

**Otago Regional Council**

**Staff Hearing Report**

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

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| ***The recommendation in the staff report represents the opinion of the writer and it is not binding on the Hearing Panel. The report is evidence and will be considered along with any other evidence that the Hearing Panel will hear.*** |

Rebecca Jackson

**Team Leader Consents**

19 February 2024

**OTAGO REGIONAL COUNCIL**

**HEARING REPORT**

**Prepared For: Hearings Panel**

**Prepared By: Rebecca Jackson, Team Leader Consents**

**Date: 19 February 2024**

**Subject: Staff Hearing Report for Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams for Otago Regional Council**

## 1. Introduction

This report has been prepared to assist in the hearing of the Otago Regional Council’s proposed policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams. Under section 162 of the Building Act 2004, a policy on dangerous dams, earthquake-prone dams, and flood-prone dam may only be amended or replaced in accordance with the special consultative procedure in section 83 of the Local Government Act 2002. The purpose of the report is to assist the Hearing Panel in making a decision on the proposed policy.

The report details the following:

* Background of the policy and legislative requirements;
* Details on the consultation that has been undertaken;
* Overview of the submissions received including key themes; and
* Any recommended changes to the proposed policy.

In this report I refer to the following documents, a copy of which are attached to this report.

* Draft Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams 2023 **[Appendix 1]**
* Statement of Proposal of the Dangerous Dam, Earthquake-Prone and Flood-Prone Dams 2023 **[Appendix 2]**
* Summary of Submissions **[Appendix 3]**
* Copy of all submissions **[Appendix 4]**
* Updated draft policy showing track change recommendations **[Appendix 5]**

This report contains the recommendations of the report writer and is not a decision on the final wording of the policy. The recommendations of the report are not binding on the Hearing Panel. The report is evidence and will be considered along with any other evidence that the Hearing Commissioners will hear.

## 2. Background

Under the Building Act 2004, every regional authority including Otago Regional Council is required to develop, adopt and periodically review a policy on dangerous, earthquake-prone and flood-prone dams (hereafter referred to as the Dangerous Dam Policy) within it’s region. The purpose of the policy is to reduce the risk of catastrophic failure of a potentially dangerous dam, earthquake-prone dam or a flood-prone dam.

The policy must be reviewed at intervals of not more than 5 years. Council’s Dangerous Dam Policy was last reviewed in 2011, so is overdue for review[[1]](#footnote-1). In the past each regional authority developed their own dangerous, earthquake-prone, and flood-prone dam policy. With the recent introduction of the Building (Dam Safety) Regulations 2022, regional authorities have been working collaboratively to produce a consistent policy template that is fit for purpose nationwide.

As noted above the policy has not been reviewed since 2011. The need for a policy review has depended on central government promulgating regulations that define some of the matters that the policy relies on, such as definitions. The regulations were amended in 2022 which enabled review of the current policy to commence.

It should be highlighted that the Dangerous Dam Policy is a separate document to the Building (Dam Safety) Regulations 2022 (hereafter referred to as the Dam Safety Regulations) which largely relates to dam owner responsibilities including ensuring that classifiable dams are well operated, maintained and regularly monitored.

**2.1 Background on consultation process undertaken**

On 25 October 2023 Council approved consultation of the proposed Dangerous Dams Policy using the special consultative procedure under Section 83 of the Local Government Act 2002.

Section 83 of the Local Government Act 2002 provides:

**83 Special consultative procedure**

1. Where this Act or any other enactment requires a local authority to use or adopt the special consultative procedure, that local authority must—

(a) prepare and adopt—

(i) a statement of proposal; and

(ii) if the local authority considers on reasonable grounds that it is necessary to enable public understanding of the proposal, a summary of the information contained in the statement of proposal (which summary must comply with section 83AA); and

(b) ensure that the following is publicly available:

(i) the statement of proposal; and

(ii) a description of how the local authority will provide persons interested in the proposal with an opportunity to present their views to the local authority in accordance with section 82(1)(d); and

(iii) a statement of the period within which views on the proposal may be provided to the local authority (the period being not less than 1 month from the date the statement is issued); and

(c) make the summary of the information contained in the statement of proposal prepared in accordance with paragraph (a)(ii) (or the statement of proposal, if a summary is not prepared) as widely available as is reasonably practicable as a basis for consultation; and

(d) provide an opportunity for persons to present their views to the local authority in a manner that enables spoken (or New Zealand sign language) interaction between the person and the local authority, or any representatives to whom an appropriate delegation has been made in accordance with Schedule 7; and

(e) ensure that any person who wishes to present his or her views to the local authority or its representatives as described in paragraph (d)— (i) is given a reasonable opportunity to do so; and (ii) is informed about how and when he or she may take up that opportunity.

(2) For the purpose of, but without limiting, subsection (1)(d), a local authority may allow any person to present his or her views to the local authority by way of audio link or audiovisual link.

(3) This section does not prevent a local authority from requesting or considering, before making a decision, comment or advice from an officer of the local authority or any other person in respect of the proposal or any views on the proposal, or both.

A Statement of Proposal (Appendix 2) was prepared and outlined the application of the policy, its purpose and principles as well as Council’s approach to performing these functions. This information was publicly available on Council’s website and information on where to find these documents was sent to known large dam owners (185 owners) and potentially interested stakeholders (13 different parties) throughout Otago. The website also contained information on the submission process including a form that submitters could use (either online or as a PDF document).

A media release announcing the proposed Dangerous Dams Policy circulated on 25 October 2023. This explained the purpose of the policy and provided dates for when the submission period was available. A public notice was placed in the Otago Daily Times on two separate occasions (4th and 11th of November 2023) as well as Southern Rural Life and the Oamaru Mail on the 8th and 10th of November 2023 respectively.

The submission process was open between 13 November 2023 – 15 December 2023 (25 working days). Submissions were received in the form of emails, letters and via the online form during the consultation period. The submission form had options to choose whether submitters wished to present their evidence in person or not.

Based on the above, I consider that 83 of the LGA 2002 was satisfied.

**3. Submissions Received**

A total of 13 submissions were received by the close of the submission period. There were no late submissions. A summary of submissions is provided below:

**Table** 1: Summary of Submissions

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| **Submitter** | **Submission Points** | **Wishes to be heard** |
| Tom Pinckney on behalf of Northburn Limited | * Submission related to the direction of the Building (Dam Safety) Regulations 2022. * Provided suggested provision in the regulation for potential exemptions. | Yes |
| Helen Dempster on behalf of New Zealand Transport Agency (NZTA) | * NZTA is the entity that provides the State Highway Road network (a lifeline utility). * Dams impacted by this policy could present a risk to the safe and efficient functioning of the State Highway Road network and other lifeline utilities. * NZTA requests that the proposed policy be amended to also include direct notification of lifeline utility providers where their assets could be impacted directed or indirectly by a dam. | Yes |
| Dawn Sangster on behalf of GlenAyr Limited | * Submission related to the direction of the Building (Dam Safety) Regulations 2022. * Notes policy lacks clarity around timing and use of wording ‘timely manner’ which could create uncertainty. * Recommends amending the timing requirements for dam owners to dates consents are held for. | No |
| Shona Walter on behalf of Port Blakely Limited | * Opposes the policy * Submitter seeks the following amendments to the policy: * To include an obligation for ORC to provide any technical reports in their possession which provide details about the state of a dangerous, earth-quake prone or flood-prone dam upon request. * To require ORC to supply information about all dams on their register to Territorial Authority (TLA) and for the TA to include information about any dam on the relevant Land Information Memorandum (LIM) report. * To require ORC to regularly update public about an emergency situation concerning a dam under this policy and to provide a 24 hour phone for members of the public to call in the event of an emergency. | Yes |
| Gerard Flannery | * Submission related to the direction of the Building (Dam Safety) Regulations 2022. * Provided suggested changes to regulations. * Concern with cost to farms for engineer reports on dams. | Not stated |
| Jeremy Anderson | * Submission related to the direction of the Building (Dam Safety) Regulations 2022. * Notes policy lacks clarity around timing and use of wording ‘timely manner’ which could create uncertainty. * Recommends amending the timing requirements for dam owners to dates consents are held for. | No |
| Jeremy Anderson on behalf of Maniototo Irrigation Company | *Same as submission above* | No |
| Bruce Smith on behalf of Eden Leith Partnership (ELP) | * Submission related to a specific site and whether the Building (Dam Safety) Regulations 2022 apply. * Highlighted that irrigation dams are regularly monitored by landowners particularly in times of drought. | No |
| Fran Davies on behalf of Heritage New Zealand Pouhere Taonga | * Generally supportive of the recognition of heritage values and commitments where the dam is a heritage dam. * Recommends inclusion of advice note to advise there may be additional obligations to comply with. Provided proposed wording changes to paragraph 3 and the addition of an advice note. * Recommended a number of dams that are not captured under the definition of heritage dams have an archaeological assessment be carried out. | No |
| Murray Heckler on behalf of Falls Dam Company Limited | FDC supports the principles and ORC’s priorities however notes the time needed to gather the required information. FDC considers that similar wording to that in the 2011 Dangerous Dam Policy should be included in current policy. | Yes |
| James Russell on behalf of Last Chance Irrigation Company | LCI supports the principles and ORC’s priorities however notes the time needed to gather the required information. LCI considers that similar wording to that in the 2011 Dangerous Dam Policy should be included in current policy. | Yes |
| Tony Jack on behalf of Pioneer Energy Limited | Request that authorities take a collaborative approach with owners should any safety issues arise. PEL supports adoption of a consistent policy for all regional authorities throughout NZ. PEL supports the principles and ORC’s priorities however notes the time needed to gather the required information. PEL considers that similar wording to that in the 2011 Dangerous Dam Policy should be included in current policy. | Not stated |
| Luke Kane and Myfanwy Alexander on behalf of Federated Farmers of New Zealand – Otago Province | Supports the revised policies requirement for dam owners to make an initial assessment. Concerned about the costs associated with engineering assessment for low PIC dams. Notes concerns around lack of qualified and competent engineers. Notes benefit in establishing a review mechanism for decisions where the Chief Executive is empowered to initiate necessary actions to remove the danger. Suggests medium PIC dams have a longer period between reviews than high PIC dams. | Yes |

A more comprehensive summary of the submissions is attached as Appendix 3. The full list of all submissions is attached as Appendix 4.

It is noted that 3 submissions did not appear to have direct relevance to the Dangerous Dam Policy but rather either the Dam Safety Regulations, or in one case queries about a particular dam that may be impacted. Other submissions that raised points regarding the Dangerous Dam Policy also contain comments on the Dam Safety Regulations. No submission points relating to the Dam Safety Regulations are considered further in this report given the inability to make changes to these Regulations.

With regards to the submission points that directly relate to the Dangerous Dam Policy, a key theme that came out through multiple submissions was clarity sought around timing to reduce uncertainty to dam owners. A number of submissions also highlighted the need to recognise the social and economic needs of the community whilst reducing the risks to the safety of the dam and the community.

The other requested changes that directly impact the policy are:

* Inclusion of notification to lifeline utility providers where their assets could be impacted directly or indirectly by a dam;
* Obligation for ORC to provide any technical reports in their possession to those that request the documents which provides details about the state of a dam affected by the policy;
* Requirement for ORC to supply information about all dams on their register to the TLA and for the TLA to include information about any dam on the relevant LIM report;
* Requirement for ORC to regularly update public on an emergency situation concerning a dam including providing a 24-hour phone for the public to call in the event of an emergency;
* Inclusion of advice note to advise dam owners that there may be additional obligations to comply with; and
* Recommend a number of dams not captured under the definition of heritage dams have an archaeological assessment be carried out.

**4. Report writer recommendations following submissions received**

Below I provide a discussion on each submission that was received.

**Northburn Limited**

Northburn Limited provided a submission requesting a provision in the Dam Safety Regulations that allow for dams of a certain age that have no history of failure to be allowed to ‘pass’. The submission also notes that if a failure of a dam would not result in damage to neighbouring property it should be ‘exempt’ or ‘pass’.

The submission above does not contain any specific changes to the proposed policy therefore I do not recommend any changes to the draft are required based on this submission.

**New Zealand Transport Agency (NZTA)**

The NZTA submission highlights the lifeline utility (State Highway Road Corridor) that they provide for. Dams discussed in this policy may present a risk to the functioning of the State Highway Road network, as well as other lifeline utilities that are required to be in the road corridor. NZTA submit that it is important that lifeline utility providers, including NZTA are directly notified about any dams under this policy, that if they were to fail, may impact on the State Highway Network. If notified about these dams, NZTA would be better placed to understand the risk presented to the State Highway network and prepare for dam failure scenarios.

The submission notes a section in the policy titled ‘The Council’s approach to performing these functions’ where it lists parties that will be notified of any dangerous, earthquake-prone and flood-prone dams it receives information about.

NZTA requests the following:

*“.. that the proposed policy be amended to also explicitly include direct notification of lifeline utility providers, where their lifeline utilities could be impacted directly or indirectly by the failure of a dangerous dam, earthquake-prone dam or flood-prone dam.”*

The policy includes a provision that, where appropriate, ORC will notify potentially affected communities downstream of a dam impacted by this policy by publishing information through liaison with the Otago Civil Defence Emergency Management Group. I have reviewed the submission and agree that there are benefits in notifying lifeline utility providers. This policy cannot direct an action like this however. I recommend that Section 4.1 of the policy is amended to include the following statement “Otago Civil Defence and Emergency Management Group will be requested to notify potentially affected lifeline utility providers.”

I recommend that this is a role Civil Defence and Emergency Management (CDEM) undertake as part of their operations. This has been discussed with the CDEM Lifelines Program Lead who noted that this is feasible. However, all lifeline utility operators would be notified rather than specific ones as CDEM will not be making an assessment on the level of risk to assets.

**Port Blakely Limited (PBL)**

PBL oppose the Dangerous Dam Policy. PBL own and manage land in the Otago region where the Phoenix Dam is located. The Phoenix Dam has been considered a flood-prone dam and PBL were instructed last year to undertake emergency works under Section 330 of the Resource Management Act 1991 to immediately lower the water level of the dam.

PBL seeks:

*“Amendment to Section 3 (Principles), paragraph 3 to include an obligation on the ORC to provide on request any technical reports in their possession which provides details about the sate of a dangerous, earth-quake prone or flood-prone dam.”*

This information would be public information and therefore would be subject to any request, made to the ORC, for that information under the Local Government Official Information and Meetings Act 1987. Accordingly, I do not consider that updates to the policy are required.

The policy states that ORC will supply a record of all of the heritage listing of all dams considered by this policy to the Territorial Authority (“TA”). The TA will then include this information on the LIM report. PBL seek that the policy should require the ORC to supply information about all dams on the register to the TA to be included on the relevant LIM report. PBL discusses the purchasing of their land where the Phoenix Dam is located, where the LIM report indirectly references the Dam, but does not make reference to the state of the dam or its heritage values. This was when the dam was in a poor state but prior to it being classified as a High PIC dam. PBL consider that including this provision will ensure the safety of dams is managed in a proactive way as future buyers will be better informed on the presence of a dam on their property as well as any risks associated with the dam.

While emergency works were being undertaken for Phoenix Dam PBL staff were contacted by members of the public directly. PBL suggest having an emergency 24-hour contact phone number and regularly updated information in the media regarding the emergency would be beneficial to keep the public safe and would help maintain trust in public authorities.

PBL seeks:

1. *Amendment to Section 4, subsection 4.1, paragraph 1 to require that all information in the ORCs registry of dams be sent to Territorial Authorities for inclusion on any relevant LIM Report.*
2. *Amendment to Section 4, subsection 4.3, to require the ORC to regularly update the public about an emergency situation concerning a dangerous, earthquake-prone or flood-prone dam and to provide a 24-hour phone number for members of the public to call in the event of an emergency.*

It is the responsibility of a TA to determine what is included in a LIM report. It is noted that ORC is not required to keep a record of all dams therefore this request could not be fulfilled. I do not recommend the proposed amendment to Section 4, subsection 4.1. With regards to the proposed amendment to Section 4, subsection 4.3, Emergency Otago have a 24-hour phone that can be used by Council’s and professional stakeholders. It is the recommendation that in all other emergency scenarios individuals contact emergency services (111) rather than CDEM. I consider this to be a role for Civil Defence and for TA’s as they deal with localised emergencies. Based on this I do not recommend the proposed amendment to Section 4, subsection 4.3.

**Gerard Flannery**

Mr Flannery submitted on the proposed policy with the following recommendations:

* For farm dams 100,000m3 would be more realistic. It is not clear but I have interpreted this as related to the definition of a classifiable dam under the Dam Safety Regulations;
* Recommends a standard design for contractors could be used when constructing dams; and
* Included a note suggesting that contractors could certify dams less than 100,000m3.

The submission above does not contain any specific changes to the proposed policy therefore I do not recommend any changes to the draft are required based on this submission.

**GlenAyr Limited and Jeremy Anderson and Maniototo Irrigation Company (MIC)**

Jeremy Anderson provided two identical submissions, one on behalf of himself and one on behalf of the Maniototo Irrigation Company. GlenAyr Limited also provided a submission using near identical wording. For ease I have discussed the three submissions together.

The submissions acknowledge the proposed policy must comply with the Dam Safety Regulations and that the submission will suggest recommendations that ORC may be unable to accept, but should be considered if the Regulations are amended in the future.

Submission points related to the Dam Safety Regulations state:

* The definition of classifiable dams be amended as the definition is likely to have unintended consequences for capturing dams with little to no risk; and
* Dam engineers have identified a lack of resource in this field and are of the belief that they will be adding costs to farms by doing inspections that present little to no risk.

As highlighted by the submitter, changes to the Dam Safety Regulations cannot be considered through this process.

The submissions highlight that most landowners prefer defined dates and timeframes rather than wording such as ‘in a timely manner’. GlenAyr Limited, Mr Anderson and MIC have stated there will be an unintended consequence of landowners leaving the process to the last minute. A solution outlined in the submissions is an amendment to the policy aligning requirements to correspond with irrigation consents to which the dam relates. The submissions state:

*“This would streamline costs and workloads for farmers making it more practical, and mean that low risk dams that are in all likelihood not dangerous are inspected at a later date, allowing high risk dams to be at the front of the queue.”*

The point above appears to relate more to the Dam Safety Regulations than the policy. With regards to the wording “in a timely manner”; I do not consider changes are required to the policy. Each scenario will be case by case and heavily fact dependent, therefore there will be a range of timings and situations that could be dealt with. It is noted that under section 153B of the Building Act 2004, the owner of a dam must immediately notify the regional authority. By analogy, I do not consider that any changes to the proposed policy are required.

The submissions provide comment on the high cost associated with engaging an engineer, particularly if farmers believe their dam is safe and low-risk. The submissions recommend the policy be amended to allow alternatives to an engineer report for dams that meet a level of criteria for being low-risk. The submissions provide suggested alternatives that could be included.

The submissions conclude by making reference to the statement in the policy *“this policy applies to dams everywhere in Otago, and irrespective of the age and intended life of the dam”.* The submissions express disappointment that the policy does not target dams that are high risk so that resources can be appropriately allocated.

While the submissions discuss changes to the policy, I do not feel these relate to the proposed policy but rather matters dealt with in the Dam Safety Regulations. The proposed policy is required to address high-risk situations (dams that are dangerous, flood-prone or earthquake-prone) therefore it is important the correct technical information is required to be sought. Due to this I am not recommending any changes to the proposed Policy based on these submissions.

**Eden Leith Partnership (ELP)**

The submission questioned whether the Dam Safety Regulations are applicable to particular barriers that cross Eden Creek. The submitter notes that the structures would hold large qualities (quantities) of water if pipes were to be blocked. The submitter has requested that ORC undertake site visits to view existing dams and inform land owners whether or not they are of the belief that the dams trigger a level of risk that warrants further investigation. The submission also notes that irrigation dams are significantly monitored onsite, particularly in times of drought.

. It is crucial that a dam owner engages a SQP to undertake a site visit and assessment of a dam to fulfil requirements under the Dam Safety Regulations. It is not clear whether the submitter is seeking for their recommendations to be incorporated into the proposed Dam Safety Policy. I do not recommend that these recommendations are incorporated into the policy given I do not believe it would be appropriate for a policy of this nature would be required.

**Heritage New Zealand Pouhere Taonga (HNZPT)**

HNZPT is generally supportive of the recognition of heritage values outlined in the proposed policy and the commitment that “*account will be taken of the need to facilitate the preservation of parts of the dams with significant heritage values*”.

HNZPT highlights in the submission of the regulatory framework that governs any activity that may modify or destroy an archaeological site. The submission provides a definition of an archaeological site. The submission also provides examples of dams that are not captured under the definition of heritage dams under the Building Act 2004 however HNZPT recommends that an archaeological assessment is considered prior to works being carried out on the structures.

With regards to the wording around the ‘Application to Heritage Dams’ section of the proposed policy, HNZPT is generally supportive of this section and appreciates the balance and consideration that the Council must undertake when there is a risk arising from dams considered under this policy and is encouraged by the recognition that it has given to historic heritage in this process.

HNZPT submits the following relief is sought:

* Reword Application to heritage dams, paragraph 3 to state:

*When dealing with heritage dams that are classed as 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 Building Act … .*

* Include the following advice note:

*Note – Under the Heritage New Zealand Pouhere Taonga Act 2014 (the Act), the permission of Heritage New Zealand Pouhere Taonga must be sought prior to the modification or destruction of any archaeological site, whether the site is unrecorded or has been previously recorded. An archaeological site is described in the Act as a place associated with pre-1900 human activity, which may provide evidence relating to the history of New Zealand. Works to pre-1900 structures, such as dams, or earthworks near pre-1900s structures may require an archaeological authority to be obtained prior to works commencing. Please contact Heritage New Zealand Pouhere Taonga for further information.*

The addition of the advice note is sensible and proposed re-wording is logical. It is recommended that these changes are made with the inclusion of a footnote noting the advice note was supplied by HNZPT.

**Last Chance Irrigation Company (LCI), Falls Dam Company Limited (FDC) and Pioneer Energy Limited (PEL)**

LCI, FDC and PEL all submitted on the proposed policy and had the same submission except for the description of each of the companies. For the purposes of this report, I have combined these submissions.

LCI own and operate an irrigation scheme that uses Butchers and Conroys dam to supply irrigation water in the Central Otago region. FDC own and operate Falls Dam which acts as a storage reservoir and generates hydroelectricity. There are 4 irrigation schemes that the reservoir provides reliable irrigation water for.

PEL own 7 dams and is involved with the management of 2 other dams. Many of these dams are likely to be classified as medium or high PIC dams under the new regulations. PEL own and operate several hydroelectric schemes. They also are involved with the Falls Dam. PEL acknowledge that some of the dams may not meet current engineering standards due to their age however have performed in a manner that would not be considered “dangerous”. Based on the past and current performance of these dams and the economic consequences of being identified as either dangerous, earthquake-prone or flood-prone, PEL submits that a collaborative approach is taken with owners should any safety issues arise.

LCI, FDC and PEL supports the Principles and Council’s priorities that are outlined in the proposed policy. They all identify however that whilst some owners will have a large amount of information regarding the state of their dam, others will not and will be working towards meeting the requirements of the regulations.

LCI, FDC and PEL note the 2011 version of the policy includes the following wording:

*“Without overriding the paramount aim of protecting community safety, when deciding what actions must be taken in respect of a dangerous dam, earthquake-prone dam or flood-prone dam, the ORC will take into account social, economic and environmental impacts that may arise from those actions.*

*The ORC 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 common gool of reducing the risks to the safety of the dam and the community associated with the dam in a way that recognises the social and economic needs of the community. it is not realistic to specify a timeframe within this policy for achieving this goal because practicability will be dictated by the circumstances surrounding each case (e.g. economic welfare, ability to manage the interim risk, etc). When setting a timeframe for action, the ARC will consider the circumstances giving rise to the need for action, the nature of the risk (including the likelihood and immediacy of any threat), the degree of risk exposure, the potential impact classification (PIC) of the dam, whether satisfactory steps con be taken to manage the interim risk and the priorities established in this policy (community safety, economic welfare, heritage values).”*

In the submission, LCI, FDC and PEL note that many classifiable dams provide for significant needs in their communities. To reflect this the three companies recommend that similar wording to the 2011 version provided above is incorporated into the proposed policy.

The 2011 version of the policy predates the Dam Safety Regulations. The draft wording has been written with consideration of the current Regulations and was legally reviewed to ensure it complies. It is noted that Section 5 (Council’s priorities in performing these functions) outlines the priorities in order of highest to lowest priority which are:

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

The environment is defined in the Resource Management Act 1991 as:

*includes—*

*(a) ecosystems and their constituent parts, including people and communities; and*

*(b) all natural and physical resources; and*

*(c) amenity values; and*

*(d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters*

Based on this, I consider that the requested changes are provided for by using this definition and therefore no changes to the draft policy wording are required.

**Federated Farmers of New Zealand – Otago Province (FF)**

FF outlined in their submission that they support the requirements in the policy for dam owners to make an initial assessment as they have expressed concerns at a national level regarding requirements for audits for dams which turn out to be low risk. FF note concerns around costs associated with submitting certification from a low PIC dam when there is likely to be little benefit. FF discuss in their submission a regime for randomly sampling low PIC dams for auditing purposes.

FF highlight the lack of suitably qualified engineers and whether there will be sufficient resources to cope with demand. FF believe engineers should focus on certification for medium and high PIC dams and their ongoing compliance requirements under the Regulations.

FF also note concern with annual reviews for medium PIC dams and consider that they should have longer between reviews. The submission highlights the importance of guidance material to be developed in relation to the Regulations.

While the above makes reference to the policy, I believe FF are referring to the Dam Safety Regulations. Therefore, I do not recommend any changes to the draft are required based on this aspect of the submission.

Section 5 of the Proposed policy notes the Chief Executive of the Council is empowered to initiate necessary actions to remove the danger, with costs recoverable from the dam owner. FF submit it would be beneficial to establish a review mechanism for such decisions. FF suggest this could entail an initial assessment from a qualified engineer with an independent peer review before action is undertaken. FF consider this to be essential as it adds further scrutiny and avoids impulsive decision making that may have far-reaching consequences.

I consider that potential issues may arise with regards to costs associated with an independent review prior to any action undertaken. It is noted that if there was any uncertainty the Chief Executive could request a second opinion. Based on this I do not consider any further changes to the proposed Dangerous Dam Policy are required.

**Summary**

Table 2 below outlines the submission points that directly relate to the Dangerous Dam Policy as well as recommendations from the report writer outlining whether changes should or should not be made. Submissions that use similar or the same wording are grouped together.

**Table 2:** Recommendation of changes to the policy based on points raised in submission

|  |  |  |
| --- | --- | --- |
| **Submitter** | **Submission point** | **Report writer recommendations** |
| NZTA | That the proposed policy be amended to also include direct notification of lifeline utility providers where their assets could be impacted directed or indirectly by a dam. | I recommend that the policy is updated to state “Otago Civil Defence and Emergency Management Group will be requested to notify potentially affected lifeline utility providers.” |
| GlenAyr Limited, Jeremy Anderson and Maniototo Irrigation Company | Recommends amending the timing requirements for dam owners to dates consents are held for. | No changes recommended. |
| Port Blakely Limited | To include an obligation for ORC to provide any technical reports in their possession which provide details about the state of a dangerous, earth-quake prone or flood-prone dam upon request.  To require ORC to supply information about all dams on their register to Territorial Authority (TLA) and for the TA to include information about any dam on the relevant Land Information Memorandum (LIM) report.  To require ORC to regularly update public about an emergency situation concerning a dam under this policy and to provide a 24 hour phone for members of the public to call in the event of an emergency. | No changes recommended. |
| Heritage New Zealand | Recommends inclusion of advice note to advise there may be additional obligations to comply with. Provided proposed wording changes to paragraph 3 and the addition of an advice note.  Recommended a number of dams that are not captured under the definition of heritage dams have an archaeological assessment be carried out. | Recommend the following:  Reword Application to heritage dams, paragraph 3 to state:  *When dealing with heritage dams that are classed as 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 Building Act … .*  Include the following advice note:  *Note – Under the Heritage New Zealand Pouhere Taonga Act 2014 (the Act), the permission of Heritage New Zealand Pouhere Taonga must be sought prior to the modification or destruction of any archaeological site, whether the site is unrecorded or has been previously recorded. An archaeological site is described in the Act as a place associated with pre-1900 human activity, which may provide evidence relating to the history of New Zealand. Works to pre-1900 structures, such as dams, or earthworks near pre-1900s structures may require an archaeological authority to be obtained prior to works commencing. Please contact Heritage New Zealand Pouhere Taonga for further information.* |
| Falls Dam Company Limited, Last Chance Irrigation Company and Pioneer Energy Limited | Similar wording to that in the 2011 Dangerous Dam Policy should be included in current policy. | No changes recommended. |
| Fed Farmers | Recommend establishing a review mechanism for decisions where the Chief Executive is empowered to initiate necessary actions to remove the danger | No changes recommended. |

**5. Recommendation**

I recommend that changes are made to the proposed Policy as outlined in Table 2 above and as shown in Appendix 5.

**Appendix1: Draft Policy on Dangerous Dams, Earthquake-Prone Dams and Flood-Prone Dams 2023 on**

**Appendix 2: Statement of Proposal of the Dangerous Dam, Earthquake-Prone and Flood-Prone Dams 2023**

**Appendix 3: Summary of Submissions**

**Appendix 4: Copy of all submissions**

**Appendix 5: Updated draft policy showing track change recommendations**

1. Prior to 2022, any review was frustrated by the absence of government regulations which were needed to fully define “dangerous dam”.   [↑](#footnote-ref-1)