



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Neil Jackson, Policy Planner

REFERENCE: T202

SUBJECT: **DRAFT POLICY ON DANGEROUS DAMS 2006 - 2011 - EP06/08/03** – Report Prepared for Meeting of 2 August 2006

1. INTRODUCTION

Section 161 of the Building Act 2002 requires the Council to have a policy about dangerous dams. The policy is required to be in place by 30 September 2006. We may not meet that deadline, in part due to the absence of related regulations which have yet to be determined by central government.

This report seeks Council approval to commence the Special Consultative Procedure required for the development of the policy.

2. BACKGROUND

The policy is required for similar public safety reasons as the earthquake-prone, dangerous, and insanitary buildings policies adopted in May 2006.

The draft policy states how Council will fulfil its statutory responsibility. It was prepared after consideration of alternative draft policies shared among regional councils.

For identification of dangerous dams, Council will rely primarily on any danger being discovered during the processes that sections 134 – 152 of the Act impose on dam owners to:

- Classify dams as having low, medium or high potential impact;
- Prepare and implement a dam safety assurance programme for any dam classified as medium or high potential impact;
- Produce an annual dam compliance certificate.

3. RECOMMENDATION

It is recommended that:

1. This report be received.
2. The Committee adopt the Draft Dangerous Dams Policy, and the Summary of Information and Statement of Proposal attached to this report.

3. The Committee agree to release the Draft Dangerous Dams Policy using the Special Consultative Procedure as set out in section 83 of the Local Government Act 2002.
4. The Committee note the hearing of any submissions will be set down as a special meeting of this committee at the conclusion of the RMPC meeting on 13 September 2006.

Neil Jackson
Policy Planner

SUMMARY OF INFORMATION – DRAFT DANGEROUS DAMS POLICY

1. INTRODUCTION

Section 161 of the Building Act 2004 requires regional authorities to adopt a policy on dangerous dams, by 30 September 2006. The policy is to be developed under the special consultative procedure of section 83 of the Local Government Act 2002, which requires a Statement of Proposal and, through section 89, a Summary of Information about the proposal.

The Statement of Proposal is the draft policy, which follows this item. The Statement/Policy, is available from Customer Services at Council's Richmond office or any of its Service Centres, by phone (543 8400), or e-mail: info@tdc.govt.nz. It will be available on the website www.tasman.govt.nz after 5 August 2006.

Submissions on the draft policy will be received until 4.00 pm on 6 September 2006, and should be sent to Tasman District Council at:

- Private Bag 4, Richmond 7050; or
- Fax 543 8249; or
- E-mail: info@tdc.govt.nz.

If requested in writing, submitters may be heard at the special meeting of Council's Environment and Planning Committee on 13 September 2006.

Changes may be made to the policy after considering submissions, and adoption of the policy will be advised by public notice.

2. SUMMARY OF INFORMATION

Council has no existing policy on dangerous dams. The policy is required by section 161 of the Building Act 2004, as part of the 'health and safety of people' aspects of the purpose of the Act. The policy must be reviewed every five years.

For identification of dangerous dams, Council will rely primarily on new responsibilities on dam owners to monitor the condition of their dams, but will also respond to concerns of persons whose safety is likely to be affected by dam failure.

Council's response to a dangerous dam will range between seeking with the owner mutually agreed steps to reduce or remove the danger, to seeking a Court order requiring work to be done.

The policy does not specify an acceptable level of risk to which a dangerous dam would need to be upgraded.

The policy has no special provisions relating to heritage dams.

If the Council gives written notice requiring work to remedy danger associated with a dam, failure to comply with the notice is an offence, liable for a fine of up to \$200,000.

TASMAN DISTRICT COUNCIL

STATEMENT OF PROPOSED DANGEROUS DAMS POLICY 2006-2011

DANGEROUS DAMS – DRAFT POLICY – VERSION 2 - JULY 06

STATUTORY OBLIGATION

Section 161 of the Building Act 2004 requires Council to adopt a policy on dangerous dams, by 30 September 2006.

The policy must state:

- Council's approach to dealing with dangerous dams;
- Council's priorities in dealing with dangerous dams; and
- how the policy applies to heritage dams.

The policy is adopted under the special consultative procedure of the Local Government act 2002 (section 83).

The policy relates to the 'health and safety of people' aspects of the purpose of the Act.

DEFINITIONS

Dam

- (a) means an artificial barrier, and its appurtenant structures, that:
- (i) is constructed to hold back water or other fluid under constant pressure so as to form a reservoir; and
 - (ii) is used for the storage, control, or diversion of water or other fluid; and
 - (iii) retains 3 or more metres depth, and holds 20 000 or more cubic metres volume, of water or other fluid; and
- (b) includes:
- (i) a flood control dam; and
 - (ii) a natural feature that has been significantly modified to function as a dam; and
 - (iii) a canal; but
- (c) does not include a stopbank designed to control floodwaters.

Meaning of dangerous dam (section 153)

A dam is dangerous for the purposes of this Act if the dam:

- (a) is a high potential impact dam or a medium potential impact dam; and

- (b) is likely to collapse:
- (i) in the ordinary course of events; or
 - (ii) in a moderate earthquake (as defined in the regulations); or
 - (iii) in a moderate flood (as defined in the regulations); or
- (c) is a leaky dam.

POWERS OF COUNCIL

If the Council is satisfied that a dam is dangerous, it has wide powers including: preventing access to the dam, putting up a warning notice, or giving written notice requiring work to be done to reduce or remove the danger. It may seek a Court order to carry out work itself, or carry out work in response to an immediate danger, recovering costs from the dam owner in both cases.

If a dam exists but is below the thresholds for the Building Act definition of dam, and is considered to be dangerous for any reason, Council will assess whether action can be taken:

- as for a dangerous building under the Building Act; or
- under the Resource Management Act Section 17 duty to avoid, remedy or mitigate any adverse effect.

APPROACH TO DEALING WITH DANGEROUS DAMS

For new dams, Council will seek to avoid a dam being dangerous by ensuring that the construction of any new dam complies with the Building Act / Building Code.

For existing dams, Council will monitor the classification of dams, the dam safety assurance programmes, and the annual certificates of compliance required under sections 134 – 152 of the Building Act 2004. Where any of those steps shows a dam to be dangerous, Council will use its powers to reduce or remove the danger.

If Council has any other reason to consider a dam might be dangerous, or if there is concern expressed by people likely to be affected by dam failure (and Council is satisfied that concern is not frivolous or vexatious), Council may require the owner to report on the safety or danger state of the dam, or Council may carry out that investigation and recover costs from the owner if the dam is found to be dangerous. If a report shows a dam to be dangerous, Council will use its powers to reduce or remove the danger

PRIORITIES

Council's priorities are:

- to identify dangerous dams;
- immediately take steps to promote public safety (for example, erect warning signs or issue public notice);
- identify solutions for high potential impact dams before solutions for medium potential impact dams;

- endeavour to negotiate an agreed solution with the owner of a dangerous dam, to be recorded in a Notice to give a formal basis for ensuring performance of the agreed solution;
- if no agreed solution is reached, issue a Notice requiring work to be done;
- seek a Court order requiring work to be done.

RECORDS AND INFORMATION

The Council will keep a record of dangerous dams on property files, with a copy of any notice requiring work to be done and a record of completion when the work has been completed to the required standard.

Section 154 of the Act requires that any notice requiring work to be done is fixed to the dam.

Information about a dangerous dam will be included in any LIM report for the property.

HERITAGE DAMS

For heritage dams, there is a question of whether the heritage value relates to just the existence of the structure, or its continuing use as a dam. Where continued use of a heritage dam means the dam is dangerous, this policy applies as for any other dam.

Note: The policy only applies to a heritage dam while it continues to function as a dam, and is dangerous, in terms of the definitions of dam and dangerous dam. That is, a heritage dam structure that no longer holds 20 000 cubic metres of water at an average depth of 3 metres or more is neither a dam nor is dangerous for the purposes of this policy. (It may be a dangerous building under subpart 6 of the Act.)

CONTEXT IN THE BUILDING ACT

The requirement for a policy on dangerous dams follows sections 134-152 of the Act that require:

- (a) the owner of a dam to classify the dam as having low, medium or high potential impact;
- (b) the classification to be audited and certified by an engineer, and sent to the Council;
- (c) for dams of medium or high potential impact: preparation of a dam safety assurance programme, audited by an engineer and sent to the Council;
- (d) an annual dam compliance certificate to be sent to the Council, confirming compliance with the safety assurance programme.

Regulations will give details of the assessment process for classifying dams, and about the content and form of dam safety assurance programmes.