

Meeting of the Hawke's Bay Regional Council

Date: 26 June 2024
Time: 12.30pm
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Agenda

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Subject: Call for minor items not on the Agenda

Reason for Report

1. This item provides the means for councillors to raise minor matters they wish to bring to the attention of the meeting.
2. Hawke's Bay Regional Council standing order 9.13 states:
 - 2.1. "A meeting may discuss an item that is not on the agenda only if it is a minor matter relating to the general business of the meeting and the Chairperson explains at the beginning of the public part of the meeting that the item will be discussed. However, the meeting may not make a resolution, decision or recommendation about the item, except to refer it to a subsequent meeting for further discussion."

Recommendations

That Hawke's Bay Regional Council accepts the following *minor items not on the agenda* for discussion as item 9.

Topic	Raised by

Subject: Public Forum

Reason for report

1. This item provides the means for Council to give members of the public an opportunity to address the Council on matters of interest relating to the Council's functions.

Background

2. The Hawke's Bay Regional Council's Standing Orders provide for public forums as follows:

14. Public Forums

Public forums are a defined period of time, usually at the start of a meeting, which, at the discretion of a meeting, is put aside for the purpose of public input. Public forums are designed to enable members of the public to bring matters to the attention of the local authority.

In the case of a committee or sub-committee, any issue, idea or matter raised in a public forum must also fall within the terms of reference of that meeting.

Requests must be made to the HBRC Governance Team (06 835 9200 or governanceteam@hbrc.govt.nz) at least one clear day before the meeting; however this requirement may be waived by the Chairperson.

14.1 Time limits

A period of up to 30 minutes, or such longer time as the meeting may determine, will be available for the public forum at each scheduled Regional Council, Corporate & Strategic Committee, Environment & Integrated Catchments Committee and Regional Transport Committee meeting.

Speakers can speak for up to 5 minutes. No more than two speakers can speak on behalf of an organisation during a public forum. Where the number of speakers presenting in the public forum exceeds 6 in total, the Chairperson has discretion to restrict the speaking time permitted for all presenters.

14.2 Restrictions

The Chairperson has the discretion to decline to hear a speaker or to terminate a presentation at any time where:

- a speaker is repeating views presented by an earlier speaker at the same public forum
- the speaker is criticising elected members and/or staff
- the speaker is being repetitious, disrespectful or offensive
- the speaker has previously spoken on the same issue
- the matter is subject to legal proceedings
- the matter is subject to a hearing, including the hearing of submissions, where the local authority or committee sits in a quasi-judicial capacity.

14.3 Questions at public forums

At the conclusion of the presentation, with the permission of the Chairperson, elected members may ask questions of speakers. Questions are to be confined to obtaining information or clarification on matters raised by a speaker.

14.4 No resolutions

Following the public forum no debate or decisions will be made at the meeting on issues raised during the forum unless related to items already on the agenda.

Decision-making process

3. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision-making provisions do not apply.

Recommendation

That Hawke's Bay Regional Council receives and notes the *Public Forum speakers' verbal presentations*.

Authored by:

Leeanne Hooper
Team Leader Governance

Approved by:

Desiree Cull
Strategy & Governance Manager

Attachment/s

There are no attachments for this report.

Subject: Regional Economic Development Agency update**Reason for report**

1. This item provides an update on the establishment and operations of the Hawke's Bay Regional Economic Development Agency (HBREDA).

Background

2. Councils in the Hawke's Bay region resolved to fund HBREDA in late 2021. The organisation was formed as a partnership between local government, business, and iwi/hapū.
3. Following legal advice, the legal structure for HBREDA was confirmed to be a council organisation (but not a CCO) in the form of a limited liability company and governed by an independent skills-based board. Shareholdings in the HBREDA company were agreed by council CEs and the Matariki Governance Group (MGG) to be in equal thirds between business, iwi/hapū and local government. Fourteen shareholder entities are represented within these three groupings.
4. The MGG set up a board appointments panel and appointed the Board in December 2022. Board members are:
 - 4.1. Alasdair MacLeod (Chair)
 - 4.2. Shayne Walker
 - 4.3. Caren Rangi
 - 4.4. Erin Simpson
 - 4.5. Rawinia Kamau (resigned May 2024).
5. The Matariki Governance Group was nominated by shareholders, via the HBREDA constitution, as the shareholder representative.
6. The funding committed by councils in December 2021 is allocated between councils as outlined in the table below.

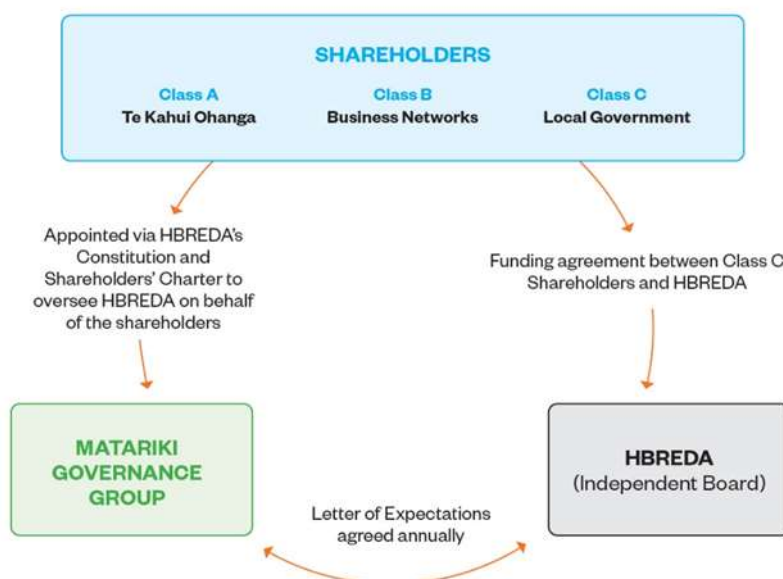
Council	Split	Year 1	Year 2	Year 3+
HBRC	29%	454,572	461,899	500,000
HDC	29%	454,572	461,899	500,000
NCC	29%	454,572	461,899	500,000
CHB	8%	122,844	124,824	135,120
WDC	4%	64,440	65,479	70,880
		1,551,000	1,576,000	1,706,000

7. Prior to HBREDA's establishment, some of the funds set aside for HBREDA were allocated to the operation of the Business Hub in Ahuriri, shifting the business support agencies to Hastings and setting up a new business hub, the Regional Freight Distribution Strategy, consultant support to assess the needs of business post-cyclone, and consultant and legal costs for the establishment of HBREDA.

HBREDA establishment update

8. Lucy Laitinen was appointed as Chief Executive of HBREDA and commenced 14 August 2023.

9. HBREDA was incorporated on 14 September 2023 with a constitution that outlined the shareholder arrangements and appointed the Matariki Governance Group as the shareholder representative.
10. The Shareholders' Charter was approved at a meeting of shareholders on 23 February 2024. This lays out the governance, reporting, and funding arrangements for the company. The Charter states that the Matariki Governance Group, as the shareholder representative, shall agree an annual letter of expectations (LOE) with the HBREDA Board. The process for agreeing the annual letter of expectations must allow for an opportunity for shareholder entities to provide their input/feedback into the letter. The Matariki Governance Group has the final signing authority, on behalf of shareholders. HBREDA's governance arrangements are illustrated below.



11. The Shareholders' Charter lays out eight operating principles to assist HBREDA in determining its work programme (to be detailed in the LOE). The full Charter is attached.
12. The HBREDA Shareholders' Charter, approved on 23 February, defines the letter of expectations (LOE) as the mechanism for Matariki, the shareholder representative, and HBREDA to agree work programme priorities, reporting, and performance measures for the company.
13. HBREDA provided the Matariki Governance Group a draft LOE for the six-month period starting 1 July 2024 at the 5 April 2024 meeting, asking the MGG to provide it to shareholder entities for feedback with a view to agreeing the LOE at the 21 June 2024 Matariki meeting.
14. Over time, when Matariki has the capacity available, HBREDA has recommended a move to a process where Matariki prepares a LOE each year, with input from all shareholder entities, and provides it to HBREDA, which then responds with a Statement of Intent. This would allow for the development of a robust and transparent process to secure shareholder feedback and input and allow HBREDA to exercise its independence through developing a Statement of Intent in response.
15. On 21 June the MGG is reviewing an LOE that will lay out HBREDA's work programme, performance measures, and reporting requirements for a six-month period. The LOE will be annexed to HBREDA's funding agreement with councils.
16. The financial reporting provided by HBREDA to the Matariki Governance Group will meet the reporting requirements for local government expenditure. It is Matariki's responsibility to ensure this reporting, along with narrative reporting, is disseminated to shareholder organisations. It is not expected there will be any additional formal reporting mechanisms to

shareholders outside of those outlined in the Letter of Expectations, and no separate KPIs. HBREDA will continue to respond to requests from shareholders, such as HBRC, to provide updates directly on its activities. These will not be considered part of HBREDA's formal reporting to shareholders.

17. Following the approval of HBREDA's first LOE, HBREDA will sign a funding agreement with the funding councils. HBREDA is currently receiving tax and accounting advice on the draft agreement. We are also in the process of clarifying the treatment of pre-incorporation expenses, which is relevant to HBRC as the Council held HBREDA's funding before it was established.

Establishment of Te Rae

18. The responsibility for running the new business hub was given to HBREDA before the company was established. Due to the shift of the previous business hub away from Ahuriri to Hastings, HBREDA 'inherited' a building project.
19. HBREDA turned the building project into "Te Rae", the new business hub, which was blessed and opened to the public on 23 February 2024. Te Rae houses the business support agencies (Chamber of Commerce, NZTE, Business Central, and Export NZ) and HBREDA, and provides six meeting rooms for public hire. HBREDA has partnered with Toi Mairangi to provide gallery space for local artists in the events/meeting space.
20. The Te Rae website can be accessed at www.terae.nz. HBREDA is seeking clarification from the MGG that all councils should receive free use of the rooms.
21. HBREDA has just taken over the lease on 101 Queen Street East, Hastings, where Te Rae is located, from Hastings District Council and now has licenses to occupy with tenants. A considerable portion of HBREDA funds have been put toward the design and fitout of Te Rae. Landlord and operational responsibility for Te Rae will be an ongoing part of HBREDA's responsibilities.

Telecommunications resilience report

22. HBREDA engaged consultant Jonathan Brewer to conduct a review of Hawke's Bay's telecommunications resilience as a contribution to the recovery to investigate the widespread telecommunications outage that occurred after Cyclone Gabrielle and develop recommendations. The Regional Recovery Agency is responsible for developing an action plan for next steps. The report will be released shortly.

Requests for proposals (RFPs)

23. HBREDA published two RFPs in May 2024 – *Research into Understanding the HB Economy* and *Provision of Regional Dashboard and Economic Insights* – and is currently evaluating responses. Both the research and the ongoing provision of economic and wellbeing data will inform HBREDA's future work programme and will provide useful insights and data for all of our stakeholders.

Matariki Secretariat

24. HBREDA has been asked to fund and support the Matariki secretariat. It has contracted a board secretary, communications function, and just recently a strategic advisor. A grant of \$60,000 has recently been provided by MSD to support these costs as well as the development costs of a Matariki website, when appropriate.

Decision-making process

25. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision-making provisions do not apply.

Recommendation

That the Hawke's Bay Regional Council receives and notes the *Regional Economic Development Agency update* report.

Authored & approved by:

Susie Young
Group Manager Corporate Services

Attachment/s

1 [!\[\]\(339a16584d5da0f0a3ca4e9ec17bf6a1_img.jpg\)](#) HBREDA Shareholders' Charter

Approved 23 February 2024

Shareholders' Charter for the HB Regional Economic Development Agency (HBREDA)

1. Introduction

The Hawke's Bay Regional Economic Development Agency (HBREDA) was set up by the shareholders to secure better economic outcomes for our region. HBREDA will support the region to work collaboratively to capture opportunities, address regional challenges, reduce inefficiencies and duplication, maximise investments, present a unified voice, and champion positive economic and social outcomes for all whānau in Hawke's Bay.

This Charter has been prepared by the shareholders to provide additional clarity around the relationship between the shareholders, the Matariki Governance Group, and the HBREDA Board. This document supplements the company's constitution.

The shareholders recognise that partnerships and collaboration across, and between, iwi and hapū Māori, business, local authorities, central government, and the community sector are essential for regional success. The shareholders have established HBREDA to work for the benefit of the region as a whole.

2. Vision of HBREDA

The vision, as stated in HBREDA's constitution, is a sustainable, accessible, and resilient Hawke's Bay economy where every whānau and household benefits.

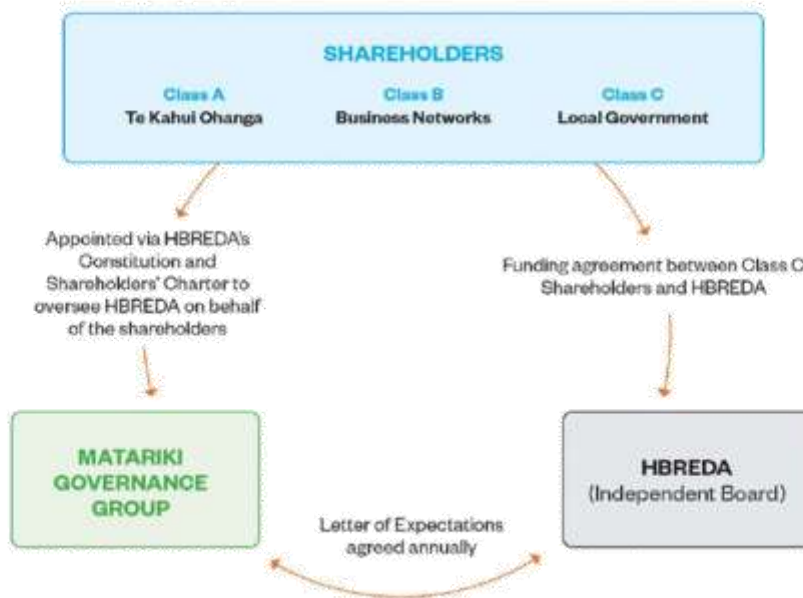
3. Goals

The purpose of HBREDA, as stated in the Constitution, is to contribute to:

- i. increasing Hawke's Bay productivity performance, including a shift from volume to higher value products, investing in R&D, technology and innovation to achieve productivity improvements, and supporting small to medium enterprise growth;
- ii. facilitating a more even distribution of economic benefits, skill levels and productivity improvements, achievement of higher incomes and the right skills available for the future workforce; and
- iii. assisting in enabling Hawke's Bay to respond to and mitigate the effects of disruptions and shocks in a manner that reduces harm and overall costs including through diversification and supporting supply chains.

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4. Governance



4.1 Matariki Governance Group

The shareholders have asked the Matariki Governance Group to act as our shareholder representative. The Matariki Governance Group will set expectations for HBREDA's strategic direction and oversee its performance. Following input from the shareholders, the Matariki Governance Group will issue an annual Letter of Expectations to the Board of HBREDA, which will include:

- i. HBREDA's anticipated work programme;
- ii. Agreed funding; and
- iii. Annual reporting requirements.

Additionally, the Matariki Governance Group will undertake to:

- iv. Facilitate discussions about funding for HBREDA, noting that individual shareholder entities have their own processes to consider and approve funding contributions;
- v. Review the external review of HBREDA's Board performance every two years;
- vi. Act as the first point of contact for any shareholder concerns regarding HBREDA's work programme, funding, and/or performance;
- vii. Approve interim appointment of directors on recommendation of the HBREDA Board, subject to confirmation of appointment at the shareholders' AGM; and
- viii. Set the directors' remuneration annually after taking independent advice. The HBREDA Board shall annually make a recommendation to the Matariki Governance Group regarding remuneration for directors.

It is expected that the Chair of HBREDA will meet the Matariki Governance Group co-chairs at minimum twice a year to discuss HBREDA's work, emerging issues of interest, and any areas of concern.

The CEO of HBREDA shall be a member of the Matariki Executive Group.

4.2 HBREDA Board

The HBREDA Board shall direct and supervise the business and affairs of HBREDA including:

- i. Appointing the Chair;
- ii. Appointing the Chief Executive Officer and managing their performance;
- iii. Working with the Matariki Governance Group to establish HBREDA's work programme through the Letter of Expectations;
- iv. Making sure the appropriate resources are in place to achieve the HBREDA's objectives within the funding envelope provided by shareholders and any other funders;
- v. Ensuring key governance policies and procedures are in place and adhered to;
- vi. Taking the necessary steps to protect the company's financial position and the ability to meet its debts and other obligations when they fall due;
- vii. Ensuring HBREDA adheres to high standards of professional and ethical behaviour;
- viii. Managing risks appropriately; and
- ix. Familiarising itself with issues of concern to shareholders and wider stakeholders.

The HBREDA Board shall take a 'no surprises' approach where matters of major importance and significant emerging issues are shared early with the Matariki Governance Group, applying tika, pono, and aroha.

As an independent board, the HBREDA Board is encouraged to form views on matters related to economic and social wellbeing in the region in order to advocate for change, inform investment decisions, and drive collaboration. It is the expectation of the shareholders and the Matariki Governance Group that the HBREDA Board shall take a constructive approach to communicating its views to shareholders and the wider public, keeping at the forefront recognition of its role as a regional entity that has been established to work towards the vision and goals outlined in the constitution and this Charter.

The desire of the shareholders is to ensure the independence of the HBREDA Board. To ensure continued independence, and avoid the undue influence of a single shareholder, the shareholders agree that no elected members, directors, trustees, or officers of any of the shareholder entities shall be appointed as directors of HBREDA.

5. Operating Principles

In determining its work programme and the activities that shall or shall not be prioritised, the HBREDA Board shall in the first instance ensure there is alignment with agreed regional targets, when in place, and that the following principles are met:

- i. There are opportunities for collective regional benefit at the household level;
- ii. Our commitment to our rights and obligations under Te Tiriti o Waitangi is honoured;
- iii. The activity or initiative is operationally feasible within existing resourcing and capability, or additional funding is provided; and
- iv. No other shareholder or other organization is better placed to undertake the work in terms of mandate, capacity, funding, and capability and/or within the desired time-frame.

Once this threshold is met, the HBREDA Board shall be guided by the following principles in determining its work programme:

- v. Long-term value, whether economic, environmental, cultural, or social, is not sacrificed for short-term results;
- vi. The expected outputs and outcomes are clear and measurable and include, where possible, measurable outcomes for Māori, Pasifika, and other groups in our community who are currently disadvantaged in the local economy;
- vii. Subsequent high impact opportunities for REDA, or the region more generally, are generated; and
- viii. No more of than 50% of the discretionary budget shall be consumed by one activity.

The HBREDA Board shall ensure that all applicable fiduciary, prudence, and due diligence requirements are met as well as compliance with all applicable laws, rules, and regulations.

6. Funding and Audit

The Matariki Governance Group shall facilitate discussion about funding for HBREDA, noting that individual shareholder entities have their own processes to consider and approve funding contributions. We note the nature and scale of its resourcing is a large factor in the success of HBREDA.

HBREDA may also seek funding from outside of the shareholder group as long as the source and nature of funding aligns with the company's purpose as defined in the constitution and charter and the strategic goals as defined in the letter of expectations.

No external financial audit is required unless the shareholders pass a resolution to the contrary at the shareholders' annual general meeting.

7. Letter of Expectations

The Matariki Governance Group shall agree an annual letter of expectations with the HBREDA Board. The process for agreeing the annual letter of expectations must allow for an opportunity for shareholder entities to provide their input/feedback into the letter. The Matariki Governance Group will have the final signing authority, on behalf of shareholders.

8. Board Performance

The HBREDA Board shall be responsible for establishing governance policies and procedures to manage the appointment of the Chair, the nomination and onboarding of new directors, voting and conduct at Board meetings, tenure and rotation, and Board performance.

Each year the HBREDA Board shall critically evaluate its own performance, including the performance of the Chair and each director. Every second year, in addition to its own internal evaluation, the HBREDA Board shall commission an independent review of its performance, which shall be shared with the Matariki Governance Group.

Subject: Dangerous dams, Earthquake-prone dams and Flood-prone Dams Policy adoption

Reason for report

1. This item provides Council with the proposed Policy on Dangerous dams, earthquake-prone dams and flood-prone dams 2024 (the Policy) for adoption for notification.

Officers' recommendations

2. Council staff recommend that the Council adopts the Policy as proposed.

Executive summary

3. The *Building Act 2004* requires all regional councils to adopt a policy on dangerous dams, earthquake-prone dams and flood-prone dams.
4. The existing Dangerous Dams Policy 2006 required updating to align with the new *Building (Dam Safety) Regulations 2022* which come into effect in May 2024. The updated Policy is also required to reflect MBIE consultation on changes to classifiable dam thresholds.
5. Policy drafting, dam owner notification, and public consultation have taken place in the months previous. Changes to classifiable dam thresholds were included in the policy drafting following MBIE consultation. No submissions were received during the public consultation period.
6. This item is being raised now to seek a decision that enables public notification of the updated Policy to meet *Building Act 2004* requirements and ensure the Council is compliant.

Background

7. In January 2024 a project team was formed to update the Dangerous Dams Policy 2006. This policy sets out what Council will do if they are notified of a dangerous, earthquake-prone or flood-prone dam in Hawke's Bay. New regulatory requirements set out in the *Building (Dam Safety) Regulations 2022* would mean our current Dangerous Dams Policy 2006 would no longer reflect the new regulations from 13 May, 2024.
8. A number of changes were needed for the updated policy on dangerous dams, earthquake-prone dams and flood-prone dams. Changes from the current Dangerous Dams Policy 2006 largely relate to aligning the Policy with requirements under the *Building (Dam Safety) Regulations 2022* and *Building Act 2004*. A further key consideration was the need to simplify and refine the document to make it more readable.
9. Drafting of the updated policy began in late-January 2024, taking the May 13 deadline into account. Pre-consultation engagement with registered dam owners was undertaken in March 2024. This included informing registered dam owners of MBIE consultation around potential threshold changes to classifiable dams. During drafting, attention was given to MBIE consultation on classifiable dam thresholds, and the updated Policy was drafted to accommodate any potential changes (with reference to the Regulations, rather than specific height and volume).
10. Adoption of the proposed Policy for public consultation was discussed at EICC and Council meetings in March 2024. Councillors indicated that the updated policy would be of better use to dam owners if classifiable thresholds (specific height and volume) were included. Following this meeting of Council, MBIE released the updated thresholds on classifiable dams on 28 March and the Policy was updated accordingly to reflect the new thresholds.
11. Subject to final Council approval for notification, it is anticipated that the updated Policy will

come into effect in early June 2024.

Options assessment

12. As mentioned previously, the current Dangerous Dams Policy 2006 does not align with terminology or requirements under the new regulations. It is therefore to be discounted as an option for these reasons.
13. The updated Policy achieves Council requirements and responsibilities, and it is recommended that the Council adopts the Policy for notification.

Significance and Engagement Policy assessment

14. Council and its committees are required to make every decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements in relation to this item and have concluded:
 - 14.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 14.2. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 14.3. Given the nature and significance of the issue to be considered and decided, and the persons likely to be affected by, or have an interest in the decisions made, the Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Considerations of tangata whenua

15. Prior to the period of public consultation, both PSGEs and taiwhenua were informed via letter of the proposal to update Council policy on dangerous dams. As part of the information letter Council also informed PSGEs and Taiwhenua of the concurrent consultation undertaken by MBIE to update the classifiable dam thresholds. Both PSGEs and taiwhenua were invited to give feedback on the proposed Policy update during the public consultation period and relevant information was included.
16. No feedback was received on the proposed Policy. However, feedback was received from Tūhoe in relation to their concerns about the presence of the existing dam at Lake Waikaremoana, rather than feedback on the Policy itself.

Financial and resource implications

17. Existing staff are currently utilised in all aspects of the project.
18. All implementation costs have been budgeted for. Such costs are modest and will be funded as part of business-as-usual activity.

Consultation

19. The public consultation phase of the proposed Policy took place across a four-week period between 28 March and 28 April 2024. It was advertised in print, online media, and an online dam safety web page with submission forms was available. Registered dam owners, utility providers, territorial authorities, and tangata whenua were notified in advance of the opening date and were encouraged to participate.
20. No submissions were received.

Other considerations

21. Comments during deliberations at both Council and committee meetings considered financial implications for owners of classifiable dams. Owners of classifiable dams will have to undertake

a Potential Impact Classification (PIC), and owners of dams classified as medium to high impact must develop a Dam Safety Assurance Programme (DSAP). Annual dam compliance and PIC reviews are also required, all of which must be approved by a recognised engineer.

22. Equally, despite recognition of potential costs to dam owners, it was noted that financial implications are unavoidable as these actions are dam safety requirements under national regulations.

Decision-making process

23. Council and its committees are required to make every decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements in relation to this item and have concluded:
 - 23.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 23.2. The use of the special consultative procedure is prescribed by legislation. The Council must consult directly with the community or others having an interest in the decision.
 - 23.3. The decision is not significant under the criteria contained in Council's adopted Significance and Engagement Policy.
 - 23.4. The persons affected by this decision are owners of dams that are classifiable.

Recommendations

That Hawke's Bay Regional Council:

1. Receives and considers the proposed *Policy on dangerous dams, earthquake-prone dams and flood-prone dams 2024* adoption staff report.
2. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion and make decisions on this issue without conferring directly with the community or persons likely to have an interest in the decision.
3. Adopts the Policy on dangerous dams, earthquake-prone dams and flood-prone dams for notification.

Authored by:

Saul Gudsell
Policy Planner

Nichola Nicholson
Acting Manager Policy & Planning

Approved by:

Katrina Brunton
Group Manager Policy & Regulation

Attachment/s

- 1 [📄](#) Policy on dangerous dams, earthquake-prone dams and flood-prone dams 2024



Hawke's Bay Regional Council
S161 Building Act 2004

Policy on dangerous dams, earthquake-prone dams and flood-prone dams 2024

1. Introduction

This document sets out the policy on dangerous dams, earthquake-prone dams and flood-prone dams adopted by the Hawke's Bay Regional Council ("**the Council**") in accordance with [sections 161 and 162](#) of the Building Act 2004.

The policy states the approach and priorities the Council will take in performing its functions in relation to dangerous dams, earthquake-prone dams and flood-prone dams in the Hawke's Bay region, and how the policy will apply to heritage dams¹.

The Council will comply with any relevant requirements under Treaty settlement legislation when undertaking its functions in relation to dangerous, earthquake-prone dams and flood-prone dams.

2. Where the policy applies

This policy applies to:

Structures that meet the definition of a **dam** as defined in [section 7](#) of the Building Act 2004 (**the Act**); and dams that meet the definition of a **classifiable dam** defined in [regulation 5](#) of the Building (Dam Safety) Regulations 2022 (**the Regulations**)²

The dam safety provisions in [subpart 7 of Part 2](#) of the Act, including this policy, apply to:

1. Classifiable dams, defined in [regulation 5](#) as a dam that:
 - has a height of 4 or more metres and stores 20,000 or more cubic metres volume of water or other fluid.
2. Referable dams as defined in the Regulations³

Only [section 133B](#)⁴ (height measurement of dams) and [sections 157-159](#) (measures by a regional authority to avoid immediate danger) apply to all other dams.

3. Application of this policy

This policy applies to dams everywhere in the Hawke's Bay region, and irrespective of the age and intended life of the dam. The terms "dangerous dam", "earthquake-prone dam" and "flood-prone dam" have the same meaning as provided in [sections 153](#) and [153A](#) of the Act.

This policy must be read alongside the Regulations which define terms used in the Act in relation to "dangerous dams", "earthquake-prone dams" and "flood-prone dams"⁵.

The Regulations and the Act can be accessed at legislation.govt.nz⁶.

¹ Refer to the section "Application to heritage dams" for a definition of heritage dams.

² The Regulations were made on 9 May 2022 but do not come into force until 13 May 2024. Terms defined in the Regulations are relevant to the meaning and application of this policy.

³ The current Regulations do not define a referable dam.

⁴ When measuring the height of the dam under this section, the crest of the dam includes any freeboard – refer to section 133B of the Building Act 2004 for the definition.

⁵ Section 19 of the Regulations defines moderate earthquake, moderate flood, earthquake threshold event and flood threshold event.

⁶ Building (Dam Safety) Regulations 2022 and Building Act 2004.

This policy does not cover consents required under the Resource Management Act 1991 or the Building Act 2004. Under [section 153AA](#), if a dangerous dam is located in an area that has been affected by an emergency ([subpart 6B](#) of the Act), this policy and other provisions of the Act continue to apply but only in relation to:

- a. action or notices issued under [section 154](#);
- b. work carried out under [section 156](#); or
- c. if a warrant is issued under [section 157](#).

4. Commencement and review

This policy commences **13 May 2024**

The Council is required to follow special consultative procedure set out in [section 83](#) of the Local Government Act 2002 when developing and adopting this policy and will have regard to any relevant principles in the Act. This policy will be reviewed every five years or earlier as required. The policy remains in effect even if it is due for review or being reviewed.

5. Principles

The Council will apply the following principles to the exercise of its dangerous dams, earthquake-prone dams and flood-prone dams functions under the Act.

1. Dam owners have the primary responsibility for identifying, monitoring, reviewing and reporting on dangerous, earthquake-prone and flood-prone dams, and for reducing or removing the risk of harm to people, property and the environment in a timely and effective manner.
2. A recognised engineer⁷ engaged (by the dam owner) to provide a certificate for the purposes of sections [135\(1\)\(b\)](#), [142\(1\)\(b\)](#), or [150\(2\)\(f\)](#) must notify the Council and the owner of the dam, in writing and within five working days, if they believe that the dam is dangerous.
3. The state of all dangerous, earthquake-prone and flood-prone dams (as defined in the Act and the Regulations) must be known (noting that other dam safety provisions in the Act apply to all dams) and this information, if known to the Council, will be made readily available by the Council, to all persons potentially affected by the safety risks of a dangerous, earthquake-prone or flood-prone dam.
4. The Council will endeavour to communicate to dam owners about the responsibilities of dam owners under the policy.

⁷ A recognised engineer is defined in section 149 of the Act.

6. Council's approach to performing its functions

Information on dam status

The Council will keep a register of dams as required by [section 151](#) of the Act, recording the dangerous, earthquake-prone and flood-prone status of each classifiable dam. The Council will develop a monitoring procedure to maintain the register.

Should the Council receive information about a dangerous, earthquake-prone or flood-prone dam in the region, the Council will notify the chief executive of the Ministry of Business, Innovation and Employment, the relevant territorial authority, the Hawke's Bay Civil Defence and Emergency Management Group, and relevant mana whenua. Equally, the Council will notify operators of critical infrastructure or lifeline utilities downstream of a dangerous, earthquake-prone or flood-prone dam. Heritage New Zealand Pouhere Taonga will be notified by Council if it becomes aware of a dangerous dam that is also a heritage dam.

Working with dam owners

The Regulations require owners of all classifiable dams to know whether their dam is dangerous, earthquake-prone or flood-prone and to take the necessary steps, in a timely manner, to comply with the Act and the Regulations. The Act requires dam owners to immediately notify the Council if they have reasonable grounds for believing their dam is dangerous. This applies to dams that are either a high potential impact dam or a medium potential impact dam and are likely to fail in the ordinary course of events, or a "moderate earthquake" or "moderate flood" (as defined in the Regulations).

The Act also requires a recognised engineer who provides a certificate for the purposes of sections [135\(1\)\(b\)](#), [142\(1\)\(b\)](#), or [150\(2\)\(f\)](#), to notify the Council and the owner of the dam if they believe that the dam is dangerous. The notice must be provided in writing and be given within five working days after the engineer forms their belief.

The Council will work with the owners of identified dangerous dams and may work with owners of identified earthquake-prone and flood-prone dams, to develop an action plan (with timeframes) with the goals of increasing the safety of the dam and eliminating or reducing the risks of the dam to people, property, infrastructure and the environment. It is not realistic to specify a timeframe in this policy for achieving this goal because timeframes will be dictated by the circumstances of each case.

When setting a timeframe for action, the Council will consider the state of the dam, and the likelihood and consequences of dam failure.

Directing and taking action

The Council may exercise the powers outlined below:

- For dangerous dams
 - if the owner of any dam is not acting in accordance with an agreed action plan; or
 - where there is no agreed action plan; or
 - where it considers that the agreed action plan requires review or amendment; or
 - where ownership is not known or is disputed; or
- For all dams, where there is or is likely to be a risk of immediate danger.

Before exercising any of its powers under sections [154](#) to [159](#) of the Act, the Council will, unless the circumstances dictate otherwise (such as where there is immediate danger to the safety of persons, property, or the environment), seek to discuss options for action with the owner of the dam, with a view to obtaining from the owner a mutually acceptable proposal for reducing or removing the

danger. Acceptable actions by the owner may include, but are not limited to, one or more of the following:

- operational changes such as reducing the volume of impounded fluid or completely emptying the reservoir;
- reconfiguring an existing spillway or creating a new or supplementary spillway so as to limit the maximum impounded volume and/or to safely route flood flows;
- increasing surveillance and monitoring;
- development of emergency preparedness and response plans;
- review of the dam safety assurance programme;
- requiring the owner to engage a dam specialist to investigate and make recommendations with any report provided to the Council;
- implementing measures to enable controlled, rapid emptying of the impounded fluid;
- measures downstream of the dam to mitigate the impact of dam failure;
- physical works including reconstruction or partial demolition of the dam;
- decommissioning and/or removal of the dam.

The whole or part of any proposal by the dam owner may be incorporated as a requirement in a Notice to Fix issued by the Council under [section 164](#) of the Act. If no action is taken by the owner to address the danger, the Council may exercise any of its statutory powers in [sections 154-159](#) and [164](#) of the Act.

The Council will notify potentially affected communities downstream of dangerous, earthquake-prone or flood-prone dams. The Council will do this by publishing information about any dangerous, earthquake-prone or flood-prone dams in the region. The Council will also work with the Hawke's Bay Civil Defence Emergency Management Group and where relevant, lifeline utilities⁸.

The Council may at any time require the dam owner to review a dam safety assurance programme if the dam is an earthquake-prone or flood-prone dam.

In a situation where a dam is dangerous, the Council may (amongst other actions):

- erect a hoarding or fence to prevent people from approaching the dam nearer than is safe.
- attach a notice on or near the dam (or affected downstream areas) that warns people not to approach.
- give written notice to the owner requiring work to be carried out on the dam, and within the time stated in the notice to remove or reduce the danger.

In a situation where the Chief Executive of the Council considers that, because of the state of the dam, immediate danger to the safety of persons, property, or the environment is likely, then the Chief Executive of the Council may:

- cause any action to be taken that is necessary to remove that danger.
- recover the costs of taking any action from the dam owner.

⁸ Lifeline utilities is defined in section 4 of the Civil Defence Emergency Management Act 2002.

7. Council's priorities in performing these functions

The Council's approach to dangerous, earthquake-prone or flood-prone dams is tailored towards achieving a reduction in the pre-existing risk whilst still being able to deal with risks that emerge in the future.

The priorities will be as follows:

1. to minimise the risk to public safety at all times.
2. to minimise the risk to damage or loss of property.
3. to minimise the risk to the environment.
4. to have regard to cultural and heritage values.

8. Application to heritage dams

For the purposes of this policy, a heritage dam means a dam that is included on:

1. the New Zealand Heritage List/Rārangi Kōrero maintained under [section 65](#) of the Heritage New Zealand Pouhere Taonga Act 2014; or
2. the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu list maintained under [section 81](#) of the Heritage New Zealand Pouhere Taonga Act 2014.

[Section 4\(2\)\(l\)](#) of the Building Act recognises the “need to facilitate the preservation of buildings of significant cultural, historical, or heritage value”.

The Council recognises the need to retain heritage values of the dam itself, but also the need to reduce or remove any risk posed by a heritage dam which has been classified as dangerous, flood prone or earthquake prone. When considering heritage dams under this policy, account will be taken of the need to facilitate the preservation of significant heritage values.

When dealing with heritage dangerous dams, the Council will seek advice from Heritage New Zealand Pouhere Taonga and the relevant territorial authority (if appropriate) before any actions are undertaken by the regional authority under [sections 153 – 160](#) of the Act.

The Council may also engage suitably qualified professionals with engineering expertise and heritage expertise to advise and recommend actions. When considering any recommendations, the Council will have regard to the priorities set out in the previous section of this policy. Copies of all served notices for heritage dangerous dams, earthquake-prone dams and flood-prone dams will be provided to Heritage New Zealand Pouhere Taonga.

The Council will record the heritage listing of all dangerous, earthquake-prone and flood-prone dams it is made aware of in its register of dams and supply this information to the relevant territorial authority for inclusion on any relevant land information memorandum.

**Subject: Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works)
Order 2024 – Delegations**

Reason for report

1. This item seeks the Council's delegation of decisions on consent applications lodged under the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024 (the Order) to independent commissioners.

Staff recommendations

2. Staff recommend that the following independent commissioners be given the necessary delegations from the Council to consider and decide on the matters listed in paragraph 12.
 - 2.1. Janeen Kydd-Smith (Sage Planning)
 - 2.2. Philip McKay (Mitchell Daysh Ltd)
 - 2.3. Alison Francis (Bay Planning Ltd)
 - 2.4. Rob van Voorthuysen (vVEnvironmental Limited).
3. All of the above are experienced local planning practitioners who are currently certified as commissioners under the Ministry for the Environment Making Good Decisions (MGD) programme. The commissioner to be used for each application will be determined closer to the time of lodgement, taking into account availability and actual or perceived conflicts of interest.

Executive summary

4. The Order requires that independent commissioners consider and make decisions on consent applications for flood protection works in eight specified areas.
5. The Order establishes a bespoke and streamlined non-notified consent process for flood protection work applications. The applications will need to be considered and decided on within tight timeframes. These timeframes cannot be extended.
6. Delegation is sought for four Making Good Decisions (MGD) certified planning practitioners so that they can be engaged as required to decide on flood protection works applications.

Background

7. The Order came into force of 7 June 2024. It modifies the Resource Management Act 1991 (the RMA) to facilitate the carrying out of flood protection works at specified locations in the Hawke's Bay Region.
8. The order seeks to ensure that people and communities in Hawke's Bay can recover from the effects of Cyclone Gabrielle and are protected against future events through the construction of flood protection works at eight specified locations in the region. To do this, it establishes a specific streamlined consent process for these projects.
9. The eight sites included are:
 - 9.1. Wairoa
 - 9.2. Porangahau
 - 9.3. Ohiti
 - 9.4. Whirinaki

- 9.5. Waiohiki
- 9.6. Havelock North (Mangarau Stream)
- 9.7. Awatoto
- 9.8. Omahu.
10. The flood protection works are classified as controlled activities, must be processed on a non-notified basis within 30 working days, and must be granted. Only HBRC and TLA's may apply for consents under the Order. Applications are expected to be lodged from around mid-August.
11. The streamlined consent process set out by the Order includes the following key steps:
 - 11.1. Receiving the application and determining that it is complete and contains all of the information as specified by the Order.
 - 11.2. Specified persons must be notified within five working days of the application being lodged, and their comments sought. Specified persons have ten working days to provide comment. Specified persons include:
 - 11.2.1. relevant Māori entities
 - 11.2.2. local authorities
 - 11.2.3. national agencies (eg Maritime NZ)
 - 11.2.4. Ministers (eg for Minister of the Environment)
 - 11.2.5. The Director General of Conservation
 - 11.2.6. network utility operators
 - 11.2.7. landowners and occupiers
 - 11.2.8. coastal marine area customary title holders and applicants, and
 - 11.2.9. any other person the consent authority considers appropriate, where that person has an interest in the application greater than that of the general public.
 - 11.3. The consent authority must consider all comments received and prepare a summary of those comments and its responses. This must be published before (or with) the decision.
 - 11.4. A consent authority may impose on a resource consent it grants, conditions taken from those set out in Schedule 2 of the Order. The authority may amend those conditions, or impose additional conditions, within the matters of control.
 - 11.5. Requires the consent authority to notify its decision on the consent application within 30 working days after the date of application.
12. Clause 10 of the Order requires that a consent authority delegates to an independent hearing commissioner certain specified functions, duties, and powers in relation to a resource consent application for flood protection works. Those functions, duties, and powers include the consideration of the application, the decision granting consent, and the conditions imposed on the consent.
13. Clause 10(2) of the Order states:

The functions, duties, and powers that must be delegated are the following functions, duties, and powers of the authority in relation to a resource consent for flood protection works:

 - (a) consideration of an application under section 104 of the RMA (see clause 16):*
 - (b) decision to grant a resource consent under section 104A(a) of the RMA:*
 - (c) imposition of conditions on a resource consent in accordance with clause 17:*
 - (d) giving of notice of its decision under section 114 of the RMA in accordance with clause 18.*

14. Delegation for the matters listed in paragraph 13 must come from the Council to the independent commissioner directly. As the applications are for controlled activities, and must be granted without notification, the key areas of consideration and decision by the commissioners will be on the imposition of appropriate consent conditions.
15. The Order sets out the process where consents are required from more than one consent authority. This is likely to occur as the flood protection works will require both regional and district/city land use consents. The Order requires the local authorities to act jointly when processing and determining the consent applications. The commissioner will need to consider and decide on regional and TLA consents applied for, and so will also need to be agreed to by the relevant TLA and also be given the appropriate delegation by them.

Options Assessment

16. An independent commissioner (i.e. not a member of the authority) must be used to consider and decide on any consent application made under the Order.
17. Officers have not had an opportunity to identify available and qualified Maori commissioners. They would need to be current MGD certificate holders and would need to be available to undertake this work at short notice and within tight timeframes. They would preferably be familiar with regional and TLA activities and able to determine appropriate conditions of consent for these.

Considerations of tangata whenua

18. The Order provides opportunities for consultation and engagement with tangata whenua (and other parties), including:
 - 18.1. Relevant Māori entities will be invited to comment on each application and any comment must be considered and responded to by the consent authority.
 - 18.2. Conditions of consent require the consent holder to invite each relevant Māori entity to appoint a representative. The relevant Māori entity may appoint a team of cultural monitors to support the representatives and to provide on-site guidance to help manage the impact of the works on culturally sensitive land and cultural values.
 - 18.3. The consent holder must consider guidance provided by the representatives when preparing all plans required by the consent conditions and subsequently report to the Māori entities representatives on how cultural advice has been taken into account.
 - 18.4. The Māori entities representatives and other parties will form a stakeholder advisory group. This group will have the opportunity to comment on the Construction Environmental Management Plan prior to works commencing.

Financial and resource implications

19. The decision on which independent commissioners to use for this process will not impact the HBRC budget as all costs incurred will be charged to the applicant(s) in accordance with the Fees and User Charges Policy.

Decision-making process

20. Council and its committees are required to make every decision in accordance with the requirements of the Local Government Act 2002 (the Act). Staff have assessed the requirements in relation to this item and have concluded:
 - 20.1. The decision does not significantly alter the service provision or affect a strategic asset, nor is it inconsistent with an existing policy or plan.
 - 20.2. The use of the special consultative procedure is not prescribed by legislation.
 - 20.3. The decision is not significant under the criteria contained in Council's adopted

Significance and Engagement Policy.

- 20.4. The persons affected by this decision are HBRC and TLAs in their role as applicant under the Order.
- 20.5. Given the nature and significance of the issue to be considered and decided, Council can exercise its discretion and make a decision without consulting directly with the community or others having an interest in the decision.

Recommendations

That Hawke's Bay Regional Council:

1. Receives and considers the *Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024 – Delegations* staff report.
2. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted Significance and Engagement Policy, and that Council can exercise its discretion and make decisions on this issue without conferring directly with the community or persons likely to have an interest in the decision.
3. In relation to resource consent applications made under the Severe Weather Emergency Recovery (Hawke's Bay Flood Protection Works) Order 2024, agrees to delegate the following duties, functions and powers:
 - 3.1. *in relation to a resource consent for flood protection works:*
 - 3.2. *consideration of an application under section 104 of the RMA*
 - 3.3. *decision to grant a resource consent under section 104A(a) of the RMA:*
 - 3.4. *imposition of conditions on a resource consent*
 - 3.5. *giving of notice of its decision under section 114 of the RMA.*to the independent commissioners listed:
 - 3.6. Janeen Kydd-Smith (Sage Planning)
 - 3.7. Philip McKay (Mitchell Daysh Ltd)
 - 3.8. Alison Francis (Bay Planning Ltd)
 - 3.9. Rob van Voorthuysen (vVEnvironmental Limited).

Authored by:

Paul Barrett
Principal Consents Planner

Approved by:

Katrina Brunton
Group Manager Policy & Regulation

Attachment/s

There are no attachments for this report.

Subject: Summary report from the Clifton to Tangoio Coastal Hazards Strategy Joint Committee

Reason for report

1. This item provides a summary of discussions (attached) that took place at the 14 June 2024 Clifton to Tangoio Coastal Hazards Strategy Joint Committee meeting for the Council's information.

Decision-making process

2. Staff have assessed the requirements of the Local Government Act 2002 in relation to this item and have concluded that, as this report is for information only, the decision-making provisions do not apply.

Recommendations

That Hawke's Bay Regional Council receives and notes the *Summary report from the Clifton to Tangoio Coastal Hazards Strategy Joint Committee*.

Authored by:

Simon Bendall
Coastal Hazards Strategy Project Manager

Approved by:

Chris Dolley
Group Manager Asset Management

Attachment/s

- 1 [📄](#) Clifton to Tangoio Coastal Hazards Strategy Joint Committee - Meeting Summary 14 June 2024



Clifton to Tangoio Coastal Hazards Strategy

Summary Notes of Meeting held 14 June 2024

1. PURPOSE

This briefing note has been prepared to communicate the activity of the Clifton to Tangoio Coastal Hazards Strategy Joint Committee to the Partner Councils, as the Committee progresses with Stage 4 of the Strategy. More information on the Strategy can be found on the project website at www.hbcoast.co.nz.

2. JOINT COMMITTEE MEETING SUMMARY: 14 JUNE 2024

Key points from the Joint Committee meeting held 14 June 2024 are highlighted below. The full minutes of the meeting will be provided to each Partner Council in due course.

Te Awanga erosion issues and pathway considerations

- Members of the Te Awanga community attended the meeting to speak to recent erosion issues that left some properties at risk from water intrusion from high seas. The community has developed a proposal for armouring the coast in this area to increase resilience. The community considered this to be a complementary action alongside the pathway being developed for Te Awanga by the Strategy.
- It was acknowledged that the erosion issues are urgent and serious, and that the Strategy is not the right vehicle to provide a rapid response. The Community continues to work with Hastings District Council in the interim. The Joint Committee requested analysis from TAG to consider Strategy alignment questions and a proposed way forward, to be reported back to the next meeting.

Project Manager's Update

- Noted that confirming a funding model remains a significant challenge as the lead role is now shifting to HBRC to work the model through a Long Term Plan amendment process.
- Updates were provided on the Joint Committee's participation as a submitter in the Government's new inquiry into climate adaptation and Fast-track Approvals Bill.

Communication and Engagement Update

- Early engagement with community to commence in July, however HBRC have requested that this is delayed by 1 month to provide separation with the confirmation of its Long Term Plan. Early engagement will now commence in August 2024.
- Consultation is still planned for September 2024, subject to HBRC decision-making.

Current Coastal Projects Update

- A summary of updates from coastal hazards-related projects being tracked by the Joint Committee was provided in written form, including the Westshore nourishment consent renewal (HBRC), Maraetotara River at Te Awanga (HDC) and Hawke's Bay Climate Action Committee (joint).

Workshop

- The rest of the meeting was held as a workshop to review and provide feedback on a draft Strategy document; this document provides the foundation for the public consultation process in September.

Next Meeting

- The next meeting of the Joint Committee will be held on 5 July 2024.