Building Act 2004 (Section 161)

Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams

Adopted 28 May 2024

horizons
REGIONAL COUNCIL

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1 Introduction

This document sets out the policy on dangerous dams, earthquake-prone dams and flood-prone dams for the Manawatū-Whanganui (**Horizons**) Region, adopted by the Manawatū-Whanganui Regional Council (**Horizons Regional Council**) in accordance with sections 161 and 162 of the Building Act 2004 (**the Building Act**).

This Policy states the approach and priorities Horizons Regional Council will take in performing its functions in relation to dangerous dams, earthquake-prone dams and flood-prone dams in the Horizons Region, and how this Policy will apply to heritage dams[1].

Horizons Regional Council will uphold its obligations under Treaty settlement legislation when undertaking its functions in relation to dangerous dams, earthquake-prone dams and flood-prone dams.

This Policy applies to dams defined in section 7 of the Building Act that are located in the Horizons Region.

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

1. Classifiable dams (defined in regulation 5 of the Building (Dam Safety) Regulations 2022 (**the Regulations**).
2. Referable dams as defined in the Regulations.[2]

This Policy, once operative, replaces any previous policy on dangerous dams, earthquake-prone dams and flood-prone dams for the Horizons Region.

2 Application of this Policy

This Policy applies to dams everywhere in the Horizons Region, 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 Building Act.[3]

This Policy must be read alongside the Regulations which defines terms used in the Building Act in relation to dangerous dams, earthquake-prone dams and flood-prone dams.[4]

The Regulations and the Building Act can be accessed at www.legislation.govt.nz.[5]

This Policy does not cover consents required under the Resource Management Act 1991 or the Building Act.

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

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[1] Refer to clause 7 of this Policy for a definition of heritage dams.
[2] At the time of writing, the Regulations do not define a referable dam, however the Building Act includes referable dams in subpart 7, Part 2 and for that reason referable dams have been included in this Policy.
[3] This includes buildings in areas designated under subpart 6B as set out in section 153AA of the Building Act.
[4] Section 19 of the Regulations define moderate earthquake, moderate flood, earthquake threshold event and flood threshold events.
[5] Building (Dam Safety) Regulations 2022 and Building Act 2004.

1. Action or notices issued under section 154; or
2. Work carried out under section 156; or
3. If a warrant is issued under section 157.

3 Commencement and review

This Policy commences on the date that it is adopted by Horizons Regional Council through council resolution.

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

4 Principles

Horizons Regional Council will apply the following principles to the exercise of its dangerous dams, earthquake-prone dams and flood-prone dams functions under the Building Act:

1. Horizons Regional Council will endeavour to communicate to landowners about the responsibilities of dam owners under this Policy. This may include a notice in rates documents, the development of information packs and guidelines, among other suitable tools.
2. Horizons Regional 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 by Horizons Regional Council).

Horizons Regional Council also advises that:

1. Dam owners have the primary responsibility for identifying, monitoring and reporting on dangerous dams, earthquake-prone dams and flood-prone dams and for reducing or removing the risk of harm to people, property, infrastructure and the environment in a timely and effective manner.
2. A recognised engineer6 engaged (by the dam owner) to provide a certificate for the purposes of sections 135(1)(b), 142(1)(b), or 150(2)(f) of the Building Act must notify Horizons Regional Council and the owner of the dam within **five working days** if they believe that the dam is dangerous.

5 Horizons Regional Council's approach to performing its functions

The sections that follow outline how Horizons Regional Council will meet its obligations under the Regulations and the Building Act.

5.1 Information on dam status

Horizons Regional Council will keep a register of dams as required by section 151 of the Building Act, recording the dangerous, earthquake-prone and flood-prone status of each classifiable dam. Horizons Regional Council will develop a monitoring procedure to maintain the register.

Should Horizons Regional Council receive information about a dangerous dam in the Region, Horizons Regional Council will notify:

- The Chief Executive of the Ministry of Business Innovation and Employment;

[6] A recognised engineer is defined in section 149 of the Building Act.

- The relevant territorial authority;
- Manawatū-Whanganui Civil Defence and Emergency Management (Manawatū-Whanganui CDEM) Group;
- Relevant iwi authorities; and
- Heritage New Zealand Pouhere Taonga if it becomes aware of a dangerous dam that is also a heritage dam.

5.2 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 to take the necessary steps, in a timely manner, to comply with the Building Act and the Regulations.

The Building Act requires dam owners to **immediately notify** Horizons Regional 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 Building Act also requires a recognised engineer (engaged by the dam owner) who provides a certificate for the purposes of sections 135(1)(b), 142(1)(b) or 150(2)(f), to notify Horizons Regional 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** from when the engineer forms their belief.

Horizons Regional Council, Manawatū-Whanganui CDEM Group and, where relevant, lifeline utilities, will work with the owners of identified dangerous dams, and may work with owners of identified 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, infrastructure 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, Horizons Regional Council will consider the state of the dam, and the likelihood and consequences of dam failure.

Horizons Regional Council may, at any time, require the dam owner to review their dam safety assurance programme if the dam is an earthquake-prone dam or flood-prone dam.

6 Directing and taking action

Horizons Regional Council may exercise its powers under sections 154 - 159 of the Building Act as follows:

- 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 Horizons Regional Council considers that the agreed action plan requires review or amendment; or
  - Where ownership is not known or is disputed.
- For all dams, where there is, or is likely to be, a risk of immediate danger.

Before exercising any of its powers Horizons Regional Council will, unless the circumstances dictate otherwise (such as where there is immediate danger to the safety of persons, property, infrastructure 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;
- Increasing surveillance and monitoring;
- Development of emergency preparedness and response plans;
- Review of the dam safety assurance programme;
- Requiring the owner to engage a dam specialist to investigate and make recommendations with any report provided to Horizons Regional Council;
- Implementing measures to enable controlled, rapid emptying of the impounded fluid;
- Implementing 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 by the dam owner may be incorporated as a requirement in a Notice to Fix issued under section 164 of the Building Act. If no action is taken by the owner to address the danger, Horizons Regional Council may exercise any of its statutory powers in sections 154 - 159 and 164 of the Building Act.

Horizons Regional Council will notify potentially affected communities and the relevant territorial authority downstream of dangerous dams, earthquake-prone dams or flood-prone dams. Horizons Regional Council will do this by publishing information about any dangerous dams, earthquake-prone dams or flood-prone dams in the Region. Horizons Regional Council will also work with the Manawatū-Whanganui CDEM Group and where relevant lifeline utilities[7].

In a situation where a dam is dangerous, Horizons Regional Council may (amongst other actions and at the dam owners expense):

- 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 Horizons Regional Council considers that, because of the state of the dam, immediate danger to the safety of persons, property, infrastructure or the environment is likely, then the Chief Executive of Horizons Regional Council may:

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

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

7 Horizons Regional Council's priorities in performing its functions

Horizons Regional Council's approach to dangerous dams, earthquake-prone dams or flood-prone 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.

[7] Lifeline utilities is defined in section 4 of the Civil Defence Emergency Management Act 2002.

Horizons Regional Council's priorities will be as follows:

1. To ensure public safety at all times, following a risk-based approach.
2. To protect the health and wellbeing of the environment.[8]
3. To have regard to cultural sites[9] and heritage values.
4. To minimise the risk to damage or loss of property.

8 Application of this Policy to heritage dams

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

1. the New Zealand Heritage List/Rārangi Kōrero maintained under section 65 of the Heritage New Zealand Pouhere Taonga Act 2014; or
2. 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".

Horizons Regional 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, earthquake-prone or flood-prone. When considering heritage dams under this Policy, account will be taken of the need to facilitate the preservation of the dams with significant heritage values.

When dealing with heritage dams which has been classed as a dangerous dam, Horizons Regional Council will seek advice from Heritage New Zealand/Pouhere Taonga and the relevant territorial authority (if appropriate) before any actions are undertaken by the regional council under sections 153 – 160 of the Building Act.

Horizons Regional Council may also engage suitably qualified professionals with engineering expertise and heritage expertise to advise and recommend actions. When considering any recommendations, Horizons Regional Council will have regard to the priorities set out in clause 6 of this Policy. Copies of all served notices for heritage dangerous dams, heritage earthquake-prone dams and heritage flood-prone dams will be provided to Heritage New Zealand/Pouhere Taonga.

Where Horizons Regional Council is made aware of a heritage dam that is listed as dangerous, earthquake-prone or flood-prone, Horizons Regional Council will record the heritage listing in its dam register. Horizons Regional Council will supply this information to the territorial authority for inclusion on any relevant Land Information Memorandum.

[8] This priority will reflect the issues addressed more specifically through the provisions of the Horizons One Plan.
[9] Cultural site has the same meaning as defined in clause 3 of the Regulations 2022.

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