

Notice is given that a deliberations meeting will be held on:

Date: Wednesday 22 May 2024
Time: 1:00pm
Meeting Room: Tasman Council Chamber
Venue: 189 Queen Street, Richmond
Zoom conference link: <https://us02web.zoom.us/j/87028392412?pwd=cFFpc3VKL0ZzeK9FdEdJeiVPdlM5Zz09>
Meeting ID: 870 2839 2412
Meeting Passcode: 243604

Dangerous Dams Policy Hearings and Deliberations Panel

AGENDA

MEMBERSHIP

Members

Councillor B Dowler
Councillor C Mackenzie
Councillor K Maling

(Quorum 2 members)

Contact Telephone: 03 543 8400
Email: councildemocracy@tasman.govt.nz
Website: www.tasman.govt.nz

AGENDA

1 OPENING WELCOME, KARAKIA

- 3.1 Appointment of Dangerous Dams Policy Hearings and Deliberations Panel
Chairperson 4

2 APOLOGIES AND LEAVE OF ABSENCE

Recommendation

That apologies be accepted.

3 REPORTS

- 3.2 Policy on Dangerous Dams, Earthquake-prone Dams and Flood-prone Dams -
Deliberations..... 5

4 CONFIDENTIAL SESSION

Nil

4 CLOSING KARAKIA

3 REPORTS

3.1 APPOINTMENT OF DANGEROUS DAMS POLICY HEARINGS AND DELIBERATIONS PANEL CHAIRPERSON

Decision Required

Report To:	Submissions Hearing
Meeting Date:	22 May 2024
Report Author:	Elaine Stephenson, Team Leader - Democracy Services
Report Number:	RSH24-05-2

1. Purpose of the Report / Te Take mō te Pūrongo

- 1.1 To appoint a Chairperson for the Dangerous Dams Policy Hearings and Deliberations Panel.

2. Recommendation/s / Ngā Tūtohunga

That the Dangerous Dams Policy Submissions and Deliberations Hearings Panel

1. **appoints Councillor xxxxxxxx as Chairperson of the Dangerous Dams Policy Hearings and Deliberations Panel.**

3.2 POLICY ON DANGEROUS DAMS, EARTHQUAKE-PRONE DAMS AND FLOOD-PRONE DAMS - DELIBERATIONS

Decision Required

Report To:	Submissions Hearing
Meeting Date:	22 May 2024
Report Author:	Amy Smith, Community Policy Advisor
Report Authorisers:	Kim Drummond, Group Manager - Environmental Assurance
Report Number:	RSH24-05-1

1. Purpose of the Report / Te Take mō te Pūrongo

- 1.1 The purpose of this report is to:
- 1.1.1 provide the Submissions Hearing and Deliberations Panel (the Panel) with the submission received during consultation on the draft policy on Dangerous Dams, Earthquake-prone Dams and Flood-prone Dams (the policy); and
 - 1.1.2 provide the Panel with information to support its deliberations; and
 - 1.1.3 seek decisions on any amendments to the policy; and
 - 1.1.4 seek a recommendation from the Panel on whether the policy should be adopted.

2. Summary / Te Tuhinga Whakarāpoto

- 2.1 This report has been prepared to assist the Panel to deliberate on the submission received on the draft policy during the public consultation period.
- 2.2 The Panel can then make decisions on any amendments to the policy and on its recommendation to the Environment and Regulatory Committee (the Committee) on whether the final policy should be adopted.
- 2.3 There was one submission (Attachment 1) received by the closing date. The submission was made on behalf of Irrigation New Zealand and the submitter does not wish to be heard at today's Hearing.
- 2.4 Staff have provided a summary of the submission and their advice to assist the deliberations (see Section 5).
- 2.5 The final policy is scheduled to be presented to the Committee on 6 June 2024, with the Panel's recommendation on whether the policy should be adopted.

3. Recommendation/s / Ngā Tūtohunga

That the Submissions Hearing

- 1. receives the Policy on Dangerous Dams, Earthquake-prone Dams and Flood-prone Dams - Deliberations RSH24-05-1; and

2. **receives and considers the submission on the draft Policy on Dangerous Dams, Earthquake-prone Dams and Flood-prone Dams; and**
3. **recommends to the Environment and Regulatory Committee that pursuant to Section 161 of the Building Act 2004, it adopts the Policy on Dangerous Dams, Earthquake-prone Dams and Flood-prone Dams (Attachment 2 to the agenda report) with amendments, if any, and**
4. **notes that the Hearing and Deliberation Panel's recommendations will be presented to the Environment and Regulatory Committee for consideration on 6 June 2024.**

4. Background / Horopaki

The Building Act 2004 and the Building (Dam Safety) Regulations 2022

- 4.1 Section 161 of the Building Act 2004 requires a regional authority to adopt a policy on dangerous dams, earthquake-prone dams and flood-prone dams within their region. The purpose of this policy is to help prevent the catastrophic failure of a potentially dangerous dam, and to ensure deficiencies in an earthquake-prone or flood-prone dam are addressed.
- 4.2 The Building Act also requires the Council to take action, if necessary, if any dam poses an immediate danger to the safety of persons, property or the environment, and to provide building consent processing and inspections service for large dams.
- 4.3 The Building (Dam Safety) Regulations 2002 (the Regulations) came into effect on 13 May 2024 introducing further responsibilities on regional authorities and dam owners. The Regulations set a minimum requirement for dam safety with a post-construction risk-based nationwide regulatory framework.
- 4.4 The Council has responsibilities for administering and monitoring implementation of the Regulations. This involves approving or refusing dam classifications and dam safety assurance programmes, receiving annual dam compliance certificates, and establishing and maintaining a register of dams in the Tasman District.

The Policy on Dangerous Dams, Earthquake-prone Dams and Flood-prone Dams

- 4.5 Regional authorities have been working collaboratively to produce a policy that is fit for purpose nationwide and the draft policy reflects this work. The policy sets out Tasman District Council's approach for fulfilling and prioritising its functions around these types of dams and covers our regulatory and legislative responsibilities under the Building Act. The policy also states how it will be applied to heritage dams.
- 4.6 The Government announced on 28 March 2024 that it would be changing the definition of a classifiable dam and this change was signalled in the consultation document. On 7 May, the Government amended the meaning of a 'classifiable dam' in regulation 5 of the Regulations. Dams are now defined as classifiable if they are four or more metres in height and store 20,000 or more cubic metres volume of water, or other fluid. The policy has been amended to align with the change to the Regulations.
- 4.7 Dangerous dams are defined in section 7 below. Section 153B of the Building Act requires a dam owner to immediately notify the Council if, at any time, they have reasonable grounds for believing that their dam is, or has become, dangerous. The policy provides direction to the Council on how to respond, should we be notified of a dangerous dam within the Tasman District.

- 4.8 The policy does not seek to classify dams, regulate adherence to the Regulations, or cover consenting matters under the Resource Management Act 1991 or the Building Act 2004.

5. Analysis and Advice / Tātaritanga me ngā tohutohu

Consultation process

- 5.1 At its meeting on 28 March 2024, the Council agreed to undertake consultation between 1 April and 5 May 2024 using the special consultative procedure (SPC), in accordance with sections 83 and 87 of the Local Government Act 2002 (see RCN24-03-13).
- 5.2 Copies of the statement of proposal and draft policy were available at all public libraries and the Council's service centres in Tasman and for download from Shape Tasman.
- 5.3 Approximately 50 owners of larger dams in the District (i.e. four or more metres in height) were directly emailed a copy of the consultation document and provided with information on how to make a submission.
- 5.4 Some key stakeholders were emailed about the consultation, including Richmond Fire and Emergency NZ, Nelson Tasman Civil Defence and Emergency Management (NT-CDEM) Group and Heritage New Zealand Pouhere Taonga. Other potentially interested parties were also emailed, including Waimea Irrigators and Irrigation NZ, Federated Farmers, Horticulture NZ and AgFirst, Engineering NZ, NZTA, Network Tasman and Transpower.
- 5.5 The Department of Conservation (DOC) office in Tākaka was directly contacted, as staff wanted to specifically draw attention to the unknown heritage status of Druggan's Dam located in the Aorere Goldfields on DOC land.
- 5.6 Submissions could be made via the Shape Tasman consultation page or via email. There were 213 'visits' to the Shape Tasman consultation page by 169 visitors during the consultation period. Information about the policy and the consultation was advertised in Newsline on 5 April. This information was also shared on 9 April in a post on the Council's Facebook page.

Submission summary and staff comments

- 5.7 There was limited interest from the community in commenting on the draft policy. This could be due to the largely operational and technical nature of the policy, and it only directly affects dam owners and their engineers.
- 5.8 One submission (Attachment 1) was received, via email. This submission was made on behalf of Irrigation New Zealand (INZ), an organisation representing over 3,800 members nationally including irrigation schemes, individual irrigators, and the irrigation service sector.
- 5.9 INZ is supportive of the policy, commending the Council for its approach to the policy and the effort to make the regulatory process as straightforward as possible. INZ acknowledges that navigating Council policies can be complex for rural dam owners and that the requirement for councils to adopt a position on dam safety through policies has been set by the Government.
- 5.10 The submission from INZ suggested some aspects of the policy that may still be ambiguous, but that these arise largely from the Building Act and Regulations. For example, that the regulations do not necessarily identify earthquake-prone and flood-prone dams. Staff agree and have raised this previously with the Ministry of Building, Innovation and Employment (MBIE). Staff note that care has been taken not to bring the requirements of the regulations into the scope of this policy.

- 5.11 INZ noted in the draft policy the objective to maintain a database for *all* dams and suggested that the inclusion of *all* dams within the Building Act and Regulations continues to create confusion about the applicability to such minor structures as duck ponds, effluent ponds, canals, constructed wetlands, and now dams under 4 m and 20,000 m³. Staff agree with this feedback and recommend to the Panel that *all* is removed from the first sentence of section 3.1 of the policy, so it aligns with s151 of the Building Act.
- 5.12 Note that any dam can become dangerous. Dams falling below the threshold requirements of the regulations must also be located and recorded; the policy does not just apply to dams under the regulations, rather it applies to dams as defined in section 7 of the Building Act.
- 5.13 Staff advise that the NT-CDEM Group has reviewed the policy and confirm they are comfortable with the content.

Submission hearing and deliberation purpose

- 5.14 The role of the Deliberations Panel is to consider the submission received, deliberate and decide on whether to recommend proceeding with the proposed policy. The Panel could also recommend changes to the proposed wording in the policy for the Council's consideration. However, the submitter did not seek specific changes to the wording in the policy and only a minor amendment (deletion) is recommended by staff. Note that the definition of a classifiable dam has also been updated to align with the recent amendment to the regulations.
- 5.15 Staff consider no further wording changes are needed to the policy, should the Panel decide to recommend it for adoption by the Council.
- 5.16 The Panel's recommendations will be presented to the Committee for consideration at its next meeting on 6 June 2024.

6. Options / Kōwhiringa

- 6.1 Adopting a policy on dangerous dams is required by the Building Act. The Panel has two options to consider, as outlined below:
- 6.1.1 Option One: proceed with the policy as consulted on, or with amendments, and recommend to the Committee that the policy is adopted.
- This option complies with the requirements of the Building Act and the Council will have an appropriate policy in place to manage dangerous dams in Tasman.
- 6.1.2 Option Two: do not proceed with the policy, based on the comments made by the submitter, and recommend to the Committee that the policy is not adopted.
- The Council would continue to be in breach of its statutory requirements under the Building Act and, if a dangerous dam were to occur, there would be no current policy.
- 6.2 Staff recommend Option One.

7. Legal / Ngā ture

- 7.1 The Building Act 2004 requires the Council to establish and maintain a register of dams in the District.
- 7.2 Dangerous dams are defined as:
- s153 Meaning of dangerous dam**

- (1) 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 fail—
 - (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).

7.3 Earthquake-prone and flood-prone dams are defined as:

s153A Meaning of earthquake-prone dam and flood-prone dam

- (1) A dam is an earthquake-prone dam 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 fail in an earthquake threshold event (as defined in the regulations).
- (2) A dam is a flood-prone dam 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 fail in a flood threshold event (as defined in the regulations).

7.4 The adoption of a policy on dangerous dams is required under section 161 of the Building Act. The Building Act required that the policy be in place within 18 months of the commencement of the part, which was on 31 March 2005. The Council has therefore been in breach of its statutory obligations since 2006.

7.5 The section states:

s161 Regional authority must adopt policy on dangerous dams, earthquake-prone dams, and flood-prone dams

- (1) A regional authority must, within 18 months after the commencement of this Part, adopt a policy on dangerous dams, earthquake-prone dams, and flood-prone dams within its region.
- (2) The policy must state—
 - (a) the approach that the regional authority will take in performing its functions under this Part; and
 - (b) the regional authority's priorities in performing those functions; and
 - (c) how the policy will apply to heritage dams.

7.6 Section 162 of the Building Act states that the policy must be adopted, amended or replaced only in accordance with the SCP in the Local Government Act 2002.

7.7 Providing submitters with the opportunity to present their feedback verbally to the Panel can enable a deeper level of understanding of the views of those submitters and provides the Panel with the opportunity to seek clarification on any matters raised in the submissions being presented.

7.8 If the Council adopts the policy, the Building Act requires a review of the policy be completed within five years after the policy is adopted and then at intervals of no more than five years. A policy does not cease to exist because it is due for review or being reviewed.

8. Iwi Engagement / Whakawhitiwhiti ā-Hapori Māori

- 8.1 Te Tauihu iwi were informed of this work by staff at face-to-face hui and project information was provided on Whakawhitiwhiti Whakaaro – the iwi engagement platform. Iwi were also advised when consultation started and information provided on how to make a submission.

9. Significance and Engagement / Hiranga me te Whakawhitiwhiti ā-Hapori Whānui

- 9.1 Staff have considered the significance of these decisions in accordance with the Council's Significance and Engagement Policy. The decisions are whether to make any amendments to the draft policy and to make recommendations on whether the policy should be adopted.
- 9.2 As noted above, consultation is required to be (and has been) undertaken in accordance with the SCP set out in section 83 of the Local Government Act 2002. This hearing is a further part of this consultation process, providing an opportunity for any person to present their views to the Panel.
- 9.3 The Panel must now consider all feedback before making a recommendation to the Committee on whether the policy (Attachment 2) should be adopted.

	Issue	Level of Significance	Explanation of Assessment
1.	Is there a high level of public interest, or is decision likely to be controversial?	Low	The policy only directly affects dam owners (and their engineers) in the District.
2.	Are there impacts on the social, economic, environmental or cultural aspects of well-being of the community in the present or future?	Yes	The policy contributes to social and environmental well-being, through the implementation of a policy for dangerous dams.
3.	Is there a significant impact arising from duration of the effects from the decision?	No	
4.	Does the decision relate to a strategic asset? (refer Significance and Engagement Policy for list of strategic assets)	No	
5.	Does the decision create a substantial change in the level of service provided by Council?	No	The policy expands the Council's current compliance activities.
6.	Does the proposal, activity or decision substantially affect debt, rates or Council finances in any one year or more of the LTP?	No	
7.	Does the decision involve the sale of a substantial proportion or controlling interest in a CCO or CCTO?	No	

	Issue	Level of Significance	Explanation of Assessment
8.	Does the proposal or decision involve entry into a private sector partnership or contract to carry out the deliver on any Council group of activities?	No	
9.	Does the proposal or decision involve Council exiting from or entering into a group of activities?	No	
10.	Does the proposal require particular consideration of the obligations of Te Mana O Te Wai (TMOTW) relating to freshwater?	No	The Council's priorities under the policy include to protect the health and well-being of the environment, which will more specifically be addressed through the Tasman Resource Management Plan and the guiding principle of TMOTW

10. Communication / Whakawhitiwhiti Kōrero

10.1 Information on the consultation process undertaken is detailed above (see section 5).

10.2 If the Panel recommends the policy is adopted, and if the Committee agrees, then the submitter will be informed and the policy made available on the Council's website.

11. Financial or Budgetary Implications / Ngā Ritenga ā-Pūtea

11.1 Any costs associated with deliberation is funded from the existing Environmental Assurance budgets.

12. Risks / Ngā Tūraru

12.1 If the Panel does not recommend to the Committee that a Dangerous Dams Policy be approved, the Council will be without a policy to manage a dangerous dam, if that situation were to occur, and this is a failure to meet the requirements of the Building Act. This is currently a risk that the Council is currently facing, as it has not previously adopted a Dangerous Dams Policy.

12.2 The Regulations came into effect on 13 May 2024. So, for a short period of time, the Regulations will be in effect and the Council will not have an adopted policy to manage a dangerous dam if that situation were to occur. If the Council is informed of a dangerous dam before a policy is adopted, the processes set out in the attached policy will be followed.

13. Climate Change Considerations / Whakaaro Whakaaweawe Āhuarangi

13.1 There are no known climate impacts to the decisions on whether to amend and recommend adoption of the policy.

- 13.2 The Building Act requires the policy, once adopted, to be reviewed every five years. Dam owners are also required to review their dams against flood performance criteria every five years, as part of a comprehensive safety review.
- 13.3 The intent is that these requirements help ensure the new safety provisions remain fit for purpose in a changing environment and as our understanding of the effects of climate change continues to improve over time.

14. Alignment with Policy and Strategic Plans / Te Hangai ki ngā aupapa Here me ngā Mahere Rautaki Tūraru

- 14.1 The adoption and consultation requirements for a policy on dangerous dams are set out in the Building Act. The Council agreed at its 28 March meeting to delegate to the Environment and Regulatory Committee authority to:
- 14.1.1 receive and consider the recommendations of the Hearings and Deliberation Panel; and
 - 14.1.2 decide on the adoption of a Council policy on dangerous dams earthquake-prone dams and flood-prone dams, as required under section 161 of the Building Act 2004.
- 14.2 The Committee is scheduled to consider the Panel's recommendations and decide on the adoption of a policy at its next meeting on 6 June 2024.





15. Conclusion / Kupu Whakatepe

- 15.1 The Building Act 2004 requires the Council to adopt a policy on dangerous dams, earthquake-prone dams and flood-prone dams in the Tasman District.
- 15.2 The Council must do so in accordance with the SCP in the Local Government Act 2002. A public consultation period on the draft policy ran from 1 April to 5 May 2024 and one submission was received.
- 15.3 There was limited interest from the community in commenting on the draft policy. This could be due to the largely operational and technical nature of the policy, and it only directly affects dam owners and their engineers.
- 15.4 Deliberating on the submission received and making a recommendation to the Committee is a critical part of the process to consider adopting a Council policy on dangerous dams.

16. Next Steps and Timeline / Ngā Mahi Whai Ake

- 16.1 Following the Deliberations meeting, staff will prepare the final policy and a Referral Report to enable the Panel to make its recommendation to the Committee on 6 June 2024.
- 16.2 Following the Committee meeting, staff will notify the submitter of the Council's decision. Communications on the adoption of the policy will be shared on Shape Tasman and the Policy will be made available on the Council's website.
- 16.3 A copy of the policy will also be sent to the Chief Executive of MBIE in accordance with s162(3) of the Building Act.

17. Attachments / Tuhinga tāpiri

- | | | | |
|----|---|--|----|
| 1. |   | Irrigation NZ Submission on TDC Dangerous Dams Policy April 2024 | 14 |
| 2. |   | Draft Policy on Dangerous Dams, Earthquake-prone Dams and Flood-prone Dams | 19 |



2nd February 2024

Shape Tasman
Tasman District Council

Submitted at info@tasman.govt.nz

Irrigation New Zealand Submission on the proposed TDC policy on dangerous dams, earthquake-prone dams, and flood-prone dams

Irrigation New Zealand (IrrigationNZ) welcomes the opportunity to contribute to the Tasman District Council proposed policy on dangerous dams, earthquake prone dams, and flood prone dams.

We note the TDC Dangerous Dams Policy is largely a verbatim copy of much of the content of the Waikato Regional Council Dangerous Dams policy, which we submitted comments on in February 2024. We believe having near identical policies has benefits in creating consistency in local government planning documents.

Irrigation New Zealand wishes to acknowledge our engagement with Councils, particularly Owen Smith of WRC, during our contribution to the Technical Working Group supporting MBIE in the development and implementation of the Dam Safety Regulations that come into effect in May 2024.

We recommend TDC engage with Tim Farrant of MBIE on the most up to date version of the Dam Safety Regulations, in particular the newly amended threshold for classifiable dams and the function a PIC under the Regulations has in assessing downstream risk after an uncontrolled discharge. As noted in this submission, we believe the Dam Safety Regulations do not necessarily identify Earthquake prone and Flood prone dams.

Introduction

IrrigationNZ represents over 3,800 members nationally, including irrigation schemes, individual irrigators, and the irrigation service sector across all regions of New Zealand.

Our irrigator members include a wide range of farmers and growers – sheep and beef, dairy and cropping farmers, horticulturalists, winegrowers, as well as sports and recreational facilities and councils. We also represent over 120 irrigation service industry members – manufacturers, distributors, irrigation design and install companies, and irrigation decision support services for both freshwater and effluent irrigation.

We are a voluntary-membership, not-for-profit organisation whose mission is to create an environment for the responsible use of water for food and fibre production for local and international consumers and to sustain the wellbeing of communities.

Irrigation New Zealand Inc.
Level 5, 342 Lambton Quay, Wellington 6011
P O Box 8014, Wellington 6140

As an organisation we actively take a technical leadership role in promoting best practice irrigation and carry out a range of training and education activities associated with freshwater management. We have trained hundreds of people in the irrigation sector on various aspects of irrigation best practices to improve water use efficiency (lowering consumption) and better manage environmental effects (improved soil moisture and surface water management).

IrrigationNZ members share many of the same goals as other New Zealanders:

- Reduce their environmental footprints and see improvements in the health of the natural environment,
- Contribute to the wellbeing of their communities, and
- Provide for a resilient future for New Zealand in the face of climate change.

IrrigationNZ General Statements of Principles

IrrigationNZ is in general supportive of the TDC policy on dangerous dams, earthquake-prone dams and flood-prone dams and its purpose. We acknowledge that there are likely some water storage structures that have design and operational issues. IrrigationNZ supports good processes and polices to identify and address this for community safety.

The MBIE Dam Safety Regulations that require Regional Councils to adopt a position on dam safety through policies is understandably a very complicated path to navigate for a rural dam owner. We feel the rural sector is being pulled in two directions; on one hand they are being encouraged through government policy to increase water availability and security through the development of water storage for irrigation, stock water or frost fighting and on the other hand storage structures that have already been through resource and building consents are now required to interpret retrospective definitions on safety with added compliance costs.

Your consultation indicates it is not intended to challenge the Act or Regulations. However, we recommend you continue to engage with MBIE where possible to improve your ability to implement a policy that targets the real risk issues without creating regulatory burden for your organisation or for dam owners.

IrrigationNZ commend TDC for its approach to the Dangerous Dams Policy and the effort to make the regulatory process as straight forward as possible. However we want to highlight some areas that we feel may still be ambiguous, largely arising from the enabling Act and Regulations.

- Preamble accompanying the Policy document.

You make a statement that we believe, if it translates into an interpretation of the policy or is used in other preamble statements, is inaccurate; *"Those new requirements include the Building (Dam Safety) Regulations 2022 (Regulations) which come into effect in May 2024. From that date, owners of dams that meet the height and volume requirements will need to confirm the potential risk their dam poses, **put in place safety plans and undertake regular dam inspections.**"*

The sentence is written as an inclusive list but could be amended to be clearer, that *"Only dams that are attributed with a medium or high PIC are required to put in place dam safety plans and undertake regular dam inspections."* This is better stated in a later section of the preamble, so consistency in all communication is needed.

Reference to specific sections of the draft Policy

- Introduction, reference to thresholds.

We note following targeted consultation the Min for Building announced the threshold values have been amended and legislation will be redrafted accordingly.

- Commencement and review.

TDC may have been party to discussions with the MBIE Technical Working Group, that identified the enforcement of compliance with the Dam Safety regulations by August 2024 will be problematic due to lower than anticipated capacity of recognised dam engineers and gaps in the national dam inventory, even for dams over 4m. MBIE have suggested that Regional Councils would be “pragmatic and apply leniency”, but this would suggest either a policy statement is needed to that effect, or a Council would be obligated to turn a blind eye to an Act. Neither seems tenable in terms of certainty for dam owners.

- Principles.

Point 3 could be clearer on the sequence of obligations. The statement of principle moves quickly to obligations on owners of dams that are dangerous. The Regulations place an earlier obligation on all dam owners to first measure their dam against the classifiable threshold, then for those that exceed the threshold conduct a PIC (Potential Impact Classification), which are activities that come before any obligations as stated regarding *“monitoring, reviewing and reporting on dangerous, earthquake-prone and flood-prone dams, and for reducing or removing the risk of harm to people, property and the environment in a timely and effective manner.”*

- Information on dam status.

We note from the TDC Dangerous Dams policy the objective to maintain a database for all dams. The inclusion but poor definition of “ALL” dams within the Act and Regulations continues to create confusion about applicability to such minor structures as duck ponds, effluent ponds, canals and even constructed wetlands, and now dams under 4m and 20,000m³. We agree with and support the position, as explored at the NZSOLD Symposium on large dams, that showed gaps and uncertainty in the existing National Dams Inventory. The inventory does not account well for the existence and location of dams under the current classifiable threshold of 4m height. We are concerned the TDC policy statement may leave you exposed to having to turn a blind eye to the requirements as clumsily set out in an Act.

- Working with Dam Owners.

Ambiguity is introduced across this document and particularly in this section as some classifiable Dams may be determined to be of low PIC so are not by definition “dangerous”. It should be made more explicit that the policy doesn’t not apply to low PIC dams.

IrrigationNZ has interpreted the PIC and DASP process required under the Dangerous Dams Regulation that draws on but is not identical to the non-statutory NZSOLD Guidance on assessing large dam risks. The PIC process adopted by MBIE only looks at an assumed uncontrolled discharge, not the nature of construction or design to determine risks to downstream population, infrastructure, and environmental features. Design and hydraulic risk are only assessed in a Dam

Safety Assurance Plan (DSAP) for dams and that requirement is actioned only for a medium or high PIC. It is the DSAP process that could determine a labelling as earthquake- or flood-prone and not the PIC which does not consider such things as the materials used, embankment geometry or hydrology of the structure that may have led to the hypothetical uncontrolled release.

It could be possible that structure poorly built from the wrong materials to withstand an earthquake or have in adequate spillway capacity, may be built in remote locations that have otherwise low consequential risk and is attributed a low PIC.

Therefore the TDC Policy on Dangerous Dams needs to reference some other evaluation process to determine earthquake prone or flood prone status than just a PIC certification. That may already be within your Building Consent assessment for structures over 4m and 20,000m³.

The Act sets the Council to be the approval body for the PIC certification and to either accept or reject the document submitted. This implies having a level of dam engineering expertise at or above that of a recognized dam engineer with the Council. Alternatively the TDC Dangerous Dam Policy needs to be clear that obligation and liability as the approval body is being defaulted to the recognised engineer certificate signatory.

The Dam Safety Regulations introduce the complexity of assigning a risk to cultural sites that is not in the NZSOLD guidelines. The risk to cultural sites is set with a very low threshold in the Regulations potentially substantially increasing the number of structures that are assigned Medium or High PIC that otherwise would be Low, an administrative burden on the dam owner and Council. Inundation of a cultural site may have a potentially high impact but does not help inform if the dam is an earthquake prone or a flood prone structure.

- Directing and taking action.

The TDC Dangerous Dams Policy doesn't talk about the management of the database to meet the five yearly review of the PIC certification required under the Regulations. The Regulations leave the discretion to require the dam owner to produce a recertification by a recognised dam engineer, even for low PIC, with the Council.

Information appended to the original PIC certificate as proposed by MBIE will not necessarily allow the review to identify any changes in actual risk exposure or method of PIC assessment used. While the NZSOLD guidelines are widely available the Regulations only partially compel a practitioner to use a particular common process of assessment compared to their peers.

For dam owners the details of method used, and evaluation criteria used in determining the PIC should be documented, attached to the PIC and be searchable. This would provide opportunity to challenge and correct information held. This would also expedite and make more cost efficient the decision by the Council to reject or require second opinion as allowed under the regulations. At the five yearly anniversary the process of determining the need for recertification will be more efficient if the previous information is readily available to confirm nothing has changed in the risk determination. Irrigation NZ understands a more comprehensive form of certificate is being made available through the WRC website that suggest the inclusion of the actual PIC Assessment report as an attachment.

We are available for further consultation on these issues, so please do not hesitate to reach out.

Please, direct any inquiries to:

Stephen McNally

Principal Technical Advisor, IrrigationNZ

smcnally@irrigationnz.co.nz

Phone: 027 687 5299

Level 6, 120 Featherston Street,

Wellington 6011

POLICY ON DANGEROUS DAMS, EARTHQUAKE-PRONE DAMS AND FLOOD PRONE DAMS

POLICY REFERENCES

Effective date: X June 2024

Review due: X June 2029

This Policy will be reviewed every five years or earlier as required. The policy remains in effect even though it is due for review or being reviewed.

Legal compliance: Building Act 2004 Section 161 & 162

Policy Number: TBA

Approved by Council: [Resolution reference]

1 INTRODUCTION

This document sets out the policy on dangerous dams, earthquake-prone dams and flood-prone dams adopted by Tasman District Council (**"the Council"**) in accordance with [sections 161](#) and [162](#) of the Building Act 2004 (**"the Act"**).

This policy states the approach and priorities the Council will take in performing its functions in relation to dangerous dams, earthquake-prone dams and flood-prone dams in Tasman, and how the policy will apply to heritage dams.¹

This policy applies to dams defined in [section 7](#) of the Act.

The dam safety provisions in subpart 7 of Part 2 of the Act, including this policy, apply to:

- Classifiable dams (defined in regulation 5 of the Building (Dam Safety) Regulations 2022² (**"the Regulations"**) are 4m or more in height and hold 20,000m³ in volume.³
- Referable dams as defined in the Regulations.⁴

Only [section 133B](#)⁵ (height measurement of dams) and sections 157-158 (measures by a regional authority to avoid immediate danger) apply to all other dams.

1.1 APPLICATION OF THIS POLICY

This policy applies to dams everywhere in the Tasman District, and irrespective of the age and intended life of the dam. The terms **"dangerous dam"**, **"earthquake-prone dam"** and **"flood-prone dam"** have the same meaning as provided in sections 153 and 153A of the Act.⁶

¹ Refer to the section 5 'Application to heritage dams' for a definition of heritage dams.

² The Regulations were made on 9 May 2022 and come into force on 13 May 2024.

³ The definition of a classifiable dam was amended on 7 May 2024 by the [Building \(Dam Safety\) Amendment Regulations 2024](#).

⁴ The Regulations do not define a referable dam.

⁵ When measuring the height of the dam under this section, the crest of the dam includes any freeboard.

⁶ This includes buildings in areas designated under subpart 6B as set out in section 153AA of the Building Act 2004.



This policy must be read alongside the Regulations which define terms used in the Act in relation to “dangerous dams”, “earthquake-prone dams” and “flood-prone dams”.⁷

The Regulations and the Act can be accessed at legislation.govt.nz⁸

This policy does not cover consents under the Resource Management Act 1991 and the Building Act 2004.

Under section 153AA, if a dangerous dam is located in an area that has been affected by an emergency (subpart 6B of the Act), this policy and other provisions of the Act continue to apply but only in relation to:

- actions or notices issued under section 154;
- work carried out under section 156; or
- if a warrant is issued under section 157.

1.2 COMMENCEMENT AND REVIEW

This policy commences one week after the council resolution is made to adopt the policy.

This policy will be reviewed every five years or earlier as required. The policy remains in effect even if it is due for review or being reviewed.

2 PRINCIPLES

The Council will apply the following principles to the exercise of its dangerous dams, earthquake-prone dams and flood-prone dams functions under the Act.

- The Council will endeavour to communicate to dam owners about the responsibilities of dam owners under the policy. This could include a notice in the rates document, the development of information packs and guidelines, among other suitable tools.
- The Council will make information about the safety risks of a dangerous dam, earthquake-prone dam or flood-prone dam publicly available (if this information is known to the Council).

The Council also notes that:

- Dam owners have the primary responsibility for identifying, monitoring, reviewing and reporting on dangerous, earthquake-prone and flood-prone dams, and for reducing or removing the risk of harm to people, property and the environment in a timely and effective manner.
- A recognised engineer⁹ engaged (by the dam owner) to provide a certificate for the purposes of section 135(1)(b), 142(1)(b), or 150(2)(f) must notify the Council and the owner of the dam, in writing and within five working days, if they believe that the dam is dangerous.

⁷ Section 19 of the Regulations defines moderate earthquake, moderate flood, earthquake threshold event and flood threshold event.

⁸ [The Building Act 2004](#) and [the Building \(Dam Safety\) Regulations 2022](#)

⁹ A recognised engineer is defined in [section 149](#) of the Act.

3 COUNCIL'S APPROACH TO PERFORMING ITS FUNCTIONS

3.1 INFORMATION ON DAM STATUS

The Council will keep a register of dams as required by [section 151](#) of the Act, recording the dangerous, earthquake-prone and flood-prone status of each classifiable dam. The Council will develop a monitoring procedure to maintain the register.

Should the Council receive information about a dangerous, earthquake-prone and flood-prone dam in its district boundary, the Council will notify the Nelson Tasman Civil Defence and Emergency Management (“**NT-CDEM**”) Group.

3.2 WORKING WITH DAM OWNERS

The Regulations require owners of all classifiable dams to know whether their dam is dangerous, earthquake-prone or flood-prone and that they will take the necessary steps, in a timely manner, to comply with the Act and the Regulations.

The Act requires dam owners to immediately notify the Council if they have reasonable grounds for believing their dam is dangerous. This applies to dams that are either a high potential impact dam or a medium potential impact dam and are likely to fail in the ordinary course of events, or a “moderate earthquake” or “moderate flood” (as defined in the Regulations).

The Act also requires a recognised engineer (engaged by the owner) who provides a certificate for the purposes of sections [135\(1\)\(b\)](#), [142\(1\)\(b\)](#), or [150\(2\)\(f\)](#), to notify the Council and the owner of the dam if they believe that the dam is dangerous. The notice must be provided in writing and be given within five working days after the engineer forms their belief.

The Council will work with the owners of identified dangerous dams, earthquake-prone dams and flood-prone dams to develop an action plan (with timeframes) with the goals of increasing the safety of the dam and eliminating or reducing the risks of the dam to people, property and the environment. It is not realistic to specify a timeframe in this policy for achieving this goal because timeframes will be dictated by the circumstances of each case. When setting a timeframe for action, the Council will consider the state of the dam, and the likelihood and consequences of dam failure.

3.3 DIRECTION AND TAKING ACTION

The Council may exercise the powers outlined below:

- For dangerous dams
 - if the owner of any dam is not acting in accordance with an agreed action plan; or
 - where there is no agreed action plan, or
 - where it considers that the agreed action plan requires review or amendment; or
 - where ownership is not known or is disputed; or
- for all dams, where there is or likely to be a risk of immediate danger.

Before exercising any of its powers under sections [154](#) to [159](#) of the Act the Council will, unless the circumstances dictate otherwise (such as where there is immediate danger to the safety of persons, property, or the environment), seek to discuss options for action with the owner of the dam, with a view to obtaining from the owner a mutually acceptable formal proposal for reducing or removing the danger.

Acceptable actions by the owner may include, but are not limited to, one or more of the following;

- Operational changes such as reducing the volume of impounded fluid or completely emptying the reservoir;
- Reconfiguring an existing spillway or creating a new or supplementary spillway so as to limit the maximum impounded volume and/or to safely route flood flows;
- Increased surveillance and monitoring;
- Development of emergency preparedness and response plans;
- Review of the dam safety assurance programme;
- Require the owner to engage a dam specialist to investigate and make recommendations with any report provided to the Council;
- Implementing measures to enable controlled, rapid emptying of the impounded fluid;
- Measures downstream of the dam to mitigate the impact of dam failure;
- Physical works including reconstruction or partial demolition of the dam;
- Decommissioning and/or removal of the dam.

The whole or part of any proposal between the Council and the dam owner may be incorporated as a requirement in a Notice to Fix issued under [section 164](#) of the Act. If no action is taken by the dam owner to address the danger, the Council may exercise any of its statutory powers in sections [154](#) to [159](#) and [164](#) of the Act.

The Council will notify all potentially affected parties downstream of a dangerous, earthquake-prone or flood-prone dams. The Council will do this by publishing information about any dangerous, earthquake-prone or flood-prone dams in its region. The Council will also work with the NT-CDEM Group.

The Council may at any time require the dam owner to review a dam safety assurance programme if the dam is an earthquake-prone or flood-prone dam.

In a situation where a dam is dangerous, the Council may (amongst other actions):

- erect a hoarding or fence to prevent people from approaching the dam nearer than is safe
- attach a notice on or near the dam (or affected downstream areas) that warns people not to approach
- give written notice to the owner requiring work to be carried out on the dam, and within the time stated in the notice to remove or reduce the danger.

In a situation where the Chief Executive of the Council considers that, because of the state of the dam, immediate danger to the safety of persons, property, or the environment is likely, then the Chief Executive of the Council may:

- cause any action to be taken to that is necessary to remove that danger
- recover the costs of taking any action from the dam owner.

4 COUNCIL'S PRIORITIES IN PERFORMING THESE FUNCTIONS

The Council's approach to dangerous dams is tailored toward achieving a reduction in the pre-existing risk whilst still being able to deal with risks that emerge in the future.

The priorities will be as follows:

- to ensure public safety at all times, following a risk-based approach
- to protect the health and wellbeing of the environment¹⁰
- to have regard to cultural and heritage values.

5 APPLICATION TO HERITAGE DAMS

For the purposes of this policy, a heritage dam means a dam that is included on:

- the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
- the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under section 81 of the Heritage New Zealand Pouhere Taonga Act 2014.

Section 4(2)(l) of the Building Act recognises the “need to facilitate the preservation of buildings of significant cultural, historical, or heritage value”.

The Council recognises the need to retain heritage values of the dam itself, but also the need to reduce or remove any risk posed by a heritage dam which has been classified as dangerous, flood-prone or earthquake-prone. When considering heritage dams under this policy, account will be taken of the need to facilitate the preservation of parts of the dams with significant heritage value.

When dealing with heritage dangerous dams, the Council will seek advice from the Heritage New Zealand Pouhere Taonga before any actions are undertaken by the Council under sections 153 to 160 of the Act.

The Council may also engage suitably qualified professionals with engineering expertise and heritage expertise to advise and recommend actions. When considering any recommendations, the Council will have regard to the priorities set out the previous section of this policy. Copies of all served notices for heritage dangerous dams, earthquake-prone dams and flood-prone dams will be provided to Heritage New Zealand Pouhere Taonga.

The Council will record the heritage listing of all dangerous, earthquake-prone and flood-prone dams it is made aware of in its register of dams and include this information on any relevant Land Information Memorandum.

¹⁰ This priority will reflect issues addressed more specifically through the provisions of the Tasman Regional Management Plan, including the guiding concept of Te Mana o te Wai.