

**ITEM 9.1.7  
APPENDIX A**

**AMENDED FLOOR PLAN**

**NOTES:**  
 Prior to commencing construction or manufacture of any items, check with the scope of the architectural drawings. The Contractor shall retain the responsibility for the design and construction of any items that are not included in the drawings. The Contractor shall be responsible for the design and construction of any items that are not included in the drawings. The Contractor shall be responsible for the design and construction of any items that are not included in the drawings. The Contractor shall be responsible for the design and construction of any items that are not included in the drawings.

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REV	FOR APPROVAL	11.05.2011
REV	FOR CONSTRUCTION	23.05.2011
REV	FOR CONSTRUCTION	30.05.2011
REV	ISSUED FOR CONSTRUCTION	11.05.2011
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**CLIENT:** Lifeline Dental Pty. Ltd.

**DRAWING TITLE:** General Arrangement Floorplan with Ambulant WC & Accessible Ramp

**LOCATION:** Unit 7, 125 Avon Terrace, York

**PROJECT:** York Dental

**DATE:** 06.10.2011

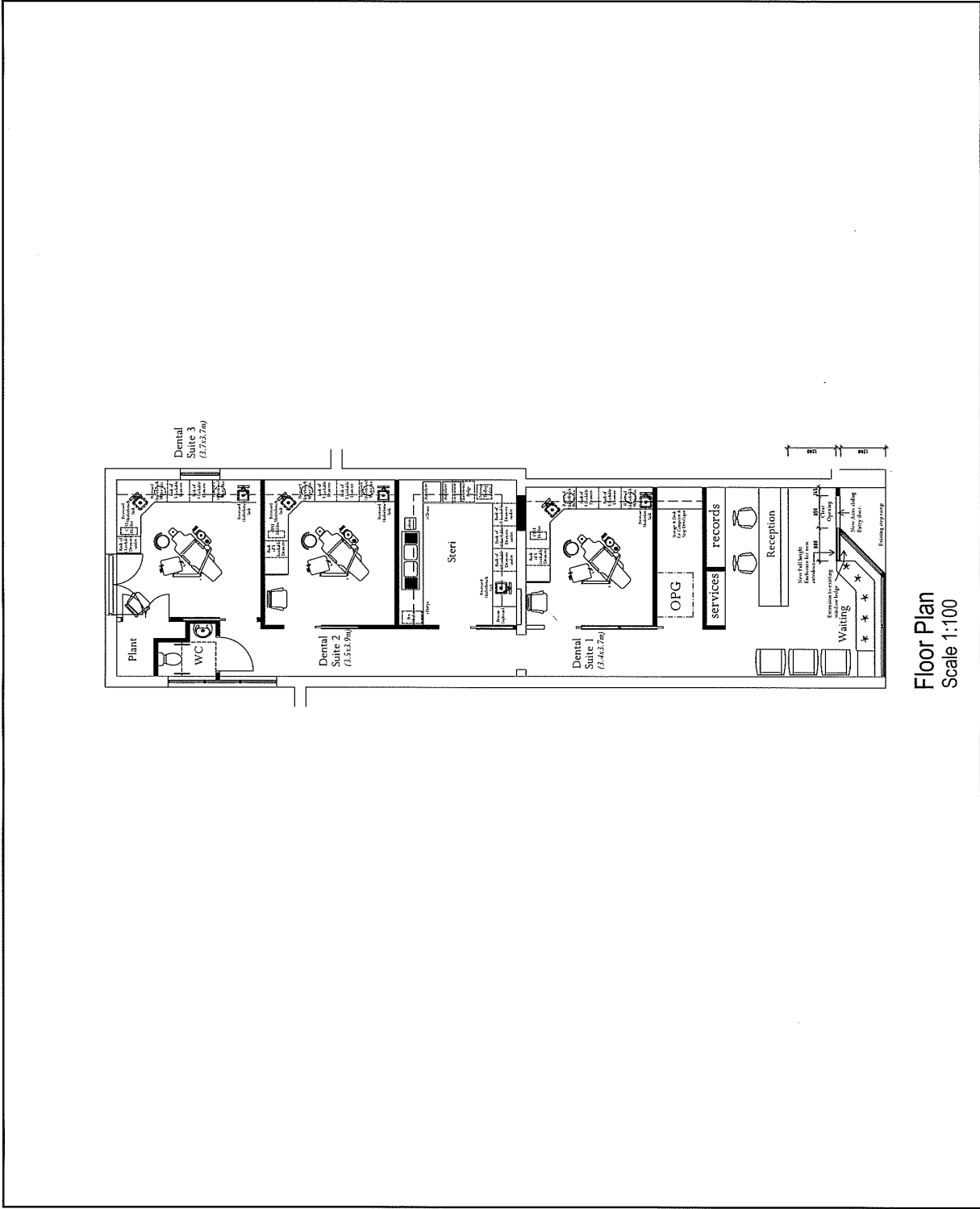
**SCALE:** 1:100

**DESIGNED BY:** JM & DL

**REVISION:** F

**PROJECT NO.:** ELE\_121

**DRAWING NO.:** A.01





## UNJUSTIFIABLE HARDSHIP REPORT

### PRECIS

Mr Ian Do in conjunction with a syndicate, has applied for a Dentist's Surgery fit-out of two existing shops within a Heritage Listed Building.

The Surgery will consist of three (3) individual chairs and supporting rooms/facilities.

At present there are no toilet facilities of any kind in the shops.

There are no other operating dental facilities within York or the surrounding towns of Quairading, Beverly or Brookton.

The closest facilities are approximately 30 kilometres away at Northam which are increasingly difficult to get to for an aging population that are mostly only likely to have ambulant disabilities.

There is a requirement for the front of the building to be accessible as it is considered to be a **new part** of a building, (see addendum definitions).

However, the remainder of the building is considered to be subject to Section "D3.4 Exemptions" of the Disability (Access to Premises-Buildings) Standards 2010, (see addendum), as neither the Dentist or Patient are able to utilise or to be employed in the area at the rear of the receptionist area, inclusive of the surgery/Dentist Chair areas and access. This is due to the fact that a standard Dental Surgery is not equipped or able to provide services to people who have a disability of a nature that prevents them from getting into and out of a Dentist's chair without assistance, due to the fact that a dentist may not be capable of assisting people with such disabilities and the treatment may be better in more safely provided at another facility e.g. a hospital.

In addition Dentists with similar disabilities are unable to provide a dental service as it is impractical for them to provide treatment using standard Dentist's chairs, tools and facilities, (see Addendum supporting letters from the Dentist Association).

Further to this to provide access for any assistants or friends or relatives of any patients would require enlargement of the access via the hallway and around the patients chairs that would prevent the installation of the chairs altogether, which would also constitute Unjustifiable Hardship.

The provision of accessibility is not just for people in wheelchairs, it includes accessibility for people with ambulant disabilities and the ambulant accessible facility will provide such access.

The application has been referred to the State Administrative Tribunal, (SAT), for approval under the Disability Discrimination Act 1992 and Equal Opportunity Act 1984 as the **Tribunal believes that the Council is the appropriate Authority** to approve the exemption under the Disability Discrimination Act 1992. This is borne out in the Act where it says it is an offence for the "Local Council" not to comply with the standard unless subject to the exemptions.

Below is an excerpt from the "Access To Premises Standards" as required by the "Amended Disability Discrimination Act 1992" which lists out the requirements for consideration and approval of a concession under "Unjustifiable Hardship":

#### *“4.1 Unjustifiable hardship*

- (1) It is not unlawful for a person to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the person.*
- (2) However, compliance is required to the maximum extent not involving unjustifiable hardship.”*

Example – While enlarging a lift may impose unjustifiable hardship, upgrading the lift controls panel to provide braille and tactile buttons may not.

- (3) “In determining whether compliance with a requirement of these Standards would involve unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account, including the following:*
  - (a) any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the requirement;*
  - (b) any reductions in capital, operating or other costs, or increases in revenue, that would be directly achieved by, or reasonably likely to result from, compliance with the requirement;*
  - (c) the extent to which the construction of the building has or will be financed by government funding;*
  - (d) the extent to which the building:*
    - (i) is used for public purposes; and*
    - (ii) has a community function;*
  - (e) the financial position of a person required to comply with these Standards;*
  - (f) any effect that compliance with the requirement is reasonably likely to have on the financial viability of a person required to comply;*
  - (g) any exceptional technical factors (such as the effect of load bearing elements on the structural integrity of the building) or geographic factors (such as gradient or topography), affecting a person’s ability to comply with the requirement;*
  - (h) financial, staffing, technical, information and other resources reasonably available to a person required to comply with these Standards, including any grants, tax concessions, subsidies or other external assistance provided or available;*
  - (i) whether the cost of alterations to make a premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations;*
  - (j) benefits reasonably likely to accrue from compliance with these Standards, including benefits to people with a disability, to building users or to other affected persons, or detriment likely to result from non-compliance;*
  - (k) detriment reasonably likely to be suffered by the building developer, building certifier or building manager, or people with a disability or other building users, including in relation to means of access, comfort and convenience, if compliance with these Standards is required;*
  - (l) if detriment under paragraph (k) involves loss of heritage significance — the extent to which the heritage features of the building are essential, or merely incidental, to the heritage significance of the building;*
  - (m) any evidence regarding efforts made in good faith by a person to comply with these Standards, including consulting access consultants or building certifiers;*

- (n) *if a person has given an action plan to the Commission under section 64 of the Act — the terms of the action plan and any evidence about its implementation;*
  - (o) *the nature and results of any processes of consultation, including at local, regional, State, national, international, industry or other level, involving, or on behalf of, a building developer, building manager or building certifier and people with a disability, about means of achieving compliance with the requirement, including in relation to the factors listed in this subsection;*
  - (p) *any decisions of a State or Territory body established to make recommendations to building authorities about building access matters.*
- (4) *If a substantial issue of unjustifiable hardship is raised having regard to the factors mentioned in subsection (3), the following additional factors are to be considered:*
- (a) *the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with these Standards;*
  - (b) *any measures undertaken, or to be undertaken, by, on behalf of, or in association with, a person or organisation to ensure substantially equal access.*
- (5) *For these Standards, **unjustifiable hardship** is to be interpreted and applied having due regard to the scope and objects of the Act (in particular the object of removing discrimination as far as possible) and the rights and interests of all relevant parties.”*

## **ASSESSMENT**

At present anyone working within the shops has no access to facilities for people with disabilities within the shop. In providing an ambulant accessible facility the Dental Surgery is actually increasing accessibility within the existing building to people with a wide range of ambulatory disabilities.

Notwithstanding this full complying access is provided to the front reception and waiting area of the Surgery.

It is believed that the proposal complies with two parts of the Access to Premises Standards that warrant exemption from application of all of the Access to Premises Requirements.

- 1) An exemption under “D3.4 Exemptions” of the Disability (Access to Premises-Buildings) Standards 2010, (see addendum).
- 2) Unjustifiable Hardship under the Disability (Access to Premises-Buildings) Standards 2010.

These are addressed below:

### **1. Exemption under “D3.4 Exemptions” of the Disability (Access to Premises-Buildings) Standards 2010.**

There is a requirement for the front of the building to be accessible as it is considered to be a **new part** of a building, (see addendum definitions).

However, the remainder of the building is considered to be subject to Section “D3.4 Exemptions” of the Disability (Access to Premises-Buildings) Standards 2010, (see addendum), as neither the Dentist or Patient are able to utilise or to be employed in the area at the rear of the receptionist area, inclusive of the surgery/Dentist Chair areas and access.

This is due to the fact that there is restricted access around the chair and a significant risk in treating wheel chair bound patients in a standard Dental Surgery (see addendum letter from the Dental Association WA), and that a dentist may not be capable of assisting people with such disabilities.

In addition, Dentists with similar disabilities are unable to provide a dental service as it is impractical for them to provide treatment using standard Dentist's chairs, tools and facilities, (see Addendum supporting letters from the Dentist Association).

Further to this to provide access for any assistants or friends or relatives of any patients would require enlargement of the access via the hallway and around the patients chairs that would prevent the installation of any of the chairs altogether, which would also constitute Unjustifiable Hardship.

The provision of accessibility is not just for people in wheelchairs, it includes accessibility for people with ambulant disabilities the ambulant accessible facility will provide access for people with ambulant disabilities which is expected to make up the significant number of patients with disabilities due to the aging population and newly built retirement village/nursing home.

Dental facilities for wheel chair bound people from the nursing home would be arranged by the home.

## **2. Unjustifiable Hardship under the Disability (Access to Premises-Buildings) Standards 2010.**

It is believed that this case warrants "Unjustifiable Hardship" under the Disability (Access to Premises-Buildings) Standards 2010.

With respect to the specific individual clauses of the Disability (Access to Premises-Buildings) Standards 2010 relating to Unjustifiable Hardship responses are provided after the italicised quoted clauses.

### ***"4.1 Unjustifiable hardship***

- 1) It is not unlawful for a person to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the person.***
- 2) However, compliance is required to the maximum extent not involving unjustifiable hardship."***

***Example – While enlarging a lift may impose unjustifiable hardship, upgrading the lift controls panel to provide braille and tactile buttons may not.***

It is proposed to provide access to the front customer and reception area via an accessible automatic power door and path of travel. This would allow any disabled person in a wheel chair with an able bodied or ambulant disabled friend or relative to enter this area and wait for that person to undergo treatment. It would also allow clerical-type workers confined to a wheelchair to work in this area as they would have been able to should no toilet have been provided. Access for disabled people with ambulant disabilities will be fully compliant. Therefore, it is considered compliance is provided for the maximum extent not involving the hardship.

**3) In determining whether compliance with a requirement of these Standards would involve unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account, including the following:**

**(a) any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the requirement;**

Three Dentist's chairs are required to make the new Dental Business viable, (this is outlined in the addendum entitled "Financial and Operation Viability). In brief, firstly the business requires three dentist's chairs to allow two dentists to operate on a continual basis and be able to service the high expected demand. This is due to the reasons that should one chair become inoperable it could take 7-10 days to be able to get a repair person to attend, diagnose, obtain parts and fix the chair in which case the third chair may be used. The third chair will also be needed for an attending specialist to use on a regular basis whilst the other chairs are being used. Secondly to make the business viable and service the setup and maintenance requirements/costs two chairs must be capable of being in continuous use.

**(b) any reductions in capital, operating or other costs, or increases in revenue, that would be directly achieved by, or reasonably likely to result from, compliance with the requirement;**

Not being able to provide three chairs would reduce the ability to increase revenue for the reasons outlined in a).

**(c) the extent to which the construction of the building has or will be financed by government funding;**

The building is in no way financed by government funding.

**(d) the extent to which the building:**  
**i. is used for public purposes; and**  
**ii. has a community function;**

The building is not used for public purposes or community functions.

**(e) the financial position of a person required to comply with these Standards;**

There is no claim for Unjustifiable Hardship with respect to the financial position of the persons required to comply with these standards.

**(f) any effect that compliance with the requirement is reasonably likely to have on the financial viability of a person required to comply;**

Compliance will not specifically reasonably affect the financial viability of the individual persons required to comply.

**(g) any exceptional technical factors (such as the effect of load bearing elements on the structural integrity of the building) or geographic factors (such as gradient or topography), affecting a person's ability to comply with the requirement;**

The shop is confined by its own strata lot and on either side by other existing strata titled and Heritage listed shops. The rear courtyard area is leased to the existing restaurant for seating

and cannot be encroached upon. The frontage is restricted by the public footpath. Extension upwards would impact on the Heritage significance of the building as well as being cost prohibitive as it would restrict ground floor space and require the installation of a lift further affecting the financial viability of the proposal. The Heritage Listing, which is dealt with under section (l).

***(h) financial, staffing, technical, information and other resources reasonably available to a person required to comply with these Standards, including any grants, tax concessions, subsidies or other external assistance provided or available;***

There are no additional resources provided to assist the project.

***(i) whether the cost of alterations to make a premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations;***

The cost of specific alterations is not disproportionate to the value of the building unless addition of an extra storey were able to be approved. However, this is restricted by the Heritage Requirements.

***(j) benefits reasonably likely to accrue from compliance with these Standards, including benefits to people with a disability, to building users or to other affected persons, or detriment likely to result from non-compliance;***

People with disabilities confining them to a wheel chair are not able to be patients, dentists or dental nurses due to the limitations and risks in servicing wheel chair bound clients or the need have a particular level of mobility to carry out dental work in the dental chair area.

Therefore making the areas accessible would not provide any additional benefit to prospective employees and to make them accessible to associates of the patients would cause the facility not to be able to be built and in itself constitute unjustifiable hardship. Detriment would only occur if the associate had to wait in the waiting area and were not able to be with the patient. Providing complying access would prevent the facility from being built and would restrict access to dental facilities for the local population and surrounding towns. The closest facilities are approximately 30 kilometres away at Northam which are increasingly difficult to get to for an aging population that are mostly only likely to have ambulant disabilities.

***(k) detriment reasonably likely to be suffered by the building developer, building certifier or building manager, or people with a disability or other building users, including in relation to means of access, comfort and convenience, if compliance with these Standards is required;***

The lack of provision of an ambulant accessible toilet facility to avoid discrimination for wheel chair bound persons who may consist of associates of patients or a clerical worker would prevent comfort, convenience and access to a toilet facility within the surgery for able bodied or ambulant disabled workers or patients, or for customers who become nauseous from treatment.

Lack of a third chair to provide additional room for compliance would also not allow a patient to remain to recover from pain, anesthesia or nausea if a third chair were not installed.



***(l) if detriment under paragraph (k) involves loss of heritage significance — the extent to which the heritage features of the building are essential, or merely incidental, to the heritage significance of the building;***

The building is Heritage Listed, to afford enough room to allow the building to fully comply with access requirements would require significant enlargement of the building and therefore significant impact on the rear façade of the building that fronts a public courtyard and dining area, significantly modifying the original appearance of the building.

***(m) any evidence regarding efforts made in good faith by a person to comply with these Standards, including consulting access consultants or building certifiers;***

The person/applicant is providing accessibility for people with ambulant disabilities and access to the front waiting area and clerical area for people confined to a wheel chair.

The applicant has also consulted with Council and Building Certifiers with respect to Heritage requirements and requirements under this standard to determine if there are other solutions.

***(n) if a person has given an action plan to the Commission under section 64 of the Act — the terms of the action plan and any evidence about its implementation;***

No action plan is applicable or has been provided to the Commission.

***(o) the nature and results of any processes of consultation, including at local, regional, State, national, international, industry or other level, involving, or on behalf of, a building developer, building manager or building certifier and people with a disability, about means of achieving compliance with the requirement, including in relation to the factors listed in this subsection;***

The applicant has also consulted with Council and Building Certifiers with respect to Heritage requirements and requirements under this standard to determine if there are other solutions.

The Council has contacted via telephone the Human Rights Commission, The State Administrative Tribunal and the Western Australian Equal Opportunities Commission to obtain a ruling under the Disability (Access to Premises-Buildings) Standards 2010. All of these bodies were not able or willing to make a ruling under this Act.

***(p) any decisions of a State or Territory body established to make recommendations to building authorities about building access matters.***

There are no similar rulings able to be accessed.

***4) If a substantial issue of unjustifiable hardship is raised having regard to the factors mentioned in subsection (3), the following additional factors are to be considered:***

***(a) the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with these Standards;***

The premises is not a public premises and only non-wheel chair bound patients may be serviced. Use of the service is by appointment only. Notwithstanding this access is provided

to the waiting room and front area where appointments or other arrangements can be made or people directed to fully accessible dental facilities.

- (b) ***any measures undertaken, or to be undertaken, by, on behalf of, or in association with, a person or organisation to ensure substantially equal access.***

The Dentist will have a procedure in place to assist wheel chair bound patients in booking into a facility that provides suitable access and is equipped to handle patients in the event of an emergency as outlined in the letter from the Dental Association WA.

- 5) ***For these Standards, unjustifiable hardship is to be interpreted and applied having due regard to the scope and objects of the Act (in particular the object of removing discrimination as far as possible) and the rights and interests of all relevant parties.***

Access for people with ambulant disabilities is provided.

Full access for people with disabilities is provided to the front waiting area of the surgery allowing people to wait for associates, friends or relatives or enquire for access to dental facilities for people confined to a wheel chair.

## **RECOMMENDATION**

That the Shire approve the exemption and ruling of Unjustifiable Hardship under the Disability Discrimination Act 1992 and the Disability (Access to Premises-Buildings) Standards 2010 subject to the standard and non-standard conditions of approval attached.

## **ADDENDUM**

### Exemptions

#### **D3.4 Exemptions**

The following areas are not *required* to be *accessible*:

- (a) an area where access would be inappropriate because of the particular purpose for which the area is used.
- (b) an area that would pose a health or safety risk for people with a disability.
- (c) any path of travel providing access only to an area exempted by this clause.

#### ***“4.1 Unjustifiable hardship***

- (1) *It is not unlawful for a person to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the person.*
- (2) *However, compliance is required to the maximum extent not involving unjustifiable hardship.*

*Example - While enlarging a lift may impose unjustifiable hardship, upgrading the lift controls panel to provide braille and tactile buttons may not.*

- (3) *In determining whether compliance with a requirement of these Standards would involve unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account, including the following:*

- (a) *any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the requirement;*
  - (b) *any reductions in capital, operating or other costs, or increases in revenue, that would be directly achieved by, or reasonably likely to result from, compliance with the requirement;*
  - (c) *the extent to which the construction of the building has or will be financed by government funding;*
  - (d) *the extent to which the building:*
    - (i) *is used for public purposes; and*
    - (ii) *has a community function;*
  - (e) *the financial position of a person required to comply with these Standards;*
  - (f) *any effect that compliance with the requirement is reasonably likely to have on the financial viability of a person required to comply;*
  - (g) *any exceptional technical factors (such as the effect of load bearing elements on the structural integrity of the building) or geographic factors (such as gradient or topography), affecting a person's ability to comply with the requirement;*
  - (h) *financial, staffing, technical, information and other resources reasonably available to a person required to comply with these Standards, including any grants, tax concessions, subsidies or other external assistance provided or available;*
  - (i) *whether the cost of alterations to make a premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations;*
  - (j) *benefits reasonably likely to accrue from compliance with these Standards, including benefits to people with a disability, to building users or to other affected persons, or detriment likely to result from non-compliance;*
  - (k) *detriment reasonably likely to be suffered by the building developer, building certifier or building manager, or people with a disability or other building users, including in relation to means of access, comfort and convenience, if compliance with these Standards is required;*
  - (l) *if detriment under paragraph (k) involves loss of heritage significance — the extent to which the heritage features of the building are essential, or merely incidental, to the heritage significance of the building;*
  - (m) *any evidence regarding efforts made in good faith by a person to comply with these Standards, including consulting access consultants or building certifiers;*
  - (n) *if a person has given an action plan to the Commission under section 64 of the Act — the terms of the action plan and any evidence about its implementation;*
  - (o) *the nature and results of any processes of consultation, including at local, regional, State, national, international, industry or other level, involving, or on behalf of, a building developer, building manager or building certifier and people with a disability, about means of achieving compliance with the requirement, including in relation to the factors listed in this subsection;*
  - (p) *any decisions of a State or Territory body established to make recommendations to building authorities about building access matters.*
- (4) *If a substantial issue of unjustifiable hardship is raised having regard to the factors mentioned in subsection (3), the following additional factors are to be considered:*

- (a) *the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with these Standards;*
  - (b) *any measures undertaken, or to be undertaken, by, on behalf of, or in association with, a person or organisation to ensure substantially equal access.*
- (5) *For these Standards, **unjustifiable hardship** is to be interpreted and applied having due regard to the scope and objects of the Act (in particular the object of removing discrimination as far as possible) and the rights and interests of all relevant parties.*

At present anyone working within the shops has no access to facilities for people with disabilities within the shop. In providing an ambulatory accessible facility the Dental Surgery is actually increasing accessibility within the existing building to people with a wide range of ambulatory disabilities.

### New Building Work

- (3) *A building is a **new building** if:*
- (a) *it is not a part of a building; and*
  - (b) *either:*
    - (i) *an application for approval for its construction is submitted, on or after 1 May 2011, to the competent authority in the State or Territory where the building is located; or*
    - (ii) *all of the following apply:*
      - (A) *it is constructed for or on behalf of the Crown;*
      - (B) *the construction commences on or after 1 May 2011;*
      - (C) *no application for approval for the construction is submitted, before 1 May 2011, to the competent authority in the State or Territory where the building is located.*

### **Scope of Standards Part 2 – Section 2.2**

#### *Disability (Access to Premises — Buildings) Standards 2010*

- (4) *A part of a building is a **new part** of the building if it is an extension to the building or a modified part of the building about which:*
- (a) *an application for approval for the building work is submitted, on or after 1 May 2011, to the competent authority in the State or Territory where the building is located; or*
  - (b) *all of the following apply:*
    - (i) *the building work is carried out for or on behalf of the Crown;*
    - (ii) *the building work commences on or after 1 May 2011;*
    - (iii) *no application for approval for the building work is submitted, before 1 May 2011, to the competent authority in the State or Territory where the building is located.*
- (5) *An affected part is:*
- (a) *the principal pedestrian entrance of an existing building that contains a new part; and*
  - (b) *any part of an existing building, that contains a new part, that is necessary to provide a continuous accessible path of travel from the entrance to the new part.*

## Letter from Dental Association WA

President  
Dr. Brian Koch



Chief Executive Officer  
Dr. Stuart Gairns

AUSTRALIAN DENTAL ASSOCIATION  
(W.A. Branch) Inc.

11<sup>th</sup> October, 2011

Dr I Do  
Northam Dental Surgery  
177 Fitzgerald St  
Northam  
WA, 6401.

Dear Ian,

Thank you for your recent telephone call regarding the management of disabled patients. I confirm that many disabled and wheelchair bound patients can be treated in the dental office as long as they can manage to move from the wheelchair to the dental chair.

As you are aware most dental equipment for reasons of infection control has tubing and airlines of a prescribed length in order that this does not drag on the floor. Should a patient be unable to move from the wheelchair to the dental chair it may not be possible to provide services to that person.

In addition some of these patients cannot maintain a competent airway when laid back or they suffer from a pronounced and uncontrollable gag reflex in this position, which will dictate the type of treatment which is able to be provided. It would be foolhardy to attempt further treatment in these situations. In fact many of these patients need to be seen in a hospital with respiratory assistance and after care to maintain an airway.

The fact that a clinic has access for this type of patient does not automatically mean that the treatment can be provided. An assessment of their condition and ability to tolerate a dental procedure needs to be undertaken. Should an adverse event occur and a claim was made, it would be indefensible if a dentist was to proceed only on the basis of access.

The ADA WA remains fully supportive of disabled access to clinics and where possible the provision of a full range of services to that patient. Occasionally this may not be possible for safety reasons and that patient will require care in a purpose built day care or HCU facility.

Yours sincerely,

Dr Stuart Gairns  
BDSc, LDS, MDSc, FADI, FICD, FPFA.  
CEO  
Australian Dental Association, WA Branch (Inc).