



greater WELLINGTON
THE REGIONAL COUNCIL

Submission of Greater Wellington – The Regional Council (“the Council”) to the Local Government & Administration Select Committee

On the Building Bill

1. Introduction

Thank you for the opportunity to make a submission on the Building Bill (“the Bill”). The Council is confident that the Bill will, once enacted, set in place a robust framework for the regulation of building activities.

However, the Council does believe that some sections of the Bill, especially in relation to dams, require amendment or further clarification.

Except where otherwise noted in this submission, the Council endorses the commentary on, and suggestions for change to, the Bill made by Local Government New Zealand (LGNZ) in its submission.

2. Aspects of the submission relating to dams

2.1 General comment

Large dams in New Zealand are typically constructed and maintained in accordance with the New Zealand Dam Safety Guidelines (“the guidelines”) which are based on international best practice. The Council is concerned that there are few obvious linkages between the Bill and the guidelines¹ and is particularly concerned that the compliance schedule/warrant of fitness model proposed will impose a significant new compliance costs without necessarily delivering improved safety of dams.

¹ It may be that the potential impact classification methodology described in the guidelines will inform the criteria for classifying high, medium and low impact dams.

As a dam owner, it is the Council's view that the requirement for an annual warrant of fitness described in section 227 will, in practice, mean a safety review every year. The Council questions whether this is justified or affordable. By way of example, the safety review of a large dam might take between four and five months (perhaps longer) to complete and will typically cost \$40,000-\$50,000. At present, it is only necessary to meet this cost one in every five years.

The Council is concerned that it has not been able to properly assess the likely impact of the provisions relating to dams. This is because the regulations to be made under section 353(1)(r) have yet to be promulgated. For this reason, the Council is keen to see a strong commitment from Government to a rigorous consultation process before regulations are passed into law.

2.2 The definition of "dam"

"Dam" is defined in the Bill to mean:

an artificial barrier constructed for the purpose of confining, storing, or transporting water or other fluid; and

includes-

- (i) a natural fence that has been modified to function as a dam; and*
- (ii) a canal; but*

does not include a stopbank designed to control flood waters.

LGNZ has indicated in its submission that this definition should be amended to read "... includes flood detention dams but does not include a stopbank designed to control flood waters". While the Council supports this submission, it believes that the definition should go further providing greater specificity and, therefore, certainty about the nature of a dam (for the purposes of the Bill).

Because the definition refers to the "confining" water (or other liquid) by an artificial barrier but does not make reference to the height or purpose of the barrier, it is the Council's view that a considerable number of structures might inadvertently be considered to be dams. For example: water reservoirs – including farm ponds; swimming pools², and bund walls surrounding refinery tanks are all artificial structures constructed for the purpose of confining water (or other liquid). Will these be considered to be dams?

It is also not clear whether a weir - that is, a structure built across a river for the purpose of raising the water level upstream of the structure or otherwise regulating the river flow - is a "dam".

² The Council notes that any tank or pool described in schedule 1 to the Bill is exempt from any requirement for a building consent. However it is not clear to Council whether this exemption extends to the requirement in section 218 that dams be classified.

For this reason, the Council believes the definition should include appropriate qualifying statements relating to height and/or purpose to exclude structures not intended to be captured by the broad definition currently in the bill.

2.3 Section 218

Section 218 currently reads:

A regional authority must, in accordance with regulations made under section 353, classify each dam within its *district*

However, neither “district” nor “region” is defined in the Bill. It is appropriate that the following definitions be included:

“**district** means the district of a local authority; and includes a region”

“**region** means a region within the meaning of the Local Government Act 2002”.

There is currently no specific provision in the Bill for dam owners to challenge or seek a review of any classification made pursuant to section 218, or to seek reclassification following structural alterations to a dam³. It is thought that such provisions should be included in the Bill.

Regional authorities are required to classify all dams within their regions in accordance with regulations that are made under section 353 of the Bill. What is not clear is how a regional authority will instigate this process or whether there are appropriate incentives on dam owners comply. For example, does a council publicly advertise, calling on owners to register their dams for classification, does it refer to only existing resource consents it has records of, or does it inspect its area from the likes of aerial photographs or a combination of several methods? The process has to have appropriate incentives in order that, for example, a farmer will register their dam.

2.4 Section 219(2).

Requiring the submission of a compliance schedule within three months of “commissioning” a dam is inappropriate. In particular, as it may take a year to fill a large dam. It is the Council’s view that a compliance schedule should be in place before filling begins. This is because the filling of the dam can be a process requiring considerable precision and checking against design criteria.

³ The Council notes that there is provision to amend the provisions of a compliance schedule following structural alteration.

2.5 Section 220(c).

A regional council could decline to approve a compliance schedule for any number of reasons. Some defects might take considerable time for the owner to remedy. For this reason, a greater amount of time should be allowed to resubmit a compliance schedule. 30 days might be appropriate.

2.6 Section 223(1)(a)

Council questions whether the compliance schedule/warrant of fitness regime proposed in the Bill is appropriate, and asks whether it would be preferable to require owners to put in place a dam surveillance and management regime closely modelled on the guidelines, and give regional authorities powers to audit compliance.

2.7 Section 224.

This section, as drafted, allows, the designer and even the builder of the dam to be involved in inspection and reporting. The guidelines preclude the designers from being part of a safety review team during the first two years of critical inspections. A similar requirement should be incorporated in the Bill.

2.8 Section 227

As indicated above, the requirement for an annual warrant of fitness will, in practice, mean undertaking a safety review every year. The Council questions whether this is justified, or affordable. In particular, in terms of the financial cost and human resources required to comply. It is the Council's view that, this requirement will necessarily result in a dilution of the effort currently expended on five yearly reviews and a potential reduction in safety. As suggested above, a better approach would be to follow the safety review provisions in the guidelines.

2.9 Section 228.

Inspection and maintenance, particularly of a large dam, is often carried out by people who are not necessarily building practitioners but are, nevertheless, competent. For example, the survey deformation work that may be carried out every regularly along the top of an earth dam would normally be performed by a registered surveyor. A competent geologist could carry out Hillside stability investigations. The Council wishes to clarify whether it will be necessary for these people to become accredited building practitioners for the purposes of the Bill. And, if so, questions whether this imposes an unnecessary compliance cost

It is the Council's view that safety evaluation reports should be kept for a minimum of 7 years (and ideally much longer – perhaps as long as 50 years in the case of a large dam).

2.10 Section 230.

Ideally an emergency action plan should be in place before a new dam starts to fill. For an existing dam, perhaps within 12 months after the dam is classified as high-impact. A copy of the emergency action plan should be deposited with the territorial authority as well as the regional authority.

3. The definition of “territorial authority”

The definition of territorial authority remains substantially unchanged from the existing Building Act. This means regional councils will continue to have responsibility, as though they were territorial authorities, for issuing building consents (and other activities described in the Bill) in the coastal marine area. It also means that, in a small number of areas, more than one local authority will have responsibility. For example, the wharves in Lambton Harbour fall within the boundaries of Wellington City but are also within the coastal marine area - hence both Wellington City Council and Greater Wellington are a territorial authority for the same area.

territorial authority

- (a) has the meaning given to it by section 5(1) of the Local Government Act 2002; *and where no territorial authority as defined in that section exists -*
- (b) includes any organisation that is authorised to permit structures under section 12(1)(b) of the Resource Management Act 1991

4. Liability of the Council when performing functions described in the Bill

While, in general terms, it is expected that the liability of territorial authorities for building failure will decrease as a consequence of the enactment of the bill, The Council wishes to clarify the extent of its liability in relation to dams (particularly in the instance of dam failure).

It does not appear that there is a section in the bill which deals with the liability of councils when performing the functions described in the bill that relate to dams. The Council believes a general exclusion from liability, provided the council has acted in good faith, should apply.

5. Certainty regarding the Council’s ability to recover costs.

The Council believes that there is a need for a single clause, which clearly address councils’ ability to recover costs, particularly in relation to dams. In this context, it is probably appropriate that an equivalent to section 28 in the existing Act be incorporated into the Bill.