

Determination 2023-016

Whether showers constructed without inbuilt seating or handrails comply with clause G1.3.4 of the Building Code

56 Rutherford Street, Nelson

Summary

This determination considers whether alterations to a building, undertaken during the internal fit out of a wellness centre, comply to the extent required by the Building Act 2004. Specifically, it considers whether the showers in the float rooms, which have been constructed without inbuilt seating or handrails, comply with clause G1.3.4 of the Building Code. Clause G1.3.4 requires that personal hygiene facilities provided for disabled people are accessible.

The legislation discussed in this determination is contained in Appendix A. In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Andrew Eames, Principal Advisor, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. Uplift Float Centre Ltd (“the lessee”), which is the company leasing the premises where the disputed building work is located
 - 1.2.2. Fords Creek Farm Limited (“the landlord”), which is the company that owns the premises where the disputed building work is located²
 - 1.2.3. Nelson City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. Because the matter concerns access and facilities for disabled people, I have consulted with the Office for Disability Issues (“ODI”) at Whaikaha/Ministry of Disabled People, as required under section 170.
- 1.4. This determination arises from the authority’s decision to refuse to issue a code compliance certificate for the internal fit out of a wellness centre in Nelson. The refusal arose because the authority is not satisfied that the showers in the float rooms, which have been constructed without inbuilt seating or handrails, comply with clause G1.3.4 of the Building Code. Clause G1.3.4 requires that personal hygiene facilities provided for people with disabilities are accessible.
- 1.5. The matter to be determined, under section 177(1)(a), is whether the building work to construct the showers in the building at 56 Rutherford Street comply to the extent required by the Act. To determine this matter, I must consider whether the showers that have been constructed without inbuilt seating or handrails comply with clause G1.3.4.

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

² The landlord did not make any submissions during the determination process.

2. The building work and background

- 2.1. The lessee applied for a building consent (BC170335) to undertake the internal fit out of the wellness centre premises, which was issued by the authority in June 2017. An amendment to the building consent was issued in November 2017.
- 2.2. The plans, approved in the building consent and later amendment, included an annotation to one of float rooms that said “shower fitted off as accessible unit”³. An “accessibility report” supporting the application for building consent noted that the proposed building work included installing “an accessible compliant toilet and shower in the tenancy”, and that showers “are level access and one will be fitted to comply with the accessible shower requirements, with seat and grab rails”.
- 2.3. The rooms containing sensory deprivation float pods are the only rooms in the wellness centre that have showers available to members of the public. The float rooms are soundproof rooms with a toilet, a level-threshold shower, and a float pod.
- 2.4. In May 2021, the authority emailed the lessee with a list of outstanding items that needed to be completed to enable the lessee to obtain a code compliance certificate. The lessee disputes the outstanding requirement to “complete the fixtures required for the accessible bathroom”.
- 2.5. Rather than providing an inbuilt fold down seat and handrail as per the approved building consent, the lessee proposed to use a removable shower seat which is “designed to cater for persons needing extra support or to sit while showering”. The authority refused to accept this proposal in lieu of providing an inbuilt shower seat and handrail, which it considers are required to meet the accessibility provisions for people with disabilities.

3. Submissions

The lessee

- 3.1. The lessee did not provide a submission in response to the authority’s determination application. However, their views are outlined in various items of correspondence with the authority.
- 3.2. The lessee considers that the unresolved matter preventing the authority from issuing the code compliance certificate is “due to differing opinions on the safest way to supply a disabled access shower on the premise”. The lessee states that removable shower seats are found in almost every care facility and benefit clients

³ The original layout plans show six float rooms. Inspections records note that amended plans were to come, with only two pods being installed and the remaining float rooms not being developed. Amended layout plans dated 8 November 2017 show a change in flooring of the two float rooms, but do not specify whether the remaining four rooms would be developed.

over a pull-down shower seat and rail because the arms on either side of the seat provide more support. They also note that a removable shower seat can be moved between rooms to accommodate those that may need it.

- 3.3. The lessee also provided an overview of the float procedure. Clients are required to shower before and after their float. In order to float, clients must climb inside the pods which have a wall height of approximately 60cm from the floor. Once the float session is complete, they must sit up, push the lid up and climb out of the pod, and go to the shower.
- 3.4. In earlier correspondence with the authority, the lessee stated that the service is unavailable to wheelchair users due to their ability to safely get in and out of the float pods. In later correspondence to the Ministry, the lessee stated that clients who use wheelchairs must have a support person with them to be assisted while showering and to be assisted to get in and out of the float pod safely. They consider that the use of a shower chair may increase accessibility to the pod by allowing the chair to be moved closer to the edge of the pod.
- 3.5. The lessee is also of the view that a fixed pull-down shower seat may create a hazard for non-disabled clients. If a client were to slip in the shower, the hard edge of the shower seat in upright position could, in the lessee's opinion, cause a more serious injury compared to a flush wall. The lessee believes that they have supplied "a sufficient alternative to supply disabled persons with what is a safer and more comfortable option, as well as improving safety of showering for able bodied people".

The authority

- 3.6. The authority's views were set out in its emails to the lessee. It noted, in summary:
 - 3.6.1. Accessible provisions are a mandatory requirement for any building with public access. The fit out was designed with accessible provisions in the building consent and that is why the authority was able to issue the consent. The accessible fixtures that were proposed as part of the consent are mandatory and the authority is not able to remove this requirement from the consent.
 - 3.6.2. It is a legal requirement that new building work complies with the Building Code, under section 17 of the Act. The objective at clause G1.1(c) of the Building Code is to "ensure people with disabilities are able to carry out normal activities and processes within buildings". The performance requirement at clause G1.3.4 requires that "personal hygiene facilities provided for people with disabilities shall be accessible".
 - 3.6.3. The authority would not accept the lessee's suggestion of using a portable shower seat as "these are used primarily in situations where the aid of a carer is required. The Building Code intends that anyone who uses [the

facilities may use them unaided, that is why [the] designer has included the seat and handrails in the design”.

- 3.6.4. The accessibility provisions are not solely applicable to someone who uses a wheelchair. Rather, they are required to assist any disabled people who use the service. This could include disabilities ranging from a vision impairment to people with sports injuries, or people who are not stable on their feet.

Office for Disability Issues (ODI)

- 3.7. ODI was sent a copy of the application and submissions, and offered the following comments (in summary):
- 3.7.1. The personal hygiene facilities without inbuilt seating or handrails are not compliant with clause G1.3.4.
- 3.7.2. The alternative proposal to use a removable shower seat is inadequate and fails to meet the requirements of the Act. It relies on (current and future) management practices and places responsibility for accessibility on people and their carers using the facility. It is not a “built environment solution” as provided for by the Act and associated regulations, standards, and guidance.
- 3.7.3. The lessee has made presumptions about disabled users, and that the requirements for accessible fixtures are primarily for wheelchair users and not all disabled people. The lessee’s comments about potential hazard risk to non-disabled clients seem to preference the interests of non-disabled clients over disabled clients.

4. Discussion

Legislation

- 4.1. Section 17 states that “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”. The fit out of the float rooms, including the showers, is new building work and must comply with the Building Code.
- 4.2. Section 118 concerns access to, and facilities for disabled people within buildings. It states:
- (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 a 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.

...

[my emphasis]

- 4.3. The wellness centre is a building that is open to members of the public. The normal activities in the float rooms include bathing in the float tank, changing, and showering, which requires sanitary facilities.
- 4.4. Per section 118, the requirement is that reasonable and adequate provision of sanitary facilities is made for disabled people. Determination 2010/089 noted that “what constitutes ‘reasonable and adequate provision’ for access is to be assessed against the performance requirements of the Building Code...”⁴ Likewise, what is considered “reasonable and adequate provision” of sanitary facilities is to be assessed against the performance requirements of the Building Code.
- 4.5. The objective of clause G1 – Personal hygiene (clause G1.1) is to:
- (a) safeguard people from illness caused by infection or contamination,
 - (b) safeguard people from loss of amenity arising from the absence of appropriate personal hygiene facilities, and
 - (c) **ensure people with disabilities are able to carry out normal activities and processes within buildings.** [my emphasis]
- 4.6. I note that there is a limit on the application of clause G1.1(c), in that it applies “...only to those buildings to which section 47A of the Act applies”. The reference is to section 47A of the Building Act 1991 which is no longer in force. The Building Code has not been amended to reflect this change in primary legislation. However, as noted in Acceptable Solution G1/AS1, the equivalent section in the Building Act 2004 is section 118.⁵ The wellness centre is a building to which members of the public are admitted, and therefore section 118 and objective G1.1(c) apply.
- 4.7. The functional requirement (clause G1.2) states that “buildings shall be provided with appropriate spaces and facilities for personal hygiene”.
- 4.8. Performance clause G1.3.4 states that “personal hygiene facilities provided for people with disabilities shall be accessible”. As per clause A2, “accessible” means “having features to permit use by people with disabilities”.

⁴ Determination 2010/089: Access for people with disabilities to a landscaped garden area, at [5.2.4]. Issued 20 September 2010.

⁵ See Acceptable Solution G1/AS1, Amendment 6, issued 10 October 2011, page 3.

Disabled People (“Persons with disabilities”)

4.9. Section 7 of the Act states:

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

4.10. I note that the New Zealand Standard 4121:2001 *Design for access and mobility: Buildings and associated facilities* (“the standard”), which is an Acceptable Solution for requirements of persons with disabilities⁶, describes various disabilities that would fall within the definition in the Act:

PEOPLE WITH DISABILITIES means people who whose ability to be freely mobile or to access and use buildings is affected by mental, physical, hearing or sight impairment, such as:

- (a) An inability to walk;
- (b) Walking difficulties;
- (c) Reliance on walking aids;
- (d) Partial sightedness or total blindness;
- (e) Hearing disabilities;
- (f) Lack of co-ordination;
- (g) Reaching disabilities;
- (h) Manipulation disabilities;
- (i) Lack of stamina;
- (j) Difficulties in interpreting and reacting to sensory information;
- (k) Extremes of physical size;
- (l) Learning difficulties.⁷

4.11. It is clear from section 7 of the Building Act that the term “persons with disabilities” is not limited to wheelchair users. There are a range of impairments that may affect a person’s ability to use the shower in the float rooms, and many people may benefit from accessible fixtures.

4.12. I also note that NZS 4121:2001 is referenced in the Acceptable Solution G1/AS1, and C10.1 of that standard states “the design of the toilet and shower facilities is intended to provide for unaided use by a person with a disability”.⁸

⁶ Section 119

⁷ Section 1.5 Definitions and interpretation, page 12.

⁸ NZS 4121:2001: Design for access and mobility: Buildings and associated facilities, page 53.

Compliance by way of Acceptable Solution G1/AS1

- 4.13. There are various ways in which building work can be shown to comply with the Building Code. One way is through demonstrating compliance with the relevant Acceptable Solution. For clause G1, this is Acceptable Solution G1/AS1 (“G1/AS1”).
- 4.14. G1/AS1 specifies layouts for fixtures in accessible showers. These include a self-draining and non-slip hinged seat, grab rail, sliding hand shower with a flexible hose, firmly fixed rail and lever control, and clothes hanging device in the drying space.⁹
- 4.15. G1/AS1 also cites NZS 4121:2001 as an Acceptable Solution, specifically section 10.¹⁰ Subsection 10.5.11 of the standard states:

Where showers are required for staff or public use, a wet-area shower shall be provided for people with disabilities. If two or more shower cubicles are provided, at least one shall have a seat and controls for the opposite hand.

Accessible shower cubicles may be complete in themselves or be part of a combined accessible toilet/shower facility.¹¹

- 4.16. In terms of fittings, the standard prescribes:

Shower cubicles shall have:

- (a) Grab rails, soap holders, and shower controls and fittings fixed in accordance with ...;
- (b) A hand-held showerhead attached to a flexible hose installed to enable the user to shower while sitting or standing;
- (c) A fitting shall be provided to allow the showerhead to be attached at various angles and heights between 1000 mm and 1900 mm above the finished floor level ...;
A combined slide/grab rail satisfying the requirements of Appendix F5, F6 and F7 may be acceptable.
- (d) A lever operated mixer shall be provided;
- (e) A water supply where the hot water has a maximum temperature of 55°C ...;
- (f) A self-draining, slip resistant seat, 800 mm x 450 mm minimum, provided inside the shower cubicle at a height between 450 mm and 550 mm above the finished floor level. This seat shall be securely fixed to the wall and shall be hinged so that it swings or folds out of the way;
- (g) A clothes hanging device shall be fitted, positioned between 1200 mm and 1350 mm above the finished floor level in drying spaces.¹²

- 4.17. I also note that for buildings categorised as ‘commercial’, G1/AS1 specifies that “where showers are provided include at least one *accessible* shower

⁹ Acceptable Solution G1/AS1, Amendment 6, issued 10 October 2011, see [4.2.2] and Figures 5 and 8.

¹⁰ Acceptable Solution G1/AS1, Amendment 6, issued 10 October 2011, page 20 at [4.2.7].

¹¹ NZS 4121:2001: Design for access and mobility: Buildings and associated facilities, page 59.

¹² NZS 4121:2001: Design for access and mobility: Buildings and associated facilities, subsection 10.5.11.4, page 60.

compartment”.¹³ One accessible shower unit was noted in the building consent and amendment plans which were approved by the authority.

- 4.18. The lessee has installed two level threshold showers in the float rooms but has not constructed either of the showers with a hinged seat and grab rail, or other fixtures that would assist people with disabilities in using the shower. Because the fixtures prescribed in the Acceptable Solution have not been installed, the showers do not comply with Building Code using the Acceptable Solution.

Compliance as an alternative solution

- 4.19. An Acceptable Solution is only one way to demonstrate compliance with the Building Code. Compliance can also be achieved through assessment directly against the performance criteria of the code as an alternative solution. In this case, the relevant performance criteria is clause G1.3.4, which states that “personal hygiene facilities provided for people with disabilities shall be accessible”.
- 4.20. The lessee has proposed, as an alternative solution, to use a removable shower seat that would be able to be moved between rooms, stating:

I propose to have a removable shower seat, designed to cater for persons needing support or to sit while showering, which can easily be moved between rooms to accommodate those that may need it, and not limit them to access of one room.

- 4.21. I note that the Building Act 2004 has the following purposes:

- (a) to provide for the regulation of **building work**, ... and the setting out of performance standards for buildings to ensure that –
- (i) ...
- (ii) **Buildings** have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them;
...¹⁴
[my emphasis]

- 4.22. It is ‘building work’ that is regulated and the ‘building’ that must contribute to the health, physical independence and well-being of the people who use it. This is achieved by meeting the minimum standards of the Building Code; in this case, to facilitate the use of the hygiene facilities.

- 4.23. The use of removable furniture relies on management practices which are not enforceable and may lapse over time or with change of lesseeship. This has been

¹³ Acceptable Solution G1/AS1, Amendment 6, issued 10 October 2011. Table 2: Number of Sanitary Fixtures, Baths and Showers, page 27.

¹⁴ Section 3 Purposes.

addressed in previous determinations, including Determination 2011/112 which stated:

In essence, buildings must comply with the performance criteria in the Building Code in their intended use, and this includes both current and future lessees of the property. As a result, management practices cannot be used to achieve compliance (except in limited circumstances dictated by statute), because current lessees cannot vouch for the behaviour of future ones.¹⁵

- 4.24. I do not consider that management practices, such as using a removable shower seat, meet the requirements of the Building Code, which regulates buildings and building work.
- 4.25. In terms of performance clause G1.3.4, an accessible shower must have features that permit use of the shower by disabled people. The level threshold is one such feature, which provides ease of access to the shower area. However, the lessee has not proposed building features in the absence of the accessible fixtures that were approved in the building consent that would meet the needs of disabled people, some of whom may need or prefer to be seated while showering or require a rail for safety and assistance with moving around the space. Due to the absence of fixtures to facilitate the use of the shower by disabled people, the performance criteria at clause G1.3.4 has not been met. Therefore, the showers in the float pod rooms do not comply by way of an alternative solution.
- 4.26. I note the lessee's submission that moveable shower chairs are safer due to having high arms which provide additional stability. Should they wish to do so, there is nothing preventing the lessee from providing movable shower furniture in addition to the fixtures that required in the showers to meet the minimum performance requirements of the Building Code.

5. Conclusion

- 5.1. The level threshold showers in the float pod rooms do not contain fixtures to facilitate the use of the shower by disabled people. As such, the showers do not comply with clause G1.3.4.
- 5.2. Because the work does not comply with the Building Code, it does not meet section 17 of the Act.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I determine that the level threshold showers, which have been constructed without inbuilt seating or handrails, do not comply with clause G1.3.4 and therefore do not comply to the extent required by the Act.

¹⁵ Determination 2011/112: Compliance of a pool barrier with a gate opening inwards to the immediate pool area, at [4.4.1]. Issued 22 December 2011.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 19 June 2023.

Andrew Eames

Principal Advisor Determinations

Appendix A

Building Regulations 1992 – Schedule 1: The Building Code

Clause G1—Personal hygiene

Objective

G1.1

The objective of this provision is to:

- (a) safeguard people from illness caused by infection or contamination,
- (b) safeguard people from loss of *amenity* arising from the absence of appropriate personal hygiene facilities, and
- (c) ensure *people with disabilities* are able to carry out normal activities and processes within *buildings*.

Limits on application

Objective G1.1(c) shall apply only to those *buildings* to which section 47A of the Act applies.

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.

G1.3.2 *Sanitary fixtures* shall be located, constructed and installed to:

- (a) facilitate *sanitation*,
- (b) avoid risk of food contamination,
- (c) avoid harbouring dirt or germs,
- (d) provide appropriate privacy,
- (e) avoid affecting occupants of adjacent spaces from the presence of unpleasant odours, accumulation of offensive matter, or other source of annoyance,
- (f) allow effective cleaning,
- (g) discharge to a plumbing and drainage system as required by Clause G13 Foul water when water-borne disposal is used, and
- (h) provide a healthy safe disposal system when non-water-borne disposal is used.

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*.

Limits on application

Performance G1.3.4 shall not apply to *housing, outbuildings, backcountry huts, ancillary buildings*, and to *industrial buildings* where no more than 10 people are employed.