



Determination 2010/001

Whether an existing shopping centre at Grandview Road, Hamilton, is insanitary under section 124 of the Building Act

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, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department.

1.2 The parties to this determination are:

- the applicant, the Hamilton City Council carrying out its duties and functions as a territorial authority or a building consent authority (“the authority”).
- the Islington Property Trust (“IPT”) who is the majority owner of the retail premises making up the New Nawton Shopping Centre (“the shopping centre”)
- the 13 owners of the other retail premises acting through the body corporate.

1.3 I take the view that the matters for determination under sections 177(a) and 177(e) of the Act² are whether:

- The shopping centre, without the provision of sanitary facilities for use by the public (“patrons of the shopping centre”) complies with the requirements of Building Code Clause G1 Personal Hygiene (Schedule 1, Building Regulations 1992)
- Whether the shopping centre is insanitary as defined in section 123 of the Act.

1.4 In making my decision, I have considered the submissions of the parties and the other evidence in this matter.

2 The shopping centre

2.1 The shopping centre comprises a number of adjacent buildings that contain retail premises and one bar.

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

² 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.

- 2.2 The bar has toilet facilities for its patrons. The shops have toilet facilities for the use of staff.
- 2.3 There are toilets in the shopping centre that were originally available for the patrons of the shopping centre (“the shopping centre toilets”) but, according to the authority, these have been closed to the public for the last 3 to 4 years, with access only provided only for the staff in the shopping centre.
- 2.4 I understand there are public toilets located approximately 150 metres from the shopping centre.

3 Background

- 3.1 On 10 February 2006, IPT faxed the authority noting its concern regarding the lack of public toilet facilities at the shopping centre. IPT was of the opinion that, in accordance with the requirements of the Approved Document G1/AS1, public toilets were required to satisfy the Schedule 1 of the Building Regulations 1992. With respect to the shopping centre toilets, IPT was concerned that:
- given that the shopping centre has a net customer area of approximately 3,300m², the existing shopping centre toilets did not satisfy the requirements of Tables 1 and 3 of G1/AS1
 - the handrails for persons with disabilities in the existing toilets do not meet the requirements of paragraph 4.2.2 of G1/AS1
 - the standard of the toilets did not meet the requirements of the Schedule 1 of the Building Regulations 1992, nor the requirements of Clause E3.
- 3.2 The authority wrote to IPT on 1 March 2006, saying that, in accordance with Clause G1, it accepted that toilet facilities are required in shopping malls for use by mall patrons. It noted that, while the shopping centre may have complied with the requirements for toilet numbers when it was built, it may not comply at the present time. The authority had little or no authority to impose more toilets than have been provided when built. While the authority could not ensure that toilet numbers need to be increased for alteration work, it was keen to see the accessible toilets upgraded to comply with the current Building Code.
- 3.3 The Body Corporate faxed IPT on 3 March 2006 stating that the shopping centre was a “stand alone shopping centre”, not a mall or a plaza and that two recently opened substantial local shopping centres had not been required to provide public toilets. According to the Body Corporate, the authority was of the opinion that, while it would like the shopping centre to have public toilets, they were not ‘essential’.
- 3.4 The Body Corporate faxed the authority on 8 March 2006 stating that:
- some of the shops have their own toilets for staff and patrons and other shops use shared toilet facilities
 - the bar is open 7 days per week and provides toilet facilities for the staff and patrons, including persons with disabilities
 - following recent alterations, the shopping centre is no longer a mall nor a plaza but rather a stand-alone shopping centre.
 - the owners had spent a large amount of money maintaining the existing toilet facilities

- one shop owner has upgraded the shopping centre toilets and wished to take them over. A situation that is acceptable to the other retail owners.
- 3.5 An email from the authority dated 29 April 2009 noted that, following an inspection of the shopping centre, it was of the opinion that it was no longer a mall, but rather a group of retail shops and one bar. The email advised that the Building Code did not require the provision of sanitary facilities for patrons of retail shops. Accordingly, it considered the shopping centre at present was code-compliant. The authority also suggested some measures that could be undertaken that might solve the current situation.
- 3.6 The application for a determination was received by the Department on 20 July 2009 and, on receipt of the appropriate fee, the determination process commenced on 28 September 2009.

4 The submissions

- 4.1 None of the parties made a submission.
- 4.2 The authority forwarded copies of:
- some floor and site plans relating to the various stages of the Complex development
 - some photographs showing some aspects of the Complex
 - the correspondence between the parties.
- 4.3 The draft determination was sent to the parties for comment on 30 November 2009. All the parties accepted the draft without comment.

5 The relevant legislation

- 5.1 The relevant provisions of the Act are:

123 Meaning of insanitary building

A building is insanitary for the purposes of this Act if the building—

- (a) is offensive or likely to be injurious to health because—
 - (i) of how it is situated or constructed; or
 - (ii) it is in a state of disrepair; or
- (b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or
- (c) does not have a supply of potable water that is adequate for its intended use; or
- (d) does not have sanitary facilities that are adequate for its intended use.

- 5.2 The relevant provisions of the Building Code include:

CLAUSE G1—PERSONAL HYGIENE

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

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

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

5.2 The Acceptable Solution for Clause G1, G1/AS1, includes the following provision:

1.1.2 WC pans and basins are required in any building where people:

- a) live or are accommodated, or
- b) work, or
- c) eat food or drink on the premises, or
- d) assemble

6 Discussion

6.1 Buildings are required to be provided with sanitary facilities appropriate to the use of the building, and, if sanitary facilities are required, they are to be provided in numbers appropriate to the use and population of the building.

6.2 Paragraph 1.1.2 of G1/AS1 describes what buildings are required to be provided with sanitary facilities. In this instance the shopping centre provides places where people work (in the retail premises and the bar), and eat food and drink (in the bar).

6.3 I note there is no dispute that the appropriate sanitary facilities have been provided for the retail premises and the bar, and I therefore presume that the numbers of facilities provided for both uses are sufficient.

6.4 Clause G1/AS1 does not require patrons of retail premises to be provided with toilet facilities.

6.5 The shopping centre does not contain an enclosed space of sufficient size that could be considered a place of assembly, as is typically the case for large enclosed shopping complexes. In this instance there is one small internal corridor-like space that is for pedestrian use. I do not consider the spaces could be used as places of assembly, therefore sanitary facilities are not required to allow for that use.

6.6 In summary, therefore, the need for sanitary facilities to the shopping centre is determined as follows:

Does the shopping centre provide this use?		Are sanitary facilities required?	
		Staff use	Patron use
Where people work	Yes (Retail premises & the bar)	Yes	No
Where people eat and drink	Yes (the bar)	Yes	Yes
Where people assemble	No	n/a	n/a

6.7 I conclude that the shopping centre is not required to have sanitary facilities for use by the public in order to comply with Clause G1. That being the case, the shopping centre cannot be considered insanitary in terms of section 124 of the Act.

7 The decision

7.1 In accordance with section 188 of the Act, I determine that:

- the shopping centre, without the provision of the sanitary facilities provided for patrons of the centre, complies with Building Code Clause G1
- the shopping centre is not insanitary as defined in section 123 of the Building Act.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 20 January 2009.

John Gardiner
Manager Determinations