

# **Dangerous Dams Policy 2006**

## **Building Act 2004**

**Adopted by Council**

**13 February 2007**



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# Chapter 1: Introduction and Policy Context

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This document sets out the Dangerous Dams Policy that was adopted by Environment Bay of Plenty at its Strategic Policy Committee Meeting held on 13 February 2007, in accordance with the requirements of the Building Act 2004.

## 1.1 Purpose of the Building Act

The purpose of the Building Act 2004 (this/the 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.

In this context, structures that meet the definition of a dam under this Act are deemed to be buildings.

The intent of the part of the Building Act concerned with dams is to ensure that:

- all dams are classified to identify those with a high or medium potential impact.
- the safety of all high and medium potential impact classification dams is managed by their owners, within an approved Dam Safety Assurance Programme (DSAP).
- public assurance of the safety of these dams is achieved by a process of reporting to the appropriate Regional Council.

Environment Bay of Plenty has three broad roles under the Building Act in respect of dams:

- it must be the building consent authority and building code enforcement authority for dams;
- it must receive and process information relating to dams; and
- it must develop policy on how to deal with dangerous dams.

The dangerous dams provisions of the Building Act 2004 give regional councils the power 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.

## 1.2 Dangerous dams policy

Section 161 of the Building Act 2004 requires all regional authorities to adopt a policy on dangerous dams by 30 September 2006. 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.

## 1.3 Definition of dam

For the purpose of this policy, the term 'dam' means a structure that is a dam as defined in section 7 of the Building Act 2004. The full text of that definition is:

*Dam -*

- (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; and*
  - (iii) *retains 3 or more metres depth, and holds 20,000 or more cubic metres volume, of water or other fluids; and*
- (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*

### **Advice Note:**

The definitions may change with subsequent updates to the Dam Safety Regulations and the Building Act.

## 1.4 Definition of dangerous dams

The definition of what constitutes a dangerous dam is set out in section 153 of the Building Act 2004 and in the related regulations that define moderate earthquakes and moderate floods.

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 collapse;
  - (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); or
- (c) is a leaky dam.

Regulations that further prescribe the standards and criteria used in section 153 are proposed and have yet to be finalised. The proposed standards and criteria are set out in "Regulations for the Dam Safety Scheme: Discussion Document May 2006" released by the Department of Building and Housing in May 2006. There is the potential for the standards and criteria, once finalised, to differ from the ones currently proposed.

The proposed standards and criteria are key component for the Dangerous Dams Policy.

**Advice Note:**

The definitions are taken directly from the Building Act 2004. The definitions may change with subsequent updates to the Dam Safety Regulations and the Building Act. For the purpose of this policy the above definition establishes a two tier test in order for a dam to be considered a dangerous dam. In this regard, a dam must first be a high or medium potential impact dam and then likely to collapse during either the ordinary course of events, or in a moderate earthquake, or in a moderate flood in order for it to be classified as a dangerous dam.

## 1.5 Policy development process

Environment Bay of Plenty will follow the special consultative procedure set out in section 83 of the Local Government Act 2002 when developing and adopting this policy, and will have regard to any relevant principles in the Building Act 2004. This policy will be reviewed every five years and in the event of any significant changes to relevant sections of the Building Act.

Given that the regulations prescribing the standards and criteria will not be in place before the date on which this policy is required to be adopted, Environment Bay of Plenty may review this policy if necessary once the regulations are gazetted.





## Chapter 2: Policy approach

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### 2.1 Background

In the Bay of Plenty Region there are large dams presently owned by TrustPower, Bay of Plenty Electricity, the Territorial Authorities and Environment Bay of Plenty that would be captured by the Building Act 2004. In the main, these dams are earth dams and are used for a variety of purposes including hydro electric generation, water supply, flood control, irrigation, farm stock supply and recreation. Only those dams that have a medium or high potential impact will be assessed as to whether they meet the criteria for a dangerous dam.

The Bay of Plenty Region sits within the Taupo Volcanic Zone with a number of active fault lines. The Region can experience frequent earthquakes and with the continuing movement of the two plates, major quakes could be expected in the future. Infrastructure in the Bay of Plenty Region, such as dams, must therefore be constructed in such a manner to take account of a potentially significant earthquake.

Many of the Region's dams are constructed in watercourses and are subject to the effects of flooding. The combined impact of flooding and a dam collapsing could potentially have significant perhaps catastrophic downstream impacts.

This policy reflects the Council's determination to reduce the risk of dam failure over time in a way that is acceptable in social and economic terms to its ratepayers.

Priorities for identification and action have been developed. These are listed in this policy.

### 2.2 Identification process

Environment Bay of Plenty proposes to undertake an initial review of Council's resource consent database to identify dams that fit the dangerous dam's definition. The resource consent files and compliance reports will also be reviewed to assess which dams could be dangerous. Of those identified Regional Council officers, assisted as considered appropriate by technical specialists, will follow this with investigations to establish the nature of the danger or the state of the dam. This would include the application of a potential impact classification rating.

The Council will compile a list of dams requiring safety assessment over time in response to owners providing information/dam classifications and complying with the dam safety assurance process, and in response to complaints or other relevant information.

Those dams requiring safety assessments will be followed up with an investigation by Regional Council officers assisted, as considered appropriate, by technical specialists to establish the nature of the danger or the state of the dam. After inspection, the Council will determine whether the dam is classified as dangerous.

A list of certified dangerous dams will be collated according to the results of the assessments. This proposed category list will identify dangerous dams according to the following:

### **Proposed Categories**

Category 1: Medium and high potential impact classification dams which are likely to collapse during the ordinary course of events (includes dams with a heritage classification under the local territorial authority's District Plan or Historic Places Trust register or as assessed against the heritage criteria in the Regional Policy Statement).

Category 2: Medium and high potential impact classification dams which are likely to collapse in a moderate flood (includes dams with a heritage classification under the local territorial authority's District Plan or Historic Places Trust register or as assessed against the heritage criteria in the Regional Policy Statement).

Category 3: Medium and high potential impact classification dams which are likely to collapse in a moderate earthquake (includes dams with a heritage classification under the local territorial authority's District Plan or Historic Places Trust register or as assessed against the heritage criteria in the Regional Policy Statement).

Note that investigations and other follow ups will take place promptly on the receipt of a complaint or relevant documentation irrespective of the dam's category.

## **2.3 Guiding principles for dealing with dam owners**

Before exercising its powers under sections 154 to 159 of the Building Act 2004, Environment Bay of Plenty will seek to discuss options for action with owners, with a view to obtaining from the owner a mutually acceptable formal proposal for reducing or removing the danger posed by their dam.

Whilst Environment Bay of Plenty's preferred approach is to encourage a dam owner to voluntarily reduce the risk posed by their dam to an acceptable level, Environment Bay of Plenty will pursue legal outcomes if required as it has statutory obligations to take all practical measures to ensure public safety and wellbeing. In the event that discussions do not yield a mutually acceptable proposal, Environment Bay of Plenty will serve a formal notice as outlined above under section 2.4 of this policy.

## **2.4 Assessment criteria**

The definition of dangerous dams is given in section 153 of the Building Act 2004. High and medium potential impacts have not been defined. Neither have what is a "moderate flood", or a "moderate earthquake". It is expected that these will be defined in regulations developed in due course. However, the regulations will not be in place before the date on which this policy is required to be adopted.

Once regulations that prescribe the standards and criteria used in section 153 are gazetted, Environment Bay of Plenty will use those definitions to determine if a dam is dangerous. Environment Bay of Plenty officers and technical specialists will use "The New Zealand Dam Safety Guidelines (2000)" for guidance in determining if a dam is dangerous.

**Advice Note:**

These definitions may change with subsequent updates to the Dam Safety Regulations and the Building Act. To be consistent with any changes to the regulations and definitions under the Building Act a review of this policy would need to occur.

## 2.5 Taking action on dangerous dams

Where Environment Bay of Plenty has confirmed that a dam is dangerous in accordance with the specified criteria, Environment Bay of Plenty will:

### 2.5.1 Provide information

Provide to the owner all information or reports obtained as a result of inspections or investigations. This may include information relating to Part VI of the Freshwater Fisheries Regulation 1983 regarding existing fish facilities.

### 2.5.2 Advise and liaise with dam owner(s) and other agencies (including civil defence agencies, territorial authorities and the Department of Conservation)

Advise and liaise with the owners of dams, where the dam has been identified as dangerous, and to discuss with the dam owners and other agencies the actions to be taken.

### 2.5.3 Provide notice to potentially affected parties and other agencies (including territorial authorities)

Environment Bay of Plenty will give notice to those likely to be potentially and directly affected in the event of a dam failure. Environment Bay of Plenty may also attach a notice to the dam or nearby that warns people not to approach the structure; and/or erect a hoarding or a fence to prevent people approaching the structure.

Once Environment Bay of Plenty is satisfied that the danger has been appropriately and adequately removed Council will give notice to those previously advised parties that the danger has been removed.

### 2.5.4 Issue notice requiring work to be carried out

Where Environment Bay of Plenty has confirmed that a dam is dangerous in accordance with the specified criteria and the owner has not taken steps to reduce or remove the danger then a notice may be issued pursuant to section 155 of the Building Act 2004.

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 or written consent of the Director General of Conservation in order to carry out the specified work.

When setting a timeframe for action, Environment Bay of Plenty will consider the nature of the issue, the classification of the dam and the priorities established in this policy. The timeframe will not be less than 10 days after the notice is given under section 155 of the Building Act 2004.

Environment Bay of Plenty will ensure that copies of notices are sent to both the owner of the dam, any occupier and any party with an interest in the land (as defined by section 155 of the Building Act 2004) on which the dam sits. If appropriate, Environment Bay of Plenty will notify potentially affected communities downstream of the dam.

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

At the end of the time in which the remedial work is to be completed, Environment Bay of Plenty will inspect the dam and review reports supplied.

Once Environment Bay of Plenty is satisfied that the danger has been appropriately and adequately removed Council will give notice to those previously advised parties that the danger has been removed.

#### **2.5.5 Dam-break analysis**

If a dam-break study is not available as part of an owner's Dam Safety Assurance Programme, it may be necessary to provide one. If requested by Environment Bay of Plenty this will be provided by the owner at the owner's expense within the timeframe defined by Environment Bay of Plenty in the request.

#### **2.5.6 Liaise with Civil Defence**

Environment Bay of Plenty will liaise directly with the relevant Civil Defence Authority if necessary.

#### **2.5.7 Regional authority to carry out work**

If any work required under the notice is not completed within the timeframe given in a notice, Environment Bay of Plenty may carry out the work required in a notice issued under section 154 itself or via contractors.

All costs which Environment Bay of Plenty incurs will be recovered from the owner of the dam (refer section 156 of the Building Act 2004).

Environment Bay of Plenty will offer extensions to the set timeframes upon receipt of a request from the dam owner where the request is consistent with the Council's statutory obligations.

#### **2.5.8 Situations when notices will not be given**

Where it is considered measures are necessary to avoid immediate danger section 157 of the Building Act 2004 gives power to regional authorities to take swift action to remove immediate danger without first serving notice on owners.

Without limiting this section, Environment Bay of Plenty will undertake reasonable effort to contact the dam owner(s) prior to taking action.

### 2.5.9 Dispute by owner of classification

Environment Bay of Plenty will write to and meet (if requested) with an owner of a dam that has been classified as dangerous. Owners will have two months to consider Environment Bay of Plenty's assessment and provide any information on the performance of the dam that may influence the assessment. A dam owner may choose to undertake their own detailed assessment.

Environment Bay of Plenty, where appropriate, will use technical specialists to review the information provided by the dam owner. If Environment Bay of Plenty is then satisfied that the dam is not dangerous, the status of the dam will be changed and the owner advised.

However, should Environment Bay of Plenty consider a dam to still be dangerous and the owner continues to dispute the dangerous classification, an application for a 'Determination' pursuant to section 177 of the Building Act 2004 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 Environment Bay of Plenty and the dam owner.

### 2.5.10 Remedial action requiring consent(s)

When building consents and /or resource consent(s) are necessary for remedial action

- required in a notice served by Environment Bay of Plenty; or
- in a formal proposal supplied by a dam owner,

Environment Bay of Plenty will expedite the required consent(s) where practicable. Note that this does not become our responsibility until November 2007.

## 2.6 Identification of dam owners

Whilst most dams will be the direct responsibility of the owner of the land on which they are located, there may be circumstances where a landowner will claim that they 'inherited' the dam, and are therefore not responsible for either its construction or its maintenance. It is likely however that there will be few cases where a landowner could claim that they purchased the land in circumstances where they could not reasonably have known there was a dam on the property.

Environment Bay of Plenty considers that landowners in this situation are in a practical sense no different to landowners who have constructed a dam, which is now subject to the provisions of new legislation. In both cases, it is the retrospective nature of this aspect of the legislation that creates the responsibility on the part of the owner in regard to the safety of the dam.

Therefore, unless there is clearly a party other than the landowner who is responsible for any particular dam, Environment Bay of Plenty will adopt the definition of 'owner' under section 7 of the Building Act 2004 for the purpose of identifying the person responsible for a dam.

There may however be a small number of cases where a dam was built on a property without the approval of the landowner - this would probably only occur under the provisions of older mining legislation. Environment Bay of Plenty will consider requests from such landowners for special treatment in these cases.

### **Dams on public land**

There may also be cases where a dam is located on public land, often for example the bed of a river.

The Building Act 2004 is binding on the Crown, so dams located on public land will be the responsibility of the Crown, unless there is a clearly responsible owner (for example the holder of a hydro easement on public land).

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

Environment Bay of Plenty will keep a register of all dams according to section 151 of the Building Act 2004 noting the status of requirements for improvement or the results of improvement, as applicable. The register will be in the form of a database. In addition, the following information will be input into the database and placed on file for each dangerous dam:

- the address and legal description of the dam and the land which supports it;
- whether the dam has a heritage listing (includes dams with a heritage classification under the local territorial authority's District Plan or Historic Places Trust register or as assessed against the heritage criteria in the Regional Policy Statement);
- a statement that the dam is considered to be dangerous;
- the date by which action to remove or reduce the danger is required (if known);
- the status of actions shown in the risk reduction plan, if appropriate;
- the status and verification that the danger has been reduced or removed to the satisfaction of Environment Bay of Plenty; and
- a statement to confirm that the dam is no longer considered dangerous.

This information will be kept in the electronic data management system and on file indefinitely and provided to the relevant territorial authority for use in LIMs and PIMs.

### **Removal of 'dangerous' from the dam register**

Once a dam owner has undertaken and completed work, to reduce or remove the danger, in accordance with section 2.5, Regional Council officers and technical specialists will reassess the dam according to the dangerous dam criteria defined in the Building Act and Dam Safety Scheme Regulations. If the work undertaken has reduced or removed the danger to such an extent that the dam no longer meets the criteria of dangerous dam, the reference to the dam will be removed from the dangerous dam register. Regional Council officers and technical specialists will use 'The New Zealand Dam Safety Guidelines (2000)' or any subsequent update for guidance in determining if a dam is dangerous.

## **2.8 Availability of information**

Information concerning the 'dangerous' status of a dam will be contained in the local territorial authority's property file and GIS system. If the Regional Council issue a notice under section 154 of the Building Act 2004 in respect of any dangerous dam, then a record of that will also be available on the relevant property file (held by the territorial authority), dangerous dam database (maintained by the Regional Council), and consent file (held by the Regional Council).

Environment Bay of Plenty will provide and then regularly update information to the territorial authorities on the existence of dangerous dams to enable the territorial authority to keep the information on property files and on a GIS system. In granting access to information concerning these dams, Environment Bay of Plenty will conform to the requirements of the relevant legislation.

## 2.9 Economic impact of this policy

Without overriding the paramount aim of protecting public safety when deciding what actions must be taken in respect of dangerous dams, Environment Bay of Plenty will take into account economic impacts that may arise from those actions<sup>1</sup>.

Environment Bay of Plenty will incur costs associated with this policy, where an investigation to determine whether a dam is dangerous takes place. It is considered that dangerous dam investigations will ultimately benefit the whole community, so whilst attempts will be made to recover costs from the dam owner, there will be instances where this can not occur.

There may be options available to the dam owner on how to reduce or remove the danger of the dam. The cost of remediation of the dam is that of the dam owners. However, there may be circumstances where others utilise the dam and a cost sharing option may present itself with these other users. In such a case Environment Bay of Plenty can facilitate meetings between all parties to find solution and agreement to contribution of cost for remedial works to reduce or remove the danger.

## 2.10 Approach for dams and associated buildings having heritage values

Under section 161 of the Building Act 2004 this policy must state how the policy will apply to heritage dams. For the purposes of this policy, a heritage dam (including associated structures) includes all dams listed as a heritage resource in the relevant territorial authority's District Plan, and/or those registered by the New Zealand Historic Places Trust (NZHPT), and/or those assessed, by a suitably qualified professional, as having heritage significance according to the heritage criteria in the Bay of Plenty Regional Policy Statement. Section 4(2)(l) of the Building Act 2004 recognises the "need to facilitate the preservation of buildings of significant cultural, historical, or heritage value".

Environment Bay of Plenty recognises the need to retain the heritage values of dams, but also the need to reduce or remove danger (strengthen or demolish dams) to mitigate the risk of loss of life in the event of a collapse. When considering dangerous dams under this policy, account will be taken of the need to facilitate the preservation of dams with significant cultural, historical, or heritage value.

When considering dangerous dams with potential heritage values and before undertaking any actions under sections 153 to 160 of the Building Act 2004, Environment Bay of Plenty will:

- (a) seek advice from the NZHPT and the relevant territorial authority (if appropriate);

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<sup>1</sup> Staff are unsure at this stage of the economic impact of this policy. It is expected that the economic impact will be different depending on the nature and extent of each dangerous dam.

And subject to that advice, may:

- (b) engage the skills of suitably qualified professionals with heritage expertise to assess the heritage values of the dam and recommend actions.

Copies of all served notices will be provided to the NZHPT.

Environment Bay of Plenty will record the heritage listing of all dams in its dangerous dams register and supply this information to the relevant territorial authority for inclusion on the relevant Land Information Memorandum.

## 2.11 **Priorities**

Under Section 161 of the Building Act 2004 this policy must contain the regional authority's priorities in performing its functions in relation to dangerous dams.

In order to remove or reduce the potential risks associated with dangerous dams, Environment Bay of Plenty will take action according to the following priorities:

First priority:	Public safety
Second priority:	Economic wellbeing
Third priority:	Heritage values



## **Chapter 3: Date on which this policy becomes operative**

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This policy will become operative three months following the date on which the Department of Building and Housing Regulations for the Dam Safety Scheme take effect.



## Appendices

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*Appendix I* ..... *Relevant Legislation*



## **Appendix I – Relevant Legislation: The 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.

### **8. Definitions**

Owner, in relation to land and any buildings on the land, -

- (a) Means the person who –
  - (i) Is entitled to the rack rent from the land; or
  - (ii) Would be so entitled if the land were let to a tenant at a rack rent; and
- (b) Includes –
  - (i) The owner of the fee simple of the land; and
  - (ii) Any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land or to take a lease of the land and who is bound by the agreement because the agreement is still in force.

### **153. Meaning of dangerous dam**

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 collapse -
  - (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); or
- (c) Is a leaky dam.

**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.

**155. Requirements for notice given under section 154**

- 1 A notice given under section 154(1)(c) must -
  - (a) Be fixed to the dam concerned; and
  - (b) State whether the owner of the dam must obtain a building consent in order to carry out the work required by the notice.
- 2 A copy of the notice must be given to –
  - (a) The owner of the dam; and
  - (b) An occupier of the dam; and
  - (c) Every person who has an interest in the land on which the dam is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
  - (d) Every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
  - (e) Any statutory authority, if the land or dam has been classified; and
  - (f) The New Zealand Historic Places Trust, if the dam is a heritage dam.
- 3 However, the notice, if fixed on the dam, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).

**156. Regional authority may carry out work**

- 1 A regional authority may apply to a District Court for an order authorising the regional authority to carry out building work if any work required under a notice given by the regional authority under section 154(1)(c) is not completed, or not proceeding with reasonable speed, within -
  - (a) The time stated in the notice; or
  - (b) Any further time that the regional authority may allow.
- 2 Before the regional authority applies to a District Court under subsection (1), the regional authority must give the owner of the dam not less than 10 days' written notice of its intention to do so.

- 3 If a regional authority carried out building work under the authority of an order made under subsection (1), -
  - (a) The owner of the dam is liable for the costs of the work; and
  - (b) The regional authority may recover those costs from the owner; and
  - (c) The amount recoverable by the regional authority becomes a charge on the land on which the dam is situated.

#### **157. Measure to avoid immediate danger**

- 1 This section applies if, because of the date of a dam, immediate danger to the safety of persons, property, or the environment is likely.
- 2 The chief executive of a regional authority may, by warrant issued under his or her signature, cause any action to be taken that is necessary in his or her judgment to remove that danger.
- 3 If the regional authority takes action under subsection (2), -
  - (a) The owner of the dam is liable for the costs of the action; and
  - (b) The regional authority may recover those costs from the owner; and
  - (c) The amount recoverable by the regional authority becomes a charge on the land on which the dam is situated.
- 4 The chief executive of the regional authority and the regional authority are not under any liability arising from the issue, in good faith, of a warrant under subsection (2).

#### **158. Regional authority must apply to District Court for confirmation of warrant**

- 1 If the chief executive of a regional authority issues a warrant under section 157(2), the regional authority, on completion of the action stated in the warrant, must apply to a District Court for confirmation of the warrant.
- 2 On hearing the application, the District Court may -
  - (a) Confirm the warrant without modification; or
  - (b) Confirm the warrant subject to modification; or
  - (c) Set the warrant aside.
- 3 Subsection (1) does not apply if –
  - (a) The owner of the dam concerned notifies the regional authority that –
    - (i) The owner does not dispute the entry into the owner's land; and
    - (ii) Confirmation of the warrant by a District Court is not required; and
  - (b) The owner pays the costs referred to in section 157(3)(a).

#### **159. Building work includes authority not limited**

Any work required or authorised to be carried out under section 154(1)(c), or action taken under section 157, may include the decommissioning and demolition of a dam.

**160. Power of regional authority not limited**

The provisions of sections 154 to 159 are in addition to, and do not limit, the powers of a regional authority under section 157.

**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
  - [(iiia) Issue or refuse to issue a certificate for public use under section 363 A; 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 unsanitary 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.