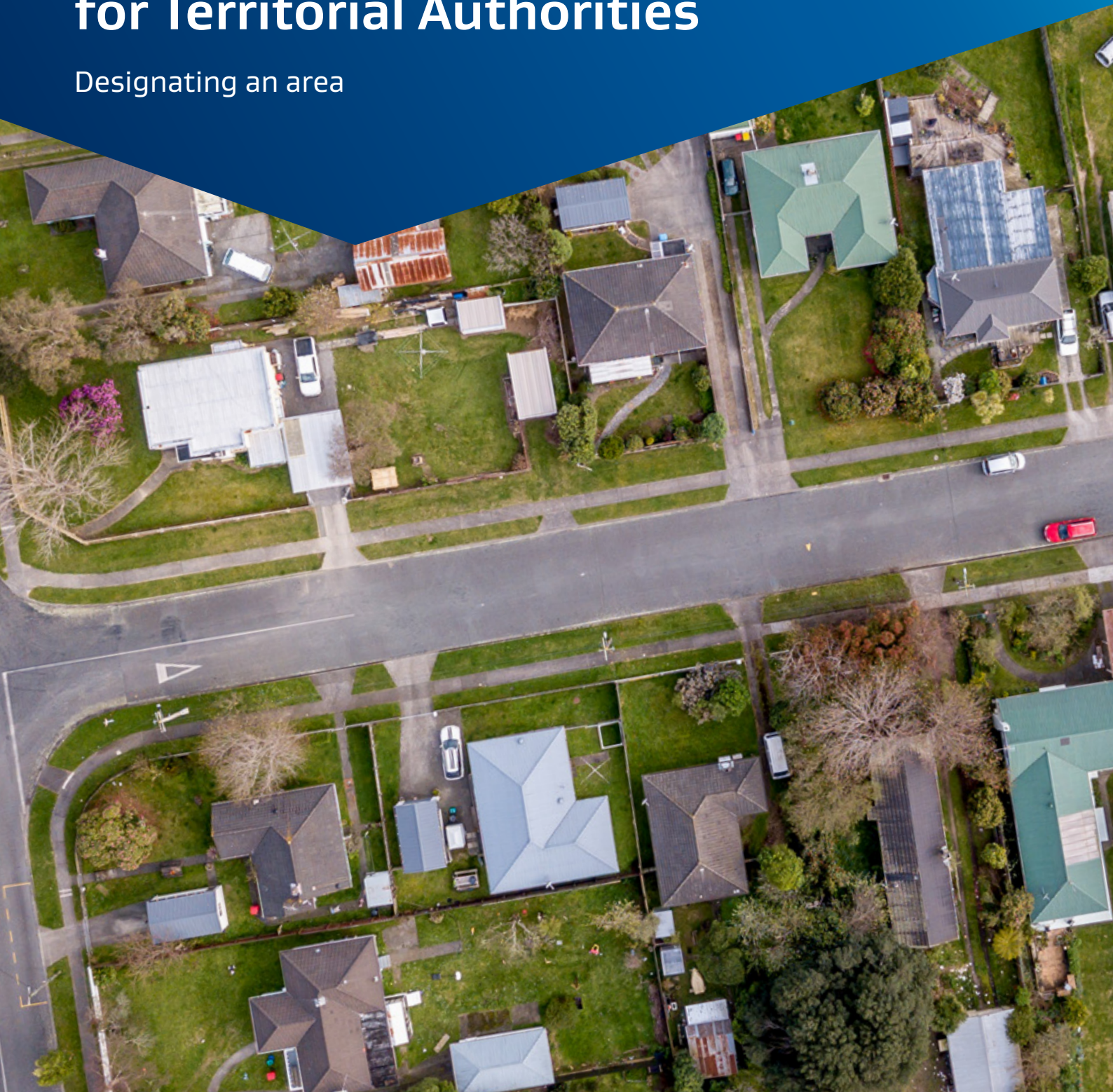


**BUILDING
PERFORMANCE**

Building Emergency Management Guidance for Territorial Authorities

Designating an area



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MORE INFORMATION

The Designation Guidance document is produced by the Building System Performance branch.

This document is issued as guidance under section 175 of the Building Act 2004.

While MBIE has taken care in preparing the document it should not be relied upon as establishing compliance with all relevant clauses of the Building Act or Building Code in all cases that may arise. This document may be updated from time to time and the latest version is available from MBIE's website at www.building.govt.nz

Information, examples and answers to your questions about the topics covered here can be found on our website: www.building.govt.nz or by calling us free on **0800 24 22 43**

DISCLAIMER

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

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Purpose

The purpose of this guidance is to provide territorial authorities with up-to-date information on the designation of areas under Subpart 6B of the Building Act 2004 for managing buildings affected by an emergency event. It supplements existing guidance by providing:

- › information on designating an area for the emergency management of buildings
- › guidance on how to designate an area, and how to extend, review or terminate a designation
- › detail on who is the responsible person for specific powers in designated areas under sections 133BA-BZA of the Building Act
- › information on the specific powers under sections 133BA-BZA of the Building Act, including links to updated forms and templates
- › guidance on what business as usual (BAU) powers are affected while an area is designated.

MBIE has published information on managing buildings in an emergency at www.building.govt.nz.

For more detailed guidance on building emergency management, see: [Managing buildings in an emergency - guidance for decision-makers and territorial authorities](#)

DEFINITIONS

Term	Definition
CDEM Decision-Maker	(a) (i) the Minister responsible for administration of the Civil Defence Emergency Management Act 2002 (CDEM Act); or (ii) a person who is appointed or otherwise authorised under section 25 of the CDEM Act to declare a state of local emergency or give notice of a local transition period (as the case may be) for the area; and (b) in sections 133BG and 133BH of the Building Act, also includes a person who, at the relevant time, is the successor in office of a person referred to (a) (ii) above.
Emergency	a situation that a situation of a kind described in paragraphs (a) and (b) of the definition of emergency in section 4 of the CDEM Act.
State of emergency	a state of national emergency (declared under section 66 of the CDEM Act) or a state of local emergency (declared under section 68 or 69 of the CDEM Act).
Responsible person	a person who is authorised by section 133B) or 133BK of the Building Act to exercise powers under Subpart 6B of the Act.
Transition period	a national transition period (notified under section 94A of the CDEM Act) or a local transition period (notified under section 94B of the CDEM Act).

FEATURES OF THIS DOCUMENT

Hyperlinks are provided to cross-reference within this document and to external websites. These hyperlinks appear with a [blue underline](#).

Roles and responsibilities

THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT (MBIE)

MBIE has a role as steward of building management in emergencies and plays a significant role at a national coordination level when an emergency occurs – from the initial response right through to recovery. MBIE’s stewardship requirements in the response phase of an emergency include supporting, coordinating, and in certain circumstances, leading the national response.

MBIE has legal obligations, roles and responsibilities under the National Civil Defence Emergency Management Plan Order 2015 (the National CDEM Plan Order 2015) and the Building Act 2004 (the Building Act). Both legislative vehicles require MBIE to have systems and functions to be in place in the event of an emergency.

MBIE’s building emergency management responsibilities include:

- › coordinating national building management support for designated areas, in consultation with CDEM, relevant agencies and professional bodies as required
- › leading rapid building assessment functions in a state of national emergency
- › the training and registration of qualified Rapid Building Assessors, who are able to be deployed across Aotearoa New Zealand
- › providing advice and guidance to affected territorial authorities, including the facilitation of designation requests and deployment of registered Rapid Building Assessors
- › providing guidance on rapid building assessments, and resources for Rapid Building Assessors including assessment forms and placards
- › lead the securing and management of compromised building sites for forensic investigations

Under a national state of emergency, some of MBIE's roles for building emergency management change at the request of the National Controller in the National Crisis Management Centre. For more information, please visit: www.building.govt.nz

TERRITORIAL AUTHORITIES

Under the [Civil Defence Emergency Management Act 2002](#) (the CDEM Act), territorial authorities are required to plan for civil defence emergency management in consultation with their communities, and in collaboration with emergency services and lifeline utilities. Territorial authorities’ roles and responsibilities for building management are detailed in Section 15 of the [National CDEM Plan Order 2015](#).

As part of this, territorial authorities must develop and maintain arrangements to ensure they are ready to respond to an emergency and lead recovery work to achieve the building emergency management objectives of the National CDEM Plan Order 2015, which are:

- › to protect life and promote safety within and in the vicinity of each building
- › minimise damage to and loss of property
- › restore building functions as soon as possible to minimise social and economic consequences of the emergency
- › minimise losses or disruption of lifeline utility services that are in or near any building.

Designating an area to manage buildings in an emergency

WHAT IS A DESIGNATION?

A designated area is an area approved by the relevant decision maker (see below) to allow a responsible person to take specific actions under the Building Act to manage buildings in an emergency.

Designating an area that has been affected by an emergency activates powers under [Subpart 6B of the Building Act](#) for managing buildings within that designated area. These provisions allow a territorial authority to effectively manage the process from response through to recovery, providing certainty to building owners and occupiers about how the safety of their buildings will be managed after an emergency.

A designation can be in place at the same time as a state of emergency or transition period, or it can be a standalone measure.

WHO CAN DESIGNATE AN AREA?

Who can designate an area depends on whether an area is subject to a state of emergency or transition period under the CDEM Act or not.

If the area is under a state of emergency or transition period, a designation can be made by a relevant Civil Defence Emergency Management (CDEM) decision maker. This means either the Minister for Emergency Management or a person appointed or otherwise authorised under section 25 of the CDEM Act to declare a state of local emergency or give notice of a local transition period for the area (usually the mayor or another decision maker who is appointed under these powers).

If an emergency arises and a state of emergency or transition period is not in force, an area can be designated by the Minister for Building and Construction or the territorial authority for the relevant area, with prior approval of the Minister for Building and Construction.

THE PURPOSE OF A DESIGNATION

Designating an area allows for the longer-term emergency management of buildings. Following an emergency, it may be necessary to take extraordinary measures to ensure that risks to life and property from damaged buildings and/or land are managed adequately. The [CDEM Act](#) does have some powers for building management during a state of emergency or transition period. However, protective measures undertaken during a state of emergency or transition period lose legal force when the state of emergency ends if there is no designation in place.

The Building Act powers that apply upon designation allow for the management of buildings after a state of emergency or transition period ends. Once an area has been designated, the Building Act provides the responsible person with a number of special powers that may be exercised in respect of all buildings within that area. These include the power to:

- › enter buildings
- › complete post-event assessments
- › direct the evacuation of buildings
- › put in place measures for protecting buildings and keeping people at a safe distance
- › place notices and signs on buildings

- › direct the owners of building or land to provide information
- › direct works (urgent and non-urgent) to remove or reduce risks
- › direct works for long term use or occupation of a building.

There are several reasons for using the designation powers under the Building Act:

- › a local state of emergency only lasts for seven days unless extended or terminated and a local transition period for up to 28 days unless extended or terminated
- › long-term management of buildings may be required (eg many damaged buildings in an area)
- › the Building Act provides a flexible system and additional tools to territorial authorities to manage buildings following an emergency event
- › damaged buildings may not meet the test for issuing section 124 notices.

The powers also account for situations where there are buildings or surrounding land damaged in an emergency event that pose a risk to life safety or of damage to other property. These powers allow for access to be restricted to buildings where a risk is posed by the adjacent land, for example a rock fall or slip.

Once an area has been designated, all building emergency management functions should be managed under the Building Act. CDEM Act powers must not be used to manage affected buildings once a designation is in place, unless the responsible person considers this is needed to remove or reduce risks that cannot be addressed using Building Act powers.

An area does not have to be designated following an emergency event. If a state of emergency or transition period is in place, CDEM Act powers can be used to manage buildings. However, protective measures undertaken during a state of emergency or transition period, such as notices (placards) that prohibit access, lose legal force when the state of emergency ends.



WHEN CAN AN AREA BE DESIGNATED?

An area can also only be designated if an emergency arises, or when there is a state of emergency or transition period in force. Also, the responsible person can only designate an area if satisfied the [tests](#) in section 133BD of the Building Act are met. This requires that the decision to designate is in the public interest and is necessary or desirable for the protection of one of the following:

- › people from death or injury
- › buildings from damage or disruption to use
- › public thoroughfares from disruption
- › critical infrastructure from damage or disruption
- › people and buildings from insanitary conditions (if applicable) of a building in the relevant area.

The decision maker must also, to the extent practicable in the circumstances, consider:

- › the scale and degree of the impact of the emergency and of its effects on buildings in the area
- › the likelihood of a further emergency or any other relevant event occurring that could cause:
 - buildings in the relevant area to pose increased or additional risks
 - land in the relevant area to pose a risk to a building
- › the principle that it is preferable that risks be managed, if possible, without the exercise or continued exercise of powers under Part 2, Subpart 6B of the Building Act.

A territorial authority can apply to designate an area even if a state of emergency has not been declared, so long as the test for designating an area is met. A designation lasts for three years unless terminated sooner or extended.

Alternative regulatory options to manage building damage after an emergency include the following:

Legislation	Powers
CDEM Act 2002: <ul style="list-style-type: none">› sections 86-88, 91-92.	Provides powers to manage buildings including powers of evacuation, inspection, giving direction.
Building Act 2004: <ul style="list-style-type: none">› sections 121 – 130› sections 220 – 221› section 222(1)(b)	Special provisions to manage dangerous, affected, or insanitary buildings; General provisions for carrying out building work on default; Entering buildings to undertake inspections with the consent of the occupier or an order of the District Court.
Local Government Act 2002: <ul style="list-style-type: none">› section 173	Provides powers of entry to land and buildings and inspection if there is a sudden emergency.

WHO MAY BE INVOLVED IN THE DECISION TO DESIGNATE AN AREA?

Although there is no legal requirement to consult, the decision maker may wish to consult with the following people to help make the decision to designate (as relevant):

- › local Building Response Managers (territorial authority)
- › local Controller and Emergency Management Officers
- › National Emergency Management Agency (NEMA)
- › MBIE
- › other members of the CDEM Group eg neighbouring mayors
- › Fire and Emergency New Zealand
- › Heritage NZ Pouhere Taonga
- › Institute of Geological and Nuclear Sciences (GNS)
- › local Authority Utility Managers
- › New Zealand Police.

PLACARDS ISSUED UNDER THE CDEM ACT CAN CONTINUE UNDER A DESIGNATION

Placards and other measures used during a state of emergency can be replaced by notices under section 124 of the Building Act, but these provisions can only be used for buildings which are dangerous in the normal course of events, or insanitary, or for a building that is adjacent to, adjoining, or nearby a dangerous building.

Many buildings damaged in an emergency event will not meet the high threshold to be a 'dangerous building' under section 121 of the Building Act or an 'affected building' under section 121A of the Building Act. However, these buildings do need to be managed for life safety purposes.

For more information on how to deal with dangerous, affected and insanitary buildings, see: [dangerous, affected and insanitary buildings](#)

Before the state of emergency or transition period ends, and an area has been subsequently designated, the responsible person may determine that any equivalent CDEM Act notice, direction or power should be treated as continuing in force under the corresponding part of the Building Act (subject to any conditions imposed). The determination must be made by the responsible person prior to the end of state of emergency and should be recorded.

Once this determination is made, placards/notices restricting access to buildings do not need to be reissued following the designation of an area. The placard would be treated as if it had been issued under the relevant corresponding section of the Building Act.

Designation process

When deciding to designate an area, the following should be considered.

- › Has an emergency occurred, or may one occur within the area?
- › Is the situation an emergency as defined in the CDEM Act?
- › Have the [tests](#) in section 133BD of the Building Act been met to designate?

When a decision has been made to designate an area, the following form must be completed: [designation form](#)

Important information must be detailed on the form. For example: the area description needs to identify where the designated area begins and ends, ensuring any possible ambiguity or confusion is avoided.

A clearly marked-up map that shows the area(s) to be designated should also be attached to the form.

The completed designation form, with supporting documentation must be emailed to:

buildingemergencymanagement@mbie.govt.nz

When the designation form is received, MBIE will review the designation request and either notify or facilitate the required approval of the Minister for Building and Construction as appropriate. The diagram on the following page outlines the process.

PUBLIC NOTIFICATION OF DESIGNATION

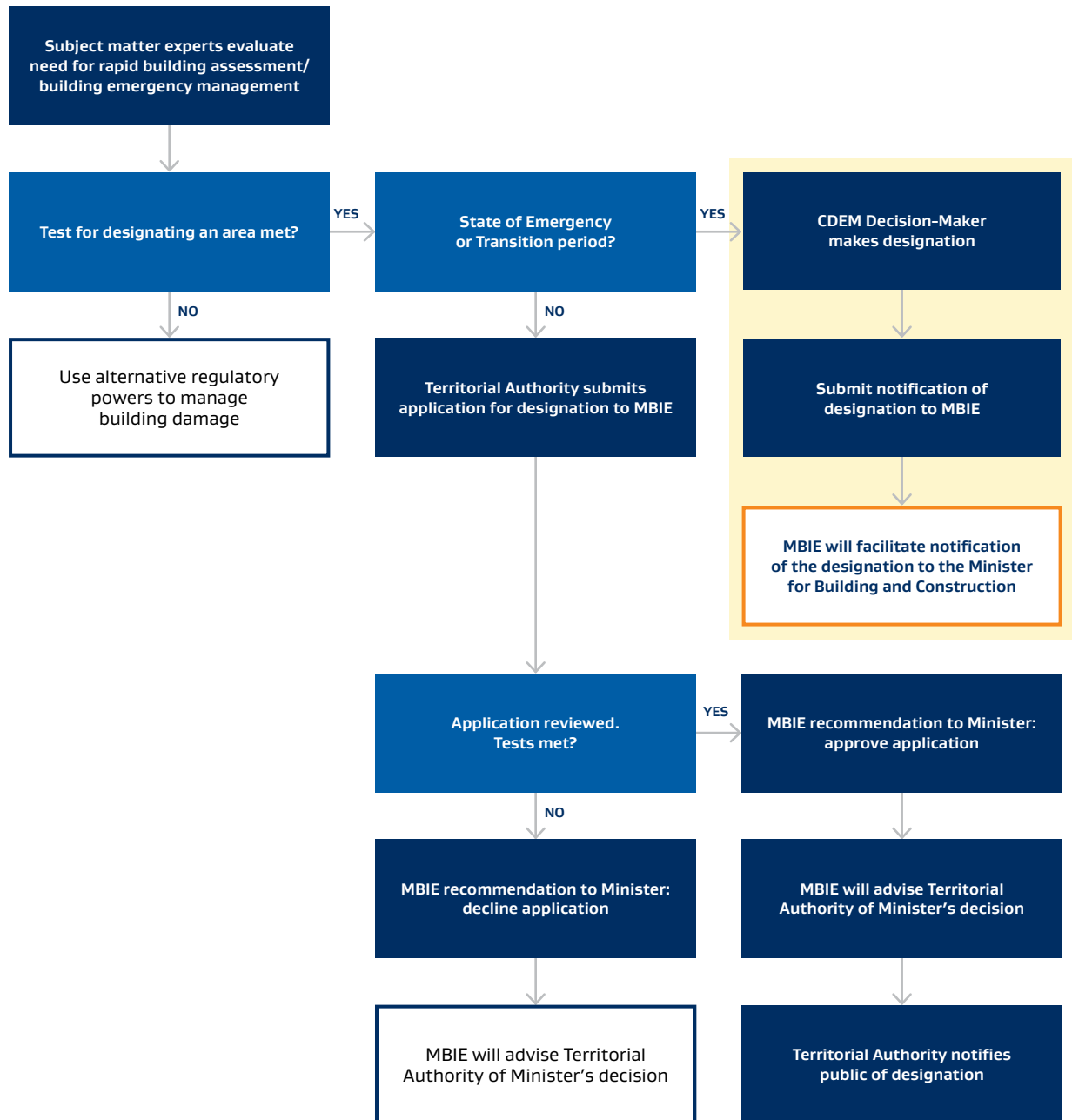
A designation comes into force at the time and on the date that the designation is made. Once made, it must be immediately publicly notified by publishing the information on a publicly accessible and free-to-access website or, if this is not practicable, through other appropriate means. The notice must describe the designated area, describe the relevant emergency, and specify the date/time the designation was made.

MBIE also publishes a list of designated areas, including the responsible territorial authority and next review date here: [Designated Areas for building emergency management | Building Performance](#)



Photo: Nick Cottrell

Figure 1: The designation process



REVIEWING A DESIGNATION

Any designation of an area for building emergency management must be reviewed at least every 90-days by the responsible territorial authority.

The [90-day review of designation form for territorial authorities](#) outlines the matters that must be considered including whether:

- › the designation is still in the public interest and required to protect people, and minimise damage and disruption to buildings, public thoroughfares and critical infrastructure. **Note:** critical infrastructure means a priority building or a building or other infrastructure operated or used by a lifeline utility
- › the risks can be managed without the use of the powers provided by a designation
- › the entire area under designation needs to remain or if the designation for some of the area can be terminated.

The review outcome must specify whether the designation will continue without alteration, if part or all the designation should be terminated, or if the designation needs to be extended.

The completed 90-day review form, with supporting documentation must be emailed to:

buildingemergencymanagement@mbie.govt.nz

If as an outcome of the review, a decision to terminate part or all of a designated area has been made, a termination of designation form must also be completed (see below section).

The outcome of each 90-day review must be immediately publicly notified by publishing the information on a publicly accessible and free-to-access website or, if this is not possible, through other appropriate means. The notice must include details of the designated area, the emergency and the date/time of the outcome of the review.

PART OR FULL TERMINATION OF A DESIGNATION

A designation of an area should remain in place until the designation is no longer in the public interest. If, after reviewing the designation of an area, it is decided that a designation is no longer required for all or part of the area under designation, it can be terminated. For instance, when an area (including suburbs and/or specific addresses) no longer has placarded properties, or those remaining can be managed using the usual provisions of the Building Act, the designation can be terminated for that area.

When a designation covers a large area/number of buildings, it is recommended that a territorial authority considers whether the entire area under designation needs to remain or, if the designation for some of the area can be terminated, and any remaining risks can be managed without the use or continued use of the powers provided by a designation.

It is recommended that a designation remains in place in areas where red or yellow placarded buildings remain. This is because the responsible person needs sufficient information to determine that the initial reason for prohibiting or restricting use of the building no longer existed (ie the danger identified had been mitigated, or it was determined the dangers could be dealt with using the council's ordinary powers under the Building Act, such as a section 124 notice).

As each situation can be different, territorial authorities should seek independent legal advice about how or when placards should be reassessed or removed following a termination of a designated area.

A person must not terminate a designation unless the person is satisfied that the designation is no longer in the public interest. Note that a designation will automatically terminate after three years, unless extended.

When a decision has been made to terminate part or all of an area, the following form must be completed: [request to terminate designation form](#)

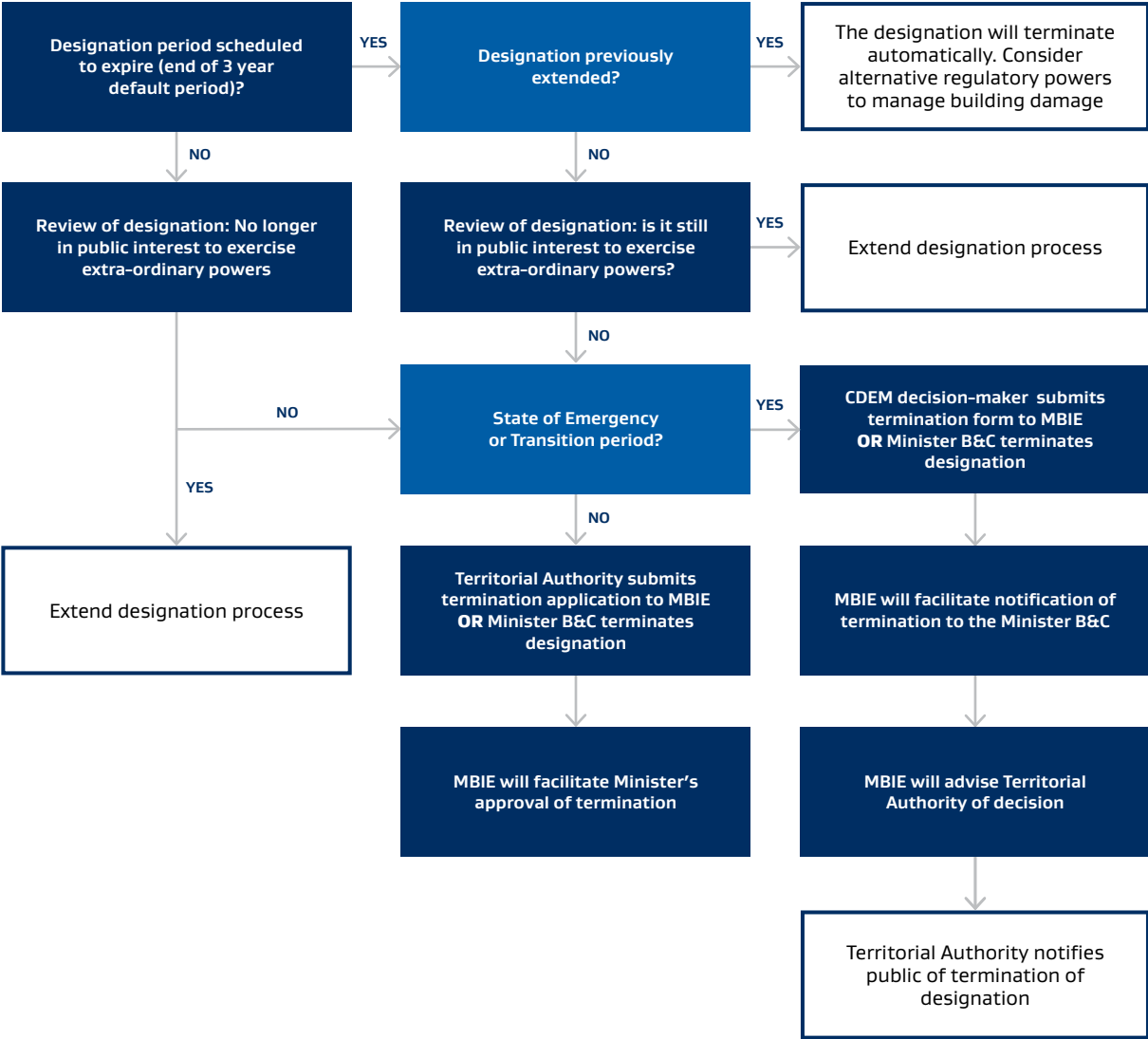
Important information must be detailed on the form, for example: why the designation in the specified area(s) is no longer in the public interest.

A clearly marked-up map showing the area(s) to be terminated also be attached to the form.

The completed termination of designation form, with supporting documentation must be emailed to: buildingemergencymanagement@mbie.govt.nz

When the termination form is received, MBIE will review the request and either notify or facilitate the required approval of the Minister for Building and Construction as appropriate. The below diagram outlines the process:

Figure 2: Termination of designation process



If the designation is terminated, the territorial authority must publicly notify (eg by publishing the information on a publicly accessible website). The notice must include details of the designated area, the emergency and the date/time the termination was made.

EXTENDING A DESIGNATION

A designation will terminate automatically after three years unless an application to extend it has been approved. An extension may relate to all or part of the designated area but must be for no more than three years and can be made only once.

When a decision has been made to terminate part or all of the designated area, the following form must be completed: [request to extend designation](#)

Important information must be detailed on the form. For example, why the designation is still in the public interest.

The completed extension of designation form, with supporting documentation must be emailed to: buildingemergencymanagement@mbie.govt.nz

When the extension request form is received, MBIE will review the request and either notify or facilitate the required approval of the Minister for Building and Construction as appropriate. The opposite diagram outlines the process.

If the designation is extended, this must be publicly notified. The notice must include details of the designated area, the emergency and the date/time the extension of the designation was made.

For more information on how the designation process works, see:

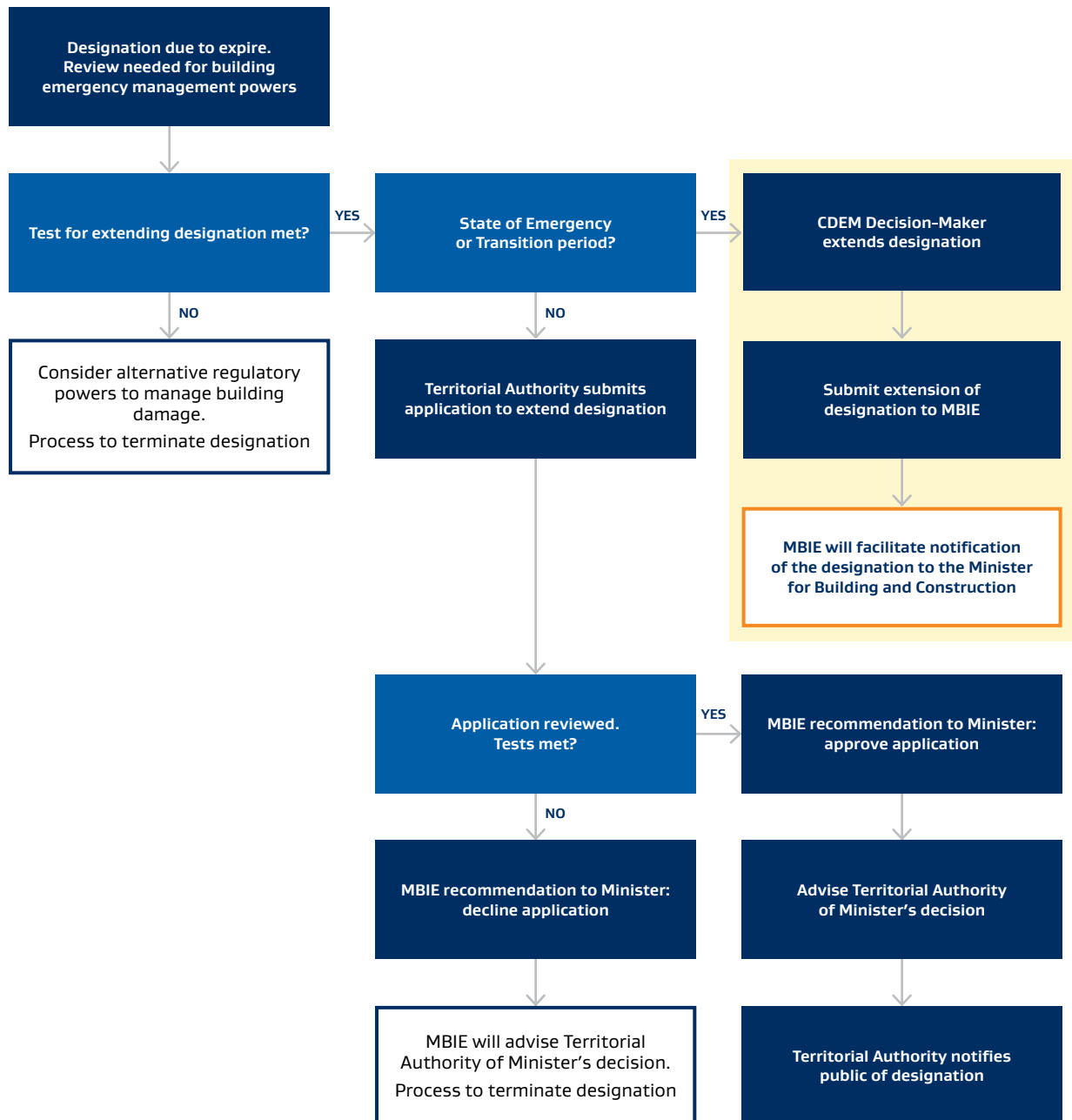
[Designation step-by-step guide](#)

[Designating an area for emergency management fact sheet](#)



Photo: Nick Cottrell

Figure 3: Extending a designation



Who is a 'responsible person' and what powers do they have?

The Building Act specifies that '**responsible persons**' may exercise powers under Subpart 6B of the Building Act (ie in a designated area).

Once an area has been designated, who the responsible person is may depend on how and who put the designation in place:

In an instance where the Minister for Building and Construction designated the area and there is no state of emergency or transition period in force, the powers can be exercised by the Minister or on direction by the Minister, by the territorial authority responsible for the designated area.

If no state of emergency/transition period is in force at the same time as a designation and the Minister for Building and Construction did not put the designation in place, the powers may be exercised by the territorial authority responsible for the designated area.

If a state of emergency or transition period is in force at the same time as the designation, the responsible person will be a CDEM Act officer. This could be the Controller, Recovery Manager, Director or CDEM Group (or someone acting under their authority). Section 133BK of Subpart 6B outlines which CDEM Act officer is the responsible person depending on the power and the situation.

Note, if a state of emergency or transition period expires or is terminated early and a designation is in force, the responsible person will switch from the CDEM Act officer to the responsible territorial authority.

Both the relevant CDEM group and territorial authority should make sure they have delegation frameworks in place to ensure the Building Response Manager and any other relevant officials are authorised to exercise building emergency management powers under the different scenarios.

The responsible person for each power and situation is set out in the tables below.

1. CONDUCT POST-EVENT ASSESSMENTS (SECTION 133BQ)

Responsible person	Powers
› State of emergency: a Controller (or a person acting under that person's authority)	Rapid Building Assessors acting under the authority of the responsible person may inspect the exterior and interior of a building or land in a designated area and prepare a post-event assessment of any risks posed by or to the building.
› Transition period: a Recovery Manager (or a person acting under that person's authority)	A trained Rapid Building Assessor (Tier 1 or Tier 2) should lead each assessment team. The post-event assessment must be prepared—
› No state of emergency or transition period: Territorial Authority or, in certain circumstances, the Minister for Building & Construction	(a) in writing and in the form approved by the Chief Executive of MBIE, and (b) should be prepared in accordance with the methodology set out in the RBA field guides Current forms and field guides

Note: Where a warrant is required to carry out a rapid building assessment, the responsible person must apply to the District Court following the process set out in the Search and Surveillance Act 2012.

2. POWER TO EVACUATE BUILDINGS (SECTION 133BR)

Responsible person	Powers
› State of emergency: a Controller or constable (or a person acting under their authority)	A responsible person or a constable may direct the evacuation of a building in a designated area if satisfied that evacuation is necessary to prevent death or injury.
› Transition period: a Recovery Manager or constable (or a person acting under their authority)	A responsible person or a constable may enter a building or land for this purpose. To do so, they must produce evidence or give a general explanation of the authority under which the person is acting and the power that the person is exercising.
› No state of emergency or transition period: Territorial Authority or under certain circumstances, the Minister for Building & Construction	

Example explanation of authority: "I am the responsible person/constable acting under the authority of section 133BR of the Building Act 2004 and direct the evacuation of this building as I am satisfied that it is necessary to prevent the death or injury of any person in the designated area."

3. PLACE NOTICES & SIGNS (PLACARDS) ON BUILDINGS (SECTION 133BT)

Responsible person	Powers
<ul style="list-style-type: none"> › State of emergency: a Controller (or a person acting under their authority) › Transition period: a Recovery Manager (or a person acting under their authority) › No state of emergency or transition period: Territorial Authority or under certain circumstances the Minister for Building & Construction 	<p>A responsible person may place one or more signs or notices on or near a building in a designated area prohibiting or restricting the use of the building if they believe that it is reasonably necessary to remove or reduce risks of injury or death; or an evacuation of the building has been directed under section 133BR.</p> <p>A sign or notice under this section must:</p> <ul style="list-style-type: none"> › be in writing and in the form (if any) approved by the Chief Executive of MBIE. › detail the nature and extent of any damage to the building; and › whether, how, and to what extent the building can safely be used (in the case of a sign or notice under subsection (1)); and › be visible to people approaching the building. <p style="text-align: center;">Current rapid building assessment placards</p>

4. MEASURES TO KEEP PEOPLE AT A SAFE DISTANCE AWAY AND PROTECT BUILDINGS (SECTION 133BS)

Responsible person	Powers
<ul style="list-style-type: none"> › State of emergency: a Controller (or a person acting under the Controller's authority) › Transition period: A Recovery Manager (or a person acting under the Controller's authority) › No state of emergency or transition period: Territorial Authority or under certain circumstances the Minister for Building & Construction 	<p>A responsible person may put in place measures that the person considers reasonably necessary to keep people at a safe distance from a building or to protect a building in a designated area from being damaged (eg a hoarding, barricade or fence).</p> <p>If measures have been in place for more than 3 months, the owner of the building is liable for the costs of continuing to take the measures after that period. The responsible person may then recover those costs from the owner.</p>

5. URGENT WORKS TO REMOVE OR REDUCE RISKS (SECTION 133BV) – INCLUDING HERITAGE BUILDINGS

Responsible person	Powers
<ul style="list-style-type: none"> › State of emergency: the CDEM Group (or authority) › Transition period: a Recovery Manager (or a person acting under their authority) › No state of emergency or transition period: Territorial Authority or under certain circumstances the Minister for Building & Construction 	<p>A responsible person can carry out works in relation to a building in a designated area if they believe they are—</p> <ul style="list-style-type: none"> (a) reasonably necessary to remove or reduce risks posed by the building; and (b) must be carried out without delay in order to remove or reduce those risks. <p>For example, a building that is not a heritage building has been damaged by an earthquake. The responsible person believes that, if works to prop and brace the walls of the building are not carried out without delay, the building might collapse and, because of the building’s location, cause death or injury. This section applies and the responsible person may carry out the works.</p> <p>For heritage buildings:</p> <p>There are special conditions for urgent works relating to heritage buildings, to ensure respect is given to the national significance of these buildings. The responsible person must obtain the approval of the Minister for Building and Construction before carrying out works that involve the demolition of the whole or a part of a heritage building that is identified as Category 1 or wāhi tūpuna in this list. MBIE will facilitate the process to obtain approval on the responsible person’s behalf.</p> <p>Demolition of heritage buildings fact sheet</p> <p>Demolition of heritage buildings request form</p>

Note: If the responsible person’s decision to carry out works under this section applies as if it was a warrant issued under section 129 of the Building Act (measures to avoid immediate danger or to fix insanitary conditions), and the responsible person is the territorial authority, then the territorial authority must apply to District Court for confirmation of warrant (see section 130 of the Act).

6. WORKS TO REMOVE OR REDUCE OTHER RISKS (SECTION 133BW)

Responsible person	Powers
<ul style="list-style-type: none"> › State of emergency: the CDEM Group (or authority) › Transition period: a Recovery Manager (or a person acting under their authority) › No state of emergency or transition period: Territorial Authority or under certain circumstances the Minister for Building & Construction 	<p>A responsible person can carry out works in relation to a building in a designated area or direct the owner of the building to do so if they believe the works are—</p> <ul style="list-style-type: none"> › reasonably necessary to remove or reduce risks posed by the building; and › section 133BV(1)(b) of the Act does not apply (ie the works aren't urgent); and › there will be ongoing disruption of a public thoroughfare or of the use of another building or of critical infrastructure because the responsible person has put in place measures such as barricades or fences (section 133BS) or signs or placards (section 133BT) on the building, which must remain in place until the works are carried out. <p>For example, a non-heritage building has been damaged by an earthquake. The responsible person believes that works to prop and brace the walls of the building are necessary to remove or reduce the risk of the building collapsing but need not be carried out immediately. In the meantime, the responsible person prohibits entry to the building and also an adjacent building by issuing yellow placards to the buildings. Until the works are completed, use of the two buildings will be disrupted. So, this section applies, and the responsible person may carry out the works or direct the building owner to do so.</p> <p>If the responsible person carries out the works, the owner of the building is liable for the costs of the works, and the responsible person may seek to recover those costs.</p>

Before carrying out works:

At least 10 days before deciding to carry out works, the responsible person must seek and consider the views of the following stakeholders described in [section 133BW\(3\)\(a\)-\(c\)](#) of the Act if it is reasonably practicable to do so.

Directing an owner to carry out works:

If the responsible person directs the owner to carry out works, the direction must be in writing, in the form (if any) approved by the Chief Executive of MBIE.

[Form for directing owner to carry out works to remove or reduce risks](#)

Note: A responsible person must not carry out works under this section after the day that is six months after the date on which the designation for the designated area comes into force.

7. TO DIRECT AN OWNER TO GIVE INFORMATION (SECTION 133BU)

Responsible person	Powers
<ul style="list-style-type: none"> › State of emergency: the Director or CDEM Group (or a person acting under their authority) › Transition period: the Director or CDEM Group (or a person acting under their authority) › No state of emergency transition period: Territorial Authority or under certain circumstances the Minister for Building & Construction 	<p>A responsible person may direct the owner to provide information about their building or land if the responsible person believes that the further information is reasonably necessary to enable the responsible person to determine—</p> <ul style="list-style-type: none"> › the risks posed by the building and whether to exercise further powers under Subpart 6B in relation to the building; or › what works, if any, are needed to remove or reduce the risks. <p>If the responsible person directs the owner to provide information, the direction must be in writing, in the form (if any) approved by the Chief Executive of MBIE.</p> <p>Form for directing an owner to give information</p>

8. WORKS FOR LONG-TERM USE OR OCCUPATION (SECTION 133BX)

Responsible person	Powers
<ul style="list-style-type: none"> › State of emergency: the CDEM Group (or a person acting under their authority) › Transition period: a Recovery Manager (or a person acting under their authority) › No state of emergency or transition period: Territorial Authority or under certain circumstances the Minister for Building & Construction 	<p>A responsible person may direct the owner of a building to carry out works if they believe that the works are —</p> <ul style="list-style-type: none"> › are reasonably necessary to remove or reduce risks posed by the building; and › sections 133BV(1)(b) and 133BW(1)(c) of the Act do not apply (ie they are not urgent works or works to remove or reduce other risks); and › the responsible person believes that the works are reasonably necessary to make the building safe, sanitary, and otherwise suitable to be used or occupied by people on a long-term basis. <p>This power can be used for a non-heritage building.</p> <p>Any works directed to be undertaken for the long-term use or occupation of a building should be carried out using the normal building control processes, ie by issuing a building consent for the building work and a code compliance certificate as final sign-off.</p>

Directing an owner to carry out works:

The responsible person may direct the owner of the building to carry out those works. A direction to carry out works must be in writing, in the form (if any) approved by the Chief Executive of MBIE:

[Form for directing owner to carry out works for long-term use of occupation of a building](#)

As soon as practicable after completion of the building work the building owner will need to apply for a certificate of acceptance under section 96 of the Act.

Note: If works directed in relation to a commercial building or a multi-unit residential building are not carried out, the responsible person may continue to exercise powers under section 133BS (barricades, fences etc) or 133BT (notices, signs, placards) in relation to the building.

9. EXERCISE OF POWERS IN SECURED BUILDINGS (SECTION 133BP)

Responsible person	Powers
The responsible person will depend on the power that needs to be exercised. Consult the relevant tables in this section to determine the responsible person for the power that needs to be exercised.	Secured buildings include buildings (or parts of buildings) in defence areas and buildings (or parts of buildings) used by the New Zealand Defence Force, intelligence and security agencies, and the Ministry of Foreign Affairs and Trade.
For example, if a post-event assessment needs to be done, the responsible person will be as per section 133BQ in Table 1 above.	A responsible person exercising a power under any of sections 133BQ to 133BX and 133BZA in relation to a secured building must exercise that power in accordance with any instructions given by the officer in charge of the building. See section 133BB of the Act for the definition of 'officer in charge'. For example, the officer in charge may choose to supervise a rapid building assessment or the completion of urgent works, to ensure the security of sensitive information.

10. POWER TO ENTER BUILDING OR LAND (SECTION 133B0)

Powers
A responsible person may enter a building or land for the purpose of exercising a power under— <ul style="list-style-type: none">› Section 133BR (evacuation)› section 133BS (measures to keep people at safe distance and protect building); or› section 133BT (notices and signs on buildings); or› section 133BV (urgent works to remove or reduce risks); or› section 133BW (works to remove or reduce other risks); or› section 133BX (works for long-term use or occupation of building). See the above guidance boxes for the responsible person for each power listed. A person who is exercising a power of entry under this section must carry proof of identity and produce that proof of identity on request by the owner or occupier or they must also produce evidence or give a general explanation of the authority under which the person is acting and the power that the person is exercising.

RESOURCE CONSENT NOT REQUIRED

Section 133BY of the Building Act specifies that resource consent under the Resource Management Act 1991 is not required for works that are carried out under:

- › section 133BS (Measures to keep people at safe distance and protect building)
- › section 133BV (Urgent works to remove or reduce risks)
- › section 133BW (Works to remove or reduce other risks).

EARTHQUAKE PRONE BUILDINGS – DEADLINES BROUGHT FORWARD

The earthquake prone building provisions in Subpart 6A continue to apply in a designated area. If a building to which Subpart 6A applies is in a designated area, a responsible person may bring forward a deadline for completing seismic work under section 133AM (including a deadline that has been extended) if the responsible person believes that the imposition of the earlier deadline is reasonably necessary to remove or reduce risks of injury or death posed by the building.

A deadline or a due date for information required about an earthquake prone building can also be brought forward if the responsible person believes that an earlier due date is reasonably necessary to enable the person to determine the matters referred to in section 133BU(1) – where an owner is directed to give information about a building, including the risks posed by the building and what works are needed to remove or reduce those risks.

DANGEROUS DAMS

If a dangerous dam is in a designated area, sections 153-162 (dangerous dams) of the Building Act will continue to apply to the dam only for the purposes of an action taken or notice issued under section 154 or work carried out in accordance with the notice or under section 156 before the designation came into force. This includes an action taken in relation to the dam under a warrant issued under section 157.

Subpart 6B of the Building Act applies to the building and prevails in the event of any inconsistency in the operation of Subpart 6A (Earthquake-prone buildings) and sections 153 to 162 of the Act (Dangerous dams).

Business as usual actions in a designated area

When an area is designated and the immediate emergency has passed, business as usual (BAU), such as compliance inspections, will likely resume in some or all parts of the designated area. However, while a designation is in place, some BAU processes may be impacted. This section provides some guidance on what powers can be used while an area is designated.

SECTION 164 - NOTICE TO FIX

A notice to fix may still be issued in a designated area. The relevant section in subpart 6B of the Building Act that deals with works for long-term use or occupation of a building in a designated area (section 133BX) applies where works are required to remove or reduce risks posed by the building. A section 164 notice applies where a building owner (or person carrying out or supervising building work) is contravening the Building Act or regulations (eg reporting procedures in a compliance schedule not being met, or a BWOF needing renewed that is not correct).

SECTION 124 - DANGEROUS, AFFECTED, AND INSANITARY BUILDINGS

Notices issued under section 124 of the Building Act in relation to buildings within the designated area cannot be issued while the designation is in force. [Section 123B\(1\)](#) of the Act states: If a dangerous or insanitary building or a building adjacent to, or adjoining, a dangerous building is located in an area that has been designated, Subpart 6 (*Special provisions for dangerous, affected, and insanitary buildings and including s 124*) does not apply to that building while the designation is in force.

However, Subpart 6 continues to apply to certain actions taken or notices issued under section 124 before the designation. This includes work carried out in accordance with an issued notice under section 124(2)(c) or under section 126, and an action in relation to the building for which a warrant has been issued under section 129(2) before the designation.

USING SUBPART 6B (SECTION 133) POWERS TO MANAGE BAU IN A DESIGNATED AREA

There are similar powers in Subpart 6B that could be used to achieve a similar outcome to a section 124 notice while an area is designated. As there are differences in who has authority to exercise the power, different triggers for when the power may be exercised, and different procedural requirements, it is important that the relevant decision maker has read and understands all of Subpart 6B to apply the right powers, including who the responsible person is to exercise that power.

Hoarding or fence: Where section 124(2)(a) specifies that a territorial authority may put up a hoarding or fence to stop people approaching the building, section 133B5 states that a responsible person may put in place measures that the person considers reasonably necessary to keep people at a safe distance from a building in the designated area. Who the responsible person is will depend on the circumstance (see above).

Notice restricting entry to a building: Sections 124(2)(b),(d) specify that a territorial authority can attach a notice warning people not to approach the building, or issue a notice restricting entry. Section 133BT also gives a responsible person the power to place 1 or more signs or notices on or near a building in a designated

area, prohibiting or restricting use of the building, where reasonably believed necessary to remove or reduce risks of injury or death. This means a red or yellow placard could be issued to restrict or prohibit entry in these circumstances.

The red, yellow and white placards are approved by the Chief Executive of MBIE as per section 133BT(3) of the Building Act. This means that only the approved placard can be used. A territorial authority cannot use another type of notice or sign to restrict entry under section 133BT.

Requiring work to be carried out on a building:

- › section 133BV allows a responsible person to carry out urgent works to remove or reduce risks in a designated area.
- › section 133BW allows a responsible person to carry out or direct a building owner to carry out non-urgent works in a designated area.
- › section 133BX allows a responsible person the power to direct the owner of the building to carry out works for long-term use or occupation of building.

Note: A designation can be terminated for a specific part of the designated area, or the whole area. For example, a designation can be reduced to only the areas where damaged/placarded buildings remain. If a part of a designation is terminated, it means that BAU powers resume in the terminated areas.

Section 130 - Application to District Court to carry out work:

The need to apply to District Court to carry out work is still required where works are carried out under section 133BV (urgent works). Section 133BV(8) specifies that section 130 applies—

- › as if the responsible person's decision to carry out works under this section were a warrant issued under section 129(2); and
- › as if a reference in section 129(2) to the territorial authority were a reference to the responsible person; and
- › with any other necessary modifications.

Otherwise, works carried out or directed to be carried out under Subpart 6B of the Building Act do not require an application to the District Court.

DISPUTES AND DETERMINATIONS

If a building owner disputes a decision by authorised officials exercising building emergency management powers during a designation, the building owner can apply to MBIE for a determination on any decision about:

- › measures to protect buildings or keep people at a safe distance (section 133BS)
- › notices or placards restricting the use of buildings (section 133BT)
- › carry out and/or direct works to remove or reduce other risks (section 133BW)
- › direct works for long-term use of occupation of buildings (section 133BX)

An application for a determination cannot be made in relation to the exercise of powers by the Minister for Building and Construction or a territorial authority acting on the direction of the Minister.

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
- › the application for determination is made within 6 months after the date the area is 'designated' for building emergency management under the Building Act, and
- › the Chief Executive (or those acting under delegated authority from the Chief Executive) considers the subject matter is not complex, and
- › the Chief Executive (or those acting under delegated authority from the Chief Executive) considers the subject matter is not relevant to other buildings in the designated area.

When an application is made, decisions by officials on other works and long-term works are suspended until MBIE has made a determination, while any measures to protect buildings or keep people at a safe distance, or in relation to any notices or placards restricting the use of buildings, remain in force until a determination has been made.

A person who disagrees with the outcome of a determination may lodge an appeal with the District Court within 15 working days. The Court may confirm, reverse, or modify the determination, refer the matter back to MBIE's Chief Executive, or make any determination MBIE could have made in respect of the matter.

OFFENCES AND PENALTIES

The Building Act sets out several offences and penalties for non-compliance with instructions in an area which has been designated.

All Building Act offences and penalties relating to these provisions are in sections 133BR to 133BU, 133BW and 133BX of the Building Act. For example, it is an offence to intentionally occupy or use a building other than in accordance with a sign or notice placed under section 133BT of the Building Act 2004 or permit another person to do so. It is also an offence to damage, alter, remove, or interfere with a placard.

The penalties include the ability for fines to be imposed following conviction if a person fails to comply with the relevant provisions of the Building Act.

The responsible person will consider the appropriate compliance approach. Generally, the Building Control Manager within the territorial authority would recommend to the responsible person a suitable compliance approach.

LIABILITY

[Section 390 of the Building Act](#) provides that a responsible person or anyone authorised by a responsible person to exercise building emergency management powers under Subpart 6B of the Building Act, is protected from having a civil claim brought against them for any act or omission carried out in good faith. Section 390 also specifies that no civil proceedings may be brought against any member, employee, or agent of a territorial authority or regional authority for any act done or omitted to be done by that person in good faith under the Building Act.

Except as provided in [sections 107 to 109, section 110 of the CDEM Act](#) also provides protection from liability for any loss or damage that is due directly or indirectly to a state of emergency or a transition period against the Crown, CDEM Groups (including officers, employees, or members of those groups and those acting under the direction of the Controller), or other persons, except in cases of bad faith or gross negligence.

This protection from liability applies whether the loss or damage is caused by any person taking any action or failing to take any action, so long as the act or omission occurred in the exercise or performance of his or her functions, duties, or powers under the CDEM Act.

PLACARDS AND LAND INFORMATION MEMORANDA (LIMS)

The Building Act does not require a territorial authority to generally include information about a placard in a property file. Section 133BX(7)(b) - *works for long-term use or occupation of building* does specify that the territorial authority that is responsible for the land on which the building is situated must include in a land information memorandum (LIM) issued under section 44A of the Local Government Official Information and Meetings Act 1987 information concerning the direction and the failure to carry out the directed works.

However, depending on the circumstances, a territorial authority may choose to disclose information about a placard. This might include putting information about the placard on a LIM for the property or providing information in response to a request under the Local Government Official Information and Meetings Act 1987. Territorial authorities should seek independent legal advice on what approach they should take.

BUILDING FAILURE INVESTIGATIONS

The Building Act gives MBIE statutory powers to investigate building failures. These powers mean that where certain criteria are met, MBIE can require building owners to provide information, such as detailed engineering assessments. MBIE can also enter or secure the site, take samples or other evidence, and carry out works on the site.

Building investigations may occur when MBIE considers any part of a building has failed by not performing as expected considering the legal requirements applied to the design and construction of the building, and the failure resulted, or could have resulted, in the risk of serious injury or death to any person.

Email BSAInvestigations@mbie.govt.nz with any queries.



Te Kāwanatanga o Aotearoa
New Zealand Government

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