



Otago
Regional
Council

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

**POLICY ON
DANGEROUS DAMS, EARTHQUAKE-PRONE DAMS
AND FLOOD-PRONE DAMS
2023**

Background

The Building Act 2004 introduced a regime for managing the safety of existing and new dams in New Zealand. Under this Act, Regional Councils must prepare a policy on how they will deal with dangerous dams, earthquake prone dams and flood prone dams in their region, and how the policy will apply to heritage dams. The Otago Regional Council is proposing changes to its existing Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams Policy. Your feedback is an important part of the policy drafting process. Once all comments and submissions have been considered, Council will make a decision on whether to adopt the amended policy.

This document provides a summary of the proposed Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams 2023 for your consideration.

Please do not hesitate to contact the Council if you would like a full version of the draft policy, and we will send a copy out to you.

Statement of Proposal of the Dangerous Dams, Earthquake-Prone and Flood-Prone Dams 2023

Application of the policy

This policy applies to dams defined in Section 7 of the Act¹.

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

1. Classifiable dams (defined in Regulation 5 of the Building (Dam Safety) Regulations 2022 (“the Regulations”) to be either:
 - a. 4 or more metres high and storing 20,000 or more cubic metres volume of water or other fluid; or
 - b. 1 or more metres high and storing 40,000 or more cubic metres volume of water or other fluid.
2. Referable dams as defined in the Regulations².
3. All dams but only for the purposes of Section 133B³ (height measurement

¹(a) means an artificial barrier, and its appurtenant structures, that—

- (i) is constructed to hold back water 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 - (iii) *[Repealed]*
- (b) includes— a flood control dam; and
- (i) a natural feature that has been significantly modified to function as a dam; and
 - (ii) a canal; but
- (c) does not include a stopbank designed to control floodwaters

² The current Regulations do not define a referable dam.

³ When measuring the height of the dam under this section, the crest of the dam includes any freeboard – refer Appendix A for the definition.

of dams) and Section 157 and Section 158 (measures by a regional authority to avoid immediate danger) of the Act.

Purpose

This document sets out the Council's policy on dangerous dams, earthquake-prone dams and flood-prone dams adopted in accordance with Section 161 and Section 162 of the Act.

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. Dam owners have the primary responsibility for identifying, monitoring 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.
2. A suitably qualified and experienced engineer engaged (by the owner) to provide a certificate for the purposes of Section 135(1)(b), Section 142(1)(b), or Section 150(2)(f) of the Act must notify the Council and the owner of the dam if he or she or they believe that the dam is dangerous.
3. The state of all dangerous, earthquake-prone and flood-prone dams (as defined in the Act and the Regulations) must be known (noting that other dam safety provisions in the Act apply to all dams) and this information, if known to the Council, will be made readily available by the Council, to all persons potentially affected by the safety risks of a dangerous, earthquake-prone or flood-prone dam.

The Council's approach to performing these functions

1. 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 and inclusion of information on the relevant property file. Should the Council receive information about a dangerous, earthquake-prone and flood-prone dam within its regional boundary, the Council will notify the relevant Territorial Authority and the Otago Civil Defence and Emergency Management Group.
2. It is expected that owners of classifiable dams will know the status of their dams as a required under the Building (Dam Safety) Regulations 2022, and they will take the necessary steps to act on it responsibly. 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. When setting a timeframe for action, the Council will consider the state of the dam, and the likelihood and consequences of dam failure.

3. The Council may intervene if any dam is or likely to be a risk of immediate danger, or if any dangerous, earthquake-prone and flood-prone dam owner is not acting in accordance with the agreed action plan, does not have an agreed action plan, considers that the agreed action plan requires review or amendment, or where ownership is not known or is disputed.
4. If appropriate, the Council will notify potentially affected communities downstream of a dangerous, earthquake-prone or flood-prone dam. 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 Otago Civil Defence Emergency Management Group.
5. If the Council considers there is immediate danger, the Council may erect a hoarding or fence to prevent people from approaching the dam, attach a notice that warns people to not approach, and give written notice to the owner of the dam requiring work to be carried out on the dam 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, the Chief Executive may cause any action necessary to remove the danger, and recover costs of taking any action from the dam owner.

The Council's priorities in performing these functions

The dangerous dams provisions of the Act will be used by the Council as a mechanism to remedy an unsatisfactory situation that has developed in Otago, rather than a means of responding to "emergencies" that arise in the future. The Council's approach to dangerous dams is therefore 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, in which 1 is the highest priority and 3 is the lowest priority.

1. To minimise the risk to public safety at all times;
2. To minimise the risk to damage or loss of property.
3. To minimise the risk to the environment

Application to heritage dams

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

In this policy, a heritage dam includes all dams 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

When dealing with heritage dangerous dams, earthquake-prone dams and/or flood-prone dams, the Council will seek advice from the Heritage New Zealand/Pouhere Taonga and the relevant territorial authority (if appropriate) before any actions are undertaken by the regional authority under 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 in clause 5 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 on its register of dams and supply this information to the relevant Territorial Authority for inclusion on any relevant Land Information Memorandum.

The Submission Process

If you would like to make a submission, please access and complete the online submission form on our website (orc.govt.nz/dangerousdams), or alternatively send your completed submission form via email to damsafety@orc.govt.nz, or post a hardcopy of the attached submission form to:

Dangerous Dams Policy 2023
Otago Regional Council
70 Stafford Street
Private Bag 1954
Dunedin 9054

Submissions close on 15 December 2023

All submissions will be considered by Councillors before considering whether to adopt a Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams.

The Council should receive all submissions by 15 December 2023. Up until this close-off date, Councillors and staff will be available to answer any queries, or to meet with individuals and groups to discuss the proposed policy.

If you wish to present your submission in person, please indicate this on the submission form.

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