



TERMS OF REFERENCE – DAM SAFETY REVIEW

The Building Act 2004 provides for a Dam Safety regulatory scheme.

As part of the Building Act Review, the Department of Building and Housing wishes to engage an independent and suitably qualified and experienced person to undertake a review of the Dam Safety regulatory scheme before it takes effect on 1 July 2010.

Background

The Building Act Review

In August 2009 the Minister for Building and Construction announced a review of the Building Act 2004 (the Act) in response to concerns about:

- the Act's implementation at local government / consent authority level
- the costs and complexity associated with the building consent process
- consumer confidence in the technical capability of practitioners
- the allocation of risk and liability between the parties involved in the building control system.

The aim of the review is to identify reforms to the Act and its associated regulation and administration to reduce the costs associated with the building control system without compromising building quality. The review therefore seeks to achieve the following results:

- quality homes and buildings are produced through a business-enabling and efficient regulatory framework
- consumers make informed decisions and have confidence transacting in the building and housing market
- homes and buildings are produced cost-effectively by a productive sector with the right skills and knowledge
- an efficient and cost-effective regulatory system.

The Dam Safety Regulatory Scheme

New Zealand has about 1,150 large dams that, until now, have not been subject to a formal system of dam monitoring, inspection and maintenance.

The Building Act provides for a Dam Safety Scheme with the intention of ensuring that from 1 July 2010 all large dams are regularly monitored, and that any associated risks to people and property from their failure are minimised.

The scheme only applies to large dams. Large dams are defined by the Act as dams that are capable of holding a reservoir of 20,000m³ or more (about the size of eight Olympic-sized swimming pools) and of retaining three or more metres' depth of water or other fluid. They include dams that only rarely hold and retain these amounts and depths of water or other fluid. The scheme applies to flood control dams but excludes stopbanks.

The Dam Safety Scheme requires the owners of dams to assess whether their dams are affected by the scheme, and the owners of large dams to:

- classify the dam as having low, medium or high potential impact (on people, property and the environment in the downstream area if the dam were to fail)
- get the dam classification certified by a recognised engineer, and
- register the dam and submit its classification with the appropriate regional authority (within three months of the 1 July 2010 commencement date of the Scheme or within three months of their dam being commissioned).

For dams classified as having a medium and high potential impact the dam owner must also:

- prepare and submit a Dam Safety Assurance Programme (which includes surveillance and maintenance procedures) to the regional authority, within one year if a high potential impact dam, and two years if a medium potential impact category dam
- provide evidence that all procedures in the Dam Safety Assurance Programme have been complied with by submitting an annual Dam Compliance Certificate to the regional authority, and
- ensure the Dam Safety Assurance Programme and annual Dam Compliance Certificate are audited and certified by a recognised engineer.

The Building Act provides for the administration of the scheme by Regional authorities, who must compile and maintain a register of dams.

Smaller dams are not affected by the dam safety scheme, although they still need to comply with the Building Act 2004 in terms of meeting the Building Code standards, etc.

Purpose

The purpose of the review is to provide the Department of Building and Housing with an independent and well informed view on whether or not the Dam Safety regulatory scheme is 'fit for purpose' before it takes effect on 1 July 2010.

The reviewer is required to:

- familiarise themselves with:
 - the risks and potential consequences of dam failure that the dam safety regulatory scheme seeks to mitigate
 - the legislative and regulatory features and requirements of the dam safety scheme
 - key stakeholder groups with interests in the scheme, the nature of their interests and any issues they might have with the scheme's design and operational requirements (including large dam owners and farmers)

- advise on whether or not:
 - the scheme and its requirements are appropriate given the nature and consequences of the risks that it is intended to mitigate, and
 - whether or not any changes should be made to its scope ie should the scheme continue to apply to all dams capable of holding a reservoir of 20,000m³ or more and of retaining three or more metres' depth of water or other fluid
- advise on any other issues associated with the scheme's design and operational requirements that are likely to negatively impact on its efficient and effective operation and result in greater than necessary compliance costs for dam owners. In doing so consideration should be given to:
 - the nature, frequency and costs to dam owners of the scheme's requirements and obligations and whether or not these are reasonable given the nature of the risks that the scheme seeks to mitigate
 - the supply of suitably qualified and experienced engineers and other service providers needed to assist dam owners to meet their obligations under the scheme
 - how and when the scheme's requirements have been communicated to dam owners
- recommend any changes that they consider necessary to ensure the scheme's efficient and effective operation before it comes into force

Stakeholder engagement

In developing their advice to the Department, the reviewer is expected to meet with the representatives of dam owners and other stakeholders. The purpose of doing so is to ensure that stakeholder views on and any issues they might have with the dam safety scheme are identified and considered by the review. The reviewer must, however, form their own independent view on the substance and significance of any issues identified by stakeholder representatives during the course of the review

Timing and Reporting

Time is of the essence. The review must be completed by 15 April 2010.

The product of the review will be a short written report that clearly sets out the reviewers:

- understanding of the risks of dam failure (and consequences) that the scheme is designed mitigate
- advice on whether or not the current scope of the scheme is appropriate given their understanding of the risks and consequences of dam failure
- identification of any other issues with the schemes design and implementation that will likely result in the scheme's inefficient or ineffective operation
- recommendations on any changes that are necessary to improve the schemes efficient and effective operation

The reviewer is required to keep the Department informed of progress, and to provide early signalling of any significant issues arising from the review so as to enable these to be considered by the Department as early as possible.

Independence

The review must be conducted by a suitably experienced and qualified person who is independent on the particular interests of stakeholders and persons affected by the scheme's operation. As well as being able to understand the technical aspects of the scheme and the risks that it seeks to mitigate, this person must be sensitive to the public policy context in which the scheme operates and the public interests in mitigating the risks of dam failure.

Support

The Department will provide the reviewer with administrative support to schedule meetings and arrange travel. The Department will also provide a policy analyst to accompany the reviewer to stakeholder meetings and clarify the detail of regulatory requirements.