



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Building (Dam Safety) Amendment Regulations 2024	Date to be published	18 June 2024

List of documents that have been proactively released

Date	Title	Author
May 2024	Building (Dam Safety) Amendment Regulations 2024	Office of the Minister for Building and Construction
2 May 2024	Building (Dam Safety) Amendment Regulations 2024 LEG-24-MIN-0065 Minute	Cabinet Office

Information redacted

YES / NO (please select)

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Office of the Minister for Building and Construction

Cabinet Legislation Committee

Building (Dam Safety) Amendment Regulations 2024

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Building (Dam Safety) Amendment Regulations 2024 (amendment Regulations).

Relation to government priorities

- 2 This paper supports the Government's commitments to cut red tape and support farmers by removing disproportionate and unnecessary compliance costs imposed on small dam owners.

Policy

- 3 The *Building (Dam Safety) Regulations 2022* (the Regulations) under the *Building Act 2004* comes into force on 13 May 2024, ensuring a nationally consistent, risk-based approach to dam safety.
- 4 Only 'classifiable dams' are impacted by the Regulations. Classifiable dams are currently those which are:
 - 4.1 four or more metres high and store 20,000 or more cubic metres of volume of water, or other fluids; or
 - 4.2 one or more metres high and store 40,000 or more cubic metres volume of water, or other fluid.
- 5 Owners of dams that meet the height and volume thresholds for a classifiable dam 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 by 13 August 2024.
- 6 Classifiable dams are assessed as having either high, medium or low potential impacts in the event of a dam failure, in accordance with criteria that are 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 with a structured framework of plans and procedures to ensure safe operation and management of their dams.
- 7 The current height and volume thresholds aimed to capture the majority of dams that may present a hazard to people, property and the environment, whilst avoiding

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placing regulatory burden on owners of small dams that are not hazardous, such as stock drinking ponds and weirs in rural areas.

- 8 The Ministry of Business, Innovation and Employment's (MBIE) assessment of the impact of the Regulations was based on the best available information at the time. However, updated 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.
- 9 Additionally, when the Regulations were made, the Regulatory 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 for such assessments.
- 10 On 25 March 2024, Cabinet agreed to amend the definition of a classifiable dam under the Regulations, to increase the size threshold of dams to four or more metres in height and 20,000 or more cubic metres of stored water, or other fluid [EXP-24-MIN-0007 and CAB-24-MIN-0101].
- 11 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 also ensure consistency with the height and volume threshold for dams that require a building consent and free up specialist engineering resource to focus on risk reduction activities on higher risk, higher consequence dams.

Timing and 28-day rule

- 12 The principal Regulations, which were made on 9 May 2022, are due to commence on 13 May 2024. The proposed commencement date for the Building (Dam Safety) Amendment Regulations 2024 is also 13 May 2024.
- 13 I seek approval for a waiver of the 28-day rule. The reason for this is to ensure the amendment to the definition of a 'classifiable dam' can commence at the same time as the principal Regulations.
- 14 The amendment to the definition of a 'classifiable dam' being made by these amendment regulations will omit some smaller dams (estimated to be 1,900 dams) from being included. The effect of this is that smaller dams will be excluded from the dam requirements in subpart 7 of Part 2 of the *Building Act 2004*. The waiver will ensure that unnecessary requirements and obligations are not placed on owners of smaller dams who will then be exempt under the amendment regulations only a number of weeks later.
- 15 Cabinet's decision to amend the definition of a classifiable dam to exclude dams under four metres has been well publicised.

Compliance

- 16 The Building (Dam Safety) Amendment Regulations 2024 comply with each of the following:
 - 16.1 the principles of the Treaty of Waitangi,

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- 16.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*,
- 16.3 the principles and guidelines set out in the *Privacy Act 1993*,
- 16.4 relevant international standards and obligations, and
- 16.5 the Legislation Design and Advisory Committee's Legislation Guidelines (2021 edition).

Regulations Review Committee

- 17 There are no anticipated grounds for the Regulations Review Committee to draw the Building (Dam Safety) Amendment Regulations 2024 to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 18 Parliamentary Counsel Office has certified the draft Building (Dam Safety) Amendment Regulations 2024 as being in order for submission to Cabinet except that they will come into force earlier than the 28th day after their notification in the *Gazette*.

Impact Analysis

- 19 A Regulatory Impact Statement was submitted at the time that Cabinet approval was sought on the policy relating to the Building (Dam Safety) Amendment Regulations 2024 [EXP-24-MIN-0007 and CAB-24-MIN-0101]. MBIE's Regulatory Impact Assessment Review Panel considered that it partially meets the quality assurance criteria.

Publicity

- 20 MBIE will advise stakeholders once the Building (Dam Safety) Amendment Regulations 2024 are made.

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 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, Ministry for Culture and Heritage, New Zealand Transport Agency, Land Information New Zealand and National Emergency Management Agency.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that in May 2022, the previous government approved the *Building (Dam Safety) Regulations 2022* under the *Building Act 2004* [LEG-22-MIN-0052] which will come into force on 13 May 2024;
- 2 **note** that the *Building (Dam Safety) Regulations 2022* sets the height and volume thresholds for a classifiable dam at:
 - 2.1 four or more metres high and store 20,000 or more cubic metres of volume of water, or other fluid; or
 - 2.2 one or more metres high and store 40,000 or more cubic metres volume of water, or other fluid.
- 3 **note** that in March 2024, the Cabinet Expenditure and Regulatory Review Committee (EXP) agreed that the height and volume threshold for a classifiable dam be amended to a height of four or more metres and holds 20,000 or more cubic metres volume of water or other fluid [EXP-24-MIN-0007 and CAB-24-MIN-0101];
- 4 **note** that the Building (Dam Safety) Amendment Regulations 2024 will give effect to the decision referred to in recommendation 3 above;
- 5 **note** that a waiver of the 28-day rule is sought:
 - 5.1 so that the Building (Dam Safety) Amendment Regulations 2024 come into force in alignment with the commencement of the dam safety framework on 13 May 2024;
 - 5.2 to avoid placing unnecessary requirements or obligations on owners of dams under the *Building (Dam Safety) Regulations 2022* who will then be exempt under the Building (Dam Safety) Amendment Regulations 2024;
- 6 **agree** to waive the 28-day rule so that the Building (Dam Safety) Amendment Regulations 2024 come into force on 13 May 2024.
- 7 **authorise** the submission of the Building (Dam Safety) Amendment Regulations 2024 to the Executive Council.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction