

Building Consent Practice Note

Applying the term as near as is reasonably practicable

Purpose:

This practice note provides guidance on applying the term “*as nearly as is reasonably practicable*” (ANARP) under the Building Act 2004, covering its use in alterations (s.112), change of use (s.115), and extension of life (s.116A) for existing buildings.

Legislation:

This guidance relates to the following sections of the Building Act 2004:

- Section 112 - Alterations to existing buildings
- Section 115 - Change of use of existing buildings
- Section 116A - Extension of life of existing buildings

Applicants should refer to the [Building Act 2004](#) for the full legislative requirements.

The meaning of the term ‘reasonable and practicable’

The ANARP principle applies differently depending on the type of work:

- **Section 112 – Alterations:** When altering an existing building, upgrades to fire safety and accessibility must be provided as nearly as is reasonably practicable, or the alteration must improve these aspects.
- **Section 115 - Change of Use:** When changing the use of an existing building, the building in its new use must comply with the Building Code as nearly as is reasonably practicable, or improvements must be made that outweigh any detriments.
- **Section 116A - Extension of Life:** When extending the life of an existing building (e.g., strengthening work), upgrades to specified systems must be provided as nearly as is reasonably practicable, or improvements must be made.

In all cases, the same assessment principles apply, balancing risk against cost, time, and practical constraints.

Applying ANARP to Alterations (Section 112):

Section 112 enables Council to exercise a level of discretion to sections 112(1)(a)(i) and 112(1)(a)(ii). The term ‘as nearly as is reasonably practicable’ allows for judgement in determining compliance with means of escape from fire and access and facilities for persons with disabilities. It is how we deal with applying this discretion, which is important.

Section 112(2) provides an alternative compliance pathway where the owner can make a case to Council that full compliance with s.112(1) would prevent the alteration from proceeding, provided the alteration improves fire safety or accessibility and these improvements outweigh any detriment.

These words have been defined in the High Court judgement dated 19 October 1995, wherein the High Court (Mr Justice Gallen) concluded that the former Building Industry Authority “cannot be criticised” for its opinion in respect of the meaning of the words “reasonable and practicable” which stated that:

‘The degree of risk is to be balanced against the cost, time, trouble or other sacrifice necessary to eliminate the risk.’ From that judgement, it is clear that a building on completion of an alteration may not be in full compliance with the Building Code.

We must therefore take into account previous legal precedent and relevant factors such as:

- when the building was constructed; and

- when changes to legislation occurred, which could affect the safety of the building as currently constructed

Under s.112.2(c) if the owner makes a case to the TA setting out the reasons justifying why the building should not be upgraded, the TA if satisfied on reasonable grounds may grant the consent without requiring an upgrade to be done.

Scenario	Justification
An owner intends to install a lift into an existing building to improve access. If this were a new building, the code would require that a sprinkler system be installed.	The means of escape from fire currently complies; increasing compliance by installing a sprinkler system is inhibitive and provides little improvement. However, providing a lift in the building will vastly improve access and facilities for disabled persons. The alteration therefore will result in an improvement, as the building will be more accessible to all users.

Regardless of which section of the Act the application relates to (s.112, s.115, or s.116A), fire and accessibility reports may be required to enable the TA to make a decision. The extent of these requirements is weighted against the nature of the proposed works. For example, such reports would not be required if building consent was only proposing to install a hand basin.

Various pieces of MBIE guidance require that even though the proposed building work may only apply to a part of the building, that for the purpose of s.112 and the other sections, the building as a whole must be considered. This initially appears to confuse what information must be supplied or considered with an application for building consent e.g., for the addition of the hand basin example previously does that now mean we need full accessibility and fire reports to be able to consider the whole building?

The answer is no, and the clues once again lie within the various legal decisions, that the degree to which we must consider the entire building for a compliance review and upgrade must be pragmatic, and must match the extent, the cost, and the complexity of the proposed building work i.e., it is not intended in the wording of the sections of the Act, that a \$5k hand basin on the 1st floor of a 10-storey building meant the applicant should spend \$10k on and accessibility reports for upgrades that would never be able to be justified.

In assessing the 'entire building' the BCA and TA can apply pragmatism and judgement to the information it requires to keep costs reasonable, and outcomes appropriate from any ANARP assessment process.

In some cases, this could mean the work is so minor in nature, that although you acknowledge the requirement to assess the entire building, you may conclude that in doing that, there is no added value to obtaining those expensive reports for such minor work, and that as the building exists in that point in time you consider ANARP met.

That could be by virtue of a review of pre-existing fire reports, or accessibility reports if they existed, or checking the current BWOFF is valid. It all comes down to that comparative assessment of the benefits, perceived or real, versus the costs and complexity of the building work.

In all instances, when preparing building consent documentation, it is up to the owner or their agent, to prepare a case to justify why it is not reasonable or practicable, to upgrade a building. Council's role is to consider the case and determine whether it is sustainable and offer guidance on the levels of information it will require based on the criteria outlined previously.

What is considered 'reasonable and practicable':

Where an assessment of what is 'reasonable and practicable' is required, it is incumbent on the applicant to provide appropriate amounts of specific documentation or information to enable this assessment to proceed.

A decision cannot be made without this information; the justification as to why the provisions of the Code cannot be complied with must be provided.

The justification must be sound and based on three key factors:

1. The work could not be undertaken without major structural alteration of the building, or there are specific site constraints
2. Sacrificing an upgrade where doing so outweighs the cost of the intended alteration (Justice Gallen)
3. Will it improve either the means of escape or access and facilities for disabled persons (as applicable to the section being applied)

Example

The provision of a lift for access may require a major change to the building's structure

- Is it reasonable or practicable to require the lift to be installed?

The installation of a sprinkler system into the building will require the installation of a riser main in the building and sprinklers on each floor.

- Is it reasonable or practicable to require this?

Comment:

Justice Gallen's conclusion indicates that consideration needs to be applied in relation to the cost of upgrade versus the cost of the proposed new building work

Example

An alteration to an existing building has identified that a lift is required (s.118). The cost of installing the lift is approximately \$300,000. The new building work for office partitioning has a construction value of \$50,000.

In the case of Auckland City Council v New Zealand Fire Service, Justice Gallen concluded that the cost in relation to compliance had to be considered. The decision requiring that a building be upgraded in terms of outbreak of fire, when weighed against the value of the proposed building work, was not reasonable or practicable, although it was physically possible.

"The fact that it was physically possible did not mean that it was reasonably practicable".

All **new building work** must fully comply with the Code.

Example of Demonstrating ANARP

For existing building elements affected by the alteration, applicants should use a structured approach to demonstrate what is "as nearly as reasonably practicable." The table below provides a worked example:

Example of a compliance worksheet for D1/AS1

Acceptable Solution requires	Existing features in building (<i>Current state</i>)	What features can be improved? (<i>Future state</i>)	Justification / reasons for argument
Handrails x 2	1	Additional handrail fitted	Improves safety of users; easy to install; cost minimal
Tread width (310mm minimum)	300mm	ANARP	Building is 10 stories high; stairs have been cast in-situ with walls and would damage structure if removed. If new stairs were installed the building could not be occupied whilst the work was being undertaken this would result in multiple tenancies being affected. There are 4 lifts in the building; stairs are rarely used; difference is only 10mm and does not impact on safety of users
Riser height (180mm maximum)	190mm	ANARP	

Contrasting nosing	None	Contrasting nosing fitted	Improves visibility to users of stairwell making it safer to use; easy to install; cost minimal
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As can be seen by the example above, the means of escape does not comply for the existing building but can easily be upgraded to improve compliance with the Code by fitting contrasting nosing to the stairs and installing a second handrail. In this instance, the applicant would need to justify why it is not reasonably practicable to replace the stairwell.

Note: While the examples above focus on S.112 alterations, the same ANARP assessment principles and documentation approach apply to change of use (s.115) and extension of life (s.116A) applications.

Note that all new building work must fully comply with the Building Code.

What is considered ‘reasonable and practicable’ in a building that has multiple alterations over a few years?

While MBIE guidance emphasises that BCAs must consider the whole building—not just the part being altered—there is **no statutory provision** within the Act that authorises a BCA to aggregate multiple earlier alteration consents and treat them cumulatively as a single, larger alteration requiring broader upgrades. Each building consent application must therefore be judged independently under section 112.

MBIE determinations and some local authority practice notes confirm this position: the authority’s discretion applies only to the alteration currently proposed. Previous minor works may inform the building’s current condition but cannot legally compel additional upgrades unless the new work itself triggers the ANARP obligation.

In practice, BCAs may *encourage* broader upgrades when a pattern of incremental alterations exists, but there is **no explicit legal mechanism** under the Building Act 2004 to mandate cumulative upgrading across multiple separate consents.

References:

- [Building Act 2004](#)
- MBIE: [Change of use, alterations and extension of life](#)
- [Managing building alterations](#)
- [Demonstrating and assessing compliance for buildings undergoing alterations](#)
- [Step 3: Applicants assess ANARP for outstanding fire and accessibility Building Code clauses](#)