

3 Regulation of Referable Dams

Dam safety of referable dams is regulated to protect the community from dam failure. The chief executive of the Department of Natural Resources and Mines (NR&M) is responsible for regulating referable dams. Dams are regulated by the chief executive through:

- safety conditions imposed on referable dams under the *Water Act 2000* (which are partly based on the failure impact rating of the dam)
- development permits containing conditions imposed under the *Integrated Planning Act 1997*, issued to approve the development of a dam (which are partly based on the failure impact rating of the dam)
- auditing of compliance with dam safety conditions (ie safety conditions imposed under the *Water Act 2000* and development permit conditions imposed under the *Integrated Planning Act 1997*)
- emergency action provisions contained in the *Water Act 2000*.

3.1 Development permits

3.1.1 General

Dam safety conditions attach to development permits and incorporate requirements specific to each individual dam. The safety conditions must be relevant to, but not an unreasonable imposition on, the dam or reasonably required for the dam. Dam owners can appeal against dam safety conditions imposed or changed by the chief executive.

Part of the intention of these conditions is to ensure a dam owner develops a dam safety management program for their dam. These guidelines provide advice on how to develop a dam safety management program. Dam safety conditions may require a dam owner to develop specific plans, procedures and reports that will form part of the dam safety management program. If the specific plans, procedures and reports have already been developed by the dam owner (in accordance with these guidelines), those documents will generally be cited in the conditions for that dam.

For example, each dam will generally be issued with a dam safety condition dealing with Emergency Action Plans. Where a dam already has an Emergency Action Plan, the condition might state:

The current Emergency Action Plan for the dam is Document XX as updated from time to time.

The dam owner must provide one copy of the current Emergency Action Plan to the Chief Executive, Department of Natural Resources and Mines by date.

The contact details contained in the Emergency Action Plan must be reviewed prior to DATE each year.

The Emergency Action Plan must be reviewed at least every five years from (date).

The dam owner must ensure that the current (and changed?) Emergency Action Plan is provided to the following parties

- *Specific local government(s) eg Esk Shire Council*
- *Local counter disaster agencies affected by emergency events .eg Ipswich Counter Disaster Coordination Committee*
- *NR&M - Dam Safety*

- *Any additional group specific to this dam*

In all emergencies, the dam owner must respond in accordance with the Emergency Action Plan.

In the event of an emergency, the dam owner must also, within 7 days of the event, prepare an Emergency Event Report and provide a copy of the report to the Department of Natural Resources and Mines. .

The Emergency Event Report must contain:

- *a description of the event;*
- *instrumentation readings (where appropriate);*
- *description of any observed damage;*
- *photographs;*
- *details of communication which took place during the emergency; and*
- *comment on the adequacy of the EAP*
- *any recommendations or suggested changes to the EAP.*

3.1.2 New Dams and Works that Increase Storage Capacity

A development permit is an approval under the *Integrated Planning Act 1997* which allows “assessable development” to occur according to conditions stated in the permit. The construction of a new referable dam and carrying out work that will increase the storage capacity of a referable dam by more than 10% is “assessable development”. The chief executive has the power under *Integrated Planning Act 1997*, to impose and change dam safety conditions on development permits issued approving these types of development.

A development permit will attach to the land where the referable dam is located. This means it will bind:

- the current owner of the land
- future owners of that land
- any occupier of that land (eg a tenant).

A person wanting to construct a new referable dam under the *Water Act 2000* must apply for and obtain a development permit before starting construction. A dam owner must also obtain a development permit to carry out works that will increase the storage capacity of a referable dam by more than 10%, before that work commences. The *Water Act 2000* requires a development application for these types of assessable development to be supported by evidence that the chief executive has accepted a failure impact assessment of the dam.

Prior to submission of a development application, owners and their consultants should consult with officers of the Dam Safety Group in NR&M to discuss technical details of the development and potential dam safety conditions. The Dam Safety Group provides advice to the chief executive on dam safety conditions to be attached to development permits. Dam owners should ensure that they use relevant guidelines prepared by the chief executive when designing and constructing their dam.

Prior to construction of any referable dam, the chief executive will overview each proposal and may require changes to be made to the proposal prior to granting a dam development permit. Where conflicts of opinion exist, the chief executive may seek advice from independent experts before making a decision.

3.1.3 Development Permits for Existing dams

For existing licenced dams which are referable under the *Water Act 2000* the previous licences for the dams will be taken to be a development permit³ which has dam safety conditions attached. Dam safety conditions applied to this development permit for existing licenced dams will therefore initially originate from the dam's waterworks license under the *Water Resources Act 1989* (Qld). The chief executive also has the power under the *Water Act 2000* to impose and change additional safety conditions on the dams.

These safety conditions are taken to be development permit conditions for the purposes of enforcement.

For existing unlicenced dams, which are referable under the *Water Act 2000*, the chief executive will develop and apply safety conditions under the *Water Act 2000*.

The chief executive also has the power to change those safety conditions if satisfied changes should be made in the interests of dam safety. The safety conditions are taken to be development permit conditions for the purpose of enforcement.

3.2 Auditing

The chief executive, to identify shortfalls in a dam safety management program and areas of non-compliance, may carry out audits of compliance with development permit conditions.

There are two Acts in Queensland which deal with enforcement of dam safety. The *Water Act 2000* contains provisions to enable the chief executive to issue a compliance notice if that Act is contravened (eg fail to carry out a failure impact assessment when one is required). Additionally, as dam safety conditions are development permit conditions for the purpose of enforcement, penalties apply under the *Integrated Planning Act 1997* (Qld) for failing to comply with a development permit condition.

3.3 Emergency action provisions

The chief executive has the power to issue a direction to take emergency action under s.494 of the *Water Act 2000*. This notice is only issued if the chief executive is satisfied or reasonably believes that:

- there is a danger of the failure of the referable dam and
- action is necessary to prevent or minimise the impact of the failure.

If a person fails to comply with a notice without a reasonable excuse, action may be taken. The compliance provisions of the *Water Act 2000* will allow any person to bring an enforcement order proceeding in the District Court and seek a Court order forcing a person to comply with the notice.

In addition, the chief executive has power under the *Water Act 2000* to act to prevent or minimise the impact of a dam failure, if a notice is not complied with. The chief executive can recover any reasonable expenses incurred when taking such action and may also make the expenses incurred a charge on the land.

Emergency action notices also attach to the land where the referable dam is located, binding the owner of the land at the time it is issued and any future owners.

³ Defined under the Integrated Planning Act 1997.

