

Determination

under the

Building Act 1991

No. 94/001: Sanitary facilities in a restaurant

1. The matter to be determined

1.1 The matter before the Authority was a dispute as to whether:

- (a) The sanitary facilities provided for use by the patrons of a restaurant should be separate from the sanitary facilities provided for use by the staff, or whether they may be combined in one location as proposed by the owner, and
- (b) Whether the proposed location was convenient for the staff.

1.2 The Authority takes the view that it is being asked to determine:

- (a) Whether the proposed combined facilities comply with Approved Document G1, and specifically with Table 1 of acceptable solution G1/AS1, and must therefore be accepted as complying with the New Zealand Building Code (the First Schedule to the Building Regulations 1992), and
- (b) Whether the proposed facilities comply with clause G1.3.3 of the New Zealand Building Code.

1.3 In making its determination the Authority has not considered whether the plans and specifications of the proposed building comply with any other provisions of the New Zealand Building Code unless specifically stated below.

1.4 The territorial authority concerned was the applicant, the other party was the owner of the proposed building.

2. Separation of facilities

2.1 General

2.1.1 The plans submitted with the application show that the proposed building is a restaurant with a single toilet area intended for the use of both patrons and staff. Access to the toilets is through the public dining area. Separate handwashing facilities are provided for staff in the kitchen area in addition to those provided in the toilet area.

2.1.2 The territorial authority contends that toilet facilities provided for staff should be separate from those provided for patrons. It is not disputed that the numbers of sanitary fixtures provided comply with the New Zealand Building Code.

2.1.3 The Authority notes that clause G1 of the New Zealand Building Code provides, amongst other things, that sanitary fixtures shall:

- Be appropriate for the people who are intended to use them, and
- Be located, constructed and installed to facilitate sanitation and avoid risk of food contamination.

2.1.4 The Authority notes that the relevant entries in Table 1 of acceptable solution G1/AS1 in Approved Document G1 are:

Defined uses	Numbers of sanitary fixtures
<p>Communal non-residential:</p> <p>Places of public assembly, entertainment, recreation and eating houses (e.g. theatres, halls, bars, restaurants, and swimming pools)</p> <p>Staff facilities</p>	<p><u>Females</u></p> <p>1 Up to 50</p> <p>etc.</p> <p>Provided in accordance with Commercial buildings</p>
<p>Commercial:</p> <p>Offices, shops.</p>	<p><u>Females</u></p> <p>1 Up to 15</p> <p>etc.</p>

2.2 *The parties' contentions*

2.2.1 The territorial authority contends that Table 1 "by indicating the need for staff toilets separately indicates that they should be for staff use exclusively".

2.2.2 In support of that interpretation of Table 1, the territorial authority argues that separate facilities for staff are necessary for compliance with the New Zealand Building Code in respect of avoiding risk of food contamination for the reasons set out in 2.3 below.

2.2.3 The owner contends that the proposed building complies with the relevant provisions of the Approved Document and will achieve the corresponding performance criteria specified in the New Zealand Building Code. The owner also provided a survey of the usage of toilet

facilities in other restaurants that it owned, together with extensive information as to the owner's cleaning routines and staff instructions.

2.3 *The interpretation of the Approved Document*

2.3.1 The Authority considers that the fact that Table 1 has separate entries for staff and for others does not imply that separate facilities are required. The Authority would in any case be reluctant to accept that such a significant requirement should be implied merely from the typographical layout of a table.

2.3.2 In this case, separate entries in Table 1 are necessary because the numbers of facilities required for patrons are different from the numbers required for staff. They are different because patrons, who are present for a comparatively short time, generate a different demand for sanitary facilities than do staff, who are present for a longer time. Thus no requirement for separate facilities can be taken from the separate listings.

2.3.3 That is enough to dispose of the issue, because if the proposed building will comply with the Approved Document then under section 50 of the Building Act it must be accepted as complying with the New Zealand Building Code. Consideration of whether or to what extent the provisions of the Approved Documents do in fact achieve the corresponding performance criteria specified in the New Zealand Building Code is therefore irrelevant.

2.3.4 That is not to say that the Approved Documents cannot be improved, and the Authority undertakes ongoing reviews of all of the Approved Documents and indeed of the New Zealand Building Code itself. Those reviews are assisted by the process of considering applications for determinations which draw attention to problems arising in particular circumstances as to the application of particular provisions of the Approved Documents or of the New Zealand Building Code.

2.3.5 Any proposed amendments to the New Zealand Building Code or the Approved Documents resulting from those reviews must be made in accordance with sections 48 and 49 of the Building Act. It would therefore be inappropriate to discuss the merits, as distinct from the interpretation or application, of the Approved Documents and the New Zealand Building Code in a determination such as this. However, in response to the extensive submissions made by the parties, other matters that go beyond the narrow question of the interpretation of Approved Document G1 are discussed in outline below, but without prejudice to the Authority's future reviews of the relevant provisions.

2.4 *Food contamination issues*

2.4.1 The Authority carefully considered the submissions from the parties, and was also assisted by comments solicited from the Ministry of Health as well as from the Authority's own consultants. The Ministry emphasised the importance of hygienic procedures, but observed that it was more difficult to maintain hygienic conditions in combined facilities than in facilities used by staff only, and therefore favoured the provision of separate facilities.

2.4.2 The territorial authority argued that separate facilities for staff are necessary for compliance with the New Zealand Building Code in respect of avoiding risk of food contamination because:

- (a) In the territorial authority's view " . . . contamination of clothing, footwear and personal effects can occur in an area of common ablution facilities shared with the public. Peak usage can leave toilet facilities with faecal and other contamination between cleansing. The risk of cross contamination would be significantly reduced if staff only facilities were available."
- (b) When consulted about the building by the territorial authority, the local Medical Officer of Health stated that "Lack of separate staff toilet accommodation can impact on food safety as the staff has the potential to bring contamination back to the food preparation area after visiting the toilet" and "over 90% of the food related illness is due mainly to lapses in food hygiene practices, including not washing the hands after visiting the toilets. The problem is therefore compounded if patrons of busy restaurants and staff share the same toilets."

2.4.3 However, the Medical Officer of Health also stated that "evidence that so much food related illnesses is directly associated with the lack/or absence of separate staff facilities . . . is not available anywhere".

2.4.4 The Authority has been advised that the scientific literature on food contamination emphasises the vital importance of hand washing but treats toilet walls and floors as unlikely sources of food contamination. Thus the Authority accepts that contamination of clothing, footwear and personal effects is far less likely to lead to contamination of food than is contamination of hands. That is not to denigrate the need for good cleaning of toilets, but with combined toilets staff will be likely to realise that special cleaning is needed earlier than with separate toilets. In either case, the necessary cleaning will be done by staff who will then have the same potential to bring back contamination as if they had visited the toilets to use them instead of to clean them.

2.4.5 The Authority also considers that staff would be no less likely to wash their hands after using or cleaning combined toilets than after using or cleaning separate toilets. The Authority also notes that facilities for hand washing are provided in the food preparation area as well as in the toilet area.

2.4.6 The Authority has also considered the relevant statutory requirements that applied before the Building Act came into force. In essence, those requirements were that:

- (a) Under the Factories and Commercial Premises Act 1981 all "undertakings", which included restaurants, were required to provide certain sanitary conveniences for people working in those undertakings, in other words, for staff only.
- (b) Under the Food Hygiene Regulations 1974, food premises were required to be "provided with sufficient toilet accommodation, in accordance with the Drainage and Plumbing Regulations 1959, for workers on the premises", (since amended to refer to the New Zealand Building Code).

- (c) Under the Drainage and Plumbing Regulations 1978, licensed premises were required to provide certain sanitary facilities:
 - (i) In that part of the premises used for the accommodation of guests, with separate facilities for staff, and
 - (ii) In each "bar dining room, conference room, or lounge in which liquor is supplied" in relation to "the number of persons served thereby" with separate facilities for staff "when they reside on the premises".

2.4.7 Under the previous law, therefore, there was no requirement for separate facilities in any restaurants, and indeed there was no requirement that sanitary facilities should be provided for anyone other than the staff of non-licensed restaurants. Thus the effect of the New Zealand Building Code has been to require all restaurants to meet the requirements that previously applied only to licensed restaurants.

2.4.8 The Authority was conscious that the restaurant concerned is a "family-type" restaurant of significant size, whereas the determination would affect smaller establishments such as lunch-bars and the like. If separate facilities were required, such establishments would have to have to provide twice as many facilities as those previously required. The Authority also notes that in some buildings the staff of different tenants (which might include restaurant staff) share sanitary facilities which may or may not be available to clients, patrons, or visitors.

2.4.9 The fact that the determination would affect the entire range of "eating establishments" meant that the owner's submissions as to its cleaning routines and staff instructions were irrelevant. What is relevant is that the Food Hygiene Regulations require proper attention to hygiene, particularly hand-washing and cleanliness, in all premises where food is handled. The Building Act requires in effect that any such building lends itself to proper hygiene procedures, but the Building Act cannot control such procedures. Conversely, the Authority considers that it is entitled to rely on the proper enforcement of such procedures when considering the requirements under the Building Act for buildings in which those procedures will apply.

3. Location of facilities

3.1 The combined facilities are about 50 metres from the furthest point in the staff area, and about half that from the furthest point in the patrons area. Staff would have to pass through the patrons area to reach the facilities.

3.2 In the Approved Documents, the only quantified requirement for the distance that must be travelled to reach sanitary facilities is the maximum of 75 metres relating to camping grounds that is required by paragraph 3.4.2 of acceptable solution G1/AS1 in Approved Document G1.

3.3 The Authority notes that the distance of 50 metres would frequently be exceeded in office buildings of any size. The Authority places no weight on the fact that staff will have to pass through the public dining area to reach the toilet facilities. Staff will be constantly passing through that area to serve meals, to clean, and so on.

3.4 The Authority therefore considers that the proposed facilities are conveniently located for both patrons and staff.

3. The Authority's decision

3.1 The Authority therefore determines that the proposed combined facilities comply with the relevant provisions of the New Zealand Building Code.

3.1 Accordingly, in accordance with section 20(a) of the Act the Authority hereby reverses the decision of the territorial authority to refuse a building consent in respect of those facilities.

Signed for and on behalf of the Building Industry Authority on this 27th day of April 1994

J H Hunt
Chief Executive