Review of the Dams Safety Act 1978 and Dams Safety Committee

Submissions have been invited regarding the KPMG report prepared as part of the review of the Dams Safety Act 1978 and operations of the Dams Safety Committee (DSC). Please find below Council’s comments as a dam owner in relation to the report.

Overview Comments

The current Dam Safety Committee (DSC) is considered to provide a valuable role in ensuring dam safety in NSW.

The DSC provides a valuable technical service in interpreting, translating and articulating technical requirements for dam safety for local government dam owners who have limited resources and capacity in the highly technical area of dam safety. It is noted that numerous comparisons are made in the KPMG report with the dam regulator in Victoria and that regulator operating with less intervention than in NSW. In making these comparisons recognition as to the size and capacity of the dam owner organisations should be considered.

Although Council as a dam owner engages recognised technical experts to advise on specific dam safety issues affecting our dam, we derive significant confidence with the knowledge that the dam safety regulator comprises expert technical knowledge of dams and dam safety and is overseeing dam safety compliance.

The DSC is recognised by Council as a technical authority on dam safety issues and provides a valuable role impressing on decision makers the imperative to undertake necessary investment in the management and infrastructure to ensure ongoing dam safety.

As the organisation responsible for the safety of our dam, we consider it essential that economic regulation does not constrain our ability to undertake activities we deem to be necessary for our management of dam safety risks.

The current dam safety regulator, by comparison with some other regulators, is considered to be efficient, effective and does not impose an unnecessary financial burden to Council’s water business or community.
Recommendation 1

Greater clarity around the objectives of the legislation and the role and powers of the dam safety regulator is considered appropriate. The primary objective of the act should be to ensure dam safety. Approaches to achieving dam safety should consider cost implications and should provide for the consideration of build and non-build strategies for achieving dam safety where appropriate.

Recommendation 2

It is considered appropriate that the dam safety regulator be responsible for the monitoring and compliance of dams with safety and guidelines. However, this role should be undertaken with a high level of technical capacity in dam engineering and safety and not transformed into an administrative function. Reforms which emphasise administration / compliance at the expense of technical guidelines and engineering considerations would likely reduce actual dam safety in NSW.

Recommendation 3

On face value the recommendations could be considered to have merit though in practice they would likely be problematic.

Sub-recommendation 3.1

Given the highly technical nature and small pool of appropriate experts in the field of dam safety it would be difficult for the regulator to be independent of the business it regulates. The necessary experts generally reside within dam owner organisations or consultants of those organisations. Potentially the consultants to dam owners may be more inclined to recommend actions requiring investment than the dam owners.

Sub-recommendation 3.2

The aspiration for government agencies to strive for integration, complementarity and efficiency is a broader issue that should be business as usual for government generally. This is particularly the case for land-use planning and planning for major developments and infrastructure where cooperation between various agencies to consider and develop balanced and sound solutions rather than agencies narrowly pursuing their portfolio to the extent it comprises appropriate solutions.

It is appropriate that a broader group of agencies and stakeholders should be involved in the general planning for regionally significant infrastructure such as dams and the preparation of land use plans below existing dams. The DSC could provide input to those considerations (where there is a dam related issue) as part of the planning process in a similar way that NSW Treasury or the Department of Planning and Investment would. The DSC does not need agencies such as NSW Treasury or the Department of Planning and Investment to be on the DSC to provide input to the planning process.

Once the decision to construct a dam is made, the ongoing regulation as to their safety or necessary upgrades is essentially a technical matter requiring a high degree of specialist knowledge in dam engineering.

The proposed changes to the composition of the dam safety regulator would significantly reduce the technical capacity and authority of the regulator and deflect it from its principle objective – dam
safety and are not supported. There is however significant merit in the SES being represented in the
dam safety regulator due to its function in response to emergencies.

It is noted that many other committees that establish, set or advise on technical requirements for a
range of topics are comprised exclusively of technical experts in the relevant field such as:-

- Threatened Species Scientific committee (scientists/ biologists/ecologist)
- The TGA Committee on safety of Vaccines (medical professionals)
- The NHMRC Water Quality advisory committee which sets the drinking water quality
guidelines (health and water professionals)

Like the committees noted above the DSC should comprise of experts in the relevant field.

Sub-recommendation 3.3

The dam safety regulator should have relevant expertise to carry out its functions under the
amended Dam Safety Act.

**Recommendation 4**

Whilst this recommendation is consistent with the principle of the user pays the formula for applying
this recommendation would need to be carefully derived. If it was applied based on a per dam basis
this could have significant cost implications for small to medium sized communities who own a dam
requiring regulation.

**Recommendation 5**

Agree

**Recommendation 6**

Agree, though for genuine consultation a consultation period well in excess of 28 days would be
appropriate. A longer consultation phase is particularly relevant where significant changes are
proposed and where stakeholders require time to consider and debate those changes before making
a submission.

**Recommendation 7**

Agree

**Recommendation 8**

In principle there is merit in seeking community input to the willingness to accept the risk of dam
failure and the appropriate level of investment of dam safety. However, given the highly technical
nature of the issues and difficulty in considering the trade-offs between risk and investment, in
practice it is likely to be difficult to derive applicable measures.
Recommendation 9

In principle the development of an appropriate business case including alternative options should be considered with any significant investment. The level of detail should be commensurate with the level of investment being considered and should be at the discretion of the dam owner.

Impact of downstream impacts / Recommendation 10

It is considered there is scope for improvement in the consideration of interactions between dams and development planning. Given the difficulty and cost of small incremental modifications to dams and the strategic role that dams generally play in a region’s water security and economic capacity it is considered the most appropriate planning considerations take place at the regional planning, planning instrument and zoning decision levels rather than at individual development level.

Consideration at the lower planning level would lead to incremental cumulative changes to the consequence category of dams over time likely leading to multiple costly and inefficient dam upgrades to respond to incremental development.

A more appropriate approach would be to ensure that regional planning undertaken by DoPI and local government properly consider dam infrastructure in the strategic planning process. This would enable planning decisions to consider the implication of the proposed development on existing dams to be considered as part of the planning process and permit the dam owner/DSC to have input to the planning process. Costs associated with the necessary dam upgrades would be identified in the planning process and could be considered in the CBA for the proposed land use planning.

Development contributions could then be levied on the development to fund the necessary upgrades triggered by the development. This approach would provide a strategic framework for the investigation, design and implementation of necessary safety upgrades in a timely manner with a strategically derived long term population/consequence category.

It is suggested that improving the consideration of development / dam implications is more an issue related to considered regional strategic planning rather than associated with any shortcomings of the DSC. There is a limited argument for there to be DoIP representation on the DSC, an alternative approach would be for DoPI to strategically consider dams in planning considerations and undertake the necessary investigations for the development of their plans.

Recommendation 11

Agree see comments on recommendation 10.

Recommendation 12

Greater clarity around the role the DSC has in the approval of mining is warranted.

There is no specific dam safety reason for the dam safety regulator to be involved in the economic impacts of water loss due to mining activities. However the composition and configuration of the DSC currently has skills that are applicable to the consideration the water loss impacts associated with mining activities. The technical reputation of the DSC enables it to advise with authority on these issues. As a dam owner, DSC consideration and input to the review/approval of mining proposals with the potential to impact on water loss is considered valuable.
Recommendation 13

There is merit in the DSC approving Dam Safety Emergency Plans.

Recommendation 14

Council has had no issues to date with the DSEP trigger points causing unnecessary evacuation warnings.

Should further information or clarifications be required I can be contacted by phone on 4350 5158 or by email garry.casement@wyong.nsw.gov.au.

Yours faithfully

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