint handrails, tactile ground surface indicators, contrasting strips on the nosing, signage etc

Recommendation

Council would ask the Committee to clarify the intent of this Clause and make it clear that the 'less onerous means' concession is only available once a claim of unjustifiable hardship is deemed valid. Council would also ask the Committee to make it clear that the 'less onerous access' provisions must still support equitable, dignified and safe access for people with a disability.

Comments on the Access Code for Buildings

Consistency of referenced documents

47. Lack of consistency in the document when referring to people with disability.

Council are concerned that the references to people with a disability are not uniform in the Premises Standard. It is acknowledged that 'persons or people with disabilities (plural) infers that all people who have a disability have more than one impairment. As this is often not the case, the preferred terminology is 'person with a disability' or 'people with disability'.

Recommendation

We recommend that the Committee adopt a uniform approach to how people with a disability are cited throughout the Premises Standards.

48. Lack of technical consistency between Disability Standards.

It is of concern to Council that there are differences in the dimensional requirements for significant access features in complimentary Disability Standards. For example, the Disability (Access to Public Transport) Standards requires that accessways, including ramps and stairways, comply with AS1428.2 and thus be a minimum 1200mm clear width. The proposed Premises Standard only requires 1000mm for the same elements. A further example is evident in the provision of passing areas.

Recommendation

Council would ask the Committee to give further consideration to harmonising the dimensional requirements between complimentary Disability Standards. Council are supportive of adopting the enhanced dimensional requirements as detailed in AS1428.2 for accessways, ramps and stairways (i.e. 90th percentile wheelchair size and user dimensions).

49. Limitations of the recently released Draft Australia Standards.

Council wish to advise the Committee that they have considerable concerns regarding the development of a Premises Standard, when key Australian Standards are still under review. Even though the critical standards namely, AS1428.1, AS1428.4.1 and AS2890.1 have subsequently been released in draft form, it is evident there are a number of technical inconsistencies which could impact on level and means in which access for people with a disability is provided. For example, AS1428.1 states that an accessible path of travel will provide a minimum 1000mm unobstructed width, whereas AS1428.4.1 states that persons who are blind or vision impaired should anticipate a path of travel to no less than 1200mm clear width.

It is positive, that AS1428.1 has adopted the 90th percentile wheelchair size and user dimensions for some locations most notably at doorway entrances and in the circulation spaces required in accessible toilet amenities. It is however disappointing that these enhanced spatial dimensions have not been adopted for key features such as accessways, ramps, and stairways. Council also wish to advise the Committee that many

of the diagrams within AS1428.4.1, whilst informative in nature, are questionable and could impact on the ability of people who are blind or vision impaired to safely wayfind in and around the built environment.

Recommendation

Council would ask that the Committee refer the issue of consistency in the listed standards to Standards Australia.

50. Absence of 'means of access' from the Access Code performance requirements.

Council are concerned that performance requirement DP1 as stated in the current Access Code fails to mention that access for people with a disability must be *equitable, safe and dignified*. Reference to how the access must also enable movement of people to and within a building is also absent i.e. the wayfinding component of access. As both requirements are detailed in the current Building Code of Australia, and are fundamental to the interpretation of the Premises Standard, it is vital that this information is inserted into the principle performance requirement.

Recommendation

Council would ask that the Committee ensure that the above references concerning the provision of access as stated in the current Building Code of Australia's DP1 be re-stated in the Access Code's performance requirement DP1.

Concerns regarding general building access requirements

51. Concession for Class 1b buildings (dwellings used for short-term holiday accommodation)

Council is concerned with the implications of the trigger for Class 1b buildings which include B & B's, Guesthouses, farm stays, eco-retreats and the like. In the current Draft access to and within a dwelling used for short-term holiday accommodation is only required where four or more rooms, cabins or the like are provided. In these instances access must also provided to not less than one type of each common facility or room for use by other residents or guests. Council's concerns regarding this concession are two-fold. Firstly, for operators who have 1,2 or 3 bedrooms the Premises Standards provisions provide no protection from complaints under the DDA which is in essence contrary to the intent of introducing Standards. Secondly, there is a risk that the majority of Class 1b accommodation would be excluded from having to provide access as many B & B's farmstays and the like which are not purpose built contain less than 4 rooms, cabins or the like.

Council would, in principle, support this concession for existing small scale B & B, Guesthouse and Farm Stay accommodation where 1 or 2 bedrooms were available for short-term rental. These types of accommodation would typically be operating out of an individuals residence and the cost implications of providing access would most likely be prohibitive. Council however believe that for all new purpose built Class 1b developments (i.e. caravan parks, eco lodges etc) the requirements should reflect the principle which has been applied to Class 3 buildings (Hotel accommodation) whereby 'at least one room, cabin or the like must be accessible where between 1 and 4 rooms or cabins are

available'. The ratio of provision as detailed for Class 3 buildings could thereby be replicated for all new purpose built Class 1b developments.

Council acknowledge that there is a need to balance the Premises Standards requirements in all instances however feel that the current requirements would result in limited improvement to the accessibility of short-term rental accommodation for people with a disability and their families. Hence we see benefit in providing the concession for small scale 1b operators and allowing the unjustifiable hardship defence to be exercised by operators of larger new and existing purpose built Class 1b developments with regards to the application of the Premises Standards requirements.

Recommendations

Council recommend that the Committee review the provisions for Class 1b buildings to ensure fairness and certainty for operators and people with a disability. In brief Council would encourage the Committee to consider:

- *Providing a concession from the requirements of the Premises for operators of existing Class 1b B & B accommodations where 1 or 2 bedrooms were available for short-term rental.*
- *For all new purpose built 1b accommodation (i.e. caravan parks and eco-lodges) that the principle used to determine the level of access provision in Class 3 buildings be applied. i.e. between 1-4 rooms, cabins or the like at least one must be made accessible.*
- *That the trigger for the Premises Standard in smaller scale B & B accommodation and the like be where 3 or more rooms are made available.*

52. Interpretation of requirements for Class 3 buildings (Hotels)

Council wish to highlight to the Committee that, due to missing punctuation in Table D 3.1, the access requirements for the common areas of a Class 3 building are misleading. The table implies that if only the entrance level is accessible then access must be provided to not less than one type of each facility for use in common by the residents. The requirement then goes on to state that where a ramp or lift is provided that all common facilities on the accessible floors must be made accessible. This implies that whereas only one of each type of common facility must be made accessible on the entrance level, all common facilities on levels serviced by a ramp or lift must be accessible. Clarification on the intent of this text is required.

It is also not clear from the table whether unique common facilities within a Class 3 are required to be accessible to people with a disability. For example, a roof terrace restaurant/bar, spa facility etc.

Recommendation

Council believe the access requirements for a Class 3 building require further clarification.

Council encourage the Committee to include a reference which states that where a Class 3 building (hotel) features a unique common access facility that access to and within the facility must also be provided.

53. Provision of access to and within 7a buildings (carparks)

Council are concerned by the limitation of the access requirement as stated in Table 3.1 for a 7a building (carpark). The table states that access is only required to levels which contain accessible parking spaces. Council are aware that, due to the inadequate number of accessible car spaces available when compared to the number of mobility parking permits issued, people with a disability are often required to park in non-accessible spaces. Further, some modified vehicles feature rear entrance ramps or hoists enabling the individual to use both the accessible and non-accessible parking spaces. It is therefore critical that all levels of a carpark are made accessible to people with a disability as people with a disability commonly use both types of parking spaces.

Recommendation

Council would suggest that the Committee consider re-wording this requirement to state that access must be provided to and within all levels of a carpark including those levels which feature accessible parking spaces.

54. Access to and within the common facilities in a 9b building (theatres, live venues, auditoriums and the like)

Council are concerned that Table 3.1 makes limited reference to the areas within a 9b building which are required to be accessible to people with a disability. Council believe it's important that reference is made to the areas which require access including the stage areas, dressing rooms, refreshment areas and the like.

Council agree, in principle, to the access concession given to tiers and platforms of seating which do not contain wheelchair accessible seating. Council however believe this concession requires clarification and that reference is made to the access provisions that should still apply to seating areas which are not wheelchair accessible. I.e. stairways, ramps and pathways should still incorporate features to ensure they are safe for people who are blind or vision impaired and those who have an ambulant disability.

In part, this provision is complicated by a concession in the current draft Access Code. Part D3.8 of the Access Code states that stairways in a Class 9b building are not required to feature tactile ground surface indicators if handrails incorporating a raised dome are installed. Whilst compliant handrails are essential, so too are tactile ground surface indicators for safe stairway access for people who are blind or vision impaired. This is more important in Class 9b developments as theatres and auditoriums often feature reduced lighting levels. Hence additional environmental cues such as tactile ground surface indicators are necessary for stairways in these types of buildings.

Council therefore believe that the stairways and ramps in a Class 9b building, especially those leading to tiers and platforms of seating, support safe access for people who are blind or vision impaired or those with an ambulant disability. In addition to compliant handrails stairways and ramps should also feature tactile ground surface indicators. Stairways should also feature slip resistant, luminance strips on the step nosings to enhance the detectability of the step edge for people who are blind or vision impaired.

Recommendations

That the Committee provide further clarification with regards to the areas within a 9b building which are required to be accessible.

That the Committee clarify the requirements for access to treads and platforms of seating and require, at a minimum, that the stairways, ramps and the like incorporate key features including:

- *Tactile ground surface indicators (TGSIs)*
- *Handrails compliant with the current provisions as stated in the draft Access Code*
- *Luminance contrasting, slip resistant strips on the step nosing to enhance detectability for people who are blind or vision impaired.*

55. Ratio of sole unit occupancy units in a Class 9c building (aged-care facility)

Council are deeply concerned that Table 3.1 indicates the same ratio of accessible sole occupancy units (SOU's) for an aged care facility (Class 9c) as for a Class 3 building (Hotel). Considering the average age of people in an aged-care facility, Government ageing-in-place initiatives and the well documented increase in disability status which accompanies ageing it is clear that this ratio of provision is inadequate. Put simply, the number of people with some level of impairment or disability is likely to be much higher in an aged care facility than found in the general population of Hotel occupants.

Ideally, Council believe that all sole occupancy units in a Class 9c development should be made accessible to facilitate independence as a person's health and mobility status alters. There is evidence that accessible units facilitate easier care management for staff who may be required to provide personal and other therapy services to individuals living in an aged care development. At a minimum the ratio should be increased to more accurately reflect the needs of the typical occupant of a Class 9c development.

Recommendations

Council would ask that the Committee review the ratio of sole occupancy units required to be accessible in a Class 9c development.

Council would recommend that all SOU's be designed to be accessible however, at a minimum, would encourage increasing the ratio's to better reflect the current and anticipatory needs people living in an aged-care development.

56. Concession given to Class 10b developments (Swimming pools)

The draft Premises Standards requires access to swimming pools only in instances where the perimeter of the pool is greater than 40 metres. The Standards provide a further concession for swimming pools that are for the exclusive use of occupants of a 1b building (B&B accommodation and the like) and those occupants of a sole occupancy unit in a Class 3 building (Motel). Council can appreciate that this concession was introduced in an attempt to balance the practicalities and cost associated with building or modifying a smaller swimming pool to provide access for people with a disability. Council are however concerned that there would be a number of instances where a pool may be less than 40metres however may be located in a development where access is

required to 'common facilities' for use of by guests. For example a purpose built Class 1b development which may be a caravan park, a more extensive cabin development, eco-lodge or the like or a Class 3 building (hotel/motel).

Council also believe that the question of whether a swimming pool is newly built or is an existing facility also needs to be factored into this discussion. Council are aware that incorporating accessibility provisions into a newly built pool is significantly easier and more cost effective than retrofitting an existing pool to provide access for people with a disability. It is clear that there are obvious circumstances where providing access to a swimming pool is not appropriate however it is evident that further clarification is required to address instances where the concession may leave the building operator open to a discrimination complaint.

Recommendations

Council would recommend that the Committee review the concession given to swimming pools which have a perimeter of less than 40 meters. Council would support a reduction in the concession to cover only pools with a perimeter of less than 20 meters.

Council would also ask the Committee to consider how an 'unjustifiable hardship' defence could be utilised in instances where an existing pool facility is available in a Building class which requires access to common amenities for guests and residents.

57. Access to buildings - Accessway and doorway provisions.

Part D3.3 (b) refers to the location of accessible entrances respective to inaccessible entrances. The clause requires that where an entrance isn't accessible, an accessible entrance must not be located more 50m from this entrance. Council are concerned that the requirement for a continuous accessible path of travel between the inaccessible and accessible entrance has not been specified. Without clarification there is a risk that an accessible entrance may be available however a connecting path to access this entrance may be absent. The need for a continuous accessible pathway between these two provisions is critically important for people who use wheelchairs, those who have an ambulatory impairment and especially people who are blind or vision impaired as it forms a vital link in the safe wayfinding system.

Part D3.3 (5) indicates that where a doorway on an access way has multiple leaves one of those must have a clear opening of not less than 850mm in accordance with AS1428.1. Whilst it is implied that this requirement applies to the active door leaf Council feel this could be specified to reduce the possibility of misinterpretation.

Recommendations

Council recommend that the Committee include a reference in Part D 3.3 (b) which states that an accessible path of travel must be provided where an accessible entrance is located away from the inaccessible entrance.

Council further recommend that Part D3.3 (5) specify that the clear door opening of 850mm applies to the active door leaf.

58. Possible implications of Part D3.4 Exemptions

This section deals with the areas of the building that are not required to be accessible to a person with a disability. Council are concerned that that some areas covered by the exemption may in fact conflict with the intent and objections of the Commonwealth Disability and Mental Health Employment Strategy. Of particular concern is the exemption provided to upper floors of warehouses used solely for wholesale and or logistic/distribution purposes. Council believe there is a risk that developers may use this exemption to avoid having to provide access to upper floors described as logistics/distribution areas even though, in reality, they actually accommodate administrative offices.

Council believe that the list of exemptions should be limited to areas where there is a clear health and safety risk for people with a disability rather than including ambiguously defined areas within the Access Code. Council believe that the unjustifiable hardship provisions stated in the Premises Standards provide an appropriate mechanism for the assessment of whether a concession is granted to an area of a building.

Recommendation

Council would encourage the Committee to consider including only the areas of a building where there is a clear risk to a person with a disability in the exemptions.

59. Implications of the exemption from providing access to the upper floors of small buildings (Classes 5, 6, 7b or 8)

This part of the exemption clause provides a concession from requiring access to the upper floors of 2 and 3 storey buildings where the floor area each storey (excluding the entrance storey) is not more than 200m². It is our understanding that this concession was created to address concerns regarding the cost of installing a lift in a small building to provide access to people who use a wheelchair. As stated in the Regulatory Impact Statement (RIS 2004), installing a lift in a small building had the most significant cost impact. Council are however concerned that in its current form, this exemption infers that small buildings are not required to include access features which assist people with a disability who are not wheelchair users.

As detailed in the Access Code, small buildings would not be require to incorporate features such as handrails on ramps and stairways, slip resistant luminance strips on the nosing of steps, tactile ground surface indicators and Braille and tactile signage, unisex accessible toilet amenities and ambulant toilet amenities on floors other than the entrance level. All of these elements are vital to supporting the safe access and egress of people who have an ambulant disability and those who are blind or vision impaired.

Council believe that the small building exemption was not intended to provide blanket coverage for small buildings with regards to access requirements for people with a disability who are not wheelchair users.

Recommendation

Council would ask the Committee to include a note of clarification with regards to access requirements for small buildings. The clarification should state that although physical access (i.e. lift access) to the upper floors of the building may not be required access provisions for people with a disability who are not wheelchair users must be incorporated on each level of the building.

60. Accessible parking provisions

Council are concerned by the provision in Part D3.5 (b) which states that accessible parking spaces need not be provided where a valet parking service is provided. Council wish to highlight to the Committee that this provision fails to recognise that many vehicles are specifically modified to enable the person with the disability to drive the vehicle independently. These modifications may, in fact, prevent another person from driving the vehicle. For example, the driver's front seat may be removed to enable an automated wheelchair locking system to be installed, foot peddles may be extended to assist a person of short stature to activate floor peddles and integrated, pressure sensitive hand controls may be fitted. Council therefore believe that alternative parking provisions need to be made in instances where a valet service is provided to enable a person with a disability to park their vehicle and independently and safely access the building.

Council are also concerned that the number of accessible parking spaces proposed for various building classes is inadequate given the number of mobility parking permits which are active. Appreciate that abuse and policing of accessible parking spaces is an ongoing concern and, that these factors do impact on the availability of these spaces for individuals who require them, it is reported that over 13% of registered drivers in NSW have a mobility parking permit. The Access Code applies a ratio of 1 or 2% when calculating the number of accessible parking spaces required. It is clear that this provision is inadequate especially considering the expected rise in mobility parking permits with the ageing of the Australian population.

Council believe there are key building classes where enhanced carparking provisions are necessary and vital. In a Class 1b or 3 building the Council believe that a 1:1 ratio should be applied rather than a percentage as people with a disability are more likely to drive their own vehicle to holiday and hotel accommodation. Therefore we believe it is critical that one accessible car space is available for every accessible hotel room or 1b accommodation option.

Council also believe that additional accessible parking provisions should be considered for Class 9a buildings (hospitals, nursing homes, clinics and the like) as accessible parking spaces are often in high demand at these locations. The current standard proposes either 1 or 2% of parking spaces to be designated as accessible. Council believe this provision is inadequate as both people with a disability and those who are unwell often require the use of accessible parking spaces.

Council are also concerned that the carparking provisions make no reference as to where the accessible parking spaces should be located. This is a significant issue as often

spaces are located at some distance from a lift or access point or may require the person to cross a vehicular path of travel. Council believe there is scope in the Standard to address the location of accessible parking spaces.

Council would also like to highlight to the Committee that the Access Code does not include any provisions with regards to how a carpark is accessed or Standards for payment and egress. Many people with a disability who drive have difficulty extracting the ticket from an entry boom gate machine due to the height at which the ticket machine is installed and also the type of ticket dispensed. The issue of access is amplified on egress as many parking stations now feature automated paying machines. Most are installed so that the payment area is inaccessible to people with a disability. Many egress systems also require the driver to insert the paid card into a machine on egress. Again, as most machines have not been installed at an accessible height people with a disability are unable to activate the egress gate.

Recommendations

Council recommend that the Committee re-consider the practicalities of Clause D3.5 (b) with regards to the valet parking provision.

Council would encourage the Committee to consider the application of a 1:1 ratio for Class 1b and Class 3 buildings which would result in an accessible parking space being provided for each accessible room.

Council recommend that the Committee consider increasing the percentage of accessible parking spaces provided for specific building classes most notable Class 9a (Hospitals, nursing homes, medical clinics and the like).

Council would ask that the Committee consider including a requirement specific with regards to the location of accessible parking spaces and the accessibility of carpark entrance and egress systems.

61. Scope of Signage provisions

Council are concerned that the current requirements for Braille and tactile signage as proposed in the Access Code may be misinterpreted. In reference to Part D3.6 (b) it appears that the need for signage in the listed areas to incorporate Braille and tactile information is absent. Council believe that it is essential that this reference be reinserted to ensure that Braille and tactile signage is installed in the range of areas as stated in the Access Code, including, but not limited to:

- general sanitary facilities,
- the door of an ambulant cubicles,
- where unisex accessible sanitary facilities are available,
- where hearing augmentation is provided, and
- entrances and sanitary facilities which are not accessible.

In the later instance this signage is intended to direct a person who is blind or vision impaired to the nearest accessible entrance or unisex accessible toilet facility.

Council also have concerns with the level of information provided on directional Braille and tactile signage installed to direct a person who is blind and vision impaired to an accessible entrance and facility. Currently, the draft Access Code infers that the signage will feature Braille and tactile information and incorporate the international symbol for access (wheelchair symbol) and a directional arrow. We believe this form of signage should also provide information on the distance a person is required to travel to access the amenity or entrance.

Council also believe that there should be a requirement for Braille and tactile signage to feature at the entrance to a sanitary facility where an ambulant toilet cubicle may be provided. (At present it is only required on the actual door of the cubicle).

Discussion with the blindness sector also supports the extension of Braille and tactile signage to the lift lobby area and doors on all floors of the building. These signs should include both room number and level information.

Recommendations

Council would ask that the Committee specify that signage proposed for locations listed in Part D3.6 (a) – (f) must feature Braille and tactile elements.

Council encourage the Committee to consider extending the information contained on directional Braille and tactile signage to include the actual distance to the feature or amenity.

Council would ask that Part 3.6 (d) be extended to requiring Braille and tactile signage on both the main entrance door and the actual cubicle to indicate the presence of an ambulant toilet cubicle.

Council would encourage the Committee to consider whether additional Braille and tactile signage is required as part of the wayfinding system for people who are blind or vision impaired. i.e. numbering all rooms with both the floor level and room number.

62. Hearing Augmentation

This section details the building classes and built environment situations where a hearing augmentation system is required. Council have been informed by the Deafness Forum of a number of concerns with regards to Part D 3.7 of the draft Access Code.

Fundamentally, the deaf community are concerned that this Part lacks a clear definition as to what constitutes a screen. Currently, if a screen features a 150mm gap, say a bank teller window, it is not defined as a screen even though a clear barrier in place. This means that in many necessary situations i.e. ticket office, tellers booth, reception area of the like there is currently no requirement to include hearing augmentation.

The Deaf Forum has also informed Council of their concerns regarding the number of receivers that are made available in spaces served by a hearing augmentation system. The deaf community indicate that the percentage used to calculate the number of receivers is too low considering the number of people who are hearing impaired who may require the use of a receiver. The Deaf Forum recommends that, in contrast to the 3.5 - 4 percent stated in the current draft, that 10 percent is applied to all situations stated in Part D3.7 (2) (i) – (iv).

Recommendations

That the Committee clarify the definition of screening and include a provision for hearing augmentation in each of the locations described in D3.7 (1) regardless of whether a gap is present or not..

That the Committee accept the Deaf Forum's recommendation that the number of receivers required is based on a 10 percent provision for room types and situations stated in D3.7 (2) (i) – (iv).

63. Tactile indicators

This part of the Access Code describes where tactile ground surface indicators are required. As raised previously, Council are concerned by the concession which has been applied to fire-isolated stairs. Currently fire-isolated stairs are not required to incorporate tactile indicators despite the potential impacts on safe access for people who are blind or vision impaired.

Council are also concerned that step ramps are not required to feature tactile ground surface indicators. Whilst the grade of a step ramp would be detectable underfoot by a person who was blind or vision impaired, the location of these step ramps is often unpredictable therefore additional cues would enhance detectability and safety of this feature. This is especially the case in buildings where a step ramp may be used to address a one step difference between one level and another.

Council are also concerned by the blanket exclusion that has been given Class 3 (motels) and Class 9a buildings (hospitals, clinics etc). Currently both these building class are excluded from requiring tactile indicators on stairways provided the stairs feature handrails with a raised dome to alert people who are blind or vision impaired to the stairs. Both of these environments contain wayfinding hazards and are typically unfamiliar environments to the people who occupy them. Council therefore believe it is crucial that tactile indicators are installed on stairways, ramps etc in these building classes.

Recommendation

Council would recommend that the Committee include a requirement for tactile indicators to be installed:

- *On fire-isolated stairways*
- *On stairways in Class 9b buildings (theatres, auditoriums etc)*

- *Where step ramps are installed*
- *On relevant design features in both Class 3(motels) and Class 9a (hospitals, clinics) buildings.*

64. Wheelchair seating in Class 9b assembly buildings

Council are concerned that Part D3.9 only refers to seating in cinemas and excludes discussion on the level and location of wheelchair accessible seating in other 9b building venues such as theatres, live venues, concert halls etc.

Council are also concerned that location of wheelchair seating only makes reference to cinema seating. Whilst it is preferably in a cinema that wheelchair seating is not provided in the front row, it is actually desirable in other 9b venues such as a theatre, auditorium or live venue. Council therefore believe it is important that reference is made to the preferred location for wheelchair accessible seating in 9b venues other than a cinema.

Recommendation

Council recommend that the Committee consider including additional text in Part D3.9 with regards to the preferred location for wheelchair accessible seating in 9b venues other than cinemas. I.e. theatres, live venues, auditoriums.

65. Concession for unisex accessible toilet amenities

The current draft Access Code contains a concession in instances where there are more than one set of male and female toilets each level of a building. In these instances only 50% of the female and male toilet blocks require a unisex accessible toilet facility to be installed.

Overall Council are pleased that this requirement increases the number and availability of unisex accessible toilet facilities in most building classes. We are however concerned that there may be instances where a unisex accessible toilet amenity is provided and is located in a tenancy which requires some form of security access. This would effectively prevent an employee from another tenancy or a visitor with a disability from using this amenity.

Appreciating that building tenancy's are unknown at the point of building approval, Council believe consideration should be given to limiting the concession by requiring that unisex accessible toilet amenities be located within 50 metre of an inaccessible toilet block. In this way the concession is limited and people with a disability can be assured that a unisex accessible toilet amenity is not more than 50 metres from an inaccessible toilet amenity.

Recommendation

Council would ask the Committee to consider introducing a provision that requires that unisex accessible toilet amenities be located within 50 metres of an inaccessible toilet block on levels where there is more than one set of toilet amenities.

66. Concessions for lifts.

The current draft Access Code expands the types of lifts that can be used to improve access for people with a disability in all building classes. Council are concerned that some of the lift types included in Table E3.6 (a) feature activation features which are in fact difficult for some people with a disability to use safely and independently. For example a AS1735.7 *Stairway platform lift* is typically used to facilitate access where stairs are present and a vertical rise lift cannot be installed. These types of lifts often require key activation and the application of constant pressure to activate the lift. For many people who have a high level spinal injury manipulating the key and maintaining constant pressure would be impossible to maintain.

Further the Access Code also makes reference to an AS1735.15 *Lifts for persons with limited mobility*. When enclosed these lifts are allowed to travel over 4m and unenclosed are permitted to over 2m. A further limitation given to this use of lift is that it is not intended for high traffic public areas. Council are concerned as these lifts are intended for residential purposes only and again, often require the use of a key and constant pressure to activate.

Council are also concerned that the Access Code fails to codify the circulation space requirements for each type of lift. This is vital as a lift can become inaccessible if there is insufficient space for a person who uses a wheelchair or has a mobility impairment to manoeuvre their wheelchair or assistance aid either onto the lift plate or into a lift car.

Recommendations

Council would ask the Committee to seek further advice on the suitability of each lift type, specifically those which require key activation and constant pressure, for use by people with a disability.

Council would recommend that the Committee seek to include information within the Access Code on the circulation space requirements for each lift type.

Comment on the Administrative Protocol

The Administrative Protocol is not mandatory and seeks to describe a process which may be adopted by State and Territory Administrations for determining access requirements for buildings. The Protocol aims to ensure, as far as practicable that the application of the Building Code of Australia (BCA) results in a built environment that is consistent with the requirements of the Premises Standards.

Put simply, if you comply with the accessibility requirements of the BCA you will provide access which is consistent with the Premises Standards. In doing so, building owners, builder, occupiers and building professionals can be assured that they are at minimum risk of a discrimination complaint.

Council strongly support the establishment of an Access Panel as part of this Administrative Protocol. Council do however feel that further clarification is required as to:

- Whether the Court or the Access Panel will be charged with making determinations in 'unjustifiable hardship' cases.
- The legal standing of Access Panel decisions.
- Whether the decision of an Access Panel could be used as evidence in a discrimination claim.

Council also acknowledge that establishing Access Panel may be easier in States and Territories that already have a mechanism or building assessment service which undertakes this function. NSW does not currently have an existing mechanism which could incorporate this function and the cost of establishing must be taken into account in this discussion.

Recommendations:

Council feel that the content and function of the Administrative Protocol requires further refinement to ensure that the role and function of the Access Panel and the mechanism to establish the Panel is clarified.

Council however wish to stress to the Committee that the discussion on the Administrative Protocol should not impede the finalisation of the Premises Standard.