



Australian Government



TRIM Ref: D13/39953

Mr Michael Scotland
Dams Safety Review
NSW Trade and Investment
GPO Box 5477
SYDNEY NSW 2001

Dear Michael

Subject: NSW Dams Safety Review: Stage 2 – Community Consultation Phase

Thank you for your email of 8 October 2013 inviting submissions as part of the community consultation phase of the NSW Dams Safety Review. Please find attached comments from the Murray-Darling Basin Authority on the Community Consultation Paper in response to your request. Separate comments on the KPMG Final Report (dated September 2013), other than those matters raised by KPMG and included in the Community Consultation Paper, have not been provided.

Should you have any queries in relation to this submission please contact either myself or MDBA General Manager Assets Mr Andrew Reynolds on (02) 6279 0436 or by email andrew.reynolds@mdba.gov.au

Yours sincerely

David Dreverman
Executive Director
River Management

5 / 11 / 2013

Attachment:

NSW Dams Safety Review (Stage 2) - MDBA comments on Community Consultation Paper
5 November 2013 [Trim Ref: D13/40070]

cc Goulburn-Murray Water - Graeme Hannan
NSW State Water – Amit Chanan

ATTACHMENT

MDBA comments on NSW Dams Safety Review: Stage 2 – Community Consultation Paper

PART A

The Community Consultation Paper (CCP) requests views on three specific items which are addressed under Items A1, A2 and A3 below.

A1) Objective of the Act [Refer CCP Page 6, Section 3.1 - last para]

'An issue on which community views would be appreciated is whether this objective should explicitly include not only acceptable levels of public safety risk, but also acceptable levels of downstream risk to economic and environmental assets.'

Comment: No. The objective of the Act needs to be uncomplicated and express the primacy of societal risk. This latter principle would be consistent with the 'Statement of Obligations' under the Victorian Regulatory framework which gives '... priority to reducing risks to life above other risks' (DSE, 2012).

The exclusion of a specific reference to environmental and economic factors in the Act objective does not suggest that these factors should be ignored in the risk assessment process. A triple bottom line approach would be part of any well considered proposal for investment in dam safety. The Australian National Committee on Large Dams (ANCOLD) Guidelines on Risk Assessment (2003) are very clear in requiring that the assessment of consequences includes not only societal risk but economic and environmental risks. Consequently it would be good practice to consider the full range of consequences as part of any dam safety portfolio risk assessment or individual risk assessment.

A2) Form of Regulatory Body [Refer CCP Page 7, Section 3.3 - 3rd para]

'An option suggested by KPMG is that an independent regulatory body similar to the DSC be maintained, but that its composition and funding be changed. Again, this strategy would deliver significant best practice improvements, while retaining desirable features of the current regulatory framework. An alternative would be for the regulatory functions to be assigned to a government agency, with support from an advisory committee of independent experts and other stakeholder agencies. Community views on this issue would be appreciated.'

Comment: Both models could be made to work but only provided that the regulatory framework, the composition of key advisory members and governance are soundly established and maintained.

A3) Development approvals [Refer CCP Page 7, Section 3.3 - 4th & 5th paras]

Comment: We support the need for consideration of the impact on dam safety at the earliest possible stage of the planning approval process. The expectation that would flow from this approach would be that developers would be required to contribute towards funding of dam safety upgrades commensurate with the scale and impacts of the development.

PART B

Other comments on the Community Consultation Paper (CCP) are addressed under Items B1 to B6 below (in order of appearance in the paper not priority).

B1) Funding of dam safety works [Refer CCP Page 2, Section 1.2 - 2nd para (IPART quote) and also Page 7, Section 3.3 – 2nd para]

Comment: Please note that the MDBA ‘*upper River Murray Storages*’ (which include Dartmouth Dam, Hume Dam, Yarrawonga Weir, Lake Victoria and Menindee Lakes#) are funded jointly by the asset controlling governments of the Commonwealth, NSW, Victoria and South Australia.

Special arrangements apply to financial contributions for the Menindee Lakes storages.

We had understood that there was a policy for NSW government to fund only dam safety issues existing prior to 1997.

B2) Concerns of under-investment in public safety measures [Refer CCP Page 4, Section 2 - 2nd para]

Comment: Concerns have been noted regarding the risk of ‘*under-investment in public safety measures, particularly for smaller dams*’. This concern is shared by the MDBA and should be addressed in the development of any alternative regulatory regime.

B3) ‘Real or perceived conflicts of interest’ [Refer CCP Page 5, 3rd para]

Comment: This para refers to the composition of the existing DSC and an observation made by KPMG of ‘*real or perceived conflicts of interest*’. With transparent processes and appropriate governance in place the MDBA believes that this perception can be managed in any regulatory framework. This would overcome the potential risk of not having the most appropriate and experienced membership of, and representation on, the regulatory body by those with specialist expertise in the field of dams engineering and also the risk of losing that connection with the dam owners. We also note that the majority of the current members are employees of public or government owned bodies and as such ‘conflict of interest’ should not and need not be an issue.

B4) KPMG two key recommendations [Refer CCP Page 5 - 2nd last para]

Two key recommendations by KPMG have been referenced in this para.

Recommendation No. 1: Consideration of a broad range of strategies as suggested is appropriate and sensible. However, some of these measures would be reliant on the actions of third parties which are likely to be outside of the control of the dam owner. Hence, a dam owner might well still recommend and proceed with measures at the '*dam wall*', in conjunction with a broad range of strategies, consistent with achieving an 'ALARP' risk position and also to fulfil a 'Duty of Care' as a dam owner (legal liability). Without that approach the dam owner could inherit liability due to the actions (or lack of) by others. Note that for a major dam failure the consequences are beyond the experience of any of the emergency response agencies and the community.

Recommendation No. 2 - part b). Strong concerns are expressed regarding the recommendations on proposed membership of the dam safety regulator. The broad makeup as proposed does not adequately describe the experience required for membership of a dam safety regulator. It needs to be more specific in the requirement for expertise in dams engineering (as distinct from engineering), dams risk assessment, operations and management. The concern is that the dam safety regulator could conceivably comprise a group which does not fully understand the dam safety risks. A lack of appropriate dams skills poses a significant risk to governments and community.

Recommendation No. 2 - part c). Funding. Note that in the case of the MDBA dams the question of ownership and control is not simple but adequate funding for the dam safety regulator would need to be provided by the asset controlling governments of the Commonwealth, NSW, Victoria and South Australia.

B5) Proposed Objective of the Act [Refer CCP Page 6 Section 3.1 3rd para]

Comment: The proposed objective is based on the assumption that the citizens of NSW understand what constitutes an acceptable level of dam safety risk. We contend that the general public do not fully understand the risks nor can they be expected to. In any case, a person living immediately downstream of a major dam (storage) will inevitably have a different view on what is an acceptable level of dam safety risk when compared with his fellow citizen who resides in a different (lower risk) location. These matters are for consideration by government on behalf of the community in conjunction with dam owners who hold the 'Duty of Care'. Note that for the majority of major storages it is the government who is effectively the dam owner.

B6) Water pricing implications [Refer CCP Page 7 Section 3.2 3rd para]

Comment: Further consideration is required in relation to water charges and government funding which we understand is outside the scope of this review. We are concerned that the statement made in the last sentence (see extract below) might give consumers an expectation of a reduction of current water charges in the future. Passing on costs of the Dam Safety Regulator to dam owners will inevitably result in an increase in cost to those who fund the dam which in most cases is the consumer.

'This approach would therefore minimise compliance costs, which can be passed on to households and industry by way of lower water charges and reduced government expenditure.'

References:

ANCOLD (2003), Guidelines on Risk Assessment, Australian National Committee on Large Dams, October 2003

DSE (2012), Guidance Note on Dam Safety Decision Principles, Victorian Department of Sustainability and Environment, May 2012.