

Determination and decisions relating to a building affected by emergency

Determinations are legally binding decisions made by the Ministry of Business, Innovation and Employment (MBIE) about matters of doubt or dispute to do with building work. The Building Act 2004 includes powers for the management of buildings located in a designated area following an emergency; some of these powers can be the subject of a determination.

Powers of decision relating to buildings affected by emergency

The Building Act includes the ability for a territorial authority or the relevant Ministers to designate an area under section 133BC of the Act following an emergency. Specified powers can be exercised by 'responsible persons' (as outlined by sections [133BJ](http://www.legislation.govt.nz/act/public/2004/0072/latest/LMS297704.html) (<http://www.legislation.govt.nz/act/public/2004/0072/latest/LMS297704.html>) and [133BK](http://www.legislation.govt.nz/act/public/2004/0072/latest/LMS297709.html) (<http://www.legislation.govt.nz/act/public/2004/0072/latest/LMS297709.html>) of the Act) for the management of buildings located in a designated area. Some of these powers can be the subject of a determination.

This page relates specifically to determinations regarding the power of decision relating to buildings affected by emergency.

For general information about determinations, other matters that can be subject of a determination, and previous determinations see our [determinations page](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/) (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/>).

For further information about the rights and responsibilities of building owners affected by an emergency, see our [Information for building owners page](https://www.building.govt.nz/managing-buildings/managing-buildings-in-an-emergency/information-for-building-owners/) (<https://www.building.govt.nz/managing-buildings/managing-buildings-in-an-emergency/information-for-building-owners/>).

What a determination can decide (relating to powers of decision relating to buildings affected by emergency)

Section 177 of the Building Act outlines the specific sections of the Building Act, which relate to buildings affected by emergency, and which may be the subject of a determination. A determination can confirm, reverse or modify the following decisions by a responsible person:

- Section 133BS (put in place measures to keep people at a safe distance or protect buildings)
- Section 133BT (place notices and signs on buildings)
- Section 133BW (carry out and/or direct works to remove or reduce other risks)
- Section 133BX (direct works for long-term use or occupation of buildings)

What a determination can't decide (relating to powers of decision relating to buildings affected by emergency)

In respect of decisions relating to buildings affected by emergency, MBIE can only make a determination on the matters above.

In addition, a determination cannot be made in relation to the exercise of powers by the Minister or a territorial authority acting on the direction of the Minister.

Who can ask for a determination

Those involved in a determination, including the person who applies for it, are called 'parties' to the determination. Section 176 of the Building Act outlines who can be a 'party' to a determination. You can ask for, or be involved as a party to, a determination if you are a:

- building owner
- council, building consent authority, territorial authority, or regional authority in the case of a dam
- 'responsible person' (other than the Minister) (i.e. a person authorised under the Building Act to exercise building emergency management powers)
- licensed building practitioner concerned with the relevant building work
- person who has been issued with a notice to fix
- neighbour or the owner of 'other property' when the issue concerns Building Code requirements for protection of other property (which relate to land stability, surface water run-off and potential spread of fire between properties)
- person with a direct interest in the issue if it relates to access and facilities for people with disabilities
- person or organisation who or that has a right or an obligation under any other Act to give written notice to a territorial authority in respect of matters to which this Act relates.

MBIE can initiate a determination where it believes it is necessary to achieve the aims of the Building Act. The responsible person and/or the council will usually be a party to any determination. MBIE may ask other people or organisations to become involved if necessary.

When an application is made, decisions of a responsible person relating to section 133BW and section 133BX are suspended until MBIE has made a determination, while decisions of a responsible person relating to section 133BS and section 133BT remain in force until a determination has been made.

Applying for a determination (relating to powers of decision relating to buildings affected by emergency)

If you're unsure whether applying for a determination is your best option, you can [contact us \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determination-and-decisions-relating-to-a-building-affected-by-emergency/downloadpdf#jumpto-contacting-us\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determination-and-decisions-relating-to-a-building-affected-by-emergency/downloadpdf#jumpto-contacting-us) for more information.

To apply for a determination you need to:

Download and complete the application form, which is in two parts:

- Part 1: Application for determination
- Part 2: Party to an application for determination

Please ensure you use Form 14A – Application for determination: decision relating to building affected by emergency (see link below)

Send MBIE:

- your completed Part 1
- your supporting documents
- the correct application fee

Send each of the other parties a copy of:

- your completed Part 1
- your supporting documents
- Part 2 with section M filled in (they will need to complete the rest of this form and return it to MBIE).

NOTE: The information and supporting documents provided are important for MBIE to make a determination. If you do not provide the relevant information, or MBIE needs to make a request for further information that is missing, this will result in delays in making a determination. The application form has suggestions about what to include and how to present your supporting information.

For more information relating to the cost of a determination, reasons your application may

Determination application form - Emergency powers

[PDF 1.8 MB]

<https://www.building.govt.nz/assets/Uploads/resolving->

be declined and withdrawing your application [see our cost of a determination page \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/applying-for-a-determination/#jumpto-cost-of-a-determination\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/applying-for-a-determination/#jumpto-cost-of-a-determination).

[problems/determinations/determination-application-form-building-affected-by-emergency.pdf](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determination-and-decisions-relating-to-a-building-affected-by-emergency/downloadpdf#jumpto-contacting-us)

Timeframes and if further information is required

In respect of the powers exercised under sections 133BS, 133BT, 133BW, or 133BX of the Building Act, MBIE is required to issue the final determination within 60 working days of receiving the application, or in some situations within 15 working days.

MBIE is required to issue the final determination within 15 working days of receiving the application, IF the:

- application relates to powers exercised under section 133BS, 133BT, 133BW, or 133BX of the Building Act and,
- application for determination is made within 6 months after the date the area is 'designated' for building emergency management under the Building Act and,
- chief executive (or those acting under delegated authority from the chief executive) considers the subject matter is not complex and,
- chief executive (or those acting under delegated authority from the chief executive) considers subject matter is not relevant to other buildings in the designated area.

If your application does not meet the above criteria, the timeframe to make a determination is within 60 working days of receiving the application.

MBIE will advise you of the relevant timeframe when your application for determination is accepted.

MBIE may need additional information from you to support a determination. The process will take longer than the relevant timeframe if further information is required in order for MBIE to make a decision. The 60 working days or 15 working days timeframe can also be extended if all parties agree.

If you are unable to provide the information in the timeframe requested you can ask for an extension, but MBIE can make the determination without it if the information cannot be provided in a reasonable timeframe.

If you're unsure about the relevant timeframe for a determination, you can [contact us \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determination-and-decisions-relating-to-a-building-affected-by-emergency/downloadpdf#jumpto-contacting-us\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determination-and-decisions-relating-to-a-building-affected-by-emergency/downloadpdf#jumpto-contacting-us) for more information.

Steps in the determination process (relating to powers of decision relating to buildings affected by emergency)

Our [steps in the determination process \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/steps-in-the-determination-process/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/steps-in-the-determination-process/) page describes the process for a determination that must be issued within 60 days of receiving an application, including requesting clarifications and appealing an issued determination which are also relevant to those required to be issued within 15 working days.

The key steps in the process for a determination that must be issued within 15 working days of receiving an application are explained below:

MBIE receives and considers the application

When MBIE receives an application for a determination the first step is to consider whether the applicant is a 'party', and whether the particular matter is something that can be determined under the Building Act.

A complete application with all relevant supporting information is important for MBIE to make a determination: MBIE will also consider whether the application form has been completed and the relevant information has been provided. MBIE will not start working on the determination if the application form is incomplete and the correct fees have not been paid.

MBIE will advise the parties whether or not we will make determination on the application and the relevant timeframe to issue a final determination.

Assessment

MBIE will assess all the information provided with the application. Once we have assessed the information we may need to ask for clarification or for any other details that might help us make a determination. If MBIE needs to make a request for further information or information that is

missing, this will result in delays in making a determination.

Final determination issued

Once we have the relevant information a decision can be made. Given the 15 working days timeframe it is unlikely a draft determination will be issued to the parties prior to the final determination being made; this is at the discretion of the chief executive (or those acting under delegated authority from the chief executive). Once a decision is made the final determination will be issued.

Contacting us

If you need more help, contact MBIE on:

Phone: 0800 24 22 43

Email: determinations@mbie.govt.nz (<https://www.building.govt.nzmailto:determinations@mbie.govt.nz>)



New Zealand Government

This information is published by the Ministry of Business, Innovation and Employment's Chief Executive. It is a general guide only and, if used, does not relieve any person of the obligation to consider any matter to which the information relates according to the circumstances of the particular case. Expert advice may be required in specific circumstances. Where this information relates to assisting people:

- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.