



New Zealand Society on Large Dams
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Government Review of the Building Act 2004

Dear Sir

At the New Zealand Society on Large Dams (Nzsold) symposium held in August 2009, the key note address was given by my Mr Craig Hill from the Department of Building and Housing. In his address Mr Hill gave an update on the Building Act 2004 and its impact on dam safety requirements. Mr Hill then went on to say that there was a proposal to review the Act and that at that time the situation with regard a review of the dam safety components of the Act was unknown. Although Mr Hills address was enlightening, it did leave many unanswered questions regarding the status of dam safety within the Act and the current process to promulgate regulations. Over the years Nzsold has worked closely with the Department of Building and Housing with regard the Act and the Dam Safety Regulations and is in the process of revising its own guidelines to reflect and support the Act and the Regulations. While Mr Hill was uncertain of the future of the current legislation, Nzsold views any review of the Act as an opportunity rather than a threat to our long term objective of a practical and cost effect regulatory regime for dam safety in New Zealand.

Nzsold still supports the broad intent of the dam safety legislation and regulations as included in the Building Act 2004, and agree that implementation of 'light handed regulation' will be of benefit to the public assurance of dam safety. However we also support a review of the Building Act 2004 and subsequent regulations as it relates to current wording and interpretation of the Act and the processes being put in place to manage the regulations. As highlighted in our recent symposium there are concerns that current interpretation and the implementation of regulation management processes has introduced 'unintended consequences' which are not consistent with the original intent of those involved in drafting the Act.

Examples of these are as follows:

- Inclusion of elements outside a dam safety function in Building Consent approvals for dams, and Dam Safety Assurance Programmes.
- It was originally anticipated that the role of the regulator in administering the Act was to perform a process audit function to ensure appropriate processes and qualified professionals were implemented in the design and construction process for dams rather than the current situation where some regulators want to get involved reviewing detailed technical matters. This trend has resulted in the introduction of significant additional costs to dam developers and owners for regulatory processes with very little benefit. Unlike other building processes in the Territorial Local Authority area there are examples of where a regulatory review is required, on top of the design certificate and the owner's peer review. In addition there have also been cases where the regulator has indicated it will review a Dam Safety Assurance Program certified by a Recognised Engineer and charge the owner.
- Building Consent Authority (BCA) procedures for dams are based upon the TLA procedures for buildings with well documented standards and guidelines. The new BCA procedures do not lend themselves to engineers having the freedom to amend the construction requirements following the discovery of foundation issues not previously identified, or construction materials that vary in nature after a quarry site has been exposed after excavation.
- Inconsistency in the way the Act is being interpreted by different Regulators
- Use of the Recognised Engineer role beyond that defined in the Building Act 2004.
- During the formulation of the Building Act 2004 it was recognised by Government that some of the larger dam owners already had in place comprehensive dam safety assurance programmes that meet current recognised standards, both nationally and internationally, and hence exceed the requirements of the proposed legislation. In recognition of this situation the legislation allows, as an alternative, for dam owners to apply to become accredited as an inspection body by a nominated accreditation body. The intent of these provisions was always clear, but the process appears to be hijacked by the wording and lack of benefits and incentive for owners to take up this option. While implementation of such a regime has been stalled at present, NZSOLD considers that it is important to derive a solution that achieves the original intent, creates a significant incentive for owners to take up this option and reduces administration costs for both owners and regulators.
- Issues have arisen where the cost of engineering services to review design of smaller dams are disproportionate to the effort, size and cost of structure being considered. These costs have resulted from the requirement of the regulator to have full Public Indemnity Insurance cover which attract significant a significant claim excess and cost consequences to cover this risk.

We understand that while the proposed review of the Building Act 2004 is primarily focused on residential and commercial buildings, all aspects of the Act are within scope of the review. In addition to the above areas of concern NZSOLD is also interested in clarification of the following:

- An update on the scope of the current review especially the areas that cover dam safety sections of the Act
- the impact of the review on the programme for development and promulgation of regulations concerning dangerous, and earthquake and flood prone dams
- the impact of the review on the programme to implement the dam safety legislation currently scheduled for 1 July 2010.

NZSOLD considers that the smooth implementation of dam safety regulations is important to ensure ongoing public confidence in the current dam safety regime. We are concerned that any uncertainty over the timing of implementation of the regulations may undermine confidence within the dam industry and result in additional costs and inconvenience to owners.

As in the past NZSOLD wishes to take an active role in any review process. We consider that the overall objectives of the review as outlined in the Scoping Document are consistent with our own. We are available and willing to work with the Department of Building and Housing Sector Reference Group in a review of the dam safety aspects of the Building Act 2004 and subsequent regulations.

We look forward to your reply and if you have any further queries please do not hesitate to contact us.

Yours sincerely

Ken Roberts

Chairman of the New Zealand Society on Large Dams

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