

**WEST COAST REGIONAL COUNCIL  
POLICY on DANGEROUS DAMS 2006**

*POLICY*

**INTRODUCTION AND BACKGROUND**

Section 161 of the Building Act 2004 (the Act) requires regional authorities to adopt a policy on dangerous dams. The West Coast Regional Council (WCRC) is a regional authority under the definitions of the Act.

The definition of a dam is contained in the Act:

- (a) means an artificial barrier, and its appurtenant structures, that*
  - (i) is constructed to hold backwater 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.*

A dangerous dam also is defined in the Act:

- (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 (to be defined in regulations); or*
  - (iii) in a moderate flood (to be defined in regulations); or*
- (c) is a leaky dam.*

Dam failure can be rapid from an onset of a breach in the dam structure. The consequences of dam failure on people, property and the environment can be devastating depending upon the size of dam and down-stream land use.

Regional Council's have a range of powers under the Act to deal with dangerous dams. The powers range from placing notices of warning on the dam, erecting a barrier to prevent access, giving written notice to the owner of a requirement to fix the problems identified (and taking action if the owner fails to do so within a prescribed time) to initiating direct action in the event of immediate danger.

This document sets out the WCRC's draft policy on dangerous dams.

The policy is required to state:

- a. The approach that the WCRC will take in performing its functions in respect of dangerous dams under the Act.
- b. The WCRC priorities in performing these functions.
- c. How the policy will apply to heritage dams.

In developing and adopting the dangerous dams' policy, the WCRC is required to follow the special consultative procedures set out in section 83 of the Local Government Act 2002.

## **1. POLICY APPROACH**

### **1.1. Policy Principles**

The intent of the Building Act 2004 is to improve control and encourage better practice in the construction of buildings, including dams and to minimise the potential risks to people and property from dangerous dams. The central tenets of the Act are that processes must be consistent, transparent and accountable which is the reason for setting out the approach and priorities to be used by the WCRC.

### **1.2. Identification of Dangerous Dams**

#### **Policy 1**

The West Coast Regional Council will compile a list of potentially dangerous dams over time in response to owners providing information/dam classifications and complying with the dam safety assurance process, and in response to complaints or relevant information. Those dams assessed as potentially dangerous will be followed up with an investigation by Council Officers assisted, as considered appropriate, by technical specialists to establish the nature of the danger or the state of the dam.

A list of certified dangerous dams will be collated according to the results of the assessments. This list will categorise the identified dangerous dams according to the following:

#### Proposed Categorisation

Category 1: High potential impact dams.

Category 2: Medium potential impact dams.

Category 3: High or medium impact dams with a heritage classification under the local territorial authority's District Plan or Historic Places Trust register.

### **1.3. Taking Action**

#### **Policy 2**

If the WCRC becomes aware of a potentially dangerous dam, either from its inspection programme or by way of a report from another party, the WCRC will (together with the dam owner), without delay, undertake an assessment of the risk and if appropriate require remedial action. The level of intervention in terms of section 154 – 157 of the Act, will be dependant on the level of risk and factors including the strategic importance, the economic importance or the heritage value of the dam to the region.

The courses of action open to the WCRC are described in the Act and range from placing notices of warning, limiting access to the dam, giving written notice to the owner to fix the dam to initiating direct action in the event of immediate danger.

If the action that is required to make the dam safe, i.e. the danger is reduced or removed so the dam is no longer 'dangerous', is undertaken successfully then it will be removed from the dangerous dams list.

#### **1.4. Dealing with the Owners of Dams**

##### **Policy 3**

- The WCRC will endeavour to consult with dam owners regarding the form of any necessary remedial work, with the purpose of obtaining a mutually agreed approach to dealing with the risk.
- In the event that consultation cannot achieve a mutually acceptable programme of remedial action, the WCRC will serve formal notice and/or take action to mitigate or remove any risks posed by the dam.
- However, should the WCRC determine that the dam poses immediate danger to the safety of persons, property or the environment (under section 157 of the Act), remedial action will not be delayed by undertaking consultation.

The intent of the legislation in respect of both safety and dealings with property owners are recognised. Whilst most dams will be the direct responsibility of the owner of the land on which they are located, there may be circumstances where a landowner will claim that they 'inherited' the dam, and were not responsible for either its construction or its maintenance. It is likely however that there will be few cases where a landowner could claim that they purchased the land in circumstances where they could not reasonably have known there was a dam on the property.

The Council considers that landowners in this situation are in a practical sense no different to landowners who have constructed a dam, which is now subject to the provisions of the new legislation. In both cases, it is the retrospective nature of this aspect of the legislation that creates the responsibility on the part of the owner in regard to the safety of the dam. Therefore, unless there is clearly a party other than the landowner who is responsible for any particular dam, the Council will adopt the definition of 'owner' under section 7 of the Act for the purpose of identifying the person responsible for the dam.

## **2. PRIORITIES**

##### **Policy 4**

The WCRC will prioritise, if necessary, remedial or mitigation work on dams identified as dangerous according to the assessed level of risk.

### **3. HERITAGE DAMS**

#### **Policy 5**

The WCRC will consider the need to provide for heritage values of dams and hold discussions with the owners and the NZ Historic Places Trust to identify mutually acceptable solutions.

Whilst it is important that heritage dams are preserved, the safety of people and their property, as well as the environment, is paramount. The heritage value of the structure, similar to issues such as strategic or economic importance, will be a consideration in determining the process to be followed after the identification of a dangerous dam.

### **4. WHEN THESE POLICIES TAKE EFFECT**

#### **Policy 6**

That Policies 1 – 5 will become operative eight months after the Dam Safety Regulations under the Building Act 2004 come into force.

Because these policies needed to be prepared by 30 September 2006 and the Building Act regulations have not yet come into force, it is necessary that the operative date of the policies be delayed to enable further change to the policies, if required, after considering the regulations.