

# 3 Responsibilities

## 3.1 Responsibility of the owner

An initial dam failure impact assessment must be undertaken by a dam owner if the dam is not deemed to have a failure impact rating under a regulation and:

- the dam exceeds the specified height and storage criteria outlined in the *Water Act 2000* (refer to 2.7) or
- the dam owner is issued with a notice by the chief executive (NR&M) under s.483(2) of the *Water Act 2000*.

The *Water Act 2000* sets out timing requirements for initial dam failure impact assessments (see Chart 1, page 10).

The *Water Act 2000* also sets out when further dam failure impact assessments are required (see Chart 1, page 10). Such assessment must be undertaken by a dam owner if:

- the dam is given a category 1 failure impact rating in an assessment accepted by the chief executive, or
- the dam is not given a failure impact rating in an assessment accepted by the chief executive, but the dam exceeds the height and storage criteria specified in the *Water Act 2000* or
- the dam owner is given a notice to have the dam failure impact assessed under s.483(2) or
- the dam is given a category 1 or category 2 failure impact rating in an assessment accepted by the chief executive, and the owner wants to carry out operational work that will increase the storage capacity of the dam by more than 10% and those works are not authorized by the existing development permit for the dam.

The owner of the dam must pay for a dam failure impact assessment, unless the chief executive requires the owner to carry out a dam failure impact assessment (under s.483(2) of the *Water Act 2000*) and subsequently the assessment is accepted by the chief executive and the dam is assessed as not being referable. In these circumstances, the chief executive must pay the reasonable cost of preparing and certifying the dam failure impact assessment.

The dam owner must obtain a development permit after the failure impact assessment is accepted by the chief executive, in certain situations (see 3.4 below).

Please note that the provisions of the *Water Act 2000* relating to referable dams and flood mitigation do not affect the liability of a dam owner or operator for any loss or damage caused by the failure of a dam or the escape of water from a dam.

## 3.2 Responsibility of the certifying engineer

A registered professional engineer must certify each written dam failure impact assessment. Penalties apply if a registered professional engineer certifies a dam failure impact assessment which contains information in that the registered professional engineer knows is false or misleading and the engineer does not disclose this.

The written certification must state:

- That the assessment has been prepared in accordance with these guidelines and that it is not based on information that the registered professional engineer knows is false or misleading

- That the certifying registered professional engineer is not the owner, an employee of the owner, the operator, or an employee of the operator of the dam being assessed
- That it is an accurate estimate of the population at risk and that the estimate is consistent with:
  - the detail and accuracy of the modelling used
  - the extent of the failure impact zone.
- The certifier's judgment of the appropriateness and accuracy of the information included in the assessment
- The certifier's view of the veracity of the information included in the assessment, as well as specifying the information on which the assessment was made
- That the certifier is satisfied that the inspection of the site has accounted for sufficient points of impact, covering the failure impact zone as a minimum, to justify the failure impact rating.
- That the certifier is satisfied with the locations of cross-sections and the intervals between those cross-sections for each individual numerical model generated for the dam failure impact assessment.

For dam failure impact assessments completed following an initial assessment accepted by the chief executive (ie the second and subsequent assessments), it may be permissible to use the same inundation data used in the previous assessment of the population at risk. However, the registered professional engineer's certification must include justification of this approach in the reassessment (refer to section 4.8 for details).

### 3.3 Responsibility of the chief executive

See Chart 2 (page 11)

The chief executive may accept, reject, or require a review of a dam failure impact assessment. If a dam failure impact assessment is accepted and the dam is referable (ie it has a category 1 or a category 2 failure impact rating), the chief executive may impose dam safety conditions on the dam. Dam safety conditions can be imposed either when the development permit for the dam or for works proposed to be undertaken on the dam is granted (as development permit conditions), or after the dam has been built (as safety conditions).

The chief executive may reject or require a review of a dam failure impact assessment if the assessment:

- has not been completed in accordance with these guidelines or
- is incomplete in a material particular (eg the assessment is not certified by a registered professional engineer) or
- is incorrect in a material particular (eg the assessment did not take account of downstream residential development).<sup>1</sup>

The chief executive may require the dam owner to supply additional information to assist in the decision to reject or require a review of the assessment.

The owner of the dam will be given written notice within 30 business days of a decision being made to accept, reject or require a review of a dam failure impact assessment.

If the chief executive requires a review of the assessment, the dam owner must review, correct or complete the dam failure impact assessment, have it re-certified by a registered professional engineer and resubmit the assessment by the required date specified.

<sup>1</sup> The chief executive reserves the right to check the accuracy of an assessment, although the certifying registered professional engineer retains responsibility for the accuracy of the assessment.

If the chief executive rejects an assessment relating to an existing dam, the dam owner must prepare a new dam failure impact assessment, have it certified by a registered professional engineer and submit the assessment by the required date specified.

If the chief executive rejects an assessment relating to a proposed dam, the dam owner will not be required to complete a new assessment by a specified date. However, if the proposed dam meets the height and storage criterion outlined in the *Water Act 2000* (refer section 2.7), it will still be necessary for the dam owner to obtain an accepted failure impact assessment before

- (a) a properly made application for a development permit is made, and
- (b) before construction of the dam begins

A dam owner may apply to the chief executive for an internal departmental review of the decision, if the chief executive requires a review of, or rejects, a dam failure impact assessment. The chief executive will then review the dam failure impact assessment and make a review decision (see Chapter 6 of the *Water Act 2000*).

If a dam owner is not satisfied with the review decision, the appeal provisions of the *Water Act 2000* allow the owner to appeal this decision in the Planning and Environment Court (see Chapter 6 of the *Water Act 2000*).

### 3.4 Responsibilities under the Integrated Planning Act 1997

A development permit must be obtained if a person wants to carry out operational work that is the construction of a new referable dam or that will increase the storage capacity of a referable dam by more than 10%. A development permit is an approval under the *Integrated Planning Act 1997*, which allows particular development (eg construction of a new referable dam) to occur. A development permit may impose conditions (eg dam safety conditions) on the approved development.

A development permit is only issued after a development application has been assessed and approved using the Integrated Development Assessment System (IDAS) under the *Integrated Planning Act 1997*.

A development application for the construction of a new referable dam or for carrying out operational work that will increase the storage capacity of a referable dam by more than 10% must be lodged with an assessment manager, who is then responsible for administering the assessment and approval process<sup>2</sup>. The development application must be supported by evidence the chief executive has accepted a dam failure impact assessment for the dam (refer to s.971 of the *Water Act 2000*). Additionally, if a water entitlement is required under the *Water Act 2000* to operate the dam (eg the proposed dam is on a watercourse) the development application must be accompanied by the chief executive's consent (as the water manager under the *Water Act 2000*) to the application being made.

The assessment manager for a development application for construction of a new referable dam or for operational works that will increase the storage capacity of a referable dam by more than 10% will generally be the local government if its planning scheme makes the construction of the new dam, or the carrying out of the operational works, assessable development. If the local government does not make the dam's construction, or the operational works assessable development under its planning scheme, a regulation under the *Integrated Planning Act 1997* may make the chief executive the assessment manager. Even in those cases where the chief executive is not the assessment manager, the chief executive will have the power to require dam safety conditions to be imposed on the development permit.

2 The appeal provisions of *Integrated Planning Act* allow appeals in the Planning and Environment Court against the decision made about the development application.

In some cases, a dam may become referable after it is constructed (eg if the chief executive issues a s.483(2) notice to have the dam failure impact assessed and the dam is assessed as having a category 1 or category 2 failure impact rating). In these cases, the chief executive has the power to impose safety conditions on the dam under the *Water Act 2000* and these are take to be part of a development permit for the dam. However, as the dam was not a referable dam prior to it's construction, there is no need for the dam owner to apply for a new development permit under the *Integrated Planning Act 1997* to construct the dam.