



Determination 2020/032

Regarding the compliance of a soil fixture space without a hand basin with Building Code Clause G1 Personal hygiene at 38 Sandhurst Drive, Rolleston, Christchurch

Summary

This determination considers the compliance of a soil fixture space which does not contain a hand basin. The determination discusses the term “immediately adjacent” and whether the soil fixture space without a hand basin complies with Building Code Clause G1 Personal hygiene by way of the Acceptable Solution G1/AS1 and if not whether the space complies with Clause G1 as an alternative solution.

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, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry¹.
- 1.2 The parties to the determination are:
 - the owners of the property, S Dalzell and K Wyatt (“the owners”) represented by an agent (“the agent”) who applied for the determination
 - Selwyn District Council (“the authority”) carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises as a result of a request from the authority to the agent to review the soil fixture² space (“the WC”) to demonstrate compliance with the Acceptable Solution³ G1/AS1⁴. The authority is of the view that the WC without a hand basin (“basin”) does not comply with paragraph 3.3.1 of G1/AS1.
- 1.4 The matter to be determined⁵ is therefore whether the WC without a basin complies with Building Code Clause G1 Personal hygiene by way of G1/AS1 and if not, whether it complies with Clause G1 as an alternative solution.
- 1.5 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I have not considered any other aspects of the Act or Building Code beyond that required to decide on the matter to be determined.

¹ The Building Act and Building Code (Schedule 1 of the Building Regulations 1992) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents and guidance issued by the Ministry, is available at www.building.govt.nz.

² A “soil fixture” is defined in G1/AS1 as “a sanitary fixture constructed to receive solid and/or liquid excreted human waste. It includes bedpan disposal units, slop sinks, urinals, water closet pans, and water-flushed sanitary towel disposal units.”

³ A building consent authority must accept compliance with an Acceptable Solution or Verification Method as having complied with the provisions of the Building Code to which that Acceptable Solution or Verification Method relates.

A Verification Method is a means to establish compliance with the Building Code; refer to section 19 of the Act.

⁴ Acceptable Solution G1/AS1 Personal Hygiene for New Zealand Building Code Clause G1 (Second edition, Amendment 6 published 10 October 2011)

⁵ Under section 177(1)(a) of the Act

- 1.6 In this determination, unless otherwise stated, references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code.
- 1.7 Relevant provisions of the Act can be found in Appendix A.

2. The building work and background

- 2.1 As shown in Figure 1, the single storey 3 bedroom residential dwelling includes a double garage, a separate laundry, and an open plan living/dining and kitchen area. A hallway provides access from the entry to the bedrooms, bathroom, the WC and linen closet and to the open plan living and kitchen area.

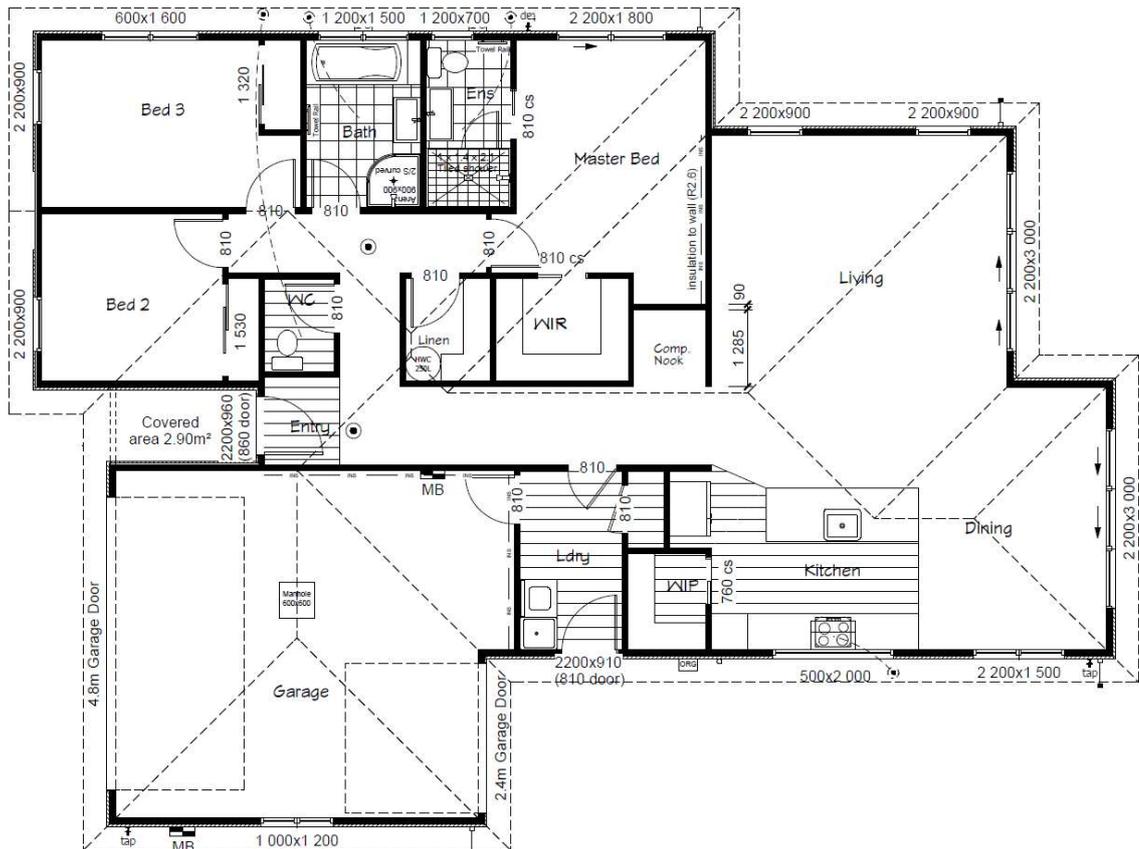


Figure 1: Floor plan (Not to scale)

- 2.2 In early 2020 an application for a building consent was lodged with the authority. The application identified the means of compliance with the Building Code, which included the Acceptable Solution G1/AS1 for Clause G1, with no alternative solution noted.
- 2.3 On 13 January 2020 the authority sent a request for information to the agent requesting:
- Please review the internally located WC as to demonstrate compliance with G1/AS1 3.3.1
- 2.4 On 19 February 2020 the agent liaised with the authority regarding the request for information and discussed possible solutions, including relocating the door to the WC to opposite the bathroom (refer Figure 2) and/or providing an additional door between the WC and the kitchen.

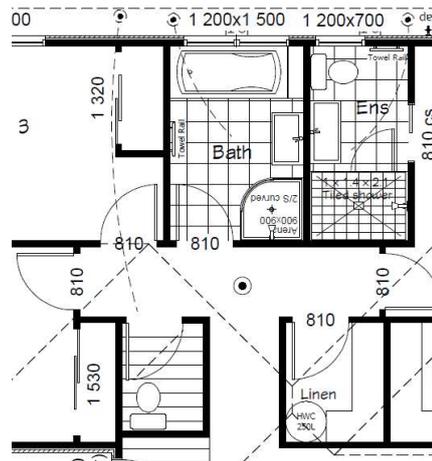


Figure 2: Alternative location of WC door (Not to scale)

- 2.5 The authority advised that with or without the additional door, the design remained non-compliant due to the WC not being immediately adjacent to the bathroom which contains a basin.
- 2.6 On 21 February 2020 the agent provided to the authority a revised design showing a basin in the WC and advised the authority of their intent to seek a determination.
- 2.7 The building consent was issued on 24 February 2020 and the Ministry received an application for determination on the same day, which was accepted on 9 March 2020.

3. The submissions

The owners' submission

- 3.1 The agent sent copies of the following with the application:
- the approved building consent plans
 - correspondence with the authority
 - a covering letter.
- 3.2 In their covering letter the owners advised they are seeking clarification on paragraph 3.3.1 of G1/AS1 asking if relocating the WC door to be opposite the bathroom or adding a second door between the WC and the kitchen would comply with paragraph 3.3.1 of G1/AS1.
- 3.3 The owner's submitted that walking out of the WC across the hallway to a bathroom is no different to walking out of the WC and into an adjoined bathroom.
- 3.4 On 26 August 2020 the Ministry confirmed the matter to be determined and clarified that the determination would consider whether:
- the WC without a basin complies with Clause G1 by way of G1/AS1 paragraph 3.3.1 or by way of an alternative solution
 - adding a second door between the WC and the kitchen would comply with Clause G1.

The authority's submission

3.5 The authority submitted the following (in summary):

- Paragraph 3.3.1 of G1/AS1 needs to be read in two parts with part one being that “Basins shall be located in spaces containing a soil fixture, **or** in an immediately adjacent space.” (authority’s emphasis)
- “immediately adjacent” is not defined in section 7 of the Act, which means it must be given its usual and ordinary meaning in the context of the text where it occurs. In the Oxford Dictionary of English (3rd ed.) this meaning is given as:

Immediately

Adverb. - Without any intervening time or space: she was sitting immediately behind me.

Adjacent

Adjective. - Next to or adjoining something else: adjacent rooms | the area adjacent to the station.

- It is clear from these definitions that ‘immediately adjacent’ means more than close by or in the general vicinity.
- The second part of paragraph 3.3.1 of G1/AS1 also has the requirement in household units to provide a basin within the soil fixture space where only a single door is provided between the soil fixture space and a kitchen.

3.6 A draft determination was issued to the parties for comment on 30 September 2020.

3.7 The agent responded on 14 October 2020 accepting the draft determination without comment.

3.8 The authority responded on 14 October 2020 accepting the draft determination subject to non-contentious comments.

4. Discussion

4.1 The matter to be determined is whether the WC without a basin complies with Clause G1 Personal hygiene.

4.2 The relevant objective and functional requirement of Clause G1 are:

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) ...

Functional requirement

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

4.3 The objective and functional requirement of Clause G1 is reflected in the first purpose⁶ of the Act which is to ensure that ‘people who use buildings can do so safely and without endangering their health’ (refer Appendix A).

⁶ Section 3 of the Act

4.4 In this case the relevant performance requirement of Clause G1 is Clause G1.3.2, which states:

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

- (a) Facilitate sanitation⁷,
- (b) Avoid risk of food contamination,
- (c) ...

Compliance with Clause G1 by way of G1/AS1

4.5 One way to comply with the Building Code is to propose a design in accordance with an Acceptable Solution, which sets out prescriptive requirements for establishing compliance with the relevant provisions of the Building Code. Under sections 19 and 22 (refer Appendix A), an authority must accept compliance with an Acceptable Solution as establishing compliance with the Building Code.

4.6 Paragraph 3.3.1 of G1/AS1 discusses the requirements for basins in spaces containing a soil fixture:

3.3.1 Basins shall be located in spaces containing a *soil fixture*, or in an immediately adjacent space. However, where only a single door is provided between the *soil fixture* space and a kitchen in household units (see Paragraph 3.2.1), a basin shall be provided within the soil fixture space.

4.7 The comment in G1/AS1 immediately below paragraph 3.3.1 states:

Comment:

1. The essential requirement is the provision of a basin with cold water immediately available to users of soil fixtures particularly before handling food. While perhaps preferable, it is often not required or practical to supply hot water in some places such as roadside rest areas.
2. It is not acceptable for the kitchen sink to be used as a hand basin.

4.8 I agree with the authority that there are two parts to paragraph 3.3.1 of G1/AS1 that need to be considered. Addressing the second part to paragraph 3.3.1 of G1/AS1 first; there is only a single door provided between the WC and the kitchen and as there is no basin in the WC the requirements of paragraph 3.3.1 of G1/AS1 have not been met.

4.9 In the following paragraphs I address the first part to paragraph 3.3.1 of G1/AS1 and the request from the agent for clarification on whether relocating the WC door to be opposite the bathroom or whether adding a second door between the WC and the kitchen would comply with paragraph 3.3.1 of G1/AS1 (refer paragraph 3.2).

4.10 The first part to paragraph 3.3.1 of G1/AS1 requires basins to be located in spaces containing a soil fixture, or in an immediately adjacent space (my emphasis). The authority notes that the term “immediately adjacent” is not defined in section 7 of the Act, nor in G1/AS,1 and therefore must be given its usual and ordinary meaning in the context of the text where it occurs.

⁷ “Sanitation” is defined in Clause A2 Interpretation as: The term used to describe the activities of washing and/or excretion carried out in a manner or condition such that the effect on health is minimised, with regard to dirt and infection.

- 4.11 In considering the Oxford English Dictionary definitions of “immediately” and “adjacent” (refer paragraph 3.5) I am of the view that an “immediately adjacent” space in the context of paragraph 3.3.1 of G1/AS1 could mean a space that is:
- adjoined to the space, or
 - next to the space without any intervening space.
- 4.12 The Oxford English Dictionary definition of *adjoin*⁸ means “Be next to and joined with (a building, room, or piece of land)”. As the bathroom is not adjoined to the WC, I am of the view that it is not an “immediately adjacent” space for the purposes of G1/AS1 paragraph 3.3.1.
- 4.13 The bathroom is close enough to the WC to be considered next to it, however there is an intervening space between the WC and the bathroom being the hallway, therefore the bathroom cannot be considered immediately adjacent to the WC for the purposes of G1/AS1 paragraph 3.3.1.

G1/AS1 Paragraph 3.3.1 conclusion

- 4.14 In conclusion I am of the view that:
- The WC without a basin and only a single door between the WC and kitchen does not meet the requirements of G1/AS1 paragraph 3.3.1
 - The bathroom is not an immediately adjacent space for the purposes of G1/AS1 paragraph 3.3.1
- 4.15 I am therefore of the view that whether or not a second door is provided between the WC and kitchen, the design would not comply with the relevant performance criteria of Clause G1 by way of G1/AS1 as a basin has not been located either in the WC or in an immediately adjacent space.

Alternative solution

- 4.16 Compliance with an Acceptable Solution is only one way of achieving compliance with the Building Code. A design solution which differs to the specific and prescriptive requirements detailed in an Acceptable Solution is referred to as an alternative solution.
- 4.17 Considering whether a design complies with the Building Code as an alternative solution requires assessing that design directly against the relevant Building Code performance criteria which in this instance requires sanitary facilities to be located, constructed and installed to facilitate sanitation and avoid risk of food contamination (refer paragraph 4.4).
- 4.18 I note here that some Acceptable Solutions are written conservatively to cover the worst case scenario which means that they may be modified in less extreme cases and the resulting alternative solution will still meet the performance criteria and functional requirements of the Building Code.
- 4.19 While I note there is “intervening space” between the WC and the bathroom, in this instance I agree with the agent that walking out of the WC (either with the door as located in Figure 1 or opposite the bathroom as shown in Figure 2) to the bathroom is not substantially different to walking out of the WC and into an adjoined bathroom,

⁸ “adjoin”, verb: Oxford English Dictionary. Web. Accessed 25 August 2020.

noting that a door in an adjoined bathroom could be a number of metres away depending on its configuration.

- 4.20 The second part to paragraph 3.3.1 of G1/AS1 requires a basin within a soil fixture space where only a single door is provided between the soil fixture space and a kitchen. I am of the view that adding a second door between the WC and the kitchen is not necessary in this instance to satisfy the relevant performance requirement of Clause G1.3.2, which is to facilitate sanitation and avoid risk of food contamination.
- 4.21 Further I note here the comment in G1/AS1 immediately below paragraph 3.3.1 (refer paragraph 4.7) which provides context to and clarification regarding paragraph 3.3.1 of G1/AS. The comment to paragraph 3.3.1 of G1/AS1 notes:
- The essential requirement is the provision of a basin with cold water immediately available to users of *soil fixtures* particularly before handling food.
- 4.22 I am of the view that this comment also provides clarification on the relevant performance requirements of Clause G1.3.2. In other words, to satisfy the relevant performance requirements of Clause G1.3.2 a basin with cold water immediately available to users of *soil fixtures* particularly before handling food shall be provided.
- 4.23 As shown in Figure 1 the bathroom is located relatively near to the WC compared to the location of the kitchen. Given this, and that the laundry which contains a tub is also located between the WC and the kitchen, I am of the view that the essential requirement to have a basin immediately available to users of the WC before handling food has been met. Therefore I am satisfied the sanitary fixtures are located to facilitate sanitation and avoid risk of food contamination, and the design complies with performance criteria G1.3.2 as an alternative solution.
- 4.24 I emphasise that each determination is conducted on a case-by-case basis. The fact that the WC has been established as complying with Clause G1 in this particular situation and configuration does not necessarily mean that the same arrangement will comply with the Building Code in another situation.

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:
- The WC without a basin does not satisfy paragraph 3.3.1 of G1/AS1.
 - The WC without a basin complies with Clause G1 Personal hygiene as an alternative solution.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 9 December 2020.

Katie Gordon
Manager Determinations

Appendix A: The relevant legislation

Relevant provisions of the Building Act 2004

Provisions of the Building Act 2004 relevant to this determination include:

3 Purposes

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
 - (i) people who use buildings can do so safely and without endangering their health; and

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:
 - (a) ...
 - (b) compliance with an acceptable solution:

22 Acceptable solution or verification method for use in establishing compliance with building code

- (1) ...
- (2) A person who complies with an acceptable solution or a verification method must, for the purposes of this Act, be treated as having complied with the provisions of the building code to which that acceptable solution or verification method relates.