



## Determination 2012/009

# Regarding the requirement for a compliance schedule for a proposed new public toilet facility containing back-flow prevention device and automatic doors

### 1. The matter for determination

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“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:

- Auckland Council, the applicant for the determination, carrying out its duties and functions as a territorial authority or building consent authority (“the building consent authority”)
- the architect for the project, B Rawson, who is a registered architect<sup>2</sup>
- Auckland Council, in its capacity as the owner of the building (“the community services group”).

1.3 This dispute arises from a decision of the building consent authority to require a compliance schedule for a new public toilet facility at a park, in respect of the proposed back-flow prevention devices and proposed automatic doors which it considered to be specified systems<sup>3</sup>.

1.4 I therefore consider the matter to be determined<sup>4</sup> is whether the authority correctly exercised its power of decision in requiring a compliance schedule be created for the proposed new building in respect of the back-flow prevention devices and the automatic doors.

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

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<sup>1</sup> The Building Act, Building Code, Compliance documents, past determinations, and guidance documents issued by the Department are all available at [www.dbh.govt.nz](http://www.dbh.govt.nz) or by contacting the Department on 0800 242 243

<sup>2</sup> Registered architects are treated as if they were licensed in the building work licensing class Design 3 under the Building (Designation of Building Work Licensing Classes) Order 2010

<sup>3</sup> Under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005

<sup>4</sup> Under sections 177(1)(b) and 177(2)(e). In this determination, unless otherwise stated, references to ‘sections’ are to sections of the Building Act 2004, and references to ‘clauses’ are to clauses of the Building Code (Schedule 1, Building Regulations 1992).

## **2. The background and the building work**

- 2.1 The proposed building is a new public toilet block at Upper Auckland Domain (“the proposed building”) and is a block of three toilets that includes an accessible toilet. The proposed building is to replace an existing toilet block that is planned to be demolished.
- 2.2 The design for the automatic doors consists of three stainless steel sliding doors, with an automated opening, closing, locking, and unlocking mechanism. The design for the plumbing incorporates a flush valve with an internal siphon guard, (vacuum breaker tube) which is the back-flow prevention device, although there is no evidence of air intake.
- 2.3 The community services group made an application for a building consent for the proposed building to the building consent authority.
- 2.4 I have been provided with very limited information on the background of this dispute, however, it appears that in a letter dated 27 September 2011, the building consent authority requested that a compliance schedule and building warrant of fitness be created for this building because of the presence of the back-flow prevention device and the automatic doors. The community services group did not agree with this requirement, stating that it does not think ‘this is necessary, reasonable or appropriate in this instance’.
- 2.5 An application for determination was subsequently received on 10 October 2011.

## **3. The submissions**

- 3.1 The application for determination contained specifications and plans for the building, and a letter from the designer of the building to the building consent authority dated 28 September 2011.
- 3.2 The community services group did not make a submission in response to the application or acknowledge the application.
- 3.3 On 31 October 2011, I requested information from the building consent authority with respect to:
- the back-flow prevention device; including the details of the device, whether the accessible toilet has the same back-flow prevention device, and whether there are one or more back-flow prevention devices outside of the building footprint
  - the means for opening the automatic doors in an emergency.
- 3.4 The building consent authority provided the following information in a response dated 1 November 2011:

The [back-flow prevention] device is an atmospheric vacuum break as part of each flush valve.

All flush valves are the same.

[Back-flow prevention] devices installed at the property boundary serve no function under the [Act] so [this hasn't been considered]

[The automatic doors] default to open in an emergency however if vandalised/abused can remain locked.

- 3.5 A draft determination was issued to the parties for comment on 7 December 2011. The building consent authority and the architect accepted the draft without further comment or submissions.

## 4. Discussion

- 4.1 The design for this building incorporates:

- a back-flow prevention device, for each toilet
- an automatic sliding door with an automated opening, closing, locking, and unlocking mechanism

- 4.2 It does not appear that compliance of the design with the Building Code is in dispute, only whether the back-flow prevention devices and automatic doors are specified systems under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (“the Regulations”) and therefore whether a compliance schedule is required.

- 4.3 Regulation 4 of the Regulations states ‘The systems or features specified in Schedule 1 are specified systems for the purposes of the Act’.

- 4.4 The items in Schedule 1 of the Regulations include:

- 3 Electromagnetic or automatic doors or windows (for example, ones that close on fire alarm activation)
- 7 Automatic back-flow preventers connected to a potable water supply

- 4.5 Section 100 of the Act states:

A building not used wholly as a single household unit–

- (a) requires a compliance schedule if–
  - (i) it has a specified system ...

- 4.6 The Department has issued guidance about compliance schedules under section 175 of the Act<sup>5</sup> that includes guidelines for automatic doors (refer to paragraph 4.7) and back-flow prevention devices (refer to paragraph 4.8).

- 4.7 The guidelines for electromagnetic or automatic doors or windows are:

An automatic door is required to be listed on a compliance schedule where the door:

- A.1 is designed to open without direct operation from any building occupant, and
- A.2 could cause injury should they fail to operate as required, and
- A.3 could trap occupants in a building should it fail to operate as required.

<sup>5</sup> The guidance documents are available on the publications section of the Department’s website <http://www.dbh.govt.nz/publications>

4.8 The guidelines for automatic back-flow preventers are:

A back-flow preventer is required to be listed on a compliance schedule where the preventer:

A.1 is connected to a potable water supply, and

A.2 is contained entirely within the property boundary of the building it is servicing, or

A.3 it is contained partially within the property boundary of the building it is servicing and is not owned by the network utility operator.

4.9 It appears to be clear (and not in dispute) that the flush valve with an internal siphon guard is a back-flow prevention device and the doors are automatic. Therefore both systems are items that come under the ambit of Schedule 1 of the Regulations and are therefore specified systems. In terms of the guidelines (refer to paragraph 4.7 and 4.8), I note that the automatic doors meet the requirements of A.1, A.2, and A.3, and the back-flow prevention device, although not specified as one of the examples, meets the requirements of A.1 and A.2.

4.10 I am therefore of the view that a compliance schedule is required for the specified systems and the authority was correct to request that a compliance schedule be created to cover the specified systems.

4.11 In response to the building consent authority's request for a compliance schedule, the community services group took the view that it did not think this was necessary, reasonable or appropriate in this instance.

4.12 In response to the view of the community services group, I note that it is clear that a compliance schedule is required for this building, based on the design choices that have been made. However, there are design choices that could be made for this building that would meet the performance requirements of the Building Code but that would not require a compliance schedule. For example the design choice for the plumbing system could be an air gap for each toilet, for example a W.C. cistern, and the design choice for the doors could be non automated doors.

## 5. Decision

5.1 In accordance with section 188 of the Act, I hereby determine that the authority correctly exercised its power of decision in requiring a compliance schedule be created for the proposed building, in respect of the atmospheric vacuum break and the automatic doors, and accordingly I confirm the authority's decision.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 16 February 2012.

John Gardiner  
**Manager Determinations**