

Determination 2025/050

An authority's decision to issue 21 insanitary building notices for small, detached buildings used as accommodation

14C Haynes Place, Huntington, Hamilton

Summary

This determination considers an authority's decision to issue insanitary building notices in respect of 21 small buildings. The determination discusses whether the buildings were insanitary under section 123 of the Building Act at the time the notices were issued, and the content of the notices in terms of sections 124 and 125.



Figure 1: The two types of buildings the subject of the insanitary building notices: top image – 'A' shape; bottom images – 'O' shape¹

¹ Top image reproduced from photographs taken by the authority at one of its inspections. Bottom images reproduced from photographs provided by the owner.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the 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 (eg, Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Andrew Eames, Principal Advisor Determinations, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).²
- 1.2. The parties to the determination are:
 - 1.2.1. S Han, the owner of the property who applied for this determination (“the owner”)
 - 1.2.2. Waikato District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. The matter to be determined, under section 177(1)(b) and 3(f), is the authority’s decision to issue 21 insanitary building notices dated 24 April 2024 (“the notices”).
- 1.4. The authority issued the notices because it considers the buildings they relate to had insufficient or defective provisions against moisture penetration so as to cause dampness in the buildings, and were therefore insanitary under section 123(b). The owner believes the buildings were not insanitary when the notices were issued, and notes that the authority did not inspect the interior of the buildings or take moisture readings.

2. Building work and background

- 2.1. This determination relates to 21 small, detached buildings constructed on the owner’s property between 2017 and 2019. The owner advises the buildings were originally used as accommodation by international visitors, and from 2020 for emergency housing purposes.
- 2.2. The parties disagree as to whether the building work to construct the buildings required building consent or was exempt work under Schedule 1 of the Act. However, that issue is outside the scope of this determination and I do not consider

² The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

it other than to note that the buildings were not constructed pursuant to a building consent.

- 2.3. Each building measures approximately 9m² internally and comprises a single bedroom space with a door to the outside at one end and an opening window at the other. The buildings are accessed via an approximately 5m² porch. They have no plumbing or sanitary facilities; shared bathroom amenities are provided in separate buildings at the property.³
- 2.4. The buildings follow one of two designs with some minor differences between buildings (see Figure 1):
 - 2.4.1. eight buildings have a curved A-frame roofline (“A shape”)
 - 2.4.2. thirteen buildings have a rounded roofline with maximum width at mid-height (“O shape”).
- 2.5. The buildings sit on timber piles with a timber subfloor. The buildings have a mix of vertical timber and/or sheet ply cladding on front and rear exterior walls, and sheet ply, corrugated iron and/or overlapping horizontal timber boards on the roof.
- 2.6. On 26 March 2024, the authority carried out a “limited inspection” of the property.
- 2.7. On 18 April 2024 the authority conducted a further inspection. The authority’s file note in relation to this inspection⁴ refers to “21 sleepout/cabin type structures”, stating:

[These] structures do not comply with New Zealand building code [clause] E2 weathertightness as they are potentially insufficient against moisture penetration to cause dampness in the building (insanitary).

...

Most of these buildings are [too] close to the ground and ground moisture has not been adequately addressed.

My concerns for these buildings are weathertightness (missing roof & window flashings & exterior cladding flashings), structural stability, foundations & bracing. Durability (timber treatment etc) Natural light & ventilation & electrical.
- 2.8. On 24 April 2024, the authority issued 21 insanitary building notices, which were affixed to the buildings. I have only been provided with a copy of one of the notices, however the owner has advised all notices are identical in content apart from identifying the specific building each pertains to. The notice is addressed to the owner and identifies the property. It states:

³ The bathroom buildings do not form part of this determination.

⁴ The file note is dated 22 July 2024.

Take notice that:

- 1 The said buildings (listed below) are deemed to be insanitary pursuant to Section 123(b) in that:
 - (b) has insufficient or defective provision against moisture penetration so as to cause dampness in the building.

Cabins: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

Maramataka Huts: 1/1, 1/2, 1/3, 1/4, 2/1, 2/2, 2/3, 2/4
- 2 The buildings must not be used for human habitation, until you have obtained both Land Use Consent and Building Consents and these have been approved and granted.

2.9. On 30 April 2024, the owner provided the authority with moisture readings taken by the owner in some of the buildings. The owner also advised the authority that “visual inspections revealed no signs of water leakage or [mould] in any of the rooms ...”.

2.10. The owner sought details from the authority about its particular concerns with the buildings, and the authority subsequently carried out a further inspection on 15 July 2024.

2.11. In response to the authority’s concerns, the owner made several modifications to the buildings, which the owner photographed and sent to the authority. These included installing window flashings, filling gaps, and raising buildings to address the ground clearance issues.

2.12. In March 2025, the owner requested the authority remove the notices, and also provided the authority with a ‘Moisture Inspection Report’ prepared by an inspection company.

2.13. On 2 April 2025 the authority replied to the owner, saying:

The insanitary notices were issued for several reasons, moisture & or dampness is only part of it.

A building is insanitary for the purposes of the building Act regarding how it is situated or constructed, is in a state of disrepair or has insufficient provision against moisture penetration to cause dampness etc. If you look at section 123 of the building Act 2004 & 123a this will show you the meaning of insanitary buildings.

Some of these pod buildings were too close to the ground & had external cladding systems issues & the external cladding was not an approved system.

2.14. The parties were unable to resolve the issue and on 6 April 2025 the owner applied for this determination.

2.15. On 21 May 2025, the authority advised the Ministry that having considered the matter further, the authority accepted the notices were defective and intended to withdraw them.

- 2.16. On 30 May 2025, the Chief Executive made a direction under section 183 lifting the suspension of the authority's powers in relation to the notices, to allow the authority to withdraw the notices.
- 2.17. On 26 June 2025, the authority emailed the owner a letter dated 17 June 2025 stating that "the notice issued ... on 24 April 2024 ... is withdrawn". I take this to mean all 21 notices have been withdrawn.

3. Discussion

- 3.1. To determine this matter, I will consider whether the buildings were insanitary at the time the notices were issued, and the content of the notices in terms of the requirements in the Act.
- 3.2. Section 124 sets out the powers of a territorial authority if it is satisfied that a building in its district is an insanitary building.⁵ The relevant parts of subsection (2) for present purposes state:

In a case to which this section applies, the territorial authority may do any or all of the following:

...

- (c) ... issue a notice that complies with section 125(1) requiring work to be carried out on the building to—

(i) ...

(ii) prevent the building from remaining insanitary:

...

- 3.3. Section 128A(1) provides that a person who fails to comply with a notice issued under section 124(2)(c) commits an offence and is liable to a fine.⁶

Whether the buildings were insanitary when the notices were issued

- 3.4. The notices state the buildings are insanitary pursuant to section 123(b), which provides:

⁵ Section 124 also relates to dangerous and affected buildings; these terms are defined in sections 121 and 121A respectively.

⁶ The fine is a maximum of \$300,000 in the case of an individual, and a maximum of \$1,500,000 in the case of a body corporate: see section 128A(1)(b).

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

(a) ...

(b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or

...

- 3.5. The notices do not provide any specific details as to why the authority considers section 123(b) applies in this case. Nor did the authority provide the owner any other details when the notices were issued. The owner has advised they did not receive a cover letter or any other correspondence from the authority regarding the notices at the time they were issued.⁷
- 3.6. The authority's email to the owner on 2 April 2025 in response to the owner's request for removal of the notices (see paragraph 2.13) says that the notices were issued for other reasons in addition to moisture and dampness. The authority quoted parts of and referenced section 123(a), which relates to buildings being likely to be injurious to health.⁸ However, this is not the reason stated in the notices, which only refer to section 123(b).
- 3.7. Consequently, in determining whether the buildings were insanitary at the time the notices were issued, I consider only whether they had insufficient or defective provisions against moisture penetration so as to cause dampness in the buildings, in terms of section 123(b).
- 3.8. The authority has provided photographs of approximately one-third of the buildings in support of its position. The authority advises the photographs were taken on 18 April 2024 (ie six days prior to the notices being issued). However, notices are visibly affixed to buildings in several of the photos (as in Figure 1, for example). The authority's next site inspection on 15 July 2024 would appear to be the earliest date the photographs could have been taken.
- 3.9. Despite this, even if the photographs were taken in July 2024, they show water damage to, and deterioration and warping of, the exterior cladding of some buildings. I consider this damage would have occurred over a long period, such that it would have been present three months earlier when the notices were issued. The photographs also show the proximity of the base of the buildings to the ground.

⁷ Nor did the authority provide the Ministry a copy of any such correspondence or any other correspondence, despite being requested by the Ministry to provide copies of all communications with or on behalf of the owner.

⁸ Section 123(a) states: "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"

- 3.10. However, the numbering of the buildings in the notices does not match the photographs provided by the authority. For example, the authority has provided photographs of “Maramataka huts “1-6”, “1-7” and “1-8”, however the notices do not relate to any buildings with these numbers, only “Maramataka Huts: 1/1, 1/2, 1/3, 1/4, 2/1, 2/2, 2/3, 2/4”.
- 3.11. In addition, the authority has not provided any evidence of dampness in the buildings, nor have I been provided any evidence the authority inspected the building interiors or conducted any moisture measurements before the notices were issued. The owner says the authority did not do either.
- 3.12. The owner says their builder⁹ found no evidence of leaks and refers to the moisture tests carried out by the owner several days after the notices were issued. I have not seen any details regarding which buildings were inspected by the builder or where in the buildings the tests were taken. However, I have also not been provided with any photographs or other evidence of dampness in the buildings such as staining of the wall linings or floor, or the presence of mould.
- 3.13. From the photographs taken during construction provided by the owner, the following issues were present with regard to construction of the buildings (which appears to be identical for each of the two types of building):
- 3.13.1. It appears the wrap up the curved walls under the roofs did not cover the end of the framing, or does in some places and not in others. There is also no indication of back-flashings at the junction between the curved and end walls. The buildings were consequently prone to moisture ingress.
- 3.13.2. Underlying building elements did not appear to be adequately protected by the cladding.
- 3.13.3. The flooring structure appeared to sit directly on the ground in some cases and to be very close to the ground in others without apparent compensatory measures. There was consequently potential for transmission of moisture into subfloor elements.
- 3.13.4. The level of timber treatment for the various building elements is uncertain, meaning there was potential for damage from moisture ingress in these elements.
- 3.14. It is clear from the construction and premature damage that has occurred to the building envelope in some buildings, that there was insufficient or defective provision against moisture penetration so as to cause (ie that would lead to, or have already caused) dampness in at least some of the buildings.

⁹ Who was a licensed building practitioner (LBP), which is a building practitioner who has been assessed as competent to carry out building work essential to the structure or weathertightness of residential buildings.

- 3.15. Consequently, I consider at least some of the buildings were insanitary in terms of section 123(b) due to the way they were constructed and located on site. However, I have not been provided with sufficient or clear evidence to establish whether all the buildings were insanitary or, if only some were insanitary, which specific buildings these were due to the numbering discrepancies.

Whether the notices satisfy the requirements in the Act

- 3.16. There is no prescribed form for an insanitary building notice in the Building (Forms) Regulations 2004. As set out above, section 124(2)(c) provides that where an authority considers a building is insanitary, it may “issue a notice that complies with section 125(1)” requiring work to be carried out on the building to prevent it remaining insanitary.¹⁰

- 3.17. Section 125(1) states:

A notice issued under section 124(2)(c)–

- (a) must be in writing; and
- (b) must be fixed to the building in question; and
- (c) must be given in the form of a copy to the persons listed in subsection (2); and
- (d) state the time within which the building work must be carried out, which must not be less than a period of 10 days after the notice is given or a period reasonably sufficient to obtain a building consent if one is required, whichever period is longer; and
- (e) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.

- 3.18. Section 125(2) requires a copy of a notice must be given to the owner of a building and an occupier (among others). However, section 125(3) provides the notice, if fixed on a building, is not invalid if has not been given to any of the persons described in subsection (2).

- 3.19. In this case the notices, which are identical in form and content, simply quote the paragraph of section 123 the authority considers makes the buildings insanitary, without providing any further details. In addition, the notices do not state:

3.19.1. that building work is required to be carried out to prevent the buildings remaining insanitary, as required by section 124(2)(c)(ii)

3.19.2. the time within which building work must be carried out, as required by section 125(1)(d)

¹⁰ The requirements for a notice in section 125(1A) are not relevant in this case as they relate to a notice issued under section 124(2)(d) (see further at paragraph 3.22).

- 3.19.3. whether the owner must obtain a building consent in order to carry out the work required by the notice, as required by section 125(1)(e)).
- 3.20. In my view, the requirement that the recipient of a notice to fix be “fairly and fully informed” by the particulars in a notice to fix, so they can address the identified issues, is equally applicable to an insanitary building notice.¹¹ It is not sufficient to simply quote from the definition of ‘insanitary’ in the Act without providing any further particulars.
- 3.21. I also consider that the statement at paragraph 2 of the notices is inappropriate for several reasons. That paragraph stipulates, “The buildings must not be used for human habitation, until you have obtained both Land Use Consent and Building Consents and these have been approved and granted.”
- 3.22. Under section 124(2)(d), an authority can issue an insanitary building notice “restricting entry to the building for particular purposes or restricting entry to particular persons or groups of persons”. Such a notice must comply with section 125(1A); paragraphs (d) and (e) of that section state such a notice may be issued for a maximum period of 30 days and can be reissued once for a further maximum period of 30 days.
- 3.23. The notices in this case purport to prevent the use of the buildings for human habitation unless certain conditions are met. However, a general prohibition on using a building for a particular purpose does not fall within the scope of section 124(2)(d), which requires the notice to specify the purposes of entry or the persons who may enter. The notices in this case do not restrict entry for a particular purpose (eg to carry out work to prevent the building from remaining insanitary) or to particular persons for a period of time up to 30 days.
- 3.24. In addition, the authority cannot require a land use consent¹² in an insanitary building notice, and the condition regarding building consents is not clear. Section 125(1)(e) provides a notice must state whether the owner of a building must obtain a building consent to carry out work required by a notice. However, the notices in this case do not require work to be carried out to prevent the buildings from remaining insanitary.

¹¹ The courts and previous determinations have discussed this requirement in relation to notices to fix issued under section 164; see *Andrew Housing Ltd v Southland District Council* [1996] 1 NZLR 589 (which related to a ‘notice to rectify’, the equivalent of a notice to fix in the predecessor to the Act, the Building Act 1991); *Marlborough District Council v Bilsborough* [2020] NZDC 9962 at [106]-[107]; and Determination 2024/029 *An authority’s decisions to issue a series of notices to fix* (27 May 2024) at [4.2]-[4.3].

¹² A ‘land use consent’ is a type of resource consent under the Resource Management Act 1991.

Conclusions

- 3.25. Some of the buildings were insanitary in terms of section 123(b) at the time the notices were issued, however there is insufficient evidence to establish which particular buildings were insanitary.
- 3.26. The notices did not satisfy the requirements for insanitary building notices in sections 124 and 125. I agree with the authority that the notices are defective.
- 3.27. Ordinarily in these circumstances it would be appropriate to reverse the notices. However, it is not necessary to exercise a remedy in terms of section 188(1)(a) in this instance as the notices have already been withdrawn.¹³

4. Decision

- 4.1. In accordance with section 188 of the Building Act 2004, I determine the 21 insanitary building notices did not comply with the requirements of the Act. As the authority has withdrawn the notices, it is not necessary to reverse them.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 26 September 2025.

Andrew Eames

Principal Advisor Determinations

¹³ Section 188(1) provides: “A determination by the chief executive must—
(a) confirm, reverse, or modify the decision or exercise of a power to which it relates; or
(b) determine the matter to which it relates.