

FACT SHEET

Designating an area for building management

Subpart 6B of the Building Act 2004 provides an end-to-end process for managing buildings following an emergency event. The provisions provide:

- › powers to civil defence emergency management group controllers, recovery managers and territorial authorities to manage buildings after an emergency event; and
- › certainty to building owners and occupiers about how the safety of their buildings will be managed after an emergency.

Purpose of designating an area

It may be necessary to take extra-ordinary 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.

Sometimes longer term management of buildings is required. Designating an area under the Building Act provides for this longer-term management.

Within a designated area a responsible person can exercise powers to (among other things):

- › Enter buildings and land
- › 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; and
- › Direct works for long term use or occupation of a building.

Who can designate an area?

Within an area that is subject to a state of emergency or transition period under the Civil Defence Emergency Management (CDEM) Act 2002, the following **responsible persons** can designate an area:

- › the Minister for Emergency Management; or
- › a person appointed or otherwise authorised under s25 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.

Upon designation, the responsible person must advise the Minister for Building and Construction of the designation.

If a state of emergency or transition period is not in place, **responsible persons** who can designate an area include:

- › a Territorial Authority, with prior approval of the Minister for Building and Construction; or
- › the Minister for Building and Construction.

When can an area be designated?

A **responsible person** can only designate an area (or extend the duration of a designation), 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** necessary or desirable for the protection of:

- › persons, from injury or death
- › buildings, from damage or disruption to their use
- › public thoroughfares, from disruption
- › 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 responsible 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 subpart 6B of the Building Act.

Who needs to be involved in the decision?

The Controller and Territorial Authority decision makers should consult with (as relevant):

- › Local Building Response Managers (Territorial Authority)
- › Local Controller and Emergency Management Officers
- › NEMA
- › MBIE
- › Other members of the CDEM Group e.g. neighbouring mayors
- › Fire and Emergency New Zealand
- › Heritage NZ Pouhere Taonga
- › GNS
- › Local Authority Utility Managers
- › New Zealand Police

If a state of emergency is not in place the Territorial Authority must apply to the Minister for Building & Construction for approval to designate an area.

MBIE is responsible for liaising with the Minister on designation requests on behalf of territorial authorities. The relevant territorial authority official should in the first instance phone the MBIE emergency contact number to give advance notice of the designation request. They should then complete the approval template available from www.building.govt.nz and send it to BuildingActEmergencyManagement@mbie.govt.nz

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

No. If a state of emergency/ transition period is in place, and the authorised person 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 under the Building Act, if a state of emergency/transition period is not in place.

If the Minister for Building and Construction believes that it is in the public interest to use the Building Act powers to manage buildings they may, outside a state of emergency, designate an area on their own initiative.

Can a CDEM Act power still be used if an area is designated under the Building Act?

If a state of emergency or transition period is in force under the CDEM Act, and a designation is in place:

- › then any buildings **in a designated area** that have been damaged in an emergency event are required primarily to be managed under the Building Act.
- › The broader building management powers in the CDEM Act must not be used **UNLESS** the person exercising the power believes that the use of the power is necessary or desirable to remove or reduce risks posed by the building that cannot be removed or reduced by exercising a power under the Building Act (s133BL).

If a CDEM Act power has been used post designation to manage buildings instead of the Building Act powers, this must be recorded and notified when the designation is reviewed under s133BG(4).

How long does a designation last?

A designation ends at the end of the day that is three years after the date it came into force, unless extended or terminated sooner (even if the state of emergency or transition period ends prior to this date).

The responsible person must review the designation every 90 days to decide whether it is still needed (s133BG).

The outcome of the review must be publicly notified (if a state of emergency or transition period is in place during this period, the person reviewing the designation must also advise if any building management powers have been exercised under the CDEM Act (s133BG(4))).

Can the duration of a designation be extended?

Yes. An extension also lasts three years (but can only be made once) and must be reviewed every 90 days (s133BH).

A designation made during a state of emergency or transition period (or if a new state of emergency or transition period is in place at the time an extension is sought) may be extended by:

- › the Minister for Emergency Management,
- › the person appointed or otherwise authorised to declare a state of emergency or give notice of a transition period under s25 CDEM Act, or
- › the Minister for Building and Construction.

If the state of emergency or transition period has ended, the relevant territorial authority may extend the designation (with the prior approval of the Minister for Building and Construction).

If the original designation was made outside a state of emergency or transition period, the designation can be extended by:

- › a Territorial Authority, with approval of the Minister for Building and Construction; or
- › the Minister for Building and Construction.

What if the designation needs to be terminated?

A person authorised to extend a designation may terminate the whole or part of a designated area (s133BI). A designation must not be terminated unless the designation is no longer in the public interest.

Public notification of designation, extension, termination

A designation, extension and termination must be notified to the public as soon as practicable, by publishing the designation on an internet site that is publicly accessible free of charge, or by any other means appropriate in the circumstances (s133BE).

The notice must: describe the designated area and the relevant emergency; and specify the date on and the time at which the designation was made.

However, failure to notify the decision does not invalidate the designation.

Considerations for use of the Building Act powers

When considering whether to exercise a power, the persons listed above must, to the extent that is practicable in the circumstances, have regard to the following principles (s133BN):

- › 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.

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

Section 133BM ensures that any equivalent CDEM Act notice/direction/power exercised can be treated as continuing in force under the corresponding part of the Building Act (subject to any conditions imposed) post the end of any state of emergency or transition period, if determined by the “responsible person” this should happen.

FIGURE 1: Process for designating an area (s133BC)

Applications to designate an area for building management should be made on the template: [Territorial authority request for approval to designate an area | Form \(building.govt.nz\)](https://www.building.govt.nz/territorial-authority-request-for-approval-to-designate-an-area-form)



FIGURE 2: Process to extend a designation (s133BD and s133BH)

A designation can be extended once, for a default period of up to three years. Applications to designate an area for building management should be made on the form:

[Territorial authority request for approval to extend an area designation | Form \(building.govt.nz\)](#)



FIGURE 3: Process to terminate a designation (s133BD and s133BI)

A designation can only be terminated if it is no longer in the public interest to exercise extra-ordinary powers, or if the designation has already been extended once.

