

# Marlborough District Council

## Building Act 2004

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### DANGEROUS DAMS POLICY 2010

Version 1

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## Document Control

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## CONTENTS

<b>Dangerous Dams Policy 2010</b> .....	<b>1</b>
1.0 Introduction and Policy Context.....	1
1.1 Purposes of the Building Act 2004.....	1
1.2 Requirement for Dangerous Dams Policy .....	1
1.3 Definition of Dangerous Dams .....	2
1.4 Policy Development Process .....	2
2.0 Dangerous Dams Policy .....	2
2.1 Policy principles .....	2
2.2 Background and overall policy approach .....	3
2.3 Identification process .....	3
2.4 Response to complaints .....	3
2.5 Assessment criteria .....	3
2.6 Guiding principles for dealing with dam owners.....	4
2.7 Taking action on dangerous dams .....	4
2.8 Recording a dam’s status .....	5
2.9 Availability of information .....	6
2.10 Economic impact of this policy .....	6
2.11 Approach for dams and associated buildings having heritage status.....	6
2.12 Abandoned Dams.....	6
2.13 Dams on Public Land.....	6
2.14 Priorities.....	6
2.15 Availability of Information.....	7
APPENDIX 1 – Relevant Legislation .....	8

# Dangerous Dams Policy 2010

## 1.0 Introduction and Policy Context

This document sets out the Marlborough District Council dangerous dams policy prepared for the purposes of observing the requirements of the Building Act 2004.

Council is a unitary authority and has regional as well as district functions. The Building Act 2004 ('the Act') requires Council to adopt a policy in respect of dangerous dams in its discharge of its regional functions.

A draft policy (*Draft Dangerous Dams Policy 2006*) was adopted by Council to meet the requirements of the Building Act notwithstanding there were, at the time, some deficiencies in the Act in this context.

This policy updates the 2006 Policy and outlines the approach Marlborough District Council ('the Council') will take to require an owner of a dangerous dam to reduce or remove the danger posed by a dam which has been classified as dangerous in terms of the criteria specified in regulation.

## 1.1 Purposes of the Building Act 2004

The purpose of the Building Act 2004 is to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings.

The Act sets out its purposes in *Section 3* and the following are particularly relevant –

- (a) people who use buildings can do so safely and without endangering their health; and
- ...
- (c) people who use a building can escape from the building if it is on fire, . . .

*Section 4* of the Act sets out an extensive list of matters that Council has to have regard for in the performance of its functions and discharge of its duties and the following list is of the more particularly pertinent provisions –

- (b) the need to ensure that any harmful effect on human health resulting from the use of particular building methods or products or of a particular building design, or from building work, is prevented or minimised;
- (c) the importance of ensuring that each building is durable for its intended use:  
...
- (e) the costs of a building (including maintenance) over the whole of its life:  
...
- (j) the need to provide for the protection of other property from physical damage resulting from the construction, use, and demolition of a building;
- (l) the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value:

## 1.2 Requirement for Dangerous Dams Policy

It is a mandatory requirement of the Act at *Section 161* that Council implements specific Policy and *Section 162* sets out the procedures for the formation and introduction of the Policy.

The policy must state:

- (a) the approach that the regional authority will take in performing its functions under this Part; and
- (b) the regional authority's priorities in performing those functions; and

- (c) how the policy will apply to heritage dams.

See **Appendix I** for key sections of Act that have been referred to in this document.

### 1.3 Definition of Dangerous Dams

First, regard should be had for the **definition** (in the Act) of a **dam** which in the ordinary course –

- (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
- (b) includes—
  - (i) a flood control dam; and
  - (ii) a natural feature that has been significantly modified to function as a dam; and
  - (iii) a canal; but
- (c) does not include a stopbank designed to control floodwaters

The **definition** of a **dangerous dam** is set out in section 153 of the Building Act 2004, namely -

- A dam is dangerous for the purposes of this Act if the dam—
- (a) is a high potential impact dam or a medium potential impact dam; and
  - (b) is likely to fail—
    - (i) in the ordinary course of events; or
    - (ii) in a moderate earthquake (as defined in the regulations); or
    - (iii) in a moderate flood (as defined in the regulations).

### 1.4 Policy Development Process

In developing and adopting this policy, the Council will follow the special consultative procedure set out in Section 83 of the Local Government Act 2002, and will have regard to the principles in section 4 of the Building Act 2004 and any relevant changes arising from the Building Amendment Act 2008. This policy will have to be reviewed every five years and may be reviewed if changes to the Act or Regulations have relevance for the Policy. It is to be noted that this document, as adopted, overtakes the 2006 Policy.

## 2.0 Dangerous Dams Policy

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### 2.1 Policy principles

The Council has noted that provisions of the Building Act, in regard to dangerous dams, reflect the Government's broader concern with the health and safety of the public in buildings and, more particularly, the need to address life safety in the event of floods and earthquakes.

## 2.2 Background and overall policy approach

In the Marlborough region there are believed to be a relatively small number of dams in the medium and high impact category. This will only become determined through the completion of the classification process required of “large dam” owners which process is statutorily required to commence 1 July 2010. No dams are on the principal waterways (Pelorus, Wairau, Awatere rivers) and five dams occur on secondary waterways, one operates through a side channel off take to harvest overflow routinely in flood conditions. One dam functions as a flood control structure, the remaining dams are water supply storage dams and allow surplus to overflow.

Marlborough lies within the zone of highest earthquake risk in New Zealand. This is because the district is transected by a series of fault lines associated with the relative movements of the tectonic plates that New Zealand sits across. Ground shaking will occur from ruptures on these fault lines or by subduction movement to the north of the district, events sourced from active features on the coastal margin or active features to the south of the district.

The active faults that have planning and development significance for Marlborough have been recorded in a Council database.

The policy approach provides a basis for Council to act in the interests of public safety in the event that a dam has been found to fall below minimum safety criteria, and the owner has not taken appropriate action.

## 2.3 Identification process

Historically, there have been very few dams in the district having a potential for serious consequence upon failure; these have been either in the control of Council or a power generating company. Quite a number of private dams have been constructed recently in response to the demand for irrigation capability for vineyards and these have been through resource consent processes requiring appropriately qualified engineering inputs.

With the introduction of dam safety assurance programs (process to commence 1 July 2010) it is considered that there is no need for a pro-active survey approach required. Owners are statutorily bound to address the state of structures under their control. Council will have to react when it becomes known, for what ever reason, that a structure poses a threat to the safety of persons or infrastructure.

## 2.4 Response to complaints

In the event it is required to address a potentially dangerous dam situation Council officers, assisted by appropriately qualified technical specialists, will carry out investigation to establish the state of the subject dam.

## 2.5 Assessment criteria

The definition of dangerous dams is given in Section 153 of the Building Act 2004. The regulations for dams formally defining a moderate flood or moderate earthquake have not been promulgated.

In the event a situation arises, Council will utilise the best technical expertise available and require the best technical practices to be followed in every instance.

A key guide to best technical practice, to be used when making assessments of dams, is the *NZSOLD New Zealand Dam Safety Guidelines*.

## 2.6 Guiding principles for dealing with dam owners

Before exercising its powers under sections 154 to 159, the Council will seek to discuss options for action with owners, the objective being to obtain a mutually acceptable approach for dealing with the danger. If time permits Council will consider a formal proposal from owners for strengthening or replacement or removal of the dangerous dam. Council will at all times place considerable weight on public safety in its dealings with owners.

In the event that discussions do not yield a mutually acceptable approach and proposal, Council will serve a formal notice as outlined above under the section “Taking Action on Dangerous Dams” of this policy.

Upon notice being served, Council will adopt an approach that encourages a dam owner to pursue voluntary compliance with any notice that has been served. It will pursue legal outcomes if so required as it has statutory obligations to take all practical measures to ensure public safety and well-being.

## 2.7 Taking action on dangerous dams

Council, on being satisfied that a dam is dangerous, will:

### **Provide information**

Provide to the owner all information or reports obtained as a result of inspections or investigations.

### **Advise and liaise with owner**

Advise and liaise with owners of dams identified as dangerous to discuss action to be taken, unless upon technical advice danger is clear, present and necessitating immediate response. Notwithstanding, every endeavour will be made to liaise with the owner.

### **Erect a hoarding or a fence and warning notice**

If necessary, Council will put up a hoarding or a fence to prevent people approaching the dam; and / or attach a notice to the dam that warns people not to approach the vicinity of the structure.

### **Issue Notice requiring work to be carried out**

Where the Council is satisfied that a dam is dangerous and the owner has not taken steps to secure or make good then a Notice may be issued pursuant to Section 155 of the Act.

### **Notices served on dam owners will:**

- specify the work that needs to be carried out;
- the time in which it is to be completed; and
- whether the owner of the dam is required to obtain building consent in order to carry out the specified work.

When setting a timeframe for action, Council will consider the nature of the issue and the classification of the dam under the priorities established in this policy. The timeframe will, generally, not be less than 10 days after the notice is given under section 155. Clearly, there could be instances requiring a much more urgent response and commonsense dictates that in those instances much shortened periods may be required. That situation is seen to be one arising in quite exceptional circumstances.

Council will ensure any notices will be fixed to the dam or at an appropriate location near the dam, and that copies will be sent to the owner of the dam, any occupier and any party with an interest (being a financial or legal interest as recorded on the certificate/s of title) in the land on which the dam sits.

Copies of notices will also be sent to interested parties such as Civil Defence, Department of Conservation, and the New Zealand Historic Places Trust when appropriate.

At the end of the time in which the remedial work is to be completed, Council will inspect the property.

### **Liaise with Civil Defence**

The Council will liaise with Civil Defence directly if necessary.

### **Council to carry out work**

Council may carry out the work required in a notice issued under Section 154 itself or via contractors if any work required under the notice is not completed within the time frame given in the notice. Any such works will be at the cost of the owner of the dam.

Council may grant extension to time frames specified in Notices upon receipt of a request from the dam owner where this request is supported by an opinion by a Recognised Engineer and acceptable to Council.

### **Situations when Notices will not be given**

Where it is considered measures are necessary to avoid immediate danger Section 157 gives power to Council to take swift action to remove immediate danger without first serving notice on owners.

Without limiting this section, Council will undertake reasonable effort to contact the dam owner prior to taking action.

### **Dispute by owner of classification**

Council has decided not to establish an appeals process in the event of the classification of a dam as dangerous.

Should an owner dispute the classification, however, an application for a 'Determination' pursuant to Section 176 of the Act may be made to the Chief Executive of the Department of Building and Housing as set out in the Building Act 2004. The determination of the Chief Executive is binding on the Council.

### **Danger Removed**

Where Council has advised people of a dam having a potential to be dangerous and it is satisfied, subsequently, that the danger has been removed then those persons are to be advised accordingly.

## **2.8 Recording a dam's status**

Council will record all documentation of its dealings with a dangerous dam on the related property file, noting the status of requirements for improvement or the results of improvement, as applicable. In addition, the following information will be placed on the LIM or PIM for each dangerous dam:

- the address and legal description of the dam and the land which supports it;
- a statement that the dam is considered to be dangerous;
- the date by which strengthening or demolition is required (if known); and



- a statement that further details are available from the Council property file.

This information will be kept on the property file until the matter is resolved.

## **2.9 Availability of information**

Information concerning the status of a dam will be contained in the property file and Council's electronic mapping system. If a notice under section 154 is issued in respect of any dangerous dam then a record of that will also be available on the relevant property file and be included in all LIMs that might be applied for.

In granting access to information concerning these dams, the Council will conform to the requirements of the relevant legislation.

## **2.10 Economic impact of this policy**

No economic impact analysis has been carried out to assess the effect of this policy nor is any proposed. Council takes the view that in the context if a dam is deemed dangerous the priority in most if not all instances will be public safety. It is considered that it is improbable that an economic argument could be sustained if life safety is in question. Further, it is considered that only in the light of particular cases can decisions be made to balance off economic issues.

## **2.11 Approach for dams and associated buildings having heritage status**

A heritage dam (including associated structures) includes all dams listed as a heritage resource in the Marlborough District Plan and/or those registered by the New Zealand Historic Places Trust.

Section 4(2)(1) of the Building Act recognises the "need to facilitate the preservation of buildings of significant cultural, historical, or heritage value". The Marlborough District Plan also requires resource consent to alter or demolish a heritage building. Dams, presently, are not specifically identified but it should be noted that a dam is a building for the purposes of the Act as specified in the "Interpretation".

At this time (January 2010) the District Plan provides no planning procedure to overcome the need for a resource consent application to be made by the owner even if the dam is to be demolished for public safety reasons. This factor needs to be considered against the Building Act's requirement that Council must ensure all dams meet minimum prescribed standards (or be demolished) to reduce the potential of injury, loss of life or damage to other property.

## **2.12 Abandoned Dams**

An abandoned dam will at all time be the responsibility of the landowner.

## **2.13 Dams on Public Land**

In the first instance dams on public land will be considered the responsibility of the Crown in terms of Section 6 of the Act.

## **2.14 Priorities**

In the event of there being a dangerous dam Council will prioritise the requirement to remove or reduce the danger by, first, ensuring public safety at all times then have regard for economic welfare followed by any heritage matters that might be present.

## **2.15 Availability of Information**

Any information acquired in the course of investigation or inspection will be publicly available upon request and will be provided in Land Information Memoranda or Project Information Memoranda.

## APPENDIX 1 – Relevant Legislation

### BUILDING ACT 2004 – KEY SECTIONS

#### 3. Purpose—

The purpose of this Act is to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings, to ensure that—

- (a) people who use buildings can do so safely and without endangering their health; and
- (b) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
- (c) people who use a building can escape from the building if it is on fire; and
- (d) buildings are designed, constructed, and able to be used in ways that promote sustainable development.

#### 4. Principles to be applied in performing functions or duties, or exercising powers, under this Act—

(1) This section applies to—

- (a) the Minister; and
- (b) the chief executive; and
- (c) a territorial authority or regional authority (but only to the extent that the territorial authority or regional authority is performing functions or duties, or exercising powers, in relation to the grant of waivers or modifications of the building code and the adoption and review of policy on dangerous, earthquake-prone, and insanitary buildings or, as the case may be, dangerous dams).

(2) In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:

- (a) when dealing with any matter relating to 1 or more household units,—
  - (i) the role that household units play in the lives of the people who use them, and the importance of—
    - (A) the building code as it relates to household units; and
    - (B) the need to ensure that household units comply with the building code;
  - (ii) the need to ensure that maintenance requirements of household units are reasonable;
  - (iii) the desirability of ensuring that owners of household units are aware of the maintenance requirements of their household units;
- (b) the need to ensure that any harmful effect on human health resulting from the use of particular building methods or products or of a particular building design, or from building work, is prevented or minimised;
- (c) the importance of ensuring that each building is durable for its intended use;
- (d) the importance of recognising any special traditional and cultural aspects of the intended use of a building;
- (e) the costs of a building (including maintenance) over the whole of its life;
- (f) the importance of standards of building design and construction in achieving compliance with the building code;
- (g) the importance of allowing for continuing innovation in methods of building design and construction;
- (h) the reasonable expectations of a person who is authorised by law to enter a building to undertake rescue operations or firefighting to be protected from injury or illness when doing so;
- (i) the need to provide protection to limit the extent and effects of the spread of fire, particularly with regard to—
  - (i) household units (whether on the same land or on other property); and
  - (ii) other property;
- (j) the need to provide for the protection of other property from physical damage resulting from the construction, use, and demolition of a building;
- (k) the need to provide, both to and within buildings to which section 118 applies, facilities that ensure that reasonable and adequate provision is made for people with disabilities to enter and carry out normal activities and processes in a building;
- (l) the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value;
- (m) the need to facilitate the efficient use of energy and energy conservation and the use of renewable sources of energy in buildings;
- (n) the need to facilitate the efficient and sustainable use in buildings of—
  - (i) materials (including materials that promote or support human health); and
  - (ii) material conservation;
- (o) the need to facilitate the efficient use of water and water conservation in buildings;

(p) the need to facilitate the reduction in the generation of waste during the construction process.

#### 154. Powers of regional authorities in respect of dangerous dams—

- (1) If a regional authority is satisfied that a dam is dangerous, the regional authority may—
  - (a) put up a hoarding or fence to prevent people from approaching the dam nearer than is safe;
  - (b) attach in a prominent place on, or adjacent to, the dam a notice that warns people not to approach the dam;
  - (c) give written notice requiring work to be carried out on the dam, within a time stated in the notice (which must not be less than 10 days after the notice is given under section 155), to reduce or remove the danger.
- (2) This section does not limit the powers of a regional authority under this Part.
- (3) A person commits an offence if the person fails to comply with a notice given under subsection (1)(c).
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.

#### 161. Regional authority must adopt policy on dangerous dams—

- (1) A regional authority must, within 18 months after the commencement of this Part, adopt a policy on dangerous dams within its district.
- (2) The policy must state—
  - (a) the approach that the regional authority will take in performing its functions under this Part; and
  - (b) the regional authority's priorities in performing those functions; and
  - (c) how the policy will apply to heritage dams.

#### 162. Adoption and review of policy—

- (1) A policy under section 161 must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.
- (2) A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.
- (3) A regional authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.
- (4) A regional authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.
- (5) A policy does not cease to have effect because it is due for review or being reviewed.

## 177 Application for determination—

A party may apply to the chief executive for a determination in relation to 1 or more of the following matters:

- (a) whether particular matters comply with the building code:
- (b) a building consent authority's decision to—
  - (i) issue, or refuse to issue, a building consent, code compliance certificate, or compliance schedule; or
  - (iii) refuse to allow, under section 52(b), an extension of the period during which building work must be commenced before a building consent lapses; or
  - (iv) issue a notice to fix; or
  - (v) refuse to allow, under section 93(2)(b)(ii), an extension of the period during which the building consent authority must decide whether or not to issue a code compliance certificate; or
  - (vi) amend a building consent, notice to fix, or code compliance certificate; or
  - (vii) impose a condition on a notice to fix or compliance schedule or to amend that condition:
- (c) a territorial authority's decision to—
  - (i) grant or refuse a waiver or modification of the building code under section 67; or
  - (ii) issue, or refuse to issue, a certificate of acceptance under section 96; or
  - (iii) amend a compliance schedule under section 106 or section 107; or
  - [(iiiia) issue or refuse to issue a certificate for public use under section 363A; or]
  - (iv) issue, amend, or impose a condition on a notice to fix:
- (d) the exercise by a territorial authority of its powers under sections 112 and 115 to 116 (which relate to alterations to, or changes in the use of, a building) and the issue by a territorial authority of a certificate under section 224(f) of the Resource Management Act 1991:
- (e) the exercise by a territorial authority of its powers under section 124 or section 129 (which relate to dangerous, earthquake-prone, and insanitary buildings) or the failure to exercise those powers:
- (f) the exercise by a regional authority of its powers under subpart 5 of Part 2 in relation to a dam or the failure to exercise those powers.

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