

Determination 2005/29

Appropriate privacy for single sex toilets at a co-educational school

1 THE MATTER TO BE DETERMINED

- 1.1 This is a determination under section 17 of the Building Act 1991 (“the Act”), as amended by section 424 of the Building Act 2004, made under due authorisation by me, John Gardiner, Determinations Manager, Department of Building and Housing, for and on behalf of the Chief Executive of that Department.
- 1.2 The matter for determination is a dispute about whether single sex toilets at a co-educational high school provide “appropriate privacy” as required by clause G1.3.2(d) of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making my decision, I have not considered any other aspects of the building code.

2 THE PARTIES

- 2.1 The applicant was the owner of the building, acting through a firm of architects. The only other party was the territorial authority.

3 THE TOILETS

- 3.1 The toilets concerned are identified as Toilets 1.10 and 1.11, shown in Figure A, and Toilet 1.21 shown in Figure B.
- 3.2 There was some confusion over terminology in the various submissions outlined below. I have not, of course, altered quotations from the submissions, but the terminology I use in this determination, referring to Figures A and B, is:

“Toilet” means a space containing WCs and basins.

“Lobby” means a space separating a toilet from a general public area. The lobbies to Toilets 1.10 and 1.11 are the spaces containing the drinking fountains. Toilet 1.21 has no lobby.

“General public area” means a space from which people access a toilet either directly or through a lobby.

“WC cubicle” means a separated space containing a WC within a toilet.

See 6.1.1 below for the application of that terminology to Figure 10 of G1/AS1.

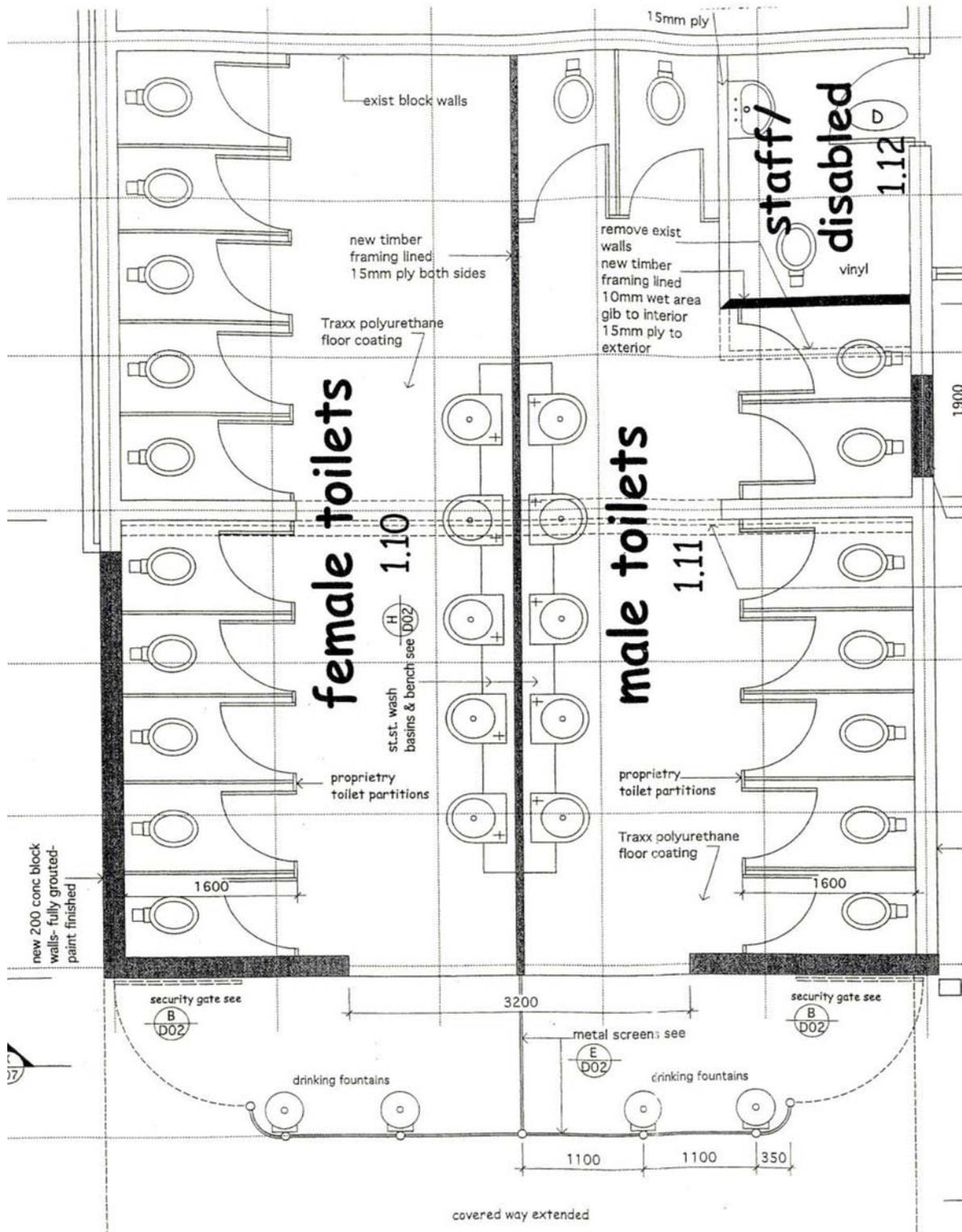


Figure A: Toilets 1.10 and 1.11
(architect's plan)

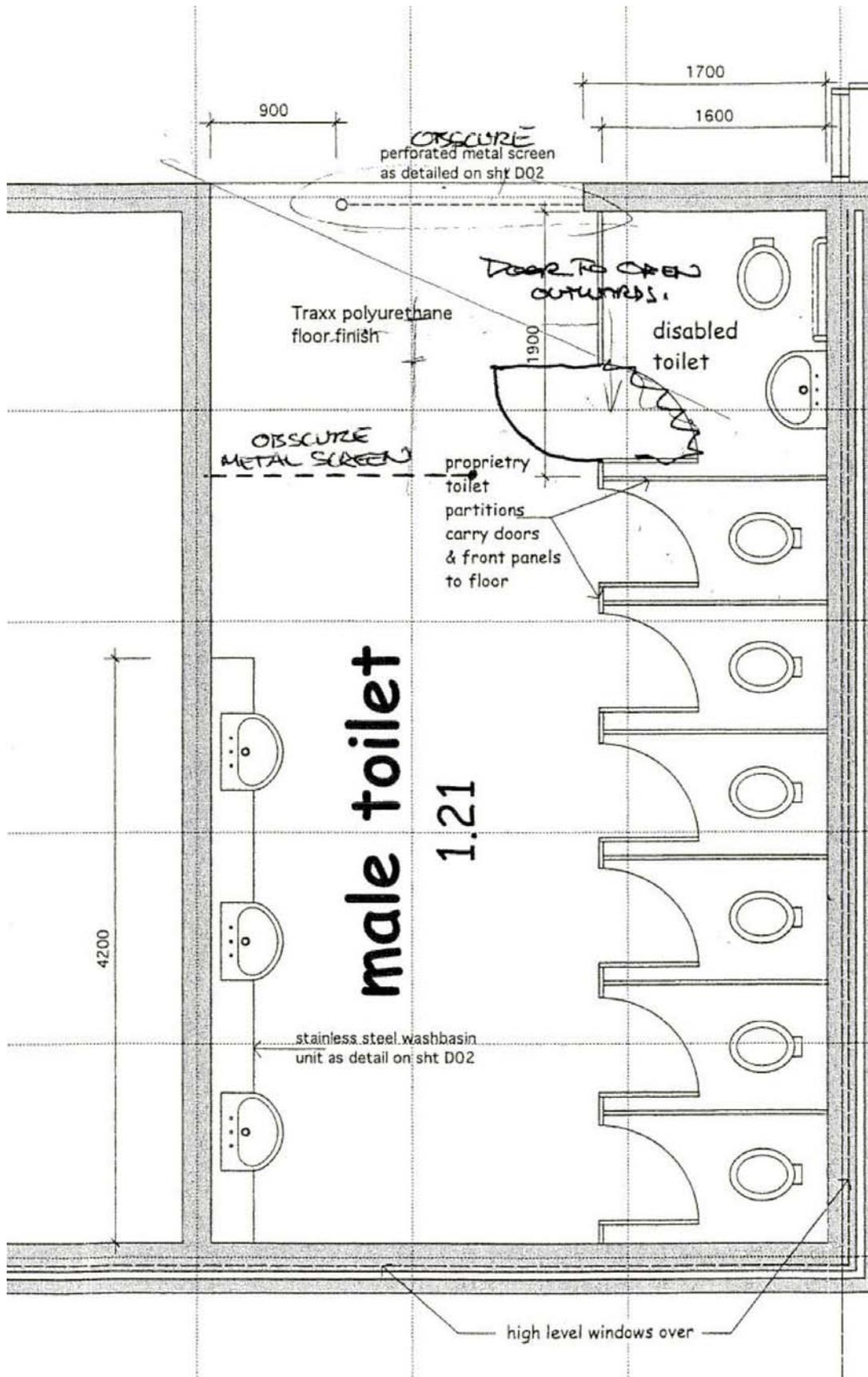


Figure B: Toilet 1.21
(architect's plan annotated by the territorial authority)

- 3.3 The “metal screens” shown on Figures A and B are of perforated metal 3 mm thick and with perforations of approximately 10 mm diameter that give an open area of approximately 41%.
- 3.4 The territorial authority refused to grant a code compliance certificate in respect of the toilets because it was not satisfied that they provided appropriate privacy as required by clause G1.3.2(d) of the building code. The applicant disputed that decision and applied for this determination.

4 THE BUILDING CODE AND THE ACCEPTABLE SOLUTION

4.1 The relevant provisions of the building code are:

(a) In clause A2:

“**Sanitary fixture** Any fixture which is intended to be used for sanitation.

“**Sanitation** 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.”

(b) In clause G1:

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

“(d) Provide appropriate privacy”

4.2 The relevant provisions of the acceptable solution, G1/AS1, are:

“**Privacy** The situation of being withdrawn from view.

“**Soil fixture** A sanitary fixture constructed to receive solid and/or liquid excreted human waste . . .

“**3.3.1** Basins shall be located in spaces containing a soil fixture, or in an immediately adjacent space. . . .

“**6.1.1** There shall be no direct line of sight between a general public area and a WC, urinal, bath, shower, or bidet. See Figure 10 for acceptable layouts.

“**6.3.1** Lobbies between the space containing sanitary facilities and general public areas are not necessary to meet privacy and line of sight requirements, but if provided:

“a) They shall be independent for each sex if the facilities are single sex”

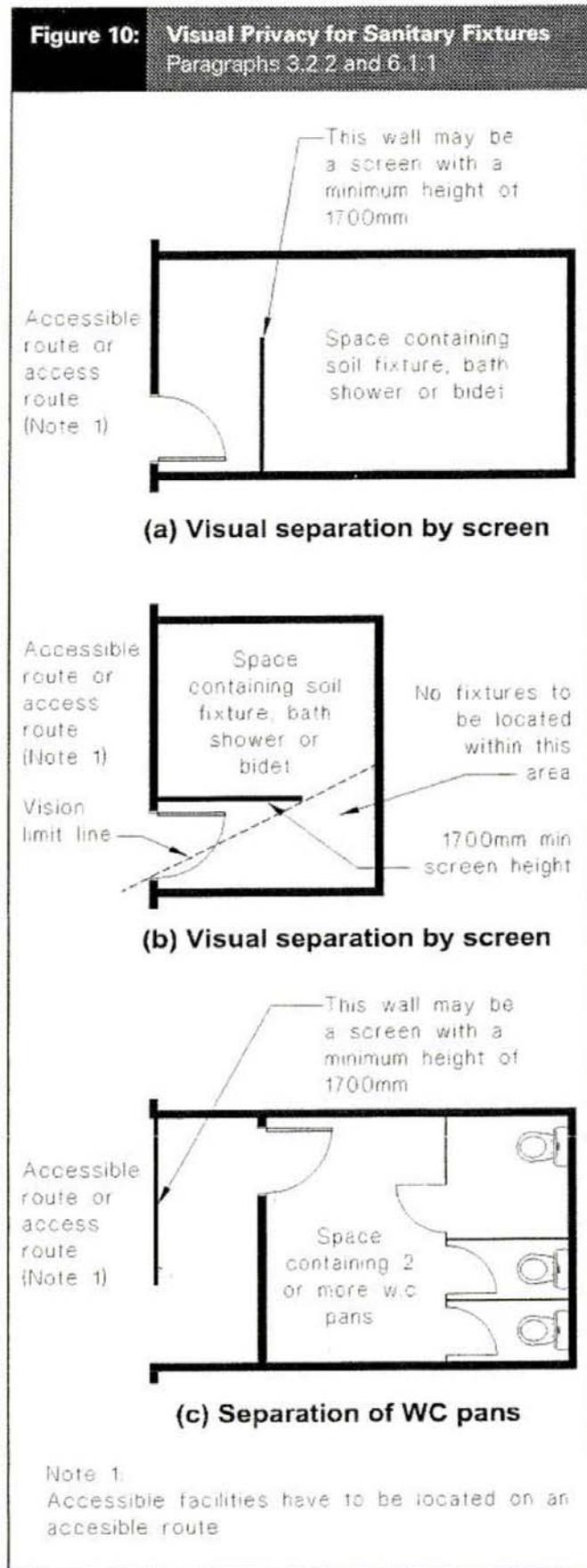


Figure 10 of G1/AS1

5 THE SUBMISSIONS

5.1 General

5.1.1 The parties supplied copies of correspondence between them, and each made specific submissions. In addition, I obtained reports from two independent experts.

5.2 The territorial authority's submissions

5.2.1 In response to the application for this determination, the territorial authority submitted:

- “1 On 20 May 2004, Council received a Building Consent application for additions and alterations to the existing school buildings located at [address of school].
- “2. Within that application, sanitary facilities have been provided which permitted a direct line of sight through a perforated metal screen between a general public area and WCs, contrary to the provision of the Building Code clause G1.3.2(d), the provisions of the Acceptable Solutions G1/AS1 Clause 6.1.1 and Figure 10.
- “3. Council raised this matter with the applicant . . . who responded . . . indicating that should Council's view [as to the requirement for visual screening] remain, an ‘obscure screen material rather than the mesh screen’ would be used. The consent was issued on the basis that an obscure screen would be installed.
- “4. Council remains of the view that the proposed perforated screening to both male and female spaces containing soil fixtures (toilet and hand basins) fails to comply with both the Building Code and the Acceptable Solution as the screening fails to prevent direct line of sight between a general public area and a space containing toilet fixtures.”

5.3 The applicant's submissions

5.3.1 The application was accompanied by correspondence between the parties rather than a specific submission from the applicant.

5.3.2 In that correspondence, the applicant had said:

“ . . . one of the central design features in the new toilet block is the ability for staff to monitor the performance of children in the wash-hand basin area.

“The toilet cubicles are in fact private and we believe meet all of the requirements of the New Zealand Building Code.

“It is only when the students leave the private cubicle and use the wash-hand basin that they can be observed. The behaviour in these areas is of great concern to all schools and more and more we are being requested to provide visibility for staff to observe from the exterior. . . .

“In the interim we acknowledge your position and will if needed provide an obscure screen material, rather than the mesh screen . . .”

5.3.3 In response to the territorial authority’s submissions, the applicant said:

“We acknowledge receipt of the (TA’s) submission to the above determination.

“Further to this we reiterate the following points relating to the original design intent.

“Schools in general, and particularly [the school concerned], experience considerable vandalism in their toilets. To help alleviate this problem we have come up with a design concept where the lobby area of the toilets is kept relatively open.

“No urinals are used as these would not be sufficiently screened from view. The toilet cubicles have the front panels and doors taken down to floor level thus making them totally private and the doors are closed.

“The screens used to the lobby areas are perforated metal which whilst giving some degree of obscurity allows any misbehaviour taking place to the [*sic*] observed.

“The toilet block has now been operating for approximately one month. The feedback has been very positive, both from the school children, the teachers and the caretaker. Toilet paper usage has dropped dramatically (no paper is made wet then thrown up to stick to the ceiling).

“The toilets have remained graffiti free and no acts of vandalism have occurred.

“The general comments are the toilets are light and airy and pleasant to use.”

5.3.4 The applicant subsequently made the following further submission:

“We have carried out a survey or [*sic*] a small sample of students using the facility and they tell of

“— the nice clean toilets

“— the safety from undesirable elements previously in the toilet lobbies

“— the smoking has stopped

“— nobody said they felt there (*sic*) privacy was infringed.”

5.4 The experts’ reports

5.4.1 The first expert’s report noted that in paragraph 6.1.1 of G1/AS1, the words “there shall be no direct line of sight between a general public area and a WC, urinal, bath, shower, or bidet” did not prohibit a line of sight between a general public area and a WC door. The expert also observed that the screens depicted in Figure 10 in G1/AS1 were not specified to be solid or walls, and that on that basis a mesh screen would be satisfactory.

5.4.2 The first expert also pointed out that there are many public toilet facilities in New Zealand where there is only one door between “an absolute public space” and WC pans. The expert suggested that as such facilities are in general use and appear to have wide public acceptance, it must be considered that they are judged to provide “appropriate privacy”. The expert also commented:

“In the case in point, the general area of the school outside the toilet block is not what would be considered a “public space” – rather it is part of the private school grounds that are commonly protected by security patrols and the like.”

5.4.3 The first expert concluded the report by saying “it is my view that the facilities as designed and provided meet the requirements of Clause G1 of the NZ Building Code”.

5.4.4 The second expert said:

“All the considerations of what might be “appropriate privacy” need to be considered in light of the [school’s] policy/preference for overview of the wash-basin area. The particular context of a high school environment, where the sexes are otherwise in class together, where violence, drug use and vandalism might be facilitated by hidden corners, and where the teaching staff are necessarily concerned to have the maximum opportunity to observe and care for the students, requires a subjective assessment which might not be applicable to another environment.”

5.4.5 The second expert’s report commented on the three examples shown in Figure 10 of G1/AS1 and noted that two of the examples indicate there would only be one door between the soil fixture and the public area, and all the examples provide a visual barrier between the soil fixture and the public area such that the soil fixture would not be visible upon opening of the door to the space containing the fixture.

5.4.6 The second expert’s report discussed the variable extent of the opacity of a perforated metal screen depending on the angle of through-vision, and concluded that use of a screen with 41% or less effective openness and a perforation diameter of 10 mm or less would achieve compliance for each of the toilets that are the subject of this determination.

6 DISCUSSION

6.1 Terminology

6.1.1 Applying the terminology set out in 3.2 above to Figure 10 of G1/AS1:

Fig. 10(a): There is no lobby, a door opens directly into the toilet from the general public area but the line of sight through that door is blocked by a wall or screen parallel to the closed door, although a short length of wall inside the toilet is visible from the general public area when the door is open.

Fig. 10(b): The same as (a) except that the wall or screen is perpendicular to the closed door, and again a short length of wall inside the toilet is visible from the general public area when the door is open.

Fig. 10(c): There is a lobby between the toilet and the general public area, the line of sight from the general public area is blocked by the wall or screen between the lobby and the toilet.

6.1.2 I take it from Fig. 10 that the difference between a wall and a screen is that a wall is full height whereas a screen is less than full height but not less than 1700 mm high. I do not accept the first expert’s interpretation that because the screens in Fig. 10 of

G1/AS1 were not shown as solid therefore a mesh screen was acceptable. I take the view that it must be impossible to see through a wall or screen that is shown on a drawing intended to illustrate visual privacy.

- 6.1.3 I do not accept the first expert's suggestion that the general area of the school is not a general public area for the purposes of G1/AS1. Even if it were true that the general public is not admitted to a school, I take the view that a space in any building other than a household unit that is available to all users of that building must be regarded as a general public area for the purposes of G1/AS1.
- 6.1.4 I do not accept the second expert's suggestion that what amounts to "appropriate privacy" in the school needs to be considered in the light of the school's policy or preference for overview of the basin area. I take the view that I cannot take into consideration policies and principles other than those of the Act. I am also conscious that for many years, and certainly when G1/AS1 was issued, almost if not all schools have had similar problems with undesirable behaviour in the school toilets. If times have indeed changed then the proper course is for the acceptable solution to be amended accordingly after the wide public consultation currently required by section 49 of the Act and that will soon be required by section 29 of the Building Act 2004.

6.2 Do the toilets comply with the acceptable solution?

- 6.2.1 There is no requirement for the toilets to comply with the acceptable solution G1/AS1 provided that they comply with the building code. However, as discussed in numerous previous decisions, an acceptable solution may be used as a benchmark or guideline when assessing whether other proposed solutions comply with the building code.
- 6.2.2 Paragraph 6.1.1 of G1/AS1 requires that there must be "no direct line of sight between a general public area and a WC, urinal, bath, shower, or bidet". That does not prohibit a line of sight between a general public area and a basin.
- 6.2.3 However, in my view it does prohibit a line of sight from a general public area through one or more open doors to a WC (and similarly for urinals, baths, showers, and bidets). I realise that privacy is for people not for fixtures. Nevertheless, I cannot read paragraph 6.1.1 as if it included the additional words "but not if the line of sight would be obstructed by a door".
- 6.2.4 Given the thickness of the metal screens and the diameter of the perforations, consideration of Figure A shows that the screens do not block lines of sight from general public areas to WCs in Toilet 1.11, nor from the lobbies of Toilets 1.10 and 1.11 to WCs in Toilets 1.11 and 1.10 respectively. However, consideration of Figure B shows that there is no line of sight from the general public area to a WC in Toilet 1.21.
- 6.2.5 In Determination 95/007, the Building Industry Authority ("the Authority") considered certain unisex toilets in a fast-food restaurant did not comply with what was then paragraph 3.2.1(a), and is now paragraph 3.2.2(a), of G1/AS1 in that the toilets opened directly into the customer service area and were situated immediately alongside the food counter. The Authority decided:
- “(a) The provision of unisex toilets for the patrons and staff of a restaurant does not contravene the building code, but

“(b) The fact that toilets in the restaurant concerned open directly into a customer service area does contravene the building code.”

In that determination, the Authority said:

“3.2.5 The only doubt about whether the facilities complied with . . . the building code, was in respect of privacy. The owner contended that the toilets complied with paragraph 4.1.1 [now paragraph 6.1.1] of Approved Document G1/AS1 in that there was no direct line of sight between a general public area and a water closet, urinal, bath, shower, or bidet. The territorial authority responded that it was simplistic to consider only whether there was a view of the water closet without considering the privacy of users in close proximity to it. The Authority recognises that privacy is required for people not for fixtures, but points out that under section 50 of the Building Act the territorial authority must accept the Approved Document as specifying a level of privacy that meets the requirements of the building code.”

I take the same approach in this determination.

6.2.6 I accordingly conclude that Toilets 1.10 and 1.11 do not comply with G1/AS1, but that Toilet 1.21 as drawn by the architect does comply (in other words, the territorial authority’s annotations may be ignored).

6.2.7 I arrive at that conclusion by a literal interpretation of paragraph 6.1.1 of G1/AS1. I recognise the territorial authority’s concerns as set out in 5.2.1 above. I also recognise that considering privacy only in terms of the line of sight from a general public area to “a WC, urinal, bath, shower, or bidet”:

- (a) Is a simplistic approach which does not correspond to the general experience that the sight of a WC or the like from a general public area does not offend most people. Privacy is achieved by shutting the door.
- (b) Means that people are not entitled to privacy from general public areas when using basins associated with WCs.

Some people might consider that they are entitled to a greater degree of privacy. However, section 50 of the Act provides that compliance with an acceptable solution must be accepted as establishing compliance with the building code so that I have no choice but to apply G1/AS1 as discussed above.

6.3 Do the toilets comply with the building code?

6.3.1 The relevant requirement of the building code, clause G1.3.2(d) is simply to provide appropriate privacy. However, what is “appropriate” can be assessed by comparison with the acceptable solution as discussed above.

6.3.2 In several previous determinations the Authority made the following general observations about acceptable solutions and alternative solutions:

- (a) Some acceptable solutions cover the worst case so that in less extreme cases they may be modified and the resulting alternative solution will still comply with the building code.

- (b) Usually, however, when there is non-compliance with one provision of an acceptable solution it will be necessary to add some other provision to compensate for that in order to comply with the building code.

I agree with those observations as applied to this case.

- 6.3.3 In this case, there is non-compliance with the provision that there must not be a line of sight between a general public area and a WC. The applicant proposed to “have the front panels and doors [of the WC cubicles] taken down to floor level” but that does not compensate for the fact that when the door is open the WC is visible from the general public area.

7 WHAT IS TO BE DONE

- 7.1 It is not for me to decide how Toilets 1.10 and 1.11 are to be brought to compliance with the provisions of clause G1.3.2(d) of the building code. That is a matter for the owner to propose and for the territorial authority to accept or reject, with any of the parties entitled to submit doubts or disputes to me for another determination.

8 DECISION

8.1 In accordance with section 20 of the Act, I hereby:

- (a) Determine that:
 - (i) Toilets 1.10 and 1.11 do not comply with clause G1.3.2(d) of the building code; and
 - (ii) Toilet 1.21 does comply with clause G1.3.2(d) of the building code.
- (b) Confirm the territorial authority’s decision to refuse to issue a code compliance certificate in respect of Toilets 1.10 and 1.11.
- (c) Reverse the territorial authority’s decision to refuse to issue a code compliance certificate in respect of Toilet 1.21.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 11 March 2005.

John Gardiner
Determinations Manager