

**PRODUCTIVE COMMISSION
DISABILITY DISCRIMINATION ACT INQUIRY**

LATE SUBMISSION

**ADDRESSING LONG TERM ACCESS CONCERNS IN
LANE COVE MUNICIPALITY**

RICHARD GAILEY OAM FRAIA JUNE 2003

The Commissioner
Productivity Commission
LB 2 Collin Street East
MELBOURNE VIC 8003

Dear Sir,

Re: Inquiry into Disability Discrimination Act

This submission is made after thirty years working in the interests of cancer patients including facilitating the accommodation needs of country cancer patients, and over the last ten years in trying to address the problems faced by the aged and the young in their use of their local community facilities, particularly in their need for safe, adequate parking and access to the shopping centre.

Yours faithfully,

Richard Gailey OAM FRAIA

Copies to Property owners from 66 Bums Bay Road to 139 Longueville Road having rear access to Council carpark

Departments, Organizations and others referred to in this submission

PRODUCTIVE COMMISSION DISABILITY DISCRIMINATION ACT INQUIRY

SUBMISSION BY RICHARD GAILEY OAM FRAIA
JUNE 2003

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C1 - 10 NSW OMBUSMAN

CI-8	Detailed submission at the request of the Ombudsman staff 27.2.00 <i>"Your office advised me on 7.1.00 that it is an office 'of last resort' and that I would require written evidence that every effort had been taken to have my concerns rectified."</i> 27.2.00 Gailey.
C9-10	Response from Deputy Ombudsman. 6.6.00 <i>Where is no evidence of mal-administration.</i> Refer to E1-E4 Lane Cove Community Safety

D1-4 AON RE WORLDWIDE

D1	AON letter 25.5.00 <i>"Lane Cove Council Executive Manager's advice. The carpark is operated by the building owners, not council. The carpark deck will be accessed from the development as well as from Councils existing carpark. The Council recognized that the ramps to Burns Bay Road were narrower than recommended in the Australian Standards, the ramps could not be widened without demolishing the adjoining building."</i>
D2-3	Gailey response 30.7.00

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D4 AON letter 2.8.00 *We are the insurance brokers to Lane Cove Council and Metro Pool. We have referred your correspondence to Council who have confirmed that the carpark in question is not owned or operated by Lane Cove Council.*

Refer to E1 & E2 Council owned land used for carparking

Refer to E3-E6 Lane Cove 2000 Community Safety. *Austin to Sera Street must be a public road*

EI- LANE COVE COUNCIL

EI-4 LANE COVE COMMUNITY SAFETY 2000

E5 PLAN OF ALLOTMENTS in Council carpark

E6 REGISTER OF LAND in Council carpark

E7 Sketches completed supermarket, completed elevated carpark, rejected Gailey proposal

E8-10 Plans of Coles Supermarket and Council parking as built and Gailey proposal

E11 Plan of Coles Service area, reduced from 13m to 6.5m with increase truck, car and pedestrian traffic

E12 Extract of Coles plan WD P 11 17.07.02 (as built drawing) showing 1:14 ramp between mid and lower levels

E13 PROPERTY SEARCH OF Lot 1 DP 591036 Coles Property and Lot 2 DP591036 and other lots effected by Council lease of the air space to Coles for the elevated carpark

Refer to A8-9 Lane Cove Council contradictions conditions and statements

Refer to F9 and F10 for requests for land titles, leases and rights of way

Refer to H1 to H15 Fire Brigades NSW

FI-10 COLES SUPERMARKET

FI 16. 8.01 Letter to State Manager advising concerns and potential solution.

F2 4.9.01 Response Coles is not the applicant and it would be inappropriate to respond.

F3-4 COLES IN LANE COVE March 02

F5 14.3.02 Letter to Mr John Fletcher CEO Coles Myers

F6-8 4.4.02 Response by Reg Binding NSW Project Manager

F9 1. 11.02 Letter to Minter/Ellison Lawyers requesting details of land titles, leases, etc.

F10 8.11.02 Response, *the particulars and documents requested by you are of no relevance to the matters in issue in the proceedings and will therefore not be produced*

G1-18 ANTI DISCRIMINATION BOARD

G1 Unsatisfied enquiry to the NSW Disability Discrimination Legal Centre 13.6.01

G2-6 Complaint to the Anti Discrimination Board 24.6.01

G7-9 ADB response 14.11.01. Why President should accept late complaint, all reasons why unable to respond in time, did you try to resolve your complaint in other ways

G10 Response 27.11.01 to ADB request for information.

GI 1-14 Second response 14.12.01, Why objection was not a ADT Complaint, diary of activities, medical procedures, actions with others, medical details of Mrs. Sutherland

G15-16 Response to out of time claim

G17-18 ADB advising they had sent complaints to the registrar Administrative Decisions Tribunal

H1-20 FIRE BRIGADE NSW

H1 16. 10.01 An official complaint against L C Council for failing to enforce regulations

H2 Copy of notes of meeting 15.10.01 with Mayor Roberts, Gailey and White

H3-4 BCA assessment of critical items of concern

H5 20. 10. 01 Letter to Brigade All fire safety requirements can be met in the following way

H6 1.11.01 Response Brigade has noted your concerns and forwarded a copy to council

H7 28.3.02 Letter from Brigade You are advised that the Brigade has forwarded a report to council

H8-9 15.4.02 Brigade letter. *'Lane Cove Shopping Centre, 43-45 Burns Bay Road Lane Cove'* As a result of the brigade findings recommendations have been made to Project manager and Council

H10-13 24.4.01 Letter raising concerns that had not been addressed

H14 29.4.02 Brigade response Inspector Isemonger carried out an inspection 10 April 02 and the results were included in Brigades letter of 15.4.02

H15-16 Report from Alan Ecob 'Work in progress Coles Supermarket . Notes of inspection by Gailey

H17-20 COLES IS A FIRE TRAP

H21 Fire Hydrants

I NSW POLICE SERVICE

I. 1 9.5.02 Letter "regarding the access from Austin to Sera Street I can only confirm that this area is not a public road and thus classified as coming under the administration authority of local council

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- J1-4 ROADS & TRAFFIC AUTHORITY
 J1 28.3.01 Letter requesting a review of material with a view to urgent upgrade of Council Lane
 J2-4 March 01 Background notes on Lane cove Traffic and Parking
- K1-3 WORKCOVER NSW
 K1 16.6.01 Complaint against Coles proceeding with dangerous truck, car & pedestrian traffic
 K2 27.2.02 Response *"I have concluded that the matters raised do not fall under the jurisdiction of Workcover NSW accordingly we will not intervene. I take this opportunity to reinforce the commitment of Workcover NSW to secure safe and healthy workplaces across the State. Our efforts are aimed at reducing the social and economic costs of workplace injuries."*
 K3 Duties of employers
 1(a) ensuring that any premises controlled by the employer are safe and without risk to health
 2(b) An employer must ensure that people are not exposed to risks to their health or safety.
- L1-27 ACCESS REPORT ON COLES SUPERMARKET DEVELOPMENT & COUNCIL CARPARK
 L1-27 Conclusion. *"In my opinion the proposed Coles development and proposed adjoining Council carpark have significant design deficiencies in regards to providing safe, equitable and dignified access for older people and people who may be disabled"*
- M1-3 ACCESS STATEMENT FOR COLES SUPERMARKET REDEVELOPMENT (GAILEY DESIGN)
 M1-3 *"It is my opinion the Gailey designed developments will provide a safer, more convenient and equitable environment, with the potential of providing 'accessible paths of travel' from both developments to Burns Bay Road and Council Lane."*
- N1-3 ACCESS STATEMENT COUNCIL THREE LEVEL CARPARK AUSTIN STREET LANE COVE
 N1-3 *"Consequently due to the proposed carpark failing to provide convenient, suitable and safe 'accessible path of travel to the commercial centre, council may be in breach of clause 24 of the Disabilities Discrimination Act. The proposed development is a facility and service that which is not accessible to people who are old, frail or who may have a mobility impairment."*
- O1-44 ADMINISTRATIVE DECISIONS TRIBUNAL
 O1-5 Points of Claim 1, 2, 3 Gailey & Others v Lane Cove Council
 O5a-c Points of Claim 1 Gailey & Others v Coles Supermarkets
 O5d-e Points of Claim 1 Gailey & Others v Cantouris & Papas
 O6-24 Gailey Evidence to AD
 O25-26 Complaint to Tribunal. Complainants were forced to withdraw their complaints to avoid incurring substantial claims for costs. This occurred before the case was considered. Request to review of Gailey v Council.
 O27 Response. Tribunal unable to review proceedings. There is a Right of Appeal.
 O28 ADT Rights of Appeal. To be lodged within 28 days. *An Appeal fee of \$200. time, risks, costs of legal representation and mental and physical exhaustion precluded consideration of an appeal.*
 O29-45 Transcript of ADT Hearing 18/19.11.02
 O46 Hotel accommodation Sunday to Wednesday \$988.60, Ambulance to & Vincent's Emergency Dept. \$154.00
- P1-7 ATTORNEY GENERALS DEPARTMENT NSW
 P1 Notice of Review of the Administrative Decisions Tribunal
 P2-4 Submission
 P5 Submission from Alan Ecob
 "extraordinary that a complaint before the Anti Discrimination for 12 months referred to the Tribunal could be, more than defeated, actually destroyed without the complaints being prosecuted as such."
 P6-7 Alan Ecob - Report from the ADT Battlefront

CALL FOR SUBMISSIONS Answers to some questions that you might like to consider

As a retired architect I have been aware of the Disabilities Discrimination Act since 1992.

I am aware of many buildings that have improved access for the disabled.

I am also aware of buildings constructed in the past ten years that do not provide improved access, these buildings breach the Building Code of Australia and DDA regulations.

I have experienced discrimination in using car parks that do not meet the BCA and the DDA regulations.

I have made complaints under the Disabilities Discrimination Act and the Anti Discrimination Act.

I believe that the DDA is failing to achieve the Objects of the DDA

3. (a) to eliminate as far as possible, discrimination against persons on the ground of disability in the areas of : (i) access to premises; (ii) the provision of facilities and services; (iii) existing laws. (iv) the administration of Commonwealth laws and programs;
- (b) to ensure, as far as possible, that persons with disabilities have the same rights to equality before the law as the rest of the community;
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

I believe that the Disabilities Discrimination Act will only be effective in my areas of concern when the breaches of the regulations of the BCA and the DDA are enforced by all levels of government.

The DDA must not rely upon an independent person or organization to bring complaints of breaches of the regulations that can't be conciliated, to a legal bearing. This has attendant emotional costs, financial preparation costs, and the risks of legal costs, if the complaints are not upheld for practical reasons, or are rejected by legal argument unrelated to the breaches.

The staff of the Disabilities Discrimination Legal Office must have a comprehensive knowledge of the regulations, why they are required and how they may be breached. To enforce the regulations, not to re-address the requirements in a legal adversarial role.

The staff should be reinforced by a registered practicing building specialist with detailed knowledge of the regulations and the relationship to other relative regulatory and enforcement bodies. Such as, the Local Councils and the Local Government Act, Planning NSW, the Building Code of Australia, Work Cover and the Health and Safety Act, NSW Fire Brigades, the NSW Ombudsman, the Anti Discrimination Board, and the Administrations Decisions Tribunal.

The enforcement of the BCA and DDA regulations must not be restricted to the Local Council as the Administrative Authority.

The integrated BCA and the DDA regulations will provide legal enforcement, but by whom?

BASIS OF REPORT

The basis of this report covers the following sections of the Disabilities Discrimination Act 1992.

Objects

3. The objects of the Act are:

- (a) to eliminate, as far as possible, discrimination against persons on the grounds of disability in the areas of:
 - (i) work, accommodation, access to premises, clubs and sport; and
 - (ii) the provision of goods, facilities, services and land;
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality under the law as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental right as the rest of the community.

Indirect disability discrimination

6. For the purpose of this Act a person (discriminator) discriminates against another person (aggrieved person) on the grounds of a disability of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition :

- (a) with which a substantially higher proportion of persons without the disability comply or are able to comply; and
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) which the aggrieved person does not or is not able to comply.

Unjustifiable hardship

11. For the purpose of this Act, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- (b) the effect of the disability of a person concerned ; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
- (d) in the case of provision of services , or the making available of facilities - an action plan given to the commissioner under section 64.

Unlawful to contravene disability standards

32. It is unlawful for a person to contravene a disability standard.

Action plans.

60. A service provider may prepare and implement an action plan.

Provision of action plans

61. The action plan of a service provider must include provisions relating to:

- (a) the devising of policies and programs to achieve the objects of the Act; and
- (b) the communication of policies and programs to persons within the service provider; and
- (c) the review of practices within the service provider with a view to identification of any discriminatory practices; and
- (d) the setting of goals and targets, where these may reasonably be determined against which the success of the plan in achieving the objects of the Act may be assessed ; and
- (e) the means other than those referred to in paragraph (d), of evaluating the policies and programs referred to in paragraph (a); and
- (f) the appointment of persons within the service provider to implement the provisions referred to in paragraphs (a) to (e) (inclusive).

EXPERIENCE WITH THE DDA

Blue Gum Lodge is a 37 room hostel for country cancer out-patients to North Shore Hospital. It is a Class 3 building fully wheelchair accessible and fully funded by public donations.

In 1998 a separate waiting lounge and toilet was added. This was completed with a step at each entry and an inaccessible toilet. Council approved the completed building and refused to have the work rectified to comply with the BCA and disability requirements. A complaint was made to the Board of Architects. A Committee of Inquiry chaired by Jerrold Cripps QC former Chief Judge of the Land and Environment Court, found the Architect had breached a condition of registration and he was reprimanded. A copy of report is included in this submission. A complaint was made to the DD Legal Office. The report under File MA/207422FC contended that cancer patients can walk up stairs and that there was an accessible toilet in the main building. They would not pursue the matter further.

The Independent Living Centre. Access consultants responded within seven days of receipt of a complaint in respect to Blue Gum Lodge.

"It is our understanding that the Building code of Australia which calls up AS1428.1-1993, requires a continuous path of travel into a building, and that any single toilet facility serving this building should be a unisex wheelchair accessibility facility. A step or threshold higher than 5mm, is not part of a continuous accessible path of travel."

The result was that the public funded building costing \$ 100,000 was not occupied for twelve months while those responsible refused to rectify the faults. The Committee finally corrected the negligence of the Council, the Builder and the Architect at a cost of \$20,000. These costs to be confirmed by the Blue Gum Lodge Management Committee.

THERE IS NO VALID CERTIFICATE OF COMPLIANCE AND OCCUPATION

Lane Cove Council Coles and Countouris and Panas

Parking in Lane Cove Lane Cove Access report 1987 " "Dangerous walking in front of supermarkets because of speeding cars coming out of parking lot below. Parking behind supermarkets dangerous for trolleys; exits/entrances to Burns Bay, Road too steep, parking area not level making unloading trolley difficult, no bays to put trolleys after use"

The parking in Council Lane is dangerous with a narrow carriage way for through traffic and trucks, angle parking, pedestrians and no footpaths. None of the existing spaces comply with Parking Standards or have accessible access to the business centre. There is no accessible access to Burns Bay road or the Plaza.

In 1998, the DDA Legal Office was approached to discuss a complaint that Council has discriminated against aged and disabled for over ten years by not upgrading and expanding the carpark and access to the business centre. The DDA Office did not have a legal officer to look at the complaint and recommended the pro-bono Public Interest Law Clearing House or the Public Interest Advocacy Centre. Subsequently PIAC assisted with the complaint.

In June 2001, Coles Supermarkets commenced construction on a major expansion to their store with provision for a carpark over Council Lane. Council's approval breached the building code and disabilities regulations and the complaint was extended to cover this work.

In June 2001, complaints were made to the Anti Discrimination Board by Gailey, Sutherland, Irwin and Harriksin against Lane Cove Council, Coles Supermarkets and Countouris and Panas. At all times correspondence was through Gailey who represented all parties.

In February 2000, a press release was sent to the media, Lane Cove Council, Lane Cove Councillors and John Fletcher, CEO Coles Myer. A copy is included in this submission.

In June 2002, after extensive correspondence with all parties the President referred the complaint of the Anti Discrimination Board to the Administration Decisions Tribunal.
This process would have been similar if the Disabilities Discrimination Legal Office had had the staff to consider the complaints.

The ADT Case Hearing covered:

1. Date of Conciliation Conference
2. Dates for Points of Claim and Points of Defence.
3. Costs were generally not awarded.
4. Each party would have a fair hearing of their claims and defence.
5. Legal representation was not required and Gailey continued to represent all parties.
6. No direction was given on how the three cases should run whether separately or jointly.

On the first day of the Hearing the Chairman granted objections by Coles' Barrister:

1. that all complainants be at the full hearing, and in the event that they were not present that their complaints be withdrawn and costs would be sought. Three parties withdrew, without costs.
2. that Access material included in Council's defence be withdrawn as irrelevant.

The morning session conclude with a site visit in the afternoon.

On the second day of the hearing, without any discussion of the site visit or any evidence of the complaints being heard or considered, the Chairman upheld a submission that if Mr Gailey proceeded, Coles. would be seeking full costs. On the basis that essential Access material had been withdrawn and lacking the finances to risk costs, Mr Gailey was forced to withdraw without costs.

THERE IS NO VALID CERTIFICATE OF COMPLIANCE AND OCCUPATION

Cooper V Coffs Harbour Shire Council

This case has been held as a benchmark in legal judgements in the area of disabilities and discrimination.

This was a private complaint by Ian Cooper run by Legal Aid with the first judgement upholding the council's decision that compliance would be an unwarranted expense.

On appeal, after the work was completed and costs were known, **the judgement found that the Council had acted unlawfully** in not requiring the work to comply with the regulations.

"Unfortunately, Ian Cooper died earlier this month, about a fortnight before the decision was handed down." Paul Batley 25 May 2000.

I sought advice from Paul Batley the prosecuting solicitor for Ian Cooper in relation to Blue Gum Lodge. I also assisted the prosecuting solicitor in locating a Sydney Quantity Surveyor who was able to give critical independent cost estimates.

These three instances highlight the futility of private individuals and the private sector seeking to see the Building code of Australia and the disabilities regulations enforced.

NATIONAL REGULATIONS ARE MADE BY GOVERNMENT, THEY MUST BE ENFORCED BY GOVERNMENT.

CORRESPONDENCE in seeking a resolution to the issues at BLUE GUM LODGE

NSW Cancer Council
Northern Area Health Service
Hope Health Care
Blue Gum Lodge Management
Independent Living Centre
The Royal Australian Institute of Architects
The Board of Architects
ACROD Limited NSW Division
PARQUAD Paraplegic & Quadriplegic Association NSW
Physical Disabilities Council of Australia
ACCESS ability

Enclosures to this submission

Refer to B1-B20

**CORRESPONDENCE in seeking a resolution to the issues of unsafe access and parking in
LANE COVE SHOPPING CENTRE AND COLES SUPERMARKET**

NSW Ombudsman
Aon Re Worldwide
Anti Discrimination Board
Disabilities Discrimination Legal Office
Lane Cove Council
Department of Local Government
Planning NSW
Coles Supermarkets
Fire Brigades NSW
NSW Police Service
Roads and Traffic Authority
WorkCover NSW
Public Interest Law Clearing House
Public Interest Advocacy Centre
Environmental Defender's Office Ltd
Joe Hockey Member for North Sydney
Kerry Chikarovski Member for Lane Cove
Minister for Disabilities Services & Ageing

EXTRACTS OF CORRESPONDENCE

NSW Ombudsman "Your office advised me on 7.1.00 that it is an office 'of last resort' and that I would require written evidence that every effort had been taken to have my concerns rectified." 27.2.00 Gailey.

Lane Cove Council "There are several critical areas where the development cannot meet the BCA and the Australian Standards. Council should not allow any continuing use conditions to over rule these safety features which will effect the community for the next 20 plus years." 21.9.98 Gailey

Lane Cove Traffic Committee "That Council investigate the legal situation regarding the layout of the off-street car parks in the Lane Cove commercial centre taking into account the Occupational Health and Safety Act, and the Disabilities Discrimination Act" Committee Minutes 8.8.00

Dept of Local Government "In this regard, councils are autonomous in their day to day operations and the department has no power to intervene in the absence of substantive evidence being presented of criminality or gross maladministration." 14.8.00 Michael. Fleming Policy Adviser

Dept of Local Government "The issues you raise do not fall within the Minister of Local Government's jurisdiction. I am sure that you will receive appropriate replies from the Ombudsman and the Dept of Urban Affairs and Planning" 26.9.01 Michael Fleming Policy Adviser.

Planning NSW "I also acknowledge receipt of the supporting documents which you prepared and submitted to Planning NSW. Neither the Minister for Planning nor Planning NSW has a formal role in the local development process." 3.4.02 Petula Samios Director

Roads and Traffic Authority "In relation to the upgrade of Council Lane this is a matter for council to consider. The RTA had input into the development application for the redevelopment of Coles Supermarket through the Regional Advisory Committee. In this instance Council is the consent authority for the subject development and thus Council is not bound by the recommendations of the RTA's Regional Development Advisory Committee." 25 May

Aon Re Worldwide "We have been advised by the Executive manager Works and Services of the following 'The carpark is owned and operated by the building owners not council' 25.7.00 Paul Bleachley

NSW Fire Brigade "You are advised that the NSW Fire Brigades has noted your concerns and forwarded a copy of your complaint to Lane Cove Council who are the authority in this matter. Your concern is appreciated." 28.3.02 W. Ismonger

NSW Police "regarding Austin to Sera Street this is not a public road and comes under the authority of the local council. In an effort to assist, I have taken the liberty of forwarding your letter to Lane Cove Council." 9.5.02 Doreen Cruickshank Superintendant

WorkCover NSW "I have conclude that the matters raised do not fall under the jurisdiction of Workcover NSW. I take this opportunity to reinforce the commitment of WorkCover NSW to securing a safe and healthy workplaces across the state" 27.3.02 Jenny Thomas team Manager

EXAMPLES LOCAL GOVERNMENT ADMINISTRATION OF REGULATIONS.

1. **Stockton ferry wharf Newcastle Herald** December 10 2002
"Disabled resident Barry Purtell was one of the first on board the Stockton ferry yesterday at the official opening of the suburb's \$1.02 million wharf that includes wheelchair access.
But he was back in Stockton shortly after, being stranded, because the State Government had provide wheelchair access to just one side of the ferry service.
Transport minister Mr Carl Scully and State Member for Newcastle Bryce Goudney officially opened the Wharf yesterday." Article contained in submission.
2. **Two large commercial premises** recently built in Artarmon in the Willoughby Municipality.
Hardware House now Bunnings has undercover parking for approx 290 cars including accessible parking spaces. All parking is fully compliant with AS 2890.1 in bay size, bay grades, access and segregated truck access.

Office Works has undercover for 40 cars including accessible parking spaces. Over 30 spaces breach AS2890.1 in bay grades. Truck access is not fully segregated.
3. **A small road side Tea House** between Bulledehah and Forster was built in the Great Lakes Shire. The owner purchased the disability regulations and built accordingly with male and female accessible toilets and a 1:8 access ramp. The Council made him rebuild the ramp to 1:14 with rest areas before they would approve it.
4. **Coles Supermarket** has recently completed major extensions and parking in the Lane Cove Municipality. Existing non complying access for cars, trucks and pedestrians to and within the completed development has been retained. This serves the combined new parking on Cole's site and the elevated parking over Council land.

Notice of Determination of development Application No. D44/98.

"it was resolved that the application be consented to subject to the attached conditions." Lane Cove Council 30 December 1998.

Building Application No. B600/99

"the above mentioned building approval has been approved by council, A copy of the conditions or amendments is enclosed" 12 March 1999.

It is disputed that the following conditions have been met.

1. Openings in an external wall which are required to achieve a fire resistant level must be protected in accordance with Clause 3.4 of the BCA.
3. Exit distance do not comply with Clause D1.4 of the BCA.
4. The carpark on Level 2 shall be fire separated by a firewall.
14. The building must be provided with: (d) a sprinkler system complying with Specification E1.5.
15. The dimensions of required exits or paths of travel to exits are to be in accordance D1.6 of the BCA
18. Stairways being a "fire Isolated Stairway"
48. Toilets for disabled people being provided in accordance with Part F.2-BCA
49. Parking spaces for disabled people being provided in accordance Part D.3-BCA
53. All parking spaces comply with the requirements of AS2890.1
59. All car parking facilities provided on the site shall comply with the requirements of the Australian Standards AS2890.1-1993 & 2890.2-1989 (Parking facilities,
Part 1: Off street car parking and
Part 2: Commercial vehicle facilities
71. The ramp for parking level to mezzanine and forecourt must be constructed in accordance with AS 1428. The maximum gradient should be 1:14 with level sections 9m long

LANE COVE COUNCIL - CONTRADICTING CONDITIONS AND STATEMENTS

The following extracts highlight regulations and Council's conditions for access to buildings fronting Council Lane. Conflicting statements have been adopted that severely affected the aged and disabled.

Building Code of Australia

Al.1 **Exit** means- (a) Any or any combination of the following if they provide egress to **a road** or open space.

Open space means a space on the allotment, or a roof or similar part of a building adequately protected from fire, open to the sky and connected directly with **a public road**.

DP7 Accessways must be provided, as far as is reasonable, to and within the building which –

(a) have features that enable people with disabilities to safely, equitably and with dignity –

(1) approach the building from the road boundary and any parking spaces associated with the building;

D1.10 Discharge from exits

(b) if a *require exit* leads to an *open space*, the path of travel to **the road** must have an unobstructed width throughout of not less than-

(i) the minimum width of the required exit; or (ii) 1 m, which ever is the greater.

(c) if an *exit* discharges to an *open space* that is on a different level than the **public road** to which it is connected, the path of travel to the road must be by-

(i) a ramp or other incline having a gradient not steeper than 1:8 at any point, or not steeper than 1:14 if *required* by the *Deemed to Satisfy Provisions* of Part D3

- Neil Russell Cocks Statement of evidence dated 8.11.02 to the ADTribunal Hearing Nov 02
10.8 "COUNCIL LANE IS A ROAD. Compliant egress is provided to that road from and by the carpark in accordance with section D of BCA, "
- Town Planners report 1976 *Council Lane should be a Public Road*
- Council letter 20.11.01 to Richard Harvey Solicitors for property owners 38-42 Burns Bay Road
I note your suggestion that, to ensure that there is continued access to the rear of your client's property, that that access be declared a public road.
- Register of Council owned land includes, map references 588 to 610, Ownership- Lane Cove Council, Property description- Public carpark Classification-operational.
- Aon Re-insurers quoting Executive manager Works an urban Services
The car park is owned and operated by the building owners, not Council.
The car park deck will be able to be accessed from the carparking associated with the development as well as from Council existing, carpark
Council recognized in approving the development that the access ramps to and from Burns Bay Road were narrower than recommended in the Australian Standards. However it was recognized that the ramps could not be widened without demolishing the existing building.
- NSW Police Service North Shore Local Area Command 9 May 2002
On reviewing the situation regarding the access from Austin Street to Sera Street I can only confirm that this area is not a public road and is thus classified as coming under the administrative authority of the local Council.

COUNCIL LANE IS NOT A PUBLIC ROAD. ON THIS BASIS ALONE, EGRESS FROM COLES SUPERMARKET AND COUNCIL/COLES CARPARK DOES NOT COMPLY WITH THE BCA

EQUALLY ALL PROPERTIES IN BURNS BAY ROAD AND THE PLAZA WITH REAR ACCESS TO COUNCIL LANE DO NOT COMPLY WITH THE BCA.

T. BEARDSMORE ADT Statement of evidence.

- Page 5-A1.5 "Is adjacent to the existing inaccessible steep trolley ramp down to Council Lane level
BA B600/99 condition 71 and Dwg WD11, required the ramp to be 1:14 it was extended at 1:8
- Page 9-A2.9 "It is my understanding that the building has been designed under the alternate solution process for fire and egress and is therefore fully compliant with the Building Code of Australia'
Cox Town Planner LC Council letter " fire and egress meets deemed to satisfy conditions"
- Page 11 -A3.7 "I understand that the 1:14 gradient ramp system provided from Level 2 to Level 1, is proposed to be further extended down to Council Lane level, ensuring complying egress from Level 2 for people with a disability"
THE RAMP HAS NOT BEEN EXTENDED MAKING THE CERTIFICATES INVALID

N COX TOWN PLANNER LC COUNCIL ADT Statement of evidence.

- Page 2-7 Building approval **B600/1999** was granted by council on 12^h March 1999
A valid construction certificate could not be issued because there were no plans and documentation for the exit of cars and people from Level 2 to a public road and the completed work would not comply
- Page 8-9 Council granted development consent for a two level carpark ..DA 54/01 25 July 2001
Council issued a construction certificate on 27th November 2001
- Page 10.8 Council lane is a road. Compliance egress is provided to that road from and by the carpark in accordance with section D of the BCA
COUNCIL LANE IS NOT A ROAD AND THE CONSTRUCTION CERTIFICATES ARE INVALID
- HENRY WONG GENERAL MANAGER LANE COVE COUNCIL to the A D Board 6 June 2002**
- Para 7.3 compliance with AS 2890.1 requirements would not have been practically possible, due to constraints of the adjoining buildings to the driveway. As to AS2890.2, those provisions are not relevant, as commercial vehicles are prohibited from using the access ramps.
- Para 7.5 No development / building work was ever proposed to be carried out on or in relation to the ramps The ramp was rebuilt to provide the only access to all parking
- Condition 12. **All trucks delivering to the site be no longer than 12m in length. A sign being provided at the front of the site to restrict any vehicles longer than 12 metres.**
- Condition 17 **All carparking facilities provided on the site shall comply with the Australian Standard AS 2890.1 1993 & 2890.2 1989 (Parking facilities Part 1 Off street car parking and Part 2 Commercial vehicle facilities)**
FAILURE TO ENFORCE THESE CONDITIONS MAKES THE CERTIFICATE INVALID

THE GAILEY PROPOSAL

- A public road and footpath for vehicle and pedestrian access to the rear of all properties south of Burns Bay Road and the Plaza
Cost estimate for elevated section Baigents Pty Ltd. \$1m.
- A new multi level carpark on an independent Council site with public road access to and lifts to all levels.
Cost estimate to standard unit cost for multi level parking spaces
- This proposal allows compliance with the BCA, AS2890 and the Disabilities Discrimination Act and addresses the recommendation of Commissioner Andrews Rezoning of Austin Street land.
2.2.00 initial concept submitted to Eric Armstrong Corporate Planning Strategy.
20.12.00 reduced proposal submitted to rezoning hearing conducted by commissioner Andrews rezoning of Rosenthal Avenue land.
15. 10.01 final concept submitted to Mayor Roberts
Council failed to recognize this alternate complying proposal

EVERYONE INVOLVED IN DISABILITY ACCESS AND DISABILITY REQUIREMENTS MUST HAVE A FULL KNOWLEDGE OF THE NEEDS AND HOW THEY ARE BEST PROVIDED.

THIS WILL BE BEST MET BY THE THREE LEVELS OF GOVERNMENT ENFORCING ALL EXISTING RELEVANT REGULATIONS.

IT IS NOT REASONABLE TO ALLOW THE COSTS OF COMPLAINTS UNDER THE DISABILITIES DISCRIMINATION ACT, DISABILITY DISCRIMINATION COMPLAINTS UNDER THE ANTI DISCRIMINATION ACT, OR DEFENCE BEFORE THE ADMINISTRATIVE DECISIONS TRIBUNAL TO BE BORNE BY PRIVATE INDIVIDUALS.

IT IS RECOMMENDED THAT HREOC AND THE ADB BE GIVEN THE LEGAL RIGHT TO INSTITUTE INVESTIGATIONS OF BREACHES OF MANDATORY REGULATIONS EFFECTING THE AGED AND DISABLED AND THAT STATE AND FEDERAL REGULATIONS ADMINISTERED BY LOCAL GOVERNMENTS ARE PROACTIVELY ENFORCED

Individuals lodging Access Complaints bear the total cost of researching the material, sourcing the authorities involved in access safety, documenting material, postage, sending and receiving faxes at commercial rates, transport costs to attend preliminary hearings, close city accommodation to attend an ADTribunal hearing, and risk unforeseen costs of emotional stress resulting in additional city accommodation, ambulance cost to hospital emergency, taxi return and two months recovery.

Individuals risk losing it all, and then being charged legal costs awarded against them for endeavouring to have State and Federal regulations enforced.

Would I do it all again. YES

One year was worthwhile to make Blue Gum Lodge a SAFE home from home for cancer patients, their families and friends

Eight years were worthwhile to bring the problems of the Disability Discrimination Act into the public arena and to show that State and Federal Governments cannot rely on Local Government and individuals to have the Act enforced

The Police can issue infringement and defect notices, failure to comply results in a disqualified license and a cancelled registration. Why can't the BCA & DDA be as easily enforced.

BACKGROUND RICARD GAILEY OAM FRAIA

Has been a resident of Lane Cove since 1949, a ratepayer since 1950, and a private practicing architect in Lane Cove from 1955 until retirement. Became a Fellow of the Institute of Architects in 1970 and a Privileged member in 2001.

Lions International

Joined Lane Cove Lions Club in 1957, President '61, District officer '62 to '86. Gave professional assistance to Scouts and Guides, Senior Citizens, schools and bowling club and supported other club projects.

Chairman Lions Cancer Treatment Fund '72 to '85. Formed by Lane Cove Lions to raise \$300,000 to replace the cobalt unit at St. Vincent's Hospital with their first Linear Accelerator and subsequently a \$25,000 upgrade of Mulberry Terrace for families of bone marrow transplant patients; \$12,000 initial laboratory equipment for the Children's Leukemia & Cancer Foundation (renamed Children's Cancer Institute); \$20,000 accommodation and equipment at Camperdown Children's Hospital. All professional services were donated.

When the fund had raised \$100,000 for the linear accelerator a request was made for a 2:1 contribution from the NSW Department of Health. This was refused. Fund raising continued to include lowering the floor of the basement for the newer unit, providing a simulator, building the bunker and covering currency devaluation. After seven years the fund had raised \$400,000 and the Minister presented the final payment of \$40,000 when he opened the unit.

This work was recognized in 1983 with a City of Sydney Australia Day Community Award and in 1990 with a Lions International Melvin Jones Fellowship

NSW Cancer Council

In 1985 prepared a Community Report on the W D Scott "Review of Coordination of Cancer Services in NSW" prepared for the NSW Cancer Council and the NSW Health Department. My report on behalf of Lions covered accommodation for country cancer patients attending city hospitals for specialist treatment. The report was adopted.

In 1986 became the Lions representative and Chair of a Cancer Council accommodation subcommittee. Initial work covered conversion of rooms in Nurses Homes at Prince of Wales Hospital and the Camperdown Children's Hospital.

This work formed the prototype for a \$600,000, 27 room "Casuarina Lodge" at Westmead Hospital, Lane Cove Lions provided the professional services and assisted with promotion and fund raising.

This was followed by the \$1,200,000, 37 room "Blue Gum Lodge" to serve Royal North Shore Hospital. Lane Cove Lions again provided professional services and headed a state wide promotion for community support.

Both projects were fully funded by public donations.

This work was recognized in December 1993 with a plaque presented at the 108th Annual General Meeting of RNS Hospital and with a "1994 OAM for services to the community, particularly the welfare of cancer patients".

Lions Cord Blood Appeal

Foundation Chairman 1995-97 raising \$250,000. Renamed Lions Cord Blood & Childhood Cancer Research Appeal with current funds raised to 2003 of \$1,250,000.