

**S83 STATEMENT OF PROPOSAL
LOCAL GOVERNMENT ACT 2002**

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

What we are doing

We are currently seeking submissions on a new policy that aligns with the dam safety requirements created by central government.

Those requirements include the Building Act 2004 (**Act**) and the Building (Dam Safety) Regulations 2022 (**Regulations**) which come into effect in May 2024.

From that date, owners of dams¹ that meet the height and reservoir volume requirements will need to confirm the potential risk their dam poses, put in place safety plans and undertake regular dam inspections.

Who should read this policy

You should read this policy if you have a dam that is a classifiable dam.

A classifiable dam² is either:

- a. 4m or more in height and holding 20,000m³ or more in volume; or
- b. 1m or more in height and retaining 40,000m³ or more in volume.

Note that central government has announced³ that it intends to amend the definition of a classifiable dam in regulation 5 of the Regulations to exclude smaller dams.

Measures by a regional authority to avoid immediate danger also apply to all other dams.

What is the policy about?

Section 161 of the Act requires all regional councils to adopt a policy on dangerous dams, earthquake-prone dams and flood-prone dams.

This policy sets out what Tasman District Council (**the Council**) will do in relation to a dangerous, earthquake-prone or flood-prone dam in the Tasman district. The policy covers our regulatory and legislative responsibilities under the Act in relation to these dams.

The policy has three key sections:

1. *How we will perform our legislative functions in relation to dangerous, earthquake-prone or flood-prone dams.*

The Council has a variety of functions under the Act, and our approach is explained in more detail in the policy. An example of an action we may take is, we may put up fencing or hoarding around the dangerous dam to stop people approaching the dam.

¹ For the purposes of the Act and the Regulations, a dam owner is the person who legally owns the physical dam itself.

² A classifiable dam is defined in regulation 5 of the Regulations

³ Read the media release for more details: [Cutting all that dam red tape | Beehive.govt.nz](#)

2. *Our priorities when performing these functions.*

The Council will prioritise safety at all times, following a risk-based approach. We will also protect the health and wellbeing of the environment and have regard to cultural and heritage values, when undertaking our functions.

3. *How the policy will apply to heritage dams.*

If a dangerous dam is also a heritage dam, we will account for the need to facilitate the preservation of significant heritage values.

What are dangerous, earthquake-prone and flood-prone dams?

The Act defines these terms and states that a dam is dangerous if it is:

A high potential or medium potential impact dam; and is likely to fail –

- In the ordinary course of events; or
- In a moderate earthquake (as defined in the Regulations); or
- In a moderate flood (as defined in the Regulations).

A dam is an earthquake-prone dam for the purposes of the 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).

A dam is a flood-prone dam for the purposes of the 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 threshold event (as defined in the Regulations)

What doesn't the policy cover?

The policy does not classify dams. The Regulations require dam owners to assess their dam as either low, medium or high potential impact. Their assessment considers the impact to the community, cultural sites, critical and major infrastructure, and the natural environment. If it is a medium or high potential impact dam, the Act then requires the owner to prepare a dam safety assurance programme.

The Council does not undertake this assessment nor is it responsible for preparing the dam safety assurance programme—this is the role of the dam owner and their recognised engineer.

However, the dam owner must immediately notify the Council if they believe their dam is dangerous. We will then respond in accordance with the policy.

The policy also does not cover consenting matters under the Resource Management Act 1991 or the Building Act 2004.

Submissions should relate to the contents of the policy. The Council is not able to change anything in the Act or Regulations.

Where to find information

The statement of proposal and draft policy are available to download from Shape Tasman at <https://shape.tasman.govt.nz/dams-policy>. You can also contact us, and we can send you out hard copies.

If you have any questions about this proposal or about how to make a submission, please contact us via email at info@tasman.govt.nz.

How to make a submission

Consultation is open until 5 May 2024.

Anyone can make a submission on the proposed policy. This consultation is an opportunity for the Council to consider your views before the decisions are made.

You can make a submission via Shape Tasman at <https://shape.tasman.govt.nz/dams-policy>.

You can also email your submission to info@tasman.govt.nz or post your submission to *Dangerous Dams Policy 2024*, Tasman District Council, 189 Queen Street, Private Bag 4, Richmond 7050.

As part of your submission, please tell us if you would like to attend the public hearing to speak to the Council in support of your submission. If you do not wish to speak, your submission will be provided to the hearings panel for consideration.

Please provide your contact details so that we can notify you of the hearing date and arrange a time for you to speak. This will also enable the Council to inform you of the decisions on the policy following the hearing.

Please be aware that all submissions will be publicly available on the Council's website.

What happens next?

After the hearing, the Council will consider all the submissions received and make decisions on any amendments to the policy as a result. All submitters will be notified of the Council's decision.

Tasman District Council

S161 Building Act 2004

Policy on dangerous dams, earthquake-prone dams and flood prone dams

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.⁴

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:

1. Classifiable dams (defined in regulation 5 of the Building (Dam Safety) Regulations 2022⁵ (“**the Regulations**”) to be either:
 - a. 4m or more in height and holding 20,000m³ in volume; or
 - b. 1m or more in height and retaining 40,000m³ in volume.
2. Referable dams as defined in the Regulations.⁶

Only [section 133B](#)⁷ (height measurement of dams) and sections 157-158 (measures by a regional authority to avoid immediate danger) apply to all other dams.

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.⁸

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”.⁹

The Regulations and the Act can be accessed at legislation.govt.nz¹⁰

⁴ Refer to the section Application to heritage dams for a definition of heritage dams.

⁵ The Regulations were made on 9 May 2022 and come into force on 13 May 2024.

⁶ The Regulations do not define a referable dam.

⁷ When measuring the height of the dam under this section, the crest of the dam includes any freeboard.

⁸ This includes buildings in areas designated under subpart 6B as set out in section 153AA of the Building Act 2004.

⁹ Section 19 of the Regulations defines moderate earthquake, moderate flood, earthquake threshold event and flood threshold event.

¹⁰ [The Building Act 2004](#) and [the Building \(Dam Safety\) Regulations 2022](#)

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:

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

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.

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.

1. 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.
2. 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:

3. 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.
4. A recognised engineer¹¹ 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.

¹¹ A recognised engineer is defined in [section 149](#) of the Act.

Council's approach to performing its functions

Information on dam status

The Council will keep a register of all 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.

Working with dam owners¹²

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.

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.

¹² For the purposes of the Act and the Regulations, a dam owner is the person who legally owns the physical dam itself.

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.

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:

1. to ensure public safety at all times, following a risk-based approach
2. to protect the health and wellbeing of the environment¹³
3. to have regard to cultural and heritage values.

Application 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”.

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.

¹³ 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.