



# Accessibility Plan

# Accessibility Plan: Public Buildings

## Where this Plan came from:

This Accessibility Plan: Public Buildings outlines a programme of work to achieve the intended goal of 'Equitable access to and use of publicly accessible buildings by all New Zealanders'.

The plan arose out of a review of the accessibility of public buildings commissioned by the Ministry of Business, Innovation and Employment (MBIE) and the Office for Disability Issues (ODI) in late 2013. It was developed with input from an external Access Reference Group<sup>1</sup> that was established to provide advice during the review.

The plan is structured around four separate phases of the consent and construction process:

1. Conceptual and Design Phase
2. Pre-Build Phase
3. Construction Phase
4. Occupation Phase.

## Prioritising the work across the Different Phases of the Construction Process

As there is a broad range and scale of possible interventions across the phases, this Plan presents prioritised interventions that were assessed against the following criteria:

- Effectiveness of intervention
- Investment in early phases
- Alignment with existing workstreams
- Positive (i.e. low) cost/ benefit ratio.

As such, these interventions are believed to have the best chance of contributing towards the goal of this Plan. The interventions undergoing the prioritisation assessment are outlined in Appendix 2.

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<sup>1</sup> Members included: The Blind Foundation, CCS Disability Action, The Association of Blind Citizens of New Zealand, Disabled People's Assembly, Barrier Free NZ Trust, Invercargill City Council, Aged Concern, The Hearing Foundation, Accessible Options, Pynenburg and Collins Architects

## The Plan

The table below presents the interventions that will address issues identified at each phase of the building and consent process. Some interventions will take place in year one, with other interventions planned to take place in years two and three. This will ensure implementation of the Plan takes a staged approach, with interventions in year one informing those in years two and three.

Phase 1: Conceptual and Design		Year One (Sep 2015 – Oct 2016)	Year Two (Nov 2016 – Oct 2017)	Year Three (Nov 2017 – Oct 2018)
1.	Investigate options for incorporating user access requirements effectively into conceptual and design phase	Jan-Mar 2016		
	<ul style="list-style-type: none"> <li>Initial draft of user-requirements for publically accessible buildings</li> <li>Sector engagement on initial draft of Guide for Publically Accessible Buildings</li> <li>Final draft of approved Guide for Publically Accessible Buildings [the basis for educational/guidance material for designers and developers</li> <li>Report identifying where/how the Guide for Publically Accessible Buildings can be used into the construction sector.</li> </ul>	Jan 2016 Feb 2016 Mar 2016  Mar 2016		
	<i>[Note: Reports are for internal MBIE approval - not for Ministers]</i>			
2.	Environmental scan of the building developer and building designer sectors (to enable more targeted communication for guidance /regulation etc.)	Jan-Mar 2016		
	<ul style="list-style-type: none"> <li>Terms of Reference (ToR) scope for environmental scan of building developer and building designer sector</li> <li>Final environmental scan report that clearly identifies all stakeholders in the</li> </ul>	Jan 2016  Mar 2016		

	<p>building developer and building designer sector and drivers/influences with respect to disabled access</p> <ul style="list-style-type: none"> <li>Stakeholder Engagement Plan.</li> </ul>	Mar 2016		
3.	Assess the true cost (and potential benefit) of incorporating improved access in 'publicly accessible buildings' for (a) new buildings and (b) amendments to existing buildings			
	<ul style="list-style-type: none"> <li>Scope and ToR for research project on the costs and benefits of incorporating improved access in 'publicly accessible buildings for (a) new buildings and (b) amendments to existing buildings</li> <li>Final report on the cost and benefit of incorporating improved access in 'publicly accessible buildings' for (a) new buildings and (b) amendments to existing buildings.</li> </ul>	<p>May 2016</p> <p>Jun 2016</p>		
4.	Identify where designers can be most effectively targeted (i.e. tertiary education or on-going practice)			
	<ul style="list-style-type: none"> <li>Communications strategy and communications plan for delivery of educational/guidance material for designers and developers (<i>based on information from deliverables in [1] and [2] and other sources</i>).</li> </ul>	Jun 2016		

	<b>Phase 2: Pre-Build Deliverables (Processing of Consent Application)</b>			
5.	Investigate options to effectively incorporate user access requirements in the pre-build phase <i>(by designers and developers)</i> .			
	<ul style="list-style-type: none"> <li>• Report on the possible approaches to ensuring Guide for Publically Accessible Buildings (deliverable from [1]) is considered by building developers/designers before an application for building consent is submitted.</li> <li>• Engagement with designers/developers</li> <li>• Preferred approach identified and approved</li> <li>• Preferred approach implemented.</li> </ul>	Mar 2016	Mar 2017	
6.	Develop methods for improved guidance for designers and developers submitting a building consent application and to support consent officers to require changes before consent to build is approved (for new buildings).			
	<ul style="list-style-type: none"> <li>• Report (with recommendations) on the possible options for improving guidance to buildings designers and developers to ensure accessibility issues are considered prior to the submission of application for building consent for new buildings.</li> <li>• Report (with recommendations) on the different possible options for improving guidance to Building Consent Authorities (BCAs) to ensure accessibility issues are considered prior to the building consent for new buildings being approved.</li> </ul>	Mar 2016		

	<ul style="list-style-type: none"> <li>Engagement with Designers and Developers</li> <li>Engagement with Building Consent Authorities</li> <li>Final approach approved</li> <li>Final approach implemented in all BCAs.</li> </ul> <p><i>Note: Final guidance could be anything from training to software tools etc. but will probably use content from User Activities Guide for Publically Accessible Buildings developed in (1) and the strategy developed through (3)</i></p>		Mar 2017	
7.	Develop methods for improved guidance for designers/developers submitting a building consent application and to support consent officers to require changes before consent to build is approved (for alterations to existing buildings).			
	<ul style="list-style-type: none"> <li>Report (with recommendations) on the possible options for improving guidance to buildings designers and developers to ensure accessibility issues are considered prior to the submission of application for building consent for alterations to existing buildings</li> <li>Report (with recommendations) on the different possible options for improving guidance to BCAs to ensure accessibility issues are considered prior to the building consent for alterations to existing buildings being approved.</li> <li>Engagement with Designers and Developers</li> <li>Engagement with BCAs</li> <li>Final approach approved</li> </ul>	Mar 2016		

	<ul style="list-style-type: none"> <li>Final approach implemented in all consenting processes in a way that helps BCAs assess building consent applications in a consistent manner.</li> </ul> <p><i>Note: Final guidance could be anything from training to software tools etc. but will probably use content from User Activities Guide for Publically Accessible Buildings developed in (1) and the plan/strategy developed through (3).</i></p>		Mar 2017	
8.	Obtain agreement on the interpretation of 'as near as reasonably practicable' and 'reasonable and adequate' and clarify those sections of the current legal framework that do not work in practice (e.g. the anomaly in s112).			
	<ul style="list-style-type: none"> <li>Interpret Framework on 'as near as reasonably practicable' (under s112 of the Building Act) and 'reasonable and adequate' (under s118 of the Building Act)</li> <li>Engagement with Building Designers/BCA on interpretative framework</li> <li>Draft guidance document on use of the terms and how they should be interpreted</li> <li>Engagement with sector</li> <li>Final guidance document on use and interpretation of the terms released.</li> </ul> <p><i>Note: Content from (1) may be used to help achieve agreement on how they should be interpreted.</i></p>	Mar 2016	Mar 2017	
9.	Align and simplify the three pathways to achieve compliance (Standards/Acceptable Solutions/ Alternative Solutions) to correct conflicting requirements			

	<ul style="list-style-type: none"> <li>Report with recommendations on the preferred mechanism for correct/remove existing conflicts in the three pathways to achieving consent compliance</li> <li>Preferred mechanism approved</li> <li>Preferred mechanism implemented.</li> </ul>			Mar 2018
<b>Phase 3: Construction Deliverables</b>				
10	Investigate use of current and alternative enforcement options for non-compliance (for access issues)			
	<ul style="list-style-type: none"> <li>Report summarising existing and potential enforcements options for non-compliance (for access issues) with publically accessible buildings.</li> </ul> <p><i>Note: dependent on deliverables from activities 1-9.</i></p>			Mar 2018
<b>Phase 4: Occupation</b>				
11	Identify mechanisms to assist Disability Sector Stakeholders to work together to improve accessibility of 'publicly accessible buildings'.			
	<ul style="list-style-type: none"> <li>Stakeholder forum to identify mechanisms to discuss/agree options for collaborative approaches to accessibility in public buildings.</li> </ul> <p><i>Note: follow-up actions will depend on the outcomes of the forum, and identification of an appropriate role (if any) for the Office for Disability Issues to play noting the stakeholders are external to Government.</i></p>	Oct 2016		



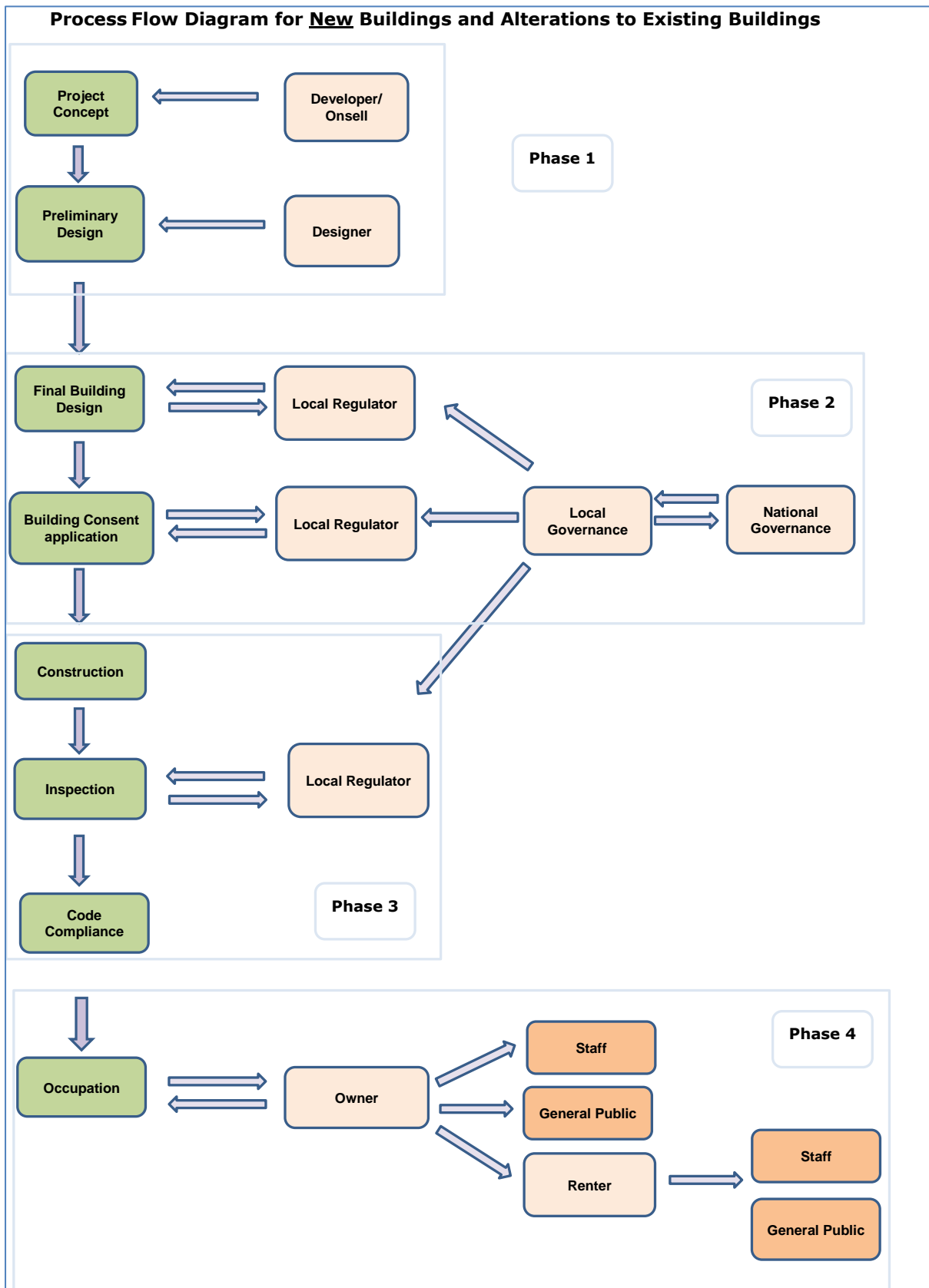
## **Implementing the Plan and Monitoring Progress**

MBIE and ODI will work together to implement the Plan. MBIE will draw on technical expertise from existing expert panel arrangements (or seek external technical support when required), with support from ODI.

MBIE and ODI will meet on a quarterly basis to review progress and consider plans for the following quarter. An annual stocktake will also be carried out to report on progress made, assess any issues identified and to confirm interventions for the following year.

MBIE and ODI will report annually to the Minister for Building and Housing and the Minister for Disability Issues.

# APPENDIX ONE: The Building Consent and Construction Process



## **APPENDIX TWO:**

### **Issues and Shortcomings the Plan Will Address**

The review and subsequent scoping by MBIE/ODI and the Access Reference Group identified the following shortcomings to ensuring the accessibility of public buildings. The potential interventions (solutions) identified to address these issues subsequently underwent a prioritisation assessment.

### **The Conceptual and Design Phase**

This phase concerns the initial concept development of the building to be constructed. It incorporates the creation of the building design (preliminary design and subsequent revisions) up to the point where it is submitted to a Building Consent Authority (BCA) as part of a building consent application.

The following problems/process failures were identified:

- Few developers appear to have a good understanding of the diverse access requirements of the end-users who will use the building (e.g. disabled people, people with temporary impairments, children, parents with infants etc.) or of the associated legal requirements under the Building Act.
- Many developers appear to depend on designers to propose designs that meet legal and access requirements, however there also appears to be a lack of understanding amongst some designers on the access requirements of end-users who will use the building.
- There is a broad range of building developers with very different drivers and motivations. The lack of specific sub-groupings of common developer types is likely to create difficulties in targeting developers effectively in terms of communication and regulation.
- There is a broad range of building designers with different experience and qualifications. The generic definition of 'designer' appears to range from professional architects to self-described 'designers' without substantial qualifications.
- There appears to be very limited guidance available to developers and designers to enable innovative solutions that meet both the access needs of users and their clients.
- There appears to be a general pre-conception amongst developers that incorporating access requirements into the construction of new buildings is prohibitively expensive whereas most significant costs seem to occur as a result of access requirements not being incorporated into the preliminary design work (requiring 'fix-up' to achieve code compliance once construction is completed). There is no New Zealand based data/research to prove/disprove this.

#### ***Potential interventions:***

The following interventions were identified as having potential to address the broad range of issues and shortcomings in the Conceptual and Design Phase:

- Clarify user access requirements for buildings so that appropriate guidance can be provided to developers and designers.

- Environmental scan of the building developer and building designer sector so that developer groups and designer sub-groups can be targeted for more effective communication and regulation.
- Investigate options for how legal and user access requirements can best be incorporated into the preliminary building concept/design so that access issues are considered prior to building consent applications being submitted.
- Identify where designers can be most effectively targeted in terms of guidance (i.e. tertiary education or on-going practice).
- Assess the true cost and potential benefit of incorporating improved access in 'publicly accessible buildings' for (a) new buildings and (b) amendments to existing buildings.
- Identify financial incentives for developers to carry out access work.

## The Pre-Build Phase

This phase concerns the assessment of the final building design and supporting documents submitted to the Building Consent Authority (BCA) as part of a building consent application and prior to the commencement of the building construction.

The following process issues and shortcomings were identified:

- The building consent applications submitted to BCAs are generally of a poor quality for assessment (possibly reflecting uninformed status of developers and designers or poor guidance from the regulators)
- Under s.112 of the Act (dealing with alterations to existing buildings), a BCA must not grant a consent for building work that will alter an existing building or part of an existing building unless it is satisfied that after the alteration, the building will comply as near as is reasonably practicable with the provisions of the building code in relation to fire and disability issues. There is a lack of clarity and guidance on the interpretation of 'as near as is reasonably practicable' by regulators and designers (a similar situation exists with reasonable and adequate access, parking and sanitary facilities for persons with disabilities under s.118 of the Building Act)
- Local regulators are limited in their ability to regulate access issues due to a number of shortcomings in the Building Code itself (e.g. the interpretation of 'access' is predominantly restricted to mobility impairment only etc.)
- Smaller BCAs may have less stringent assessments of the access components of their building applications compared to larger BCAs as they are less likely to have resource allowing access to specialist skills and support on access issues
- In many BCAs, access requirements can be compromised by those of fire safety requirements with respect to alterations to existing buildings. Although s112(1) requires both 'means of escape from fire' and 'access' to be recognised in upgrades to existing building stock, in practice BCAs, designers and public tend to default to the safety requirement over those of access requirements which is allowed through s112(2) ['means of escape from fire' or 'access']. This 'ratchet' clause was originally introduced as a means for allowing existing building stock to be improved during alterations. The focus of

improvements on safety however, has meant functionality improvements (e.g. access) have taken a lower priority.

- Existing pathways to achieving code compliance are not aligned well for disabled access as they have inconsistent technical requirements and utilise different definitions. There are therefore variable and conflicting standards which undermine the application of appropriate access requirements. Updating the standard NZS 4121 is extremely costly and more effective mechanisms for updating the legislative framework need to be considered.

### **Potential interventions:**

The following interventions were identified as having potential to address the broad range of issues and shortcomings in the Pre-Build Phase:

- Investigate options for incorporating end-user access requirements effectively into pre-build phase
- Develop methods for improved guidance for designers and developers submitting a building consent application and to support consent officers to require changes before consent to build is approved (for new buildings and alterations to existing buildings.)
- Obtain agreement on the interpretation of '*as near as reasonably possible*' and 'reasonable and adequate' and clarify those sections of the current legal framework that do not work in practice (e.g. the anomaly in s112)
- Align and simplify the pathways in the legislative framework to achieve compliance (Standards/Acceptable Solutions/ Alternative Solutions) to correct conflicting requirements.

## **The Construction Phase**

This phase covers the acceptance of the final building design, the construction process and the final issuing of code compliance by the BCA. It also covers the building inspection process.

The following issues and shortcomings were identified:

- Corrective action on code compliance of access requirements can be very expensive post-construction (due to more limited range of available design solutions)
- Where non-compliance occurs as a result of error in the assessment of the building consent application by the BCA there is a reluctance to enforce compliance due to the risk of legal challenge and political pressure from local governance. This may have more of a potential to occur with smaller BCAs
- In New Zealand there does not appear to be a requirement for builder qualification for public buildings (the Licensed Building Practitioner Regime only applies to residential housing). This may create an increased risk in terms of non-compliance as a result of the building construction (i.e. error by builder).
- Occasionally, when non-compliance on access is discovered, a certificate of public use is granted (without a compliance approval). This creates situations where there is no adequate resolution as the certificate of public use is 'rolled over' on a regular basis
- Limited practical mechanisms for revoking a certificate of compliance and other enforcement options for non-compliance on access issues post-construction.

### ***Potential interventions:***

The following interventions were identified as having potential to address the issues and shortcomings in the Construction Phase:

- Investigate the use of current and alternative enforcement options for non-compliance (for access issues)
- Investigate options for more robust enforcement of non-compliance by local regulators (for access issues) to avoid undermining by local governance
- Investigate if there is a need for expanding the LBP scheme to publically accessible buildings.

## **The Occupation Phase**

This phase covers the occupation of the building following the issuing of the code compliance certificate by the BCA. It covers the interaction between the users and owners or lease holders.

The following shortcomings /process failures were identified:

- Users currently have little direct influence on the owners or lease holders of publicly available buildings with accessibility issues (i.e. unable to inform demand or change).

Further comments received after the workshops highlighted another issue not raised during the workshops. This is:

- On occasion, owners of existing buildings carry out additional (non-consented) alterations that actually remove accessibility features.

### ***Potential interventions:***

The following interventions were identified as having potential to address the issues and shortcomings in the Occupation Phase:

- Investigate options to inform owners/renters of publicly accessible buildings on user access requirements and the need to ensure appropriate accessibility
- Identify mechanisms to assist Disability Sector Stakeholders to work together to improve accessibility of 'publicly accessible buildings' (including reporting of non-compliance).

## Issues Identified

### CONCEPTUAL DESIGN PHASE:

- Lack of understanding around access requirements of end users or legal requirements under the Building Act.
- Absence of information on developers and designers makes it challenging to target guidance appropriately.
- Lack of quality guidance available to developers/designers to enable innovative solutions. This includes on the access requirements for end users.
- Developer pre-conception that incorporating access requirements for new buildings is prohibitively expensive.

### PRE-BUILD PHASE:

- Poor quality applications (reflecting uninformed status of developers / designer)
- Lack of guidance for developers/designers on:
  - as nearly as is reasonably practicable under s.112 of the Building Act
  - reasonable and adequate access, parking and sanitary facilities for persons with disabilities under s.118 of the Building Act.
- Inconsistent and conflicting pathway requirements to achieve code compliance for disability access across NZ Building Code Acceptable Solutions, NZS4121 Acceptable Solutions and Alternative Solutions.
- Less stringent interpretations by smaller Building Consent Authorities (BCA) due to less access to specialist access skills/support.
- Access requirement compromised by those of safety (with respect to alterations to existing buildings under s112(2) of the Act)

### CONSTRUCTION PHASE:

- Corrective action to achieve code compliance on access requirements is very expensive post-construction.
- Can be BCA reluctance to enforce compliance due to the risk of legal challenge and political pressure from local governance.
- Possible risk with lack of requirement for builder qualification for public buildings. (Note: Licensed Building Practitioner regime applies only to housing).
- Occasionally, when non-compliance on access is discovered, a Certificate of Public Use (CPU) is granted (without a compliance approval). This creates situations where there is no adequate resolution as the CPU is 'rolled over' on a regular basis
- Limited practical mechanisms for revoking a certificate of compliance and other enforcement options on access issues.

### OCCUPATION PHASE:

- End-users (general public/staff) have little direct influence on the owners/renters of publicly available buildings with regards accessibility issues (i.e. are not able to inform demand for accessible buildings)
- Owners of existing buildings occasionally carry out non-consented alterations that remove accessibility features.

## Potential Solutions

- Investigate options for incorporating end user access requirements effectively conceptual design phase.
- Environmental scan of the building developer and building designer sectors (to enable more targeted communication for guidance/regulation).
- Assess the true cost/benefit of incorporating improved access in 'publicly accessible buildings' for (a) new buildings and (b) amendments to existing buildings. Identify where different designers can be most effectively targeted in terms of guidance

- Investigate options for incorporating end-user access requirements into pre-build phase.
- Develop methods for improved guidance for designers/developers submitting a building consent application and to support consent officers to require changes before consent to build is approved (for new buildings and for alterations to existing buildings)
- Obtain agreement on interpretation of 'as near as reasonably possible' and 'reasonable and adequate' and clarify those sections of the current legal framework that do not work in practice (e.g. the anomaly in s112)
- Align and simplify the three different pathways to achieve compliance (NZ Building Code Acceptable Solutions/NZS4121 Alternative Solution) to correct conflicting requirements.

Investigate use of current and alternative enforcement options for non-compliance (for access issues)

Identify mechanisms to assist disability sector stakeholders to work together to improve accessibility of 'publicly accessible buildings'

- Initial draft of user-requirements for publically accessible buildings (Jan 2016)
- Sector engagement on initial draft of Guide for Publically Accessible Buildings (Feb 2016)
- Final draft of approved Guide for Publically Accessible Buildings [*the basis for educational/guidance material for designers/developers*] (Mar 2016)
- Report identifying where/how the Guide for Publically Accessible Buildings can be used into the construction sector (Mar 2016)
- Terms of Reference (ToR) scope for environmental scan of building developer and building designer sector (Jan 2016)
- Final environmental scan report that clearly identifies all stakeholders in the building developer and building designer sector and drivers/influences with respect to disabled access (Mar 2016)
- Stakeholder Engagement Plan (Mar 2016)
- Scope and ToR for research project on the costs and benefits of incorporating improved access in 'publicly accessible buildings for (a) new buildings and (b) amendments to existing buildings (May 2016)
- Final report on the cost and benefit of incorporating improved access in 'publicly accessible buildings' for (a) new buildings and (b) amendments to existing buildings (Jun 2016)
- Communications strategy and communications plan for delivery of educational/guidance material for designers/developers (Jun 2016)

- Report on the different possible approaches to ensuring Guide for Publically Accessible Buildings is considered by building developers/designers before an application for building consent is submitted (Mar 2016)
- Engagement with designers/developers
- Preferred approach identified and approved
- Preferred approach implemented (Mar 2017)
- Report (with recommendations) on the different possible options for improving guidance to buildings designers/ developers to ensure accessibility issues are considered prior to the submission of application for building consent for new buildings
- Report (with recommendations) on the different possible options for improving guidance to BCA/TAs to ensure accessibility issues considered prior to the building consent for new buildings being approved (Mar 2016)
- Engagement with Designers/Developers
- Engagement with Building Consent Authorities/Territorial Authorities
- Final approach approved
- Final approach implemented in all BCAs (Mar 2017)
- Report (with recommendations) on the different possible options for improving guidance to buildings designers/developers to ensure accessibility issues are considered prior to the submission of application for building consent for alterations to existing buildings
- Report (with recommendations) on the different possible options for improving guidance to BCA/TAs to ensure accessibility issues are considered prior to the building consent for alterations to existing buildings being approved (Mar 2016)
- Engagement with Designers/Developers
- Engagement with BCAs/TAs
- Final approach approved
- Final approach implemented in all consenting process in a way that helps BCAs assess building consent applications in a more consistent and defensible manner (Mar 2017)
- Interpret Framework on 'as near as reasonably practicable' (under s112 of the Building Act) and 'reasonable and adequate' (under s118 of the Building Act) (Mar 2016)
- Engagement with Building Designers/BCA on interpretative framework
- Draft guidance document on use of the terms and how they should be interpreted
- Engagement with sector
- Final guidance document on use/interpretation of the terms released
- Report with recommendations on the preferred mechanism for correct/remove existing conflicts in the three pathways to achieving consent compliance
- Preferred mechanism approved
- Preferred mechanism implemented (Mar 2018)

Report summarising existing and potential enforcements options for non-compliance (for access issues) with publically accessible buildings (Mar 2018)

Stakeholder forum to identify mechanisms to discuss/agree options for collaborative approaches to accessibility in public buildings (Oct 2016)