

28 October 2013

Your ref:

Our ref:

NSW Department of Trade and Industries

Armidale Dumaresq Council Submission for the Review of the *Dam Safety Act 1978* and the role of the Dam Safety Committee.

Armidale Dumaresq Councillors at the Council meeting held Monday 28 October 2013 agreed unanimously that the following responses be provided to the NSW Department of Trade and Industries for their consideration as Armidale Dumaresq Council Submission for Comments on the Review of the *Dam Safety Act 1978* and the role of the Dam Safety Committee.

Response to Recommendations from the Report:

Recommendation 1: The Act should be amended to provide clarity in relation to the objectives of the legislation and the role and powers of the dam safety regulator. The objective should be to achieve socially acceptable levels of public safety risk in relation to stored waters in NSW and the regulatory framework should enable risk management to be achieved in the most efficient manner possible (i.e., consideration being required to be given to the broadest range of relevant operational strategies and thereby avoiding a singular focus on dam engineering solutions).

Agreed: *The Act should be amended to take into account the recommendations and comments presented below.*

Recommendation 2: The dam safety regulator should be responsible for monitoring the compliance of dams with standards and guidelines. The regulator should determine the level of monitoring necessary for each dam based on the likelihood of non-compliance.

Dam owners should be responsible for compliance with standards and guidelines. The regulator should not be involved in the development of compliance strategies or in identifying particular dam safety upgrade strategies. Dam owners should report to the regulator annually on the level of compliance being achieved by their maintenance and upgrade programs.

If dam owners do not comply with standards, the regulator should have clear powers to compel dam owners to implement changes necessary to meet required standards and guidelines.

Agreed with caveat:

Reporting annually for dams that comply and have little ongoing maintenance is excessive. The five year surveillance report should be free to recommend the level of reporting required for individual dams.

Recommendation 3: The government should change the composition of the dam safety regulator so that it:

- is independent of the businesses it regulates;
- is composed of representatives of relevant government agencies to ensure integration, complementarity and efficiency in risk reduction strategy development (for example, NSW Treasury, Department of Planning and Infrastructure, Department of Trade and Investment Resources and Energy and the NSW State Emergency Service (SES)); and
- has relevant independent expertise, including dam engineering, public safety risk management and benefit cost analysis.

Agreed with caveat:

- *Rather than being independent of the business it regulates the Dam Safety Committee should include a number of representatives from dam owners so that their viewpoint can be considered by the whole committee.*
- *As noted above plus representatives from dam owners.*
- *Agreed.*

Recommendation 4: It is recommended that the dam safety regulator be funded by relevant risk creators, which in this case are all the owners of prescribed dams in NSW.

Reject: *Making dam owners fund the DSC goes against the spirit of the first dot point of Recommendation 3. Funding by the State Government provides a degree of independence when it comes to applying pressure on recalcitrant owners.*

Recommendation 5: The regulator should be required to achieve high levels of public transparency with respect to the basis of its regulatory standards and the respective roles of dam owners versus government. This transparency will make clear the legal liability of dam owners and in so doing encourage levels of private investment in dam safety that align, as far as possible, with the risk preferences of the broader community.

Agreed – Caveat: *The term “private investment” should be better defined.*

Recommendation 6: Where the dam safety regulator proposes changes to dam safety regulation, these changes should be subject to consultation with dam owners. Best practice principles suggest a consultation phase of at least 28 days.

Agreed - Caveat: *28 days is a short consultation period, 60 days would be more practical.*

Recommendation 7: The dam safety regulator should consider the views of industry and other stakeholders when making final decisions to implement changes to dam safety regulation.

Agreed: *Presumably having a DSC with wider representation (Recommendation 3) would go some way to achieving this objective.*

Recommendation 8: The NSW Government should seek comment from the community on its willingness to accept the risk of dam failure and the appropriate level of dam safety investment. Community feedback should be considered when the regulator sets safety standards for dams. This should be reviewed periodically to ensure that safety standards continue to be consistent with community expectations. This outcome could also be achieved through high levels of transparency with respect to benefit cost analyses undertaken to identify efficient risk reduction strategies, with community input encouraged to that process.

Agreed: *The DSC should be provided with the mandate and the finances to develop a range of public consultation strategies and methodologies that would focus on presenting the risks and recommended improvements in a clear manner easily comprehended by the general public.*

Recommendation 9: Consideration by a dam owner of whether a potential dam safety investment is appropriate should explicitly include assessment of the benefits and costs of the proposed investment and alternate options to reduce the public safety risk associated with stored waters.

Agreed: *Most dam remedial works already go through a cost benefit analysis of the various upgrading options investigated. Adding the cost benefit of risk mitigation to this process should meet the objective of Recommendation 9. However, it is critical to the outcome to establish an agreed value for a human life, an extremely difficult exercise.*

Recommendation 10: A systematic and proactive approach should be implemented to inform dam owners of potential developments downstream from their dams that could influence the consequence category of their dams and the cost of complying with public safety requirements. The approach should be incorporated into the planning approval process or through an alternate process considered appropriate by the NSW Government.

Agreed: *Where local councils are the owners of prescribed dam this already occurs.*

Recommendation 11: The NSW Government should consider options to address dam safety considerations much earlier in the planning approval process, particularly for state significant developments and state significant infrastructure.

Agreed:

Recommendation 12: The NSW Government should seek public comment on:

- whether the regulator's role in the approval of mining near prescribed dams is clearly defined; and
- whether the dam safety regulator should consider the economic impacts of water loss due to mining activities or whether the dam safety regulator should only be concerned with the safety of the prescribed dam.

Agreed: *However, it is considered that any expansion of the mandate of the DSC outside of its current responsibilities would compromise its effectiveness.*

Recommendation 13: The NSW Government should consider whether the dam safety regulator or another government agency should be required to approve Dam Safety Emergency Management Plans (DSEPs). The relevant agency should have sufficient resources to make such assessments.

Agreed: *Currently the DSEPs are forwarded to both the DSC and the SES for comments. A one-stop shop for approval would be an improvement.*

Recommendation 14: The NSW Government should evaluate whether existing DSEP trigger points for alerts result in unnecessary evacuation warnings.

The implementation of these recommendations could be achieved through modification of the existing dam safety regulator (i.e. the DSC) and the regulatory framework (i.e. the Dams Safety Act 1978 and other relevant legislation).

Agreed: *Currently the trigger points for the white and amber alerts are only warning levels that inform the dam operator and the SES of the potential for evacuation. Only a red alert triggers evacuation. As each dam is different, the level of this alert should be set by the dam operator following consultation with the DSC and the SES, rather than being a prescribed level.*

Additional Suggestions from Council:

1: In general the safety standards for dams adopted by the DSC are closely based on ANCOLD guidelines. Closer relations between these two bodies are advisable with representation on ANCOLD being capable of reflecting the views of dam owners.

2: That ANCOLD be encouraged, possibly through the provision of funding, to set up workshops and public consultation sessions that explain and demonstrate the source and importance of dam safety standards. Involving an independent professional body involve would go a long way to achieving the transparency proposed under Recommendation 5.

3: That the Department of Infrastructure and Heritage, which partially funds flood studies for Councils should require that funded flood and risk management studies include dam break outcomes for those catchments where a sizeable dam is present and is likely to impact flooding in the study area

4: Currently owners with deficient dams undertake a peer reviewed concept and final design for upgrading works. This design is then submitted to the DSC for approval. If approved the dam owner then has to submit a Section 60 application to the Department of Primary Industries prior to commencing work on the dam. This is obvious duplication of the approval process which should be eliminated.

5: Currently Department of Fisheries approval has to be sought for work on upgrading a dam, even if those works merely consist of strengthening the dam structure and have no affect on either the upstream reservoir or the flow over the dam. This requirement should be eliminated for strengthening projects.

6: Funding requirements for the upgrading of dams is extremely onerous for some owners. The NSW Government should be approached for a budget that would enable the DSC to provide grants to partial fund upgrading work for those owners when the cost of the work would impose an intolerable burden on the local community.

Thank you for the opportunity of commenting on the reviews and should you require further information please don't hesitate to contact Mr David Steller, Executive Director of Strategic Projects on 02 6770 3842 or email dsteller@armidale.nsw.gov.au .

Yours sincerely


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