

DESIGNATIONS OVERVIEW

*For territorial authorities

Part 2, Subpart 6B of the Building Act 2004 provides an end-to-end process for managing buildings following an emergency event. The provisions provide certainty to building owners and occupiers about how the safety of their buildings will be managed after an emergency.

Purpose of a designation

It may be necessary to take extraordinary measures, following an emergency, to ensure that risks to life and property from damaged buildings and/or land are managed adequately. 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 if there is no designation in place. Sometimes longer-term management of buildings is required.

The Civil Defence Emergency Management Act 2002 (CDEM Act) does have some powers for building management during a state of emergency, but these are only relevant in that certain period of time, and the Building Act powers that apply upon designation allow for longer term management.

Once an area has been designated, the Building Act provides a number of special powers that may be exercised in respect of all buildings within that area. The powers that can be used within a designated area provide a responsible person with authority to (among other things):

- 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.

State of emergency: means 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).

Transition period: means 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)

What is a designated area?

A designated area is an area approved by the relevant decision maker or the Minister for Building and Construction 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 the Building Act for managing buildings within that designated area, from the initial response right through to recovery.

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 Civil Defence Emergency Management Act or not.

Within an area that is subject to a state of emergency or transition period under the Civil Defence Emergency Management Act, 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 Civil Defence Emergency Management Act to declare a state of local emergency or give notice of a local transition period (as the case may be) for the area (either 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.

Considerations for use of the Building Act powers

A responsible person must, when considering whether to exercise a power, under sections 133BQ to 133BX and 133BZA in relation to a building must, to the extent that is practicable in the circumstances, have regard to the following principles (as per section 133BN):

- The paramount consideration in the exercise of the powers is the protection of human life and safety.
- Actions taken should be proportionate to the risks being managed.
- Actions should result in minimal restriction of the ability of an owner or occupier to continue to use and occupy property and any restriction of that ability should be for no longer than is reasonably necessary.
- Decisions should be based on
 - › up-to-date information, including information about the possible occurrence of further emergencies or other relevant events and other changes in the type and severity of risks arising from an emergency
 - › information about possible future events.

When can an area be designated?

An area can also only be designated if an emergency arises (being a situation of a kind described in paragraphs (a) and (b) of the definition of emergency in section 4 of the CDEM Act), or when there is a state of emergency or transition period in force (see section 133BC).

In addition to the above, a person can only designate an area if satisfied the tests in section 133BD of the Building Act are met. That is, that the decision to designate is in the public interest and is necessary or desirable for the protection of:

- persons, from injury or death; or
- buildings, from damage or disruption to their use; or
- public thoroughfares from disruption; or
- critical infrastructure from damage or disruption to its operation or use; or
- persons or buildings, from the effects of the insanitary condition (if applicable) of a building in the relevant area.

The person must also, to the extent practicable in the circumstances, have regard to:

- the scale and degree of the impact of the emergency and of its effects on buildings in the relevant 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; or
 - › 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.

Public notice of designation

A person who designates an area must, as soon as practicable, notify the public of the designation by publishing the information on a publicly accessible and free-to-access website or, if this is not practicable, through other appropriate means (as per section [133BE](#) of the Building Act).

The notice must:

- describe the designated area
- describe the relevant emergency; and
- specify the time at which and the date on which the designation decision was made.

It is important that the information can be clearly conveyed to all interested parties. Usually this is by using words that identify the names of roads or landmarks or geographical features (such as a river) and preferably using commonly known terms or names that can be subsequently located on an official map.

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 should be attached to the application.

Who may be involved in the decision?

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
- NEMA
- MBIE
- other members of the CDEM Group eg neighbouring mayors
- Fire and Emergency New Zealand
- Heritage NZ Pouhere Taonga
- GNS
- local Authority Utility Managers
- New Zealand Police

Does an area have to be designated following an emergency event?

No. If a state of emergency/ transition period is in place, and a relevant CDEM decision-maker does not designate the area under the Building Act – then CDEM Act powers can be used to manage buildings. Territorial Authorities may apply to the Minister for Building and Construction for approval to designate an area for which the authority is responsible under the Building Act if a state of emergency/transition period is not in place. The Minister for Building and Construction may designate an area on their own initiative if a state of emergency/transition period is not in place.

What happens to placards issued under the CDEM Act at the expiry of a state of emergency or transition period?

In some cases, rapid building assessments and placarding can be carried out using the powers under the CDEM Act. In this instance, placards issued under the CDEM Act will need to be transferred for management under the Building Act by the Civil Defence decision maker.

For example, before the state of emergency ends, the responsible person may determine that any equivalent notice/placard that was issued in relation to a building under the CDEM Act should continue in force under the Subpart 6B powers. This will require the responsible person to make this determination, as CDEM Act notices will not continue on as if issued under the Building Act if this determination is not made. This decision should be recorded formally to comply with the conditions set out in the Building Act.

If this is done, it means the notices/placards restricting access to buildings issued under the CDEM Act can continue in force under the relevant provision in the Building Act and would be treated at this stage as if it had been issued under the Building Act (so the relevant offences for contravention etc would apply).