



Report 06.329
Date 13 June 2006
File ENV10/08/01

Committee Policy, Finance and Strategy
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Dangerous Dam Policy - Building Act 2004

1. Purpose

To seek approval to release the Proposed Dangerous Dam policy (**Attachment 1**) for public consultation in accordance with the Building Act 2004.

2. Significance of the decision

The Building Act 2004 (the Act) specifies that the policy must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.

3. Background

In August 2004 a new Building Act was passed, with many provisions commencing on 30 November 2004 and the remainder commencing on 31 March 2005.

The Act provided Regional Authorities with a regulatory function in regard to dams. Under the Act, a dam is defined as a structure that retains three or more metres depth and holds more than 20,000 or more cubic metres of water or other fluid.

Included in the Act is a specific section requiring regional authorities to administer a dam safety regime which will apply to existing dams and new dams once constructed. The Act also gives the responsibility for processing and monitoring building consents for dams to Regional Authorities.

Report 06.326 of this agenda fully outlines these requirements.

One of the dam safety provisions requires regional authorities to adopt a policy on dangerous dams within its region.

The policy must state:

- the approach the regional authority will take in performing its functions
- the regional authority's priorities in performing those functions; and
- how the policy will apply to heritage dams.

4. Comment

Under the Act, all regional authorities are required to adopt a Policy on Dangerous Dams by 30 September 2006. To this end, all the regional authorities have worked collectively to develop a template Dangerous Dam policy, which has then been adapted to suit each particular region. It was never intended that all regional authorities prepare identical policies; however, there are clear benefits for both councils and stakeholders in developing a consistent approach across the country.

The attached proposed policy closely follows the initial template collectively prepared by Regional Authorities.

Regulations

The Department of Building and Housing (DBH) is the Government agency responsible for managing the Building Act. DBH has been tasked developing regulations that prescribe (amongst other things) the standards and criteria for a dangerous dam. All regional authorities had delayed the development of a Dangerous Dam Policy pending the release of these regulations, which provide key guidance regarding the identification of dangerous dams. It is now apparent that these regulations will not be available until next year. Despite this, Regional Authorities have collectively agreed that they will attempt to meet the 30 September 2006 deadline imposed in the Act by which to have a Dangerous Dams Policy adopted. This means that the policy developed for consultation is deliberately generic, and drafted in such a manner that it will not need to be reviewed or amended once regulations are eventually enacted.

Dangerous Dams

Based on the current proposed standards and criteria (as identified by the Department of Building and Housing in discussion documents), there are likely to be around a dozen dams in the Wellington Region would need to be assessed as to whether they are dangerous under the Policy

A dam is considered to be dangerous if it is a high or medium potential impact dam (as defined by regulations); and

a) is likely to collapse –

i) in the ordinary course of events; or

ii) in a moderate earthquake (as defined by regulations); or

iii) in a moderate flood (as defined by regulations); or

(b) is a leaky dam.

Proposed Policy

As noted, the attached policy has been drafted in a sufficiently broad manner to take account of the standards and criteria that will eventually be set in regulation. Essentially, the policy aims to take a co-operative approach with dam owners whose dam may be considered dangerous under the policy. Each dam will be assessed individually, and a plan of action put into place to reduce or remove the danger if required. The policy prioritises the requirement to reduce or remove dangerous dams as follows:

- to ensure public safety at all times
- economic impact
- heritage values

A summary of the Policy, as required by legislation, can be found at **Attachment 2**.

Financial Implications

Until regulations are available, and dam owners have fulfilled their obligations in regard to classification of dams, it is not possible to accurately forecast the financial impact of this policy. That is because until those actions have been completed, and a register of potentially dangerous dams has been compiled, we do not know the actual number or nature of dams that may be considered as dangerous.

However, the Act does allow a Council to impose fees and charges, or recover costs, for undertaking its functions under that Act, so the actual financial impact on Council from undertaking this particular part of its Building Act is potentially recoverable. Where a dam has been identified as dangerous, but the owner has not taken proper action, Council also has the ability to direct action to remedy the situation, and can seek recovery of its costs from the dam owner.

What is clear is that the cost that is likely to be placed on the dam owner as a result of this policy is potentially significant, and Greater Wellington will be responsible for managing the collection and recovery of these costs.

Timetable for adoption of Dangerous Dam Policy

Accepting the complications that have arisen while waiting for regulations, as outlined above, it has become necessary to proceed with a broad policy.

The proposed timetable for consultation and adoption of the policy misses the timeframe specified in the Act by twelve days. Most other Regional Authorities are in a similar position. The Department of Building and Housing is aware of the difficulty with the timeframe.

Greater Wellington approval	20 July 2006
1 st Public Notice	22 July 2006
2 nd Public Notice	5 August 2006
Close of Submissions	22 August 2006
Hearing of Submissions	Late August, early September 2006
Report back and approval	12 October 2006
Policy becomes effective	Once regulations setting standards and criteria for dam safety have been enacted.

It is worth noting that the parties primarily affected by this policy will be the owners of dangerous dams. As such, it is not expected that there will be a large number of submissions on the proposed policy as a result of consultation. However, Regional Authorities are currently exploring ways in which to collaboratively consult with some of the major parties who may have an interest in the Policy, such as Federated Farmers.

Hearing of submissions

In order to be able to hear and consider any submissions we may receive in relation to this Policy, a sub-committee will need to be formed. Terms of Reference for the sub-committee can be found at **Attachment 3**. It is recommended that no less than four Councillors form this sub-committee. Hearings are likely to be held late August or early September and it is anticipated that no more than a day will be required.

5. Communication

Greater Wellington will:

- Send a copy of the proposed dangerous dam policy to all known dam owners affected by the provisions of the Act.
- Place advertisements in newspapers to publicly notify the proposed dangerous dam policy.
- Place information and the policy on our website.

6. Recommendations

That the Committee recommend that Council:

1. **Receive** the report;
2. **Note** the contents;
3. **Approves** the Proposed Dangerous Dam Policy for public consultation;
4. **Confirm** membership of a sub-committee of Council to hear and consider submissions received on the proposed Dangerous Dam Policy; and
5. **Approves** the terms of reference for the sub-committee.

Report prepared by:

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Attachment 1: Proposed Dangerous Dam Policy

Attachment 2: Summary of Information – Greater Wellington Regional Council's Proposed Dangerous Dam Policy

Attachment 3: Dangerous Dam Policy Subcommittee Terms of Reference