



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Building (Dam Safety) Regulations 2022: Proposed Amendments	Date to be published	9 May 2024

List of documents that have been proactively released

Date	Title	Author
March 2024	Building (Dam Safety) Regulations 2022: Proposed Amendments	Office of the Minister of Building and Construction
19 March 2024	Building (Dam Safety) Regulations 2022: Proposed Amendments EXP-24-MIN-0007 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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IN CONFIDENCE

Office of the Minister for Building and Construction

Cabinet Economic Policy Committee

Proposal to amend the Building (Dam Safety) Regulations 2022

Proposal

- 1 This paper seeks agreement to amend the height and volume threshold of a classifiable dam in the *Building (Dam Safety) Regulations 2022* (the Regulations). The amendment would have the effect of excluding smaller dams from the scope of the Regulations.

Relation to government priorities

- 2 This proposal supports the intent of the Government's commitments to cut red tape and support farmers. This proposal will remove disproportionate and unnecessary compliance costs that would be imposed on small dam owners, including farmers and growers.

Executive Summary

- 3 Dams are classified as buildings for the purposes of the *Building Act 2004* (Building Act). The Building Act provides empowering provisions for the regulatory framework for post-construction dam safety management.
- 4 The *Building (Dam Safety) Regulations 2022* (the Regulations) operationalises these provisions and provides the criteria and standards that apply to dam safety assurance programmes. The Regulations come into force on 13 May 2024.
- 5 Only 'classifiable dams' are impacted by the Regulations. Classifiable dams are those which:
 - 5.1 are four or more metres high and store 20,000 or more cubic metres volume of water, or other fluid; or
 - 5.2 are one or more metres high and store 40,000 or more cubic metres volume of water, or other fluid.
- 6 This paper seeks agreement to remove compliance requirements on owners of small dams, by amending the definition of a classifiable dam to exclude dams below four metres in height.
- 7 My officials estimate this will exclude 1,900 dams from the Regulations compared with the current thresholds. Owners of these smaller dams, who are predominantly farmers, growers and councils are expected to save up to \$13.3 million every five years from this change.

Background

- 8 Dams are an essential part of New Zealand's infrastructure for water supply, power generation, irrigation, mining, and storm water management.
- 9 It is crucial we have a robust approach to dam safety management as in the event a dam fails, there is a risk of significant impacts to people, property and the environment – not just in the immediate area but further downstream as well.
- 10 There have been 24 known dam incidents in New Zealand since 1960, with at least 14 considered serious. In 2017, a cost-benefit study prepared for the Ministry of Business, Innovation and Employment (MBIE) by the New Zealand Institute of Economic Research (NZIER) estimated the cost of typical dam failure at around \$5.8 million.
- 11 Owners of existing dams that meet the height and volume thresholds will be required to provide the relevant regional authority with a certificate from a recognised engineer that states the 'potential impact classification' (PIC) of the dam.
- 12 Dams can be classified as having high, medium or low potential impact in the event of an uncontrolled release of the dam's contents, in accordance with criteria prescribed in the Regulations. Owners of medium and high potential impact dams will be required to prepare a dam safety assurance programme. This programme provides dam owners a structured framework of plans and procedures to ensure safe operation and management of their dams.

Owners of small dams face disproportionate compliance costs

- 13 The current height and volume thresholds in the Regulations were developed in consultation with stakeholders. The thresholds aimed to capture the majority of dams that may present a hazard to people, property and the environment, while avoiding a regulatory burden on the owners of small dams that are not hazardous, such as stock drinking ponds and weirs in rural areas.
- 14 Public consultation on the proposed regulatory framework for dam safety was carried out during July and August 2019. 106 submissions were received. While submitters were largely supportive of the proposals, some raised specific concerns, including the threshold for a dam's inclusion in the regulatory system and the availability of appropriately skilled recognized engineers.
- 15 Groups representing farmers and growers have contacted me, to express concerns about the number of dams subject to the Regulations.
- 16 MBIE's assessment of the impact of the Regulations was based on the best available information at the time. However, further modelling by the University of Auckland indicates there could be around 2,000 additional dams subject to the Regulations, many of which will be low potential impact dams.
- 17 Additionally, when the Regulations were made, the Impact Analysis estimated that the cost for an initial PIC assessment would range between \$3,000 and \$7,000. However, MBIE is aware of some dam owners being quoted between \$10,000 to \$18,000.

- 18 I have also heard concerns about the availability of technical experts to provide and certify potential impact classifications, particularly for owners of smaller, rural dams that may not have existing relationships with dam safety engineers.

I propose to amend the Regulations, to exclude smaller dams

- 19 In response to these issues, I propose to amend the definition of a classifiable dam in the *Building (Dam Safety) Regulations 2022*, to increase the size threshold to dams four or more metres in height and 20,000 or more cubic metres of stored water.
- 20 I consider this higher threshold strikes the right balance for managing the risks posed by dams and removing the regulatory burden faced by owners of smaller dams. It would ensure consistency with the size of and volume thresholds for dams that require building consent, align more closely with thresholds in other Organisation for Economic Co-operation and Development (OECD) countries and free up specialist engineering resource to focus on risk reduction activities on higher risk, higher consequence dams.
- 21 Aligning the threshold with building consent requirements would also make it easier in future to allow a broader range of productive rural activities such as on-farm storage ponds to be constructed as a permitted activity, for example. This work is being considered as part of wider work to deliver on the Government's commitment to cut red tape and regulatory blocks water storage.
- 22 MBIE estimates the proposed changes would potentially exclude 1,900 dams from the regulatory framework compared with the current thresholds. In total, this is expected to result in reduced costs of around \$13.3 million every five years.

Stakeholders had mixed views on this proposal

- 23 In January 2024, MBIE carried out targeted consultation with regional authorities and members of the Technical Working Group on Dam Safety that had previously aided the development and review of the current Regulations. The consultation presented options to amend the height and volume threshold and sought feedback on potential alternatives to reduce the burden to comply with the Regulations.
- 24 While most submitters agreed with the issues identified in relation to the number of dams subject to the Regulations, regional authorities, the New Zealand Society on Large Dams and representatives of owners of large dams preferred retaining the status quo. They raised general concerns that a change would result in some medium and high potential impact dams falling outside the scope of the Regulations.
- 25 Groups representing farmers and growers preferred a higher threshold option that would exclude dams with a height of less than eight metres. However, this would result in a much greater number of dams falling outside the scope of the Regulations (estimated at around 2,500 dams), including many which could benefit from a periodic review of their potential impact on people and property downstream.

Risks and mitigations

- 26 Increasing the height and volume threshold will result in more dams with medium or high potential impact falling outside the scope of the Regulations. Officials estimate that the current threshold excludes in the order of 19 high or medium potential impact dams. Under the proposed amendment, this is expected to increase to around 45 medium or high potential impact dams being excluded. Note the actual figures could differ due to gaps in the information about dams, particularly dams under four metres in height.
- 27 While there is a risk these dams could pose risk to life in the event of a dam failure, I consider the risk to be low. The Building Act contains provisions that allow a regional authority to take action if a dam is likely to pose an immediate danger to the safety of persons, property or the environment. These provisions apply regardless of the height and volume threshold for classifiable dams in regulations.
- 28 Risks could be further mitigated at a later date, by making regulations to define ‘referable dams’. This would enable a regional authority to require the owner of a referable dam to classify it if the dam is located within a designated area (as defined by regulations).
- 29 Some regional authorities may seek to address any perceived residual risks of raising the threshold for classifiable dams by using regional plans and/or conditions on resource consents. There is a risk; this could negate the benefits of this proposal.
- 30 My officials will work with the Ministry for the Environment to consider how this risk could be managed, as part of wider work to deliver on the Government’s commitment to cut red tape and regulatory blocks to water storage.

Cost-of-living Implications

- 31 This proposal removes compliance costs for a number of dam owners including farmers, growers and councils.

Financial Implications

- 32 Government agencies and entities that own dams will face reduced cost as a result of this proposal. These agencies include the Department of Conservation, the New Zealand Transport Agency, Land Information New Zealand, KiwiRail and a number of local authorities.

Legislative Implications

- 33 Regulations amending the *Building (Dam Safety) Regulations 2022* will be required to implement the proposal to amend the height and volume thresholds for a classifiable dam.

Impact Analysis

Regulatory Impact Statement

- 34 A regulatory impact statement has been prepared and is attached to this Cabinet paper.
- 35 The Ministry of Business, Innovation and Employment's Regulatory Impact Assessment Review Panel has reviewed the RIS and considers that it partially meets the quality assurance criteria. The panel was satisfied with the problem definition and quality of evidence presented on the benefits of the options (particularly reduced compliance costs). To fully meet quality assurance criteria, it would be important to:
- 35.1 have a stronger evidence base on the costs of the options (increased risk of dam failures) and a more objective basis for assessing the proportionality of the options (e.g. Cost Benefit Analysis)
- 35.2 assess the full range of feasible regulatory and non-regulatory options, beyond a one-time adjustment to size thresholds (e.g. an option that captures the highest risk dams in the first instance, and covers other dams later – potentially giving more time to reconsider policy settings and improve the evidence base).

Climate Implications of Policy Assessment

- 36 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 37 Increasing the height and volume thresholds will result in a small increase in the number of medium and high potential impact dams which are not subject to classification. This may increase risk for some communities, particularly those that are downstream of a dam.
- 38 Dams make an important contribution to the economic well-being of rural communities especially, and the regulatory change will eliminate a regulatory cost for these communities. I consider that the regulatory change strikes an appropriate balance between costs and benefits for rural communities.

Human Rights

- 39 The proposal in this paper has no implications under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Use of external Resources

- 40 No external resources were used in the development of this policy proposal.

Consultation

- 41 The following agencies were consulted on the proposals in this paper: Department of Internal Affairs, Ministry for the Environment, Department of the Prime Minister and Cabinet, The Treasury, Ministry of Transport, Department of Conservation, Te Puni Kōkiri, Ministry for Primary Industries, Land Information New Zealand and National Emergency Management Agency.
- 42 My officials also engaged with regional authorities and groups such as New Zealand Society of Large Dams, Irrigation New Zealand, Federated Farmers of New Zealand, Meridian Energy, Engineering New Zealand, Environment Canterbury, Waikato Regional Council, Otago Regional Council, Northland Regional Council, Auckland Council, Bay of Plenty Regional Council Toi Moana, Taranaki Regional Council, Horizons Regional Council, Hawkes Bay Regional Council, Greater Wellington Regional Council, Gisborne District Council, Marlborough District Council, Napier City Council and Tasman District Council.

Communications

- 43 I intend to release a publicity statement, subject to Cabinet's agreement to the policy proposal.
- 44 Given the upcoming commencement of the Regulations in May 2024, following Cabinet decisions my officials will contact stakeholders to provide clarity on the scope of regulations well ahead of the Regulations coming into force.

Proactive Release

- 45 I propose to release this Cabinet paper and associated Cabinet Minute in full. The Cabinet paper and Minute will be published on MBIE's website.

Recommendations

The Minister for Building and Construction recommends that the Committee:

- 1 **note** that in May 2022, Cabinet approved the *Building (Dam Safety) Regulations 2022* [CAB-22-MIN-0166] which will come into force on 13 May 2024;
- 2 **note** that the *Building (Dam Safety) Regulations 2022* were intended to provide a minimum, consistent and effective risk-based regulatory framework for post-construction dam safety while ensuring proportionate costs and regulatory burden;
- 3 **note** that new modelling indicates that the current height and volume thresholds mean that a much larger number of dams will be subject to the *Building (Dam Safety) Regulations 2022*, many of which will be dams with a low potential impact;
- 4 **agree** that the height and volume threshold for a classifiable dam will be one that has a height of four or more metres and holds 20,000 or more cubic metres volume of water or other fluid;
- 5 **note** that increasing the height and volume threshold may increase the likelihood that dams with medium or high potential impacts are not included in scope of the *Building (Dam Safety) Regulations 2022* and this risk can be managed under existing provisions in the *Building Act 2004*;
- 6 **authorise** the Minister for Building and Construction to issue drafting instructions to Parliamentary Counsel Office to give effect to the policy proposals in this paper;
- 7 **authorise** the Minister for Building and Construction to make decisions consistent with the proposals in these recommendations on any issues which arise during the drafting process, including minor or technical amendments as required; and
- 8 **note** officials intend to communicate the above decisions to key stakeholders affected by the *Building (Dam Safety) Regulations 2022* prior to the Regulations commencing to support these stakeholders to comply.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction