



Determination 2017/019

Regarding a reduction in the number of personal hygiene facilities in a school building undergoing alterations at Cain Street, Parkside, Timaru

Summary

This determination considers whether the proposed alterations, with a reduced number of toilets, will comply with the Building Code to the extent required by section 112. The determination discusses the tests under section 112(b) in regards to a reduction in the level of performance achieved in the existing building.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to this determination are:
 - the owner of the building, the Ministry of Education (“the applicant”), acting through the project manager (“the agent”)
 - Timaru District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 I consider the School’s Board of Trustees to be a person with an interest in this determination.
- 1.4 The determination arises from a dispute regarding the number of toilets to be provided to one building in the school complex as it undergoes alterations. The agent proposes to reduce the number of toilets in the classroom block from four to two, and is of the view that this will still meet the requirements of the Building Code. The authority holds the view that a reduction in the number of toilets would mean that the alterations do not comply to the extent required under section 112(1)(b)².
- 1.5 I therefore take the view that the matter for determination³ is whether the subject building (“the MLE toilet block”) with two toilets after the alteration will comply with Clause G1 Personal Hygiene of the Building Code (First Schedule, Building Regulations 1992) to the extent required by section 112 of the Act.
- 1.6 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I have not considered compliance with any other aspects of the Act or other clauses of the Building Code.

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.

² In this determination references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code.

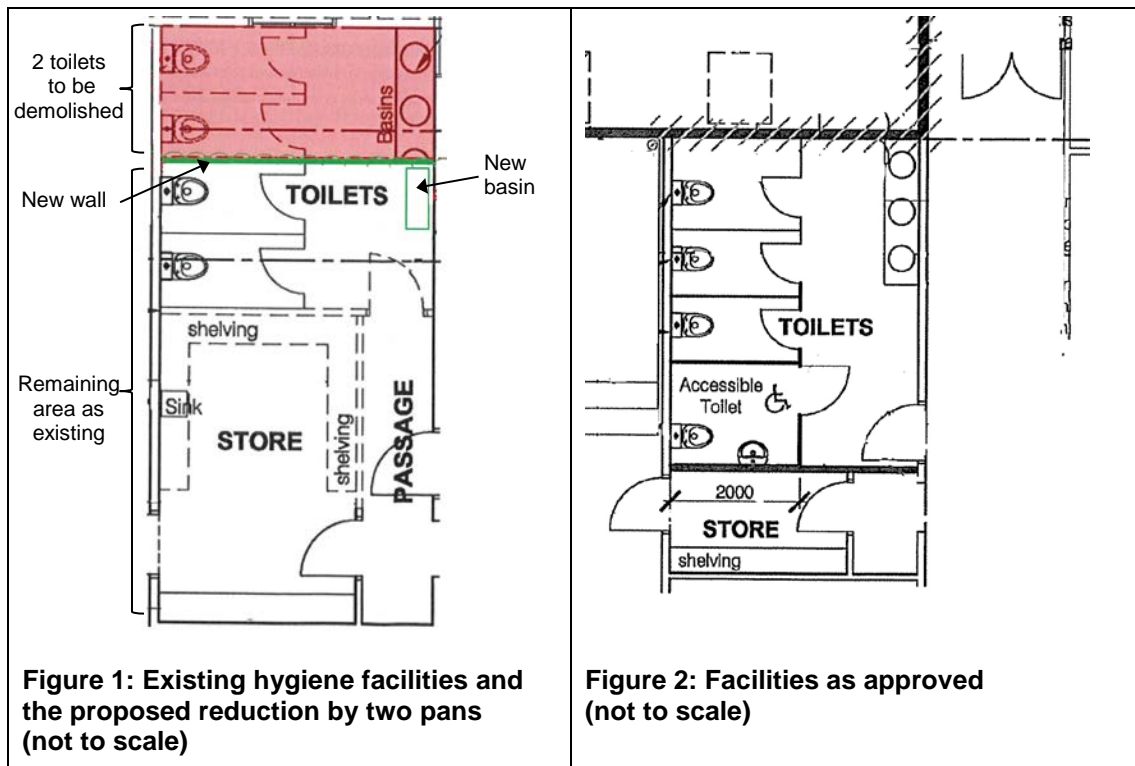
³ Under section 177(1)(a) of the Act

- 1.7 The relevant sections of the Act, clauses of the Building Code and paragraphs of the Acceptable Solution referred to in this determination are set out in Appendix A.

2. The school complex and building work

2.1 The alterations

- 2.1.1 The alterations involve the refurbishment and reconfiguration of a classroom block (referred to by the parties and in this determination as the “MLE” block) at a single-sex high school. The alterations include reconfiguration of the internal spaces within the MLE block to provide for two classrooms, three “informal” spaces, and covered walkways to two sides of the building. Based on the plans provided to the determination the MLE block is 12.3m x 26.3m (323.5sqm).
- 2.1.2 Adjacent to the MLE block is a toilet block and storage room – and it is this toilet block that is the subject of the determination. The existing personal hygiene facilities in the toilet block include four toilets, none of which are accessible, and three basins. See Figure 1 below.
- 2.1.3 The agent had initially applied for the building consent based on plans that reduced the number of pans in the MLE toilet block from four to two ‘to allow for the construction of a wall to increase the size of the classrooms’ (as indicated on Figure 1 below). The authority did not accept the proposal to reduce the number of toilets (refer paragraph 3.3).
- 2.1.4 The agent amended the plans and the authority issued building consent No. 2.2016.187 for the alterations, based on plans with the toilet block containing three pans, three basins, and an accessible toilet as shown in Figure 2 below:



- 2.1.5 The agent now seeks to confirm that the proposal, consisting of 2 women’s pans only would comply with the legislative requirements in order that an amendment to the consent may be lodged.

2.2 The school complex

2.2.1 The classroom block undergoing alterations is part of a larger high school complex. Based on a “Toilet facilities map” provided by the agent (refer Appendix B), the existing personal hygiene facilities are:

	Women's	Unisex Accessible	Men's	Urinal
Classroom block 13-17		1		
Teen parent study group		1		
Computing labs/Graphics block	3	2		
Library/Classrooms 3-4		1		
MLE block ⁴	4			
Gymnasium	4			
Science block	8	1		
Administration block	4	1	1	1
Hall	2	1	1	1
Totals	25	8	2	2

2.2.2 The facilities map that was provided to the determination noted the women's toilets in the gymnasium would be reduced from four to two pans and an additional accessible toilet provided. However the agent has advised that it is now unlikely that the upgrade to the gymnasium will proceed; accordingly I have amended the information in this determination to reflect the existing personal hygiene facilities in the gymnasium only.

2.2.3 The proposed alterations, reducing the toilets in the MLE block to two pans only, would result in a change to the totals as follows:

Women's	Unisex Accessible	Men's	Urinal
23	8	2	2

2.2.4 Buildings near to the MLE block include a library and two classroom blocks (rooms 3 and 4, and rooms 13 to 17). Nearby buildings that also contain personal hygiene facilities include the gymnasium and science block. I note that the toilets in the gymnasium and the MLE toilet block would also serve the classrooms 21 to 25. (See Appendix B “Toilet facilities map”.)

2.3 Occupancy

2.3.1 The agent has advised that the current school role has dropped over 15 years from 650 to its present level of 452 students and 27 staff.

2.3.2 In regards to the MLE block and nearby buildings, the agent has estimated the total current occupancy as 270 based on the following:

	Occupants	Based on:
MLE	80	3 classes of 40 occupants, 3 x per day
Library	30	1 staff + 20-25 students for 3 or 4 periods out of 6
Gymnasium	30	14-28 students per class, maximum 3 classes at any one time
Classrooms 13-17	130	1 staff + 5-25 students

⁴ The agent initially provided a Toilet Facilities Map that included the existing number of facilities in the gymnasium and MLE block as 4 each, however a later map includes the proposed alterations to the gymnasium and MLE block.

(I note that the occupancy of the Classroom blocks 3-4 and 21-25 was not provided, however I expect that occupants of those rooms would also use either the MLE toilet block or the gymnasium facilities.)

- 2.3.3 In an email to the authority, the applicant confirmed the number of staff is currently 66 (including the hostel) and the roll projection for the school is 450 students. The applicant calculated the necessary number of personal hygiene facilities based on the Ministry's Toilet Calculator⁵, using inputs for the school complex as a whole and the number of occupants as 650, with the resulting facilities required being 16 and accessible facilities 2.⁶

3. The background

- 3.1 The agent originally submitted plans to the authority on 17 February 2016 that included the reduced number of toilets from four to two.

- 3.2 On 5 April 2016 the authority wrote to the agent with a request for further information, including as item #9:

Provide justification of the two toilets that are being removed from the MLE Classroom block area. Are they being replaced somewhere else close by? Who occupies these toilets, etc.

I have not seen a copy of the agent's response to this request.

- 3.3 On 28 April 2016, after a site visit, the authority emailed the agent advising that the removal of the toilets was 'unreasonable for the number of classrooms/library that uses these facilities'. The authority required either the toilets remain or be reinstated somewhere within the same classroom block. The authority followed this up with a letter dated 28 April 2016, which stated (item #10):

The removal of the two toilets attached to the MLE Classroom block is not reasonable practical (sic). These toilets are servicing a large area of the school and we have considered it unreasonable to remove them. Provide revised plans.

- 3.4 The agent has advised that the plans submitted to the authority were amended to include four pans in the MLE toilet block in order to avoid further delay for the remaining alterations. The authority issued building consent number 2.2016.187 on 27 June 2016.

- 3.5 However, the agent remained of the view that two pans would be complaint, and the applicant wrote to the authority in December 2016 in support of the agent's views. The applicant confirmed the number of staff at the school and the roll projection, and provided information on the number of toilets throughout the school complex (refer Appendix B).

- 3.6 The applicant used the Ministry's Toilet Calculator, using inputs for the school complex as a whole, noting that even with the reduction in the number of toilets in the MLE toilet block from four to two the number of toilets throughout the complex would still meet the requirements of the Building Code.

- 3.7 An application for a determination was received by the Ministry on 17 January 2017.

⁵ Available on the Ministry's website

⁶ I note that the results for Options 2, 3, 4 & 5 were also included in the correspondence, however these would apply to a co-ed school not a single-sex school

4. Submissions

4.1 The applicant

4.1.1 In the covering letter accompanying the application for a determination, the agent advised that the initial proposal to reduce the toilet numbers had been refused by the authority and accordingly the plans were altered for the purpose of obtaining building consent. The agent provided details regarding the school occupancy, which I have included in paragraph 2.3, and concluded that based on a total occupancy of 452 students and 27 staff, the number of toilets required is:

1-10 Male staff/visitor	1 pan
11-50 Female staff	2 pans
452 [Female students]	10 pans (3 for 90ppl + 1 for every 60 additional ppl)
1-300 People w/disabilities	1 pan

4.1.2 The agent noted that the above calculation allowed for growth in the school role to 512 students and 50 female staff.

4.1.3 The agent submitted that it was appropriate to assess the number of toilets in relation to the school complex as a whole, rather than block by block, referring to G1/AS1 paragraph 3.4.1 (see Appendix A.3) and the Ministry of Education's guidance document⁷. The agent concluded that even after reducing the number in the MLE toilet block to two, the number of personal hygiene facilities available in the school would be well in excess of the number required to meet the performance requirements of the Building Code.

4.1.4 The agent also maintains the view that the location of toilets throughout the school complex are adequate in terms of being in convenient locations, and adequate in relation to the occupancy of the building clusters. In respect of the provision of facilities in the areas near to the MLE block, the agent has advised the travel distances from the exit door to the nearest personal hygiene facilities as follows:

	MLE toilet block	Gym facilities	Science block facilities	Classroom 3-4 facilities
Distance from MLE block:	11m	20m	29m	20m

4.1.5 With the application, the agent provided copies of:

- correspondence with the authority
- the Ministry of Education's guidance document
- the toilet facilities map.

4.2 The authority

4.2.1 The authority provided a copy of the building consent no. 2.2016.187, plans from the consent documentation, and a submission on the matter. The authority clarified some of the background and noted that its decision in regards to the number of toilets was 'simply that the current number of toilets must be retained to ensure that compliance with section 112(b)(1),(ii) of the Building Act is being complied with.' The authority also noted that no amendment application had been made to reduce the number of toilets and therefore 'no official assessment' had been carried out.

⁷ Reference *Design for Schools in New Zealand: Toilets* (Version 1.0, August 2016) Ministry of Education

- 4.2.2 The authority submitted that it had considered the total number of personal hygiene facilities within the school complex, excluding the hostel buildings, but that:

... regardless of the level of compliance the school achieved prior to the proposed building work being carried out, the proposal to reduce the number of toilets is in essence reducing the level of compliance thus the school not being able to *“continue to comply at least to the same extent as it did then comply”*.

4.3 The draft determination and submissions in response

- 4.3.1 A draft determination was issued to the parties for comment on 27 February 2017.
- 4.3.2 The authority responded on 28 February 2017, accepting the findings of the draft and noting that an amendment of the building consent would need to be applied for.
- 4.3.3 The agent also responded on 28 February, accepting the draft determination and providing a sketch of the proposed toilet layout (which I have included as figure 1 in this determination).
- 4.3.4 In an email dated 2 March 2017 the agent noted that it was now unlikely that the alterations to the gymnasium would be carried out. The agent sought an order as to costs incurred for additional fees charged by the authority and design fees to amend drawings and specifications. I note here that a direction as to costs under section 190 can only be made in relation to a party’s costs ‘in respect of the determination or application if ... the party has contributed unreasonably to costs or delays’; an award for costs incurred in relation to the project is outside that which can be considered under section 190.

5. Discussion

5.1 The legislation

- 5.1.1 Central to this dispute is the interpretation of the requirements of section 112(1)(b) of the Act. The authority holds the view that this section of the Act means that the number of toilets cannot be reduced below the number existing prior to the alterations being carried out.
- 5.1.2 Section 112(1)(b) of the Act provides:
- 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,...
- (b) the building will,—
- (i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply with those provisions; or
- (ii) if it did not comply with the other provisions of the building code immediately before the building work began, continue to comply at least to the same extent as it did then comply.
- 5.1.3 Section 112(1)(b)(i) requires the building after the alteration to continue to comply with the provisions of the Building Code if the building complied prior to the building work being carried out (my emphasis). If the building exceeded the requirements of the Building Code, there is nothing in the Act to prevent the alterations bringing about a lesser level of performance, as long as the building work complies with the provisions of the Building Code.

- 5.1.4 In a previous determination⁸ I considered a similar issue regarding a change in the level of performance before and after an alteration. In that case it was a unit within a multi-unit building where the carpeted flooring was replaced with tiles. Although the acoustic performance of the floor coverings was different, the new building work i.e. the installation of the tiles, still met the requirements of Clause G6.3.2 in regards to airborne and impact sound.
- 5.1.5 *If* the number of existing facilities prior to the alteration complies with the provision of the Building Code, section 112(1)(b)(i) would apply. And if the number of existing facilities exceeded the performance requirements of the Building Code, that number may be reduced as long as compliance with the Building Code is still achieved.
- 5.1.6 The test in Section 112(1)(b)(ii) is different; first because it applies in respect of a building that, prior to the alterations being carried out, does not comply with the provisions of the Building Code, and second because the requirement is to continue to comply at least to the same extent as it did then comply. This means that if the building did not meet requirements of the Building Code it is not required to be upgraded to achieve compliance, but the alterations must not reduce the level of performance.
- 5.1.7 *If* in this case the number of personal hygiene facilities prior to alterations being carried out did not meet the performance requirements of the Building Code section 112(1)(b)(ii) would apply, and accordingly the number could not be reduced in the alterations.
- 5.1.8 Therefore, the first consideration in applying section 112(1)(b) must be whether or not the building prior to the alterations complies with the provisions of the Building Code, in this case Clause G1.

5.2 Establishing compliance

- 5.2.1 One matter to be addressed is whether it is appropriate to consider the complex as a whole and the number of personal hygiene facilities provided within it when establishing the compliance of the toilet block.
- 5.2.2 I have considered this in previous determinations⁹, particularly with regard to accessible toilet facilities, and I am of the view the same logic applies in this case – the Building Code does not require every building in a school complex to include toilets, it is sufficient if the complex as a whole contains sufficient toilets in convenient locations.
- 5.2.3 Based on the information provided in the Toilet Facilities Map (refer Appendix B), it appears that the existing facilities total 25 women’s toilets, 8 unisex accessible toilets, 2 men’s and 2 urinals. Using the Ministry’s toilet calculator, the number of existing personal hygiene facilities exceeds the number required if using G1/AS1 as a means of compliance, and so it meets the requirements of the Building Code. As the number of existing personal hygiene facilities complies with the Building Code, it is section 112(1)(b)(i) that applies in this case.

⁸ *Determination 2013/052 Regarding the compliance with Clause G6 (Airborne and impact sound) of replacement flooring in an apartment* (20 September 2013) Ministry of Business, Innovation and Employment

⁹ For example see *Determination 2007/80 Upgrading of accessible toilet facilities in alterations to Kaniere School, Hokitika* (20 July 2007) Department of Building and Housing.

5.2.4 I conclude that the reduction of the number of pans in the MLE toilet block to two does not reduce the number of facilities such that the complex as a whole would not comply after the alterations.

5.2.5 I note also that section 112 of the Act requires the building as a whole after the alterations comply 'as nearly as reasonably practicable' in respect of access and facilities for people with disabilities. I have not specifically considered compliance in respect of the number of accessible facilities provided.

6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the proposed alteration reducing the number of personal hygiene facilities in the MLE toilet block to two toilets complies with clause G1 of the Building Code to the extent required by section 112 of the Act in respect of the school complex.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 23 March 2017.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The relevant sections of the Act

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.

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,—

(a) the building will 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);...

(b) the building will,—

(i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply with those provisions; or

(ii) if it did not comply with the other provisions of the building code immediately before the building work began, continue to comply at least to the same extent as it did then comply.

A.2 Relevant provisions of the Building Code include:

Clause G1 – Personal hygiene

Functional requirement

G1.2 Buildings shall be provided with appropriate spaces and facilities for personal hygiene.

Performance

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.

A.3 The paragraphs of the Acceptable Solution G1/AS1 referred to in this determination:

3.4 Communal sanitary fixtures

3.4.1 Sanitary fixtures may be located in buildings separate from other accommodation. The length of travel shall be convenient taking account of the type and usage of the fixtures.

3.4.2 In camping grounds sanitary fixtures shall be located no more than 75 metres from any caravan or campsite.

Comment:

This situation applies normally to institution buildings, motor camps, caravan parks, maraes, outdoor pursuits centres, schools and military bases, but may apply to a group of dwellings.

Appendix B: Toilet facilities map (not to scale)

