

Building System Performance
Ministry of Business, Innovation, and Employment

Email: building@mbie.govt.nz

9 February 2024

Dear MBIE Building Policy Team

RE: Building (Dam Safety) Regulations 2022 Targeted Consultation, January 2024

Please find below and attached the submission on behalf of the New Zealand Society on Large Dams (NZSOLD) in response to the Building (Dam Safety) Regulations 2022 Targeted Consultation ('the Targeted Consultation'), January 2024.

NZSOLD is a Technical Group of Engineering New Zealand. Our mission is to protect people, property and the environment, present and future, from the harmful effects of a dam failure or an uncontrolled release of the reservoir contents. A regulatory framework is one mechanism to improve dam safety in New Zealand.

Given the information presented in the Targeted Consultation document, NZSOLD does not support the proposed changes to the height and volume criteria for classifiable dams. Instead, we provide four key messages that support the successful implementation of the current Building (Dam Safety) Regulations 2022 ('the Regulations'). Ultimately, NZSOLD considers that an imperfect improvement in dam safety is better than ever-delayed perfection.

Our submission to the targeted consultation is guided by four key messages, as follows:

1) NZSOLD reiterates the need for evidence-based policy

We expect that any Regulation - including any criteria used to determine inclusion in a regulatory framework - will be supported by robust assessment of impacts, benefits, and risks. NZSOLD understands, via representatives on the Technical Working Group for proposed dam safety regulation, that the current height and volume thresholds were determined by analyses of all known dams and their respective Potential Impact Classifications (PICs), in conjunction with the 2019 public consultation¹. We also reiterate that the uncertainties in the known dam portfolio have been known to MBIE since 2018.

We are aware that concerns have been raised about timeframe, resources, and costs associated with implementation of the Regulations by some stakeholder groups. However, we do not have clear evidence

¹ 2019 Summary of submissions: <https://www.mbie.govt.nz/dmsdocument/7113-summary-of-submissions-on-the-proposed-regulatory-framework-for-dam-safety>

that there is a severe shortage of resource that threatens implementation of the Regulations. NZSOLD endorses systematic review of these concerns as a precursor to acting to address them.

NZSOLD considers that any change to the Regulations should be supported by a defensible evidence-based process.

2) Clarification is required on the role of the Recognised Engineers, the number of Recognised Engineers, and wider “professional and technical resourcing”

The targeted consultation document lacks precision around “professional and technical resourcing” and the role of the Recognised Engineer (questions 2 and 3). While related, the Recognised Engineer is not a direct proxy for “professional and technical resourcing” in the sector. NZSOLD reiterates that:

- The role of the Recognised Engineer is to **certify** PICs and/or DSAPs.
- A PIC or DSAP does not need to be prepared by the Recognised Engineer.

In most medium and large consultancies with a dam safety engineering practice, a team of engineers will complete work under the supervision of a Recognised Engineer. In many companies, five, ten, or more engineers may be undertaking PIC and/or DSAP work under the supervision of, and certification by, a single Recognised Engineer. Specifically, the industry capacity to undertake PICs and DSAPs is much greater than the number of Recognised Engineers suggests.

NZSOLD considers that MBIE has a role to communicate the difference between the number of Recognised Engineers and their role in the context of the broader ‘sector capacity’.

3) Other options to support successful implementation of the Regulations

Rather the proceeding with the proposed changes to the definition of a classifiable dam, NZSOLD recommends the systematic consideration of other options to support implementation of the Regulations. An options study should compare how well various options address any systematically-verified concerns around uncertainties and resourcing, and how well the options support the overall objectives of the Regulations.

Rather than a late-stage change to the height and volume thresholds for classifiable dams, NZSOLD suggests that MBIE consider alternatives ways to support implementation such as:

- Changes to compliance timeframes, such as:
 - o Extending the three-month period for submission of certified PICs for classifiable dams, and/or
 - o Staggering the timeframe for submission of certified PICs, with an immediate focus on larger classifiable dams and/or
 - o Consider a consequence-based approach to compliance timeframes for classifiable dams, without changing the classifiable dam thresholds.
- Additional resources to assist with gathering information to support PIC assessments (e.g. endorsed GIS layers).

- Formalise an educational rather than punitive approach to compliance.
- Develop alternative pathways to become a Recognised Engineer (e.g. pathways for those with CPEngGeol rather than CPEng and/or assessed training courses).
- Create an endorsed and supported process for dam owners within rural communities to seek engineering services as a consortium.
- Provide clearer guidance on liability of Recognised Engineers, as this would encourage more applicants and reduce the likelihood of overly-conservative assessments.

These options, alone or in combination, would ease the short-term workload that is outlined by MBIE in the targeted consultation document and enable MBIE to:

- Retain the current definition of a classifiable dam that is supported by an evidence-based process,
- 'Flatten the curve' of demand on the professional and technical sector, and
- Avoid the costs and risks associated with late-stage changes, as outlined in item (4) below.

Rather than changing the definition of a classifiable dam, NZSOLD suggests that MBIE consider other options, such as (but not limited to) adjusting compliance timeframes.

4) A late-stage change to the definition of a classifiable dam would negatively impact a wide range of stakeholders beyond those considered in the Targeted Consultation.

NZSOLD serves as a meeting point for a range of stakeholders in the dam safety sector. We appreciate that a significant amount of time and resource has been invested by many dam safety stakeholders in preparation for the commencement of the Building (Dam Safety) Regulations 2022. The Targeted Consultation outlines concerns around costs that will be incurred by a specific subset of dam owners; however, no consideration is given to costs and risks that a late-stage change would pose to the wider dams sector. Specifically, the proposed late-stage change to the definition of a classifiable dam would have the following credibility and cost impacts:

- Councils would be required to revise recently-updated policies that were updated to align with the current Building (Dam Safety) Regulations 2022.
- NZSOLD would be required to update the New Zealand Dam Safety Guidelines (2023), that were updated in 2023 to align with the current Building (Dam Safety) Regulations 2022.
- Some councils and sector groups have undertaken significant advertising, identification, and public awareness campaigns. Changes to the classifiable dam definition would require updates to these campaigns and potentially undermine trust in regional communities.
- Many dam owners have begun work to update their PICs and/or DSAPs in order to meet the requirement of the Regulations; a change in thresholds would result in rework.
- Many consultancies have invested significant amounts of time and resource in business planning and client relationships in order to prepare for the commencement of the Regulations.
- Given the regulatory history, including a late-stage revocation of dam safety regulations in 2015, there is a high risk of loss of trust and/or loss of credibility in the dam safety community.

NZSOLD asks MBIE to consider the cost and credibility implications of the proposed late-stage change to the definition of a classifiable dam.

Our response to the Targeted Consultation is founded on these four key messages. NZSOLD recognises that any step-change in dam safety practice will require a sector-wide response that may not be instantaneous nor perfect. However, we emphasise that the benefits of an imperfect regulatory scheme for dam safety will greatly outweigh the drawbacks of continued regulatory uncertainty. NZSOLD also considers that the regulatory transition period and step-change in industry capacity will span a relatively short timeframe, while the regulatory system that remains will be with us for decades. Once in place, a regulatory framework can be maintained, monitored, and improved like the dams themselves.

Thank you for the opportunity to respond to the Targeted Consultation. We acknowledge the dedication of all individuals, organisations, and businesses that have worked on various iterations of a regulatory dam safety scheme over the past 30+ years.

NZSOLD has invited MBIE representatives to join our next committee meeting on 15 February, and we look forward to discussing the MBIE work programme with you in more detail.

Sincerely,



Dr Kaley Crawford-Flett
Chair

On behalf of the NZSOLD Management Committee