

Nelson City Council Designation of Area for Building Emergency Management

On 17 August 2022, a local State of Emergency was declared for Nelson City region and this remains in place.

On 18 August 2022, Civil Defence Emergency Management decided to designate, under the Building Act 2004, an area in the Nelson City to manage buildings that have been affected by flood damage as a result of the severe weather event.

The decision to designate an area will allow the Nelson City Council to manage any ongoing risks to people from buildings or the surrounding land damaged as a result of the event.

The Building Act 2004 sets out powers for managing buildings following an emergency and allows the Council to investigate building failures that did or could have caused serious injury or death.

The designation powers allow the Nelson City Council 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;
- Restrict access to buildings that may pose a threat to human life and safety;
- Carry out work, or demolish, any buildings that pose an immediate risk to life, or risk damage or disruption to neighbouring buildings or public thoroughfares;
- Require building owners to provide information, such as detailed engineering assessments to help determine the risks posed to buildings;
- Require damaged buildings to be repaired or demolished on a case by case basis.

This designation will be reviewed every 90 days by Nelson City Council and Civil Defence Emergency Management, to confirm that the powers conferred by the designation are required to manage the response and recovery.

The designation will remain in place until 17 August 2025, unless terminated earlier.

What is a designated area?

The first step in managing affected buildings after an emergency under the Building Act 2004 is to establish a designated area, under section 133BC of that Act.

A designated area is an area affected by an emergency where it has been determined the emergency management powers set out in the Building Act 2004 are required to manage buildings during and following the emergency.

What will happen next?

Once a designated area is in place, the Building Act provides a number of special powers that may be exercised in respect of all buildings within the designated area.

The powers that can be used within a designated area provides a responsible person under the Building Act 2004 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.

Who is the responsible person with authority?

In this case, the Nelson City Council are the responsible person with authority.

How long will it be a designated area?

Until all buildings within the area are deemed safe. Nelson City Council must review the designation at least every 90 days, and notify the public of the outcome of this review.

A designation of an area can be in force for up to three years and can be subsequently extended one time for a further three years, during which certain powers may be exercised.

Who makes the decision to approve the designated 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 2002.

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 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).

For the Nelson City, there is a state of emergency in force under the Civil Defence and Emergency Management Act 2016.

This means that person who declared the State of Emergency (the Local Controller) is responsible for designating the area. (as per s133BC of the Building Act 2004).

If a state of emergency or transition period is not in place, 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.
- To seek the Minister's approval to designate an area, the Territorial Authority must complete a designation form and email it to BuildingActEmergencyManagement@mbie.govt.nz

MBIE will facilitate the approval of and report to the Minister for Building and Construction about the designation for the Territorial Authority.

Why didn't the Minister for Building and Construction have responsibility to approve the designated area?

When there is a state of emergency (or transition period) in force under the Civil Defence and Emergency Management Act 2002, the authorised person who declared the State of Emergency (eg

Controller) is the relevant decision-maker for designating the area (as per s133BC of the Building Act 2004).

The recent designation of other area. What happened?

On 19 June, Auckland Council designated an area in the Papatoetoe region to manage buildings that were affected by the 2021 Papatoetoe Tornado. This current designation will remain in place until 6pm 21 June 2024, unless terminated earlier.

On 19 July, Buller District Council CDEM decided to designate, under the Building Act 2004, the area of Westport Township in the Buller District to manage buildings that have been affected by flooding. This current designation will remain in place until 6pm 19 July 2024, unless terminated earlier.

A placard has been placed on my house, does this mean I can't go home?

Information about the different placards and what they mean is available here: [Information for building owners | Building Performance](#)

- **A red placard** means entry is prohibited. The building may pose a significant risk to public safety, health and wellbeing. The risk could be from the building itself, from adjacent buildings or from land instability.
- **A yellow placard** means that access to a building is restricted and cannot be used or that the public cannot enter except under supervision for a limited time or on essential business. Part or all of the building may have sustained moderate damage, or some areas of the building, neighbouring buildings, or land instability pose a significant risk.
- **A white placard** means that the building can be occupied. It does not mean that the building is not damaged. Building owners should check for further damage.

It is an offence to intentionally occupy or use a building otherwise than in accordance with a sign or notice placed under subsection, or permit another person to do so. It is also an offence to damage, alter, remove or interfere with a placard.

What happens if a building owner or resident chooses to ignore Council instructions?

The Building Act sets out a number of offences and penalties for non-compliance when the Building Act powers are in place. The responsible person who has been designated for building emergency management has the powers to make decisions about non-compliance.

The powers for offences and penalties are in sections 133BR to 133BU, and 133BW and 133BX of the Building Act. The penalties include the ability for fines of between \$5,000 and \$200,000 to be imposed following conviction if a person intentionally fails to comply with the relevant provisions of the Building Act.

The Nelson City Council, as the responsible person, will consider the appropriate compliance approach.

Which decisions are subject to a determination?

There are decisions 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)

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.

The decision to designate the area cannot be subject to a determination.

Further information about what this means is available here:

- [Determination and decisions relating to a building affected by emergency | Building Performance](#)

Why use the designation powers under the Building Act?

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

A State of Emergency only lasts for seven days and a Transition Period for 90 days.

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.

If the emergency only impacts on buildings, it may be preferable not to declare a State of Emergency or Transition Period (ie just to access the broader powers under CDEM Act).

The Building Act provides a flexible system and additional tools to territorial authorities to manage buildings following an emergency event. The workflow from issuing placards during the rapid building assessment phase to compliance notices and enforcement can occur seamlessly, without transitioning to alternative measures under the Building Act.

The powers in the Building Act to manage dangerous and insanitary buildings are not wide enough to manage damaged buildings after an emergency event.

- Many buildings damaged in an emergency event will not meet the high threshold to be a 'dangerous building' under the Building Act.

Why don't we just use the dangerous buildings and notices to fix powers?

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.

Placards and other measures can be transitioned to notices under section 124 of the Building Act, but you can only use these provisions for buildings that are dangerous in the normal course of events, or insanitary.

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.

The designated powers provide a better solution by creating an end-to-end system for managing buildings during and after an emergency event.

The designated powers also account for the situation where there are buildings or surrounding land damaged in an emergency event posing a risk to life safety or of damage to other property.

The designated 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.

What is the difference between a Rapid Impact Assessment and a Rapid Building Assessment?

Rapid impact assessment refers to initial assessments undertaken within the first 8 to 48 hours of an emergency. Their purpose is to obtain a broad picture of the type and extent of damage within the impacted area. This information is then used to help determine initial response activities, and to ascertain where and when more detailed assessment may be needed, such as in-depth building and structural assessments, or detailed welfare or recovery needs assessments.

Rapid impact assessments are typically lead by Fire and Emergency New Zealand (FENZ).

Rapid Building Assessments refers to assessments undertaken after the **Rapid impact assessment**.

Rapid building assessments quickly establish the usability of buildings and associated infrastructure where functions may be compromised by a hazard event such as flooding. The focus of the rapid building assessment process is on immediate public safety, not the provision of an engineering assessment service to building owners.

Why do some do building assessments change when Rapid Building Assessment is completed?

Rapid Impact Assessment and Rapid Building Assessment use different systems to evaluate and report building damage. These systems do not overlap – a 'red' in the Rapid Impact Assessment is not the same as a 'red' in the Rapid Building Assessment.

The numbers of buildings identified as damaged can be very high following a Rapid Impact Assessment. It is unusual for a building to receive a physical placard (sticker) during the Rapid Impact Assessment.

The Rapid Building Assessment system is a more considered evaluation, by trained assessors with more time to consider damage and potential risks. This may reduce the number of buildings identified as damaged, or highlight higher levels of risk.

All buildings should receive a physical placard (sticker) following a Rapid Building Assessment.