

Determination 2007/80

Upgrading of accessible toilet facilities in alterations to Kaniere School, Hokitika

1 The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of the Department. Unless otherwise stated, references below to sections are to sections of the Act and references to clauses are to clauses of the Building Code (the First Schedule to the Building Regulations 1992).
- 1.2 The applicant is the Ministry of Education (“the owner”) acting through School Support Ltd. The only other party is the Westland District Council (“the territorial authority”).
- 1.3 The application arises from the territorial authority’s decision to refuse to grant a building consent for alterations to one of the buildings at Kaniere School (“the school”) unless those alterations included the installation of a toilet for use by people with disabilities.
- 1.4 I take the view that in effect the matter for determination is whether the school, after the alterations, will comply as nearly as is reasonably practicable with the provisions of the Building Code that relate to access and facilities for people with disabilities, as required by section 112.

2 Background

- 2.1 The school is a primary school in a low density residential area. It currently has 114 pupils. The school complex consists of three main buildings as shown in the plan below together with various ancillary buildings. There are two accessible toilets, one in the junior block and the other in the administration block. An accessible toilet is one having features to permit use by people with disabilities, see clause A2.

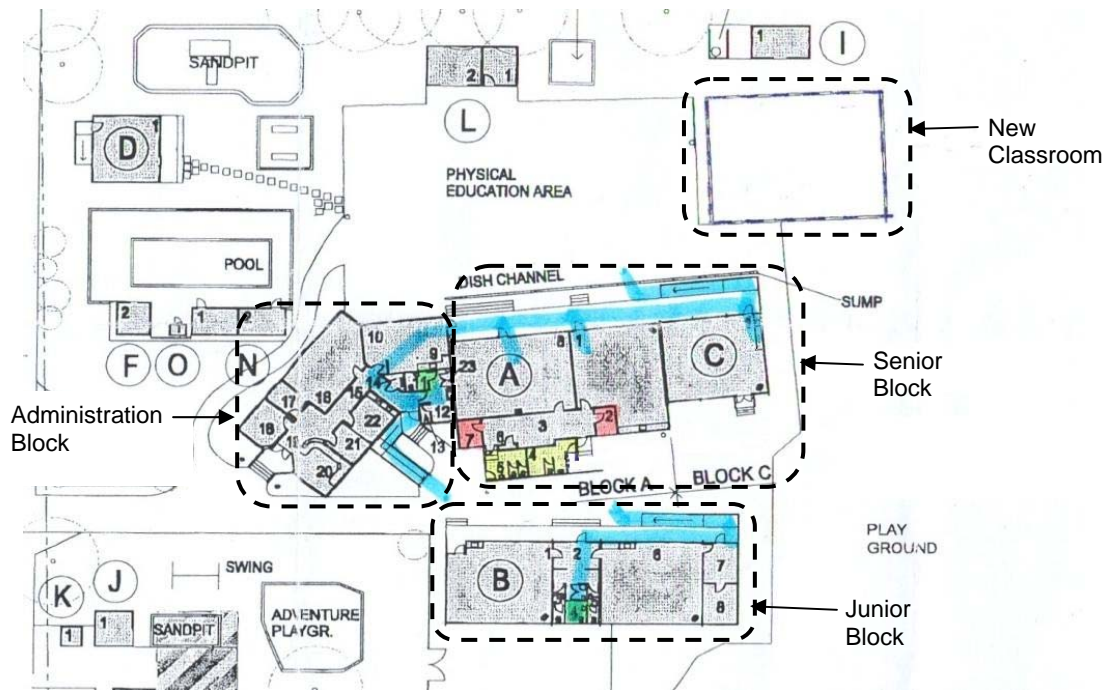


Figure 1: Site plan of the administration, junior and senior blocks, and the new classroom

- 2.2 The existing accessible toilets are reached from the classrooms in the senior block by either:
- (a) Travelling along the verandah and through the staff room and the sick room; or
 - (b) Travelling in the other direction along the verandah, down the ramp to ground level, and around the senior block to either:
 - (i) The ramp to the administration block and through the sick room, or
 - (ii) The ramp to the junior block and through the lobby.

There are corresponding routes from the new classroom.

- 2.3 The owner applied to the territorial authority for a building consent in respect of alterations to the toilet facilities in the senior block. The territorial authority refused the application unless an accessible toilet was provided in the senior block. The owner disputed that decision by way of an application for this determination.
- 2.4 After considering the application and the submissions I prepared a draft determination (“the draft”) and sent it to the parties on the basis that if they did not accept the draft, subject to non-controversial amendments, then a formal hearing would be necessary.
- 2.5 By way of consultation under section 170 I also sent the draft to the Office for Disability Issues (“the ODI”) acting for the Chief Executive of the Ministry of Social Development.

2.6 The owner accepted the draft. The territorial authority accepted the draft subject to its being accepted by the ODI. The ODI accepted the draft and made thoughtful comments upon it, which I copied to the parties for their information.

2.7 I amended the draft to correct certain minor errors.

3 The legislation and the compliance documents

3.1 Relevant provisions of the Act are:

7 Interpretation

person with a disability means a person who has an impairment or a combination of impairments that limits the extent to which the person can engage in the activities, pursuits, and processes of everyday life, including, without limitation, any of the following:

- (a) a physical, sensory, neurological, or intellectual impairment:
- (b) a mental illness

8 Building: what it means and includes

- (1) In this Act, unless the context otherwise requires, building—
 - (c) includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements

17 All building work must comply with building code

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

19 How compliance with building code is established

- (1) A building consent authority... must accept any or all of the following as establishing compliance with the building code:
 - (b) compliance with the provisions of a compliance document:

23 Effect of compliance documents

A person may comply with a compliance document in order to comply with the provisions of the building code to which the document relates, but doing so is not the only means of complying with those provisions.

49 Grant of building consent

- (1) A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

112 Alterations to existing buildings

- (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration, the building will—
- (a) comply, as nearly as is reasonably practicable ... , with the provisions of the building code that relate to—
 - (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118) . . .

118 Access and facilities for persons with disabilities to and within buildings

- (1) If provision is being made for the construction or alteration of any building to which members of the public are to be admitted, whether for free or on payment of a charge, reasonable and adequate provision by way of access, parking provisions, and sanitary facilities must be made for persons with disabilities who may be expected to—
- (a) visit or work in that building; and
 - (b) carry out normal activities and processes in that building.
- (2) This section applies, but is not limited, to buildings that are intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2.

Schedule 2 Buildings in respect of which requirement for provision of access and facilities for people with disabilities applies

The buildings in respect of which the requirement for the provision of access and facilities for persons with disabilities apply are, without limitation, as follows:

- (m) educational institutions, including public and private primary, intermediate, and secondary schools, universities, polytechnics, and other tertiary institutions:

3.2 Relevant provision of the Building Code (defined terms in *italic type*) are:

Clause A2—INTERPRETATION

In this building code unless the context otherwise requires, words shall have the meanings given under this Clause. Meanings given in the Building Act 1991 apply equally to the building code.

Accessible Having features to permit use by people with disabilities.

Clause G1—PERSONAL HYGIENE

G1.3.1 *Sanitary fixtures* shall be provided in sufficient number and be appropriate for the people who are intended to use them.

G1.3.3 Facilities for personal hygiene shall be provided in convenient locations.

G1.3.4 Personal hygiene facilities provided for *people with disabilities* shall be *accessible*.

- 3.3 Table 1 of G1/AS1, the compliance document for clause G1 requires 1 accessible toilet for up to 300 staff and students in schools and universities, and 2 for more than 300.
- 3.4 The same requirement is specified in NZS 4121:2001. Under section 119(2), NZS 4121 also has the status of a compliance document.

4 Discussion

4.1 The owner's submissions

- 4.1.1 The owner identified the difficulties of installing an accessible toilet in the senior block. In particular, the cost of installation would equate to approximately 10 years' capital funding "leaving no funding of other projects, like classroom upgrades".
- 4.1.2 I do not accept that an owner's ability to meet the cost of particular building work is ever a relevant consideration. However, cost may be taken into account when applying the "as nearly as is reasonably practicable" test of sections 112, 115, and 116, but only as a sacrifice to be weighed against the benefits of complying completely with the relevant provisions of the Building Code.
- 4.1.3 The owner submitted that the school "has no disabled students and no possible students in the future".
- 4.1.4 I do not accept that an owner's assessment of whether or not people with disabilities are likely to visit or use the building concerned is ever a relevant consideration. No-one can foresee the accidents and incidents of life that might result in someone becoming a wheelchair user. Furthermore, as the then Building Industry Authority ("the Authority") said in Determination 1996/004, which was about access and facilities for people with disabilities in a new primary school:

It is common knowledge that in today's schools, particularly today's primary schools, the pupils' care givers and other members of what is generally referred to as "the wider school community" are encouraged to visit the school. In practice, however, if reasonable and adequate access and facilities are provided for pupils and staff then they will also be available to the wider school community.

That determination was made under the Building Act 1991 ("the former Act"). However, I take the view that the provisions of the former Act for access and facilities for people with disabilities are essentially identical to the corresponding provisions of the Act (except for section 112(2), which does not apply in this case). Accordingly, I agree with the approach taken by the Authority.

- 4.1.5 The owner also submitted that if the school were to have pupils with disabilities then the owner would "fund additional bathroom space for disabled individuals on a case by case basis, as required".

4.1.6 A similar assurance that access and facilities for people with disabilities would be provided “on a case by case basis as required” was considered by the Authority in Determination 1996/003, which was about whether a lift was required in a new two-story classroom building in a school complex. The Authority said:

6.3.8 As to the assurance that classes will be relocated to accommodate the needs of any people with disabilities, the Authority generally treats such assurances as to future management practices with some caution (see Determination 92.1102). Furthermore, the question in this case is not simply whether it is possible for the school’s staff to make arrangements for people with disabilities, the question is whether the new building complies with NZS 4121. . .

That approach has been consistently followed in subsequent determinations made by both the Authority under the former Act and by the Chief Executive.

4.2 The territorial authority’s submissions

4.2.1 The territorial authority, according to the owner (I have not been given the document concerned), said that its “interpretation of the [Act] is that all blocks in a public facility, like a school, require a disabled toilet facility”.

4.2.2 In my view that interpretation does not take account of section 8(1)(c)(iii), which provides that in certain circumstances a “building” can be a complex of buildings. The corresponding provision in section 3(2)(b) of the former Act was considered by in Determination 1996/003, in which the Authority said:

4.3.2 The Authority accepts that two or more buildings may be treated as one building for certain purposes as provided by section 3(2)(b) of the Act [now section 8(1)(c)(ii)]. Indeed, that was the basis of a previous determination (No. 94/004) in relation to providing access for people with disabilities by way of a lift in an adjacent connected building. The Authority also accepts that the buildings on the complex concerned come within that provision.

4.3.4 As to the erection of new buildings without sanitary facilities being “manifestly wrong” as contended by the territorial authority, the Authority regards that as a normal occurrence in building complexes such as schools and the like where sanitary facilities are provided in other buildings or separate toilet blocks within the complex. Indeed, the Authority would have considered it surprising if the Building Act had forbidden such complexes.

4.3.5 However, in the Authority’s view it is not sufficient that accessible facilities for those using one building are provided in another building in the same complex. It is also necessary that the accessible facilities should be “provided in convenient locations” as required by clause G1.3.3 of the building code.

4.2.3 I take the view that the same applies under the Act. In other words, the Act does not require every building in a school complex to include its own accessible toilet. It is sufficient if the complex as a whole contains sufficient accessible toilets in convenient locations. In this case, the complex contains 2 accessible toilets, which is sufficient to satisfy clause G1.3.1.

4.2.4 In response to the application for a determination, the territorial authority also said:

Pupils needing to access new disable [sic] facilities . . . need to go thru [a door], into staffroom (ex recovery room) thence to [three more doors].

Our concern is that should a pupil receive the thwart [sic] of a teacher and sometime later, eg morning tea, lunch time, that pupil has to get permission to enter staffroom before proceeding onto the disabled toilets. That is not really acceptable.

4.2.5 I take that to be a submission to the effect that the accessible toilet in the administration block is not “in a convenient location” for people with disabilities in the senior block or the new classroom. As to that, in Determination 1996/004 the Authority said:

6.4.1 The Authority considers that the words of the building code must be interpreted on that basis that the purpose of the relevant provisions is to ensure that adequate and reasonable provision is made to enable people with disabilities to carry out normal activities in the school.

6.4.2 Whether any particular route of travel for wheelchair users can be accepted as adequate and reasonable is a matter to be decided in the light of all the circumstances of the case. . . .

6.4.5 In this case the lengths of the wheelchair routes and the gross disparities between the wheelchair routes and the other routes . . . make it impossible for the Authority to accept that the wheelchair routes are reasonable.

4.2.6 I take the same approach. However, in this case there cannot be said to be a gross disparity between the routes of travel to the toilets in the senior block and the routes of travel to either of the accessible toilets. I therefore conclude that, in respect of routes of travel, the existing accessible toilets are in “convenient locations” for everyone who may be expected to use them.

4.2.7 I recognise the territorial authority’s concern about a pupil having to go through the staff room to the accessible toilet in the administration block, but consider that the concern is unjustified. In the first place, I cannot believe that any of the school staff would do anything to impede people with disabilities accessing that toilet. In the second place, the alternative route from the outside is not so long and difficult as to mean that the toilet is not in a convenient location in terms of clause G1.3.3, recognising that all staff and pupils in one of the classrooms in the senior block and in the new classroom must go outside to reach the toilets.

4.3 Conclusion

4.3.1 I conclude that the school already has a sufficient number of accessible toilets in convenient locations. Accordingly, the Act does not require additional accessible toilets to be provided in the senior block or in the new classroom.

5 Decision

5.1 In accordance with section 188 of the Act, I hereby:

- (a) Determine that the school complies with clause G1 in respect of its accessible toilets.
- (c) Reverse the territorial authority's decision to refuse to issue a building consent for the alterations to the senior block.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 20 July 2007.

John Gardiner
Manager Determinations