



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Building and Construction
Title of Cabinet paper	Building (Dam Safety) Amendment Regulations 2023	Date to be published	21 September 2023

List of documents that have been proactively released

Date	Title	Author
August 2023	Building (Dam Safety) Amendment Regulations 2023	Office of the Minister for Building and Construction
17 August 2023	Building (Dam Safety) Amendment Regulations 2023 LEG-23-MIN-0137 Minute	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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Office of the Minister for Building and Construction
Chair, Cabinet Legislation Committee

Building (Dam Safety) Amendment Regulations 2023

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Building (Dam Safety) Amendment Regulations 2023.

Policy

- 2 Dams are classified as buildings for the purposes of the *Building Act 2004* (Building Act). The Building Act provides empowering provisions for a regulatory framework for post-construction dam safety management. Regulations are needed to bring this framework into full effect and provide the criteria and standards that the industry need to apply.
- 3 The Building (Dam Safety) Regulations 2022 (the Dam Safety Regulations) were approved by Cabinet on 9 May 2022 and provide the criteria and standards that the industry need to apply [CAB-22-MIN-0166]. The Dam Safety Regulations come into force on 13 May 2024 and will ensure a nationally consistent, risk-based approach to dam safety.
- 4 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' of the dam by 13 August 2024.
- 5 Dams can be classified as having high, medium or low potential impacts 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.

The Building (Dam Safety) Amendment Regulations 2023 remove two unnecessary fields from the prescribed form for the dam classification certificate

- 6 The regulations prescribe the method and criteria to carry out a potential impact classification, the form of the dam classification certificate and the information that must be provided. The dam classification certificate form currently includes fields requiring information about the dam's flood and earthquake performance.

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- 7 This information is not needed to determine the dam's potential impact. Potential impact classifications are not concerned with the 'why' or 'how' of dam failure, but rather what the potential consequences are in terms of risk to life, property, cultural or historical sites, infrastructure, and the environment.
- 8 Dam safety technical experts have recently advised my officials that owners of many existing dams will not have information regarding a dam's flood and earthquake performance readily available. Dam owners will incur significant costs in undertaking the studies to gather this information, and there are not enough engineers with the expertise to carry out these studies by the time dam classification certificates are required to be provided to regional authorities.
- 9 To address these concerns, I recommend a minor amendment to form 1 of Schedule 3 of the Dam Safety Regulations, to remove the flood performance and earthquake performance fields on the dam classification certificate.
- 10 I have authorised the Parliamentary Counsel Office to draft these amendments without reference to Cabinet as they are minor changes that are consistent with the original policy intent agreed to by Cabinet [CAB-21-MIN-0034].
- 11 Removing the flood performance and earthquake performance fields from the dam classification certificate will ensure owners do not incur additional and unnecessary costs to comply with the regulations. This will also provide clarity and certainty about the requirements to dam owners and recognised engineers, and enable them to begin conducting potential impact classifications ahead of the regulations coming into force.
- 12 I have assessed the risk of removing these fields from the dam classification certificate form and consider the risk to be minimal. The potential risk of flood-prone or earthquake-prone dams will be captured through the dam safety assurance programme, which takes place for medium and high potential impact dams following classification. A dam cannot be classified as having a low potential impact if there is a potential risk to life in the event of a failure.
- 13 Dam owners and recognised engineers also have obligations under the Building Act to notify the relevant regional authority if they believe the dam is or has become dangerous, including if the dam is flood-prone or earthquake-prone.

Timing and 28-day rule

- 14 I propose that these amendment regulations will be notified in the New Zealand Gazette, subject to Executive Council agreement. A waiver of the 28-day rule is not sought. The amendment will come into effect on 21 September 2023. The Building (Dam Safety) Regulations 2022 will come into force on 13 May 2024.

Compliance

- 15 The regulations comply with:
- 15.1 the principles of the Treaty of Waitangi;
 - 15.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 15.3 the principles and guidelines set out in the Privacy Act 2020;
 - 15.4 relevant international standards and obligations;
 - 15.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 16 I do not consider there are any grounds for the Regulations Review Committee to draw regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 17 The regulations were prepared and certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 18 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has been addressed by an existing impact analysis [CAB-21-MIN-0034].

Financial Implications

- 19 There are no direct financial implications from this proposal.

Publicity

- 20 When the amendment regulations have been made, MBIE will contact stakeholders to inform them of the changes. New Zealand Society on Large Dams will also include the changes in the guidance document they will be publishing.

Proactive release

- 21 I intend to release this paper proactively in full. MBIE will publish a copy of this paper on its website.

Consultation

- 22 MBIE has engaged with the New Zealand Society on Large Dams regarding the impact of the earthquake and flood performance fields as well as the options for removing them.
- 23 The following agencies were consulted on this paper: Ministry for the Environment; Ministry for Primary Industries; Te Puni Kōkiri; Department of Conservation; Department of Internal Affairs; the National Emergency Management Agency; Land Information New Zealand; Landcorp; Waka Kotahi NZ Transport Agency; the Treasury; Ministry of Justice; Ministry of Transport and KiwiRail.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 24 February 2021, the Cabinet Economic Development Committee (DEV) agreed to policy decisions for a set of Dam Safety Regulations for the post-construction safe management of dams in New Zealand [DEV-21-MIN-0008];
- 2 **note** that on 9 May 2022, Cabinet authorised the submission to the Executive Council of the Building (Dam Safety) Regulations 2022, to come into force on 13 May 2024 [CAB-22-MIN-0166];
- 3 **note** that on 24 February 2021, Cabinet Economic Development Committee authorised 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, and minor, technical and timing changes to these proposals as required [DEV-21-MIN-0008];
- 4 **note** that the dam classification certificate prescribed by the Building (Dam Safety) Regulations 2022 contains two unnecessary fields of flood performance and earthquake performance, which will significantly increase time and cost to complete the classification;
- 5 **note** that the Minister for Building and Construction approved a minor and technical change to the Building (Dam Safety) Regulations 2022 to remove the fields for flood performance and earthquake performance from form 1 of Schedule 3 of the Building (Dam Safety) Regulations 2022, which is consistent with the original policy proposals;
- 6 **agree** that the Building (Dam Safety) Amendment Regulations 2023 include the minor and technical change outlined in paragraph 5;
- 7 **note** that the Minister for Building and Construction authorised the Parliamentary Counsel Office to draft the amendments without reference to Cabinet, as these are minor and technical changes consistent with the original policy intent;

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- 8 **note** that the Building (Dam Safety) Amendment Regulations 2023 will give effect to the decision referred to in paragraph 6 above;
- 9 **authorise** the submission to the Executive Council of the Building (Dam Safety) Amendment Regulations 2023;
- 10 **note** that the Building (Dam Safety) Amendment Regulations 2023 will come into force on 21 September 2023.

Authorised for lodgement

Hon Dr Megan Woods

Minister for Building and Construction

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