

Our advice

Prepared for Local Government New Zealand
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Summary of proposed amendments to the Local Government Official Information and Meetings Act 1987, in relation to Land Information Memorandums

Executive Summary

1. This summary document provides relevant background information and a summary of the Local Government Official Information and Meetings Amendment Bill¹ (**Bill**), which proposes changes to the information that must be provided on a Land Information Memorandum (**LIM**), in particular, information concerning natural hazards and climate change impacts.
2. The purpose of this document is to assist Local Government New Zealand's (**LGNZ**) members to understand the impact of the proposed changes, so as to inform feedback on the submission currently being prepared by LGNZ. Submissions on the Bill must be made by **3 February 2022**, and with that date in mind LGNZ intends on sharing a draft submission with members by mid-January.

LIMs: relevant background information

3. LIMs are reports that capture a range of information held by councils in relation to property. They are provided for by section 44A of the Local Government Official Information and Meetings Act 1987 (**LGOIMA**),² and must be provided within 10 working days to anyone that makes an application to a council.
4. LIMs are a key source of information about a given piece of land, and buildings on that land. They are particularly useful for potential purchasers of a property, as it helps them to make informed decisions about a purchase.
5. A LIM is one of the few tools available to Councils to ensure that natural hazard information about a property is documented for would-be purchasers. This information is required by section 44A(2)(a), which reads:
 - (2) The matters which shall be included in that memorandum are—
 - (a) information identifying each (if any) special feature or characteristic of the land concerned, including but not

¹ The Bill: <https://www.legislation.govt.nz/bill/government/2022/0202/latest/d4191971e2.html#LMS748454>

² Section 44A is set out in full in an appendix to this memo.

limited to potential erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation, or likely presence of hazardous contaminants, being a feature or characteristic that—

- (i) is known to the territorial authority; but
- (ii) is not apparent from the district scheme under the Town and Country Planning Act 1977 or a district plan under the Resource Management Act 1991:

6. At present, section 44A(2)(a) only requires that councils provide natural hazard information that is “known” to it. For example, if certain information is not already included in a district plan, a LIM may include a flood hazard map or link to flood mapping tools available elsewhere. Information held by a regional council, or other agencies, will fall into this category.
7. The wording used makes it clear that the requirement is to provide information as to the existence of hazards, but not a risk evaluation or assessment. It is for the purchaser of the LIM to inquire about any particular natural hazard feature or characteristic, and seek to understand the potential risks (e.g. by seeking geotechnical reports and assessments in relation to the property).
8. Any important conditions and assumptions should be included on a LIM and, where relevant, statements to inform the LIM recipient that information may be subject to scientific challenge or is yet to be fully tested. Information relating to future natural hazards must be provided on a LIM if there is a possibility, objectively determined, that such events may occur. This is currently a relatively low threshold.
9. Councils can also include other information concerning the land within a LIM that it considers, at its discretion, to be relevant: section 44A(3), LGOIMA. This provision captures information that a Council is aware of about natural hazards, but that is not a “special feature or characteristic” of the land concerned in terms of section 44A(2)(a).

Legal risk

10. A failure to include mandatory information, or to make an error in presenting the mandatory information required by section 44A can lead to legal liability for a council. The consequence of this has been a conservative approach by a number of Councils to providing information, and a need for legal advice to be sought in relation to the risk of adding information to LIMs, or providing discretionary information.
 11. In terms of their use, LIMs are generally obtained by real estate agents as part of the marketing of a property. If the purchaser did not request the LIM themselves, they are not owed a duty of care by the relevant council.
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A case for change

12. LGNZ prepared a discussion document in February 2021 entitled "[Review of Land Information Memorandums: Achieving best practice](#)", which identified problems with the LIM system and a variety of short and long-term solutions. One of the identified solutions was "Agreement on the core information that is included within LIMs relating to natural hazards". Several other issues were identified, for discussion with members.
 13. The "Agreement on the core information" solution was raised due to the degree of uncertainty as to what natural hazard information should be provided within a LIM. The proposal in the LGNZ discussion document was to agree, nationally, what "discretionary natural hazard information should be included in a LIM". While not adopted in these specific terms, the Bill proposes to amend section 44A to more explicitly guide the natural hazard information that should be provided in a LIM.
 14. The Bill meets one of the actions recommended by Aotearoa New Zealand's first National Adaptation Plan, which was published in August 2022 under the Climate Change Response Act 2002. In particular, action 3.6 was to "Improve natural hazard information on Land Information Memoranda", with the implementation expected by the end of 2023 by way of amendments to the LGOIMA.
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The Local Government Official Information and Meetings Amendment Bill

Outline of key changes made by the Bill

15. The amendments proposed intend on clarifying the natural hazard information required on a LIM. The key objective is to ensure that LIMs provide better, consistent and more easily understood information that will enable people to make more informed decisions when it comes to natural hazard risks, including impacts of climate change.
 16. The amendments achieve this by including a new, standalone, section 44B which addresses "natural hazard information", and:
 - Provides a specific purpose, which is to "*ensure that [LIMs] contain understandable information*" about natural hazards and impacts of climate change that exacerbate natural hazards;
 - Prescribes the information that must be included in a LIM; and
 - States how such information should be provided, and provides for regulations as to the form of such information.
 17. The Bill also:
 - Includes definitions of climate change and natural hazard (which are proposed to be the same as those in the Resource
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Management Act 1991³);

- Creates a new requirement for regional councils to provide territorial authorities with natural hazard information; and
 - Includes a new provision that protects territorial authorities and regional councils against civil or criminal proceedings when providing information in good faith.
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Potential impact of key changes

Scope of natural hazard information

18. The new section 44B is more prescriptive in relation to the information that is to be provided in a LIM. It requires that a LIM include – to the extent that it is known to the territorial authority - information:
- about each hazard or impact that affects the land concerned;
 - about each **potential** hazard or impact, to the extent that the authority is satisfied that there is a **reasonable possibility** that the hazard or impact may affect the land concerned (whether now or in the future);
 - about the cumulative or combined effects of those hazards or impacts on the land concerned.
19. There are several new aspects to these requirements, which may warrant consideration:
- 19.1 The phrase “to the extent that it is known” (which appears in section 44B and 44C – the latter for regional councils) infers that a council will only be expected to include information where it has some prior knowledge of the existence of that information. This is potentially beneficial to councils, as it removes any expectation that new information should be gathered.
- 19.2 The requirement in sections 44B and 44C is to provide information “about” the hazard or impact. This is a departure from the existing requirement to provide information “identifying” special features or characteristics, and could import a new obligation to particularise or explain the nature of the hazard or impact. If interpreted in this way, that would likely result in additional time and cost for councils.
- 19.3 There is now an explicit requirement to address the cumulative / combined effects of actual and potential hazards, which will involve expert evaluation as to whether: a “reasonable possibility” threshold has been reached, and whether any two hazards could combine for specific land. Again, this will likely result in additional cost.

Development of regulations

3 The definition of natural hazard in the new Natural and Built Environment Bill (NBE Bill), that will replace the RMA, will now include "soil that contains concentrations of naturally occurring contaminants that pose an ongoing risk to human health". While the current definition in the RMA does not cover all of the current natural hazard examples for LIMs (which also include the "likely presence of hazardous contaminants"), the proposed definition for inclusion in the NBE Bill will be better aligned.

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20. New sections 44B(3), 44C(2) and 55(1A) provide for the making of regulations by the Minister that will clarify how information is to be presented on a LIM. There is a requirement to consult before regulations are made, which could be made more specific and require consultation with local authorities. This may be a matter raised in the LGNZ submission.

Costs

21. The Government has anticipated that there will be a low-medium cost for local authorities in terms of implementing the changes to their LIMs and associated processes.
22. For all councils, the most obvious increased costs will be amending their internal processes so that they capture the newly prescribed information. This will likely involve compiling a more complete record of all natural hazard information that potentially affects land, and also developing ways of describing that information so that the “about” requirement is satisfied.
23. In relation to section 44B(1)((a)(iii)), it is likely that additional expert resource will be required to make an assessment of whether cumulative / collective effects are relevant for any land. It may be possible to recover these increased costs through increasing LIM fees, however, regional councils will not be able to do so in this way. This point will be addressed in the draft LGNZ submission.

Protection against liability

24. The proposed new limitation on liability does not cover other information that a territorial authority must provide in a LIM, although it does extend to information about other special features and the likely presence of hazardous contaminants. Councils may benefit from a ‘good faith’ protection provision in respect of all information provided in a LIM, which is a matter that could be raised in the LGNZ submission. We note that the Bill does not appear to change or clarify the extent to which liability arises if discretionary information is included in a LIM under section 44A(3).

Other options

25. In preparing the LGNZ submission, we will reflect on the solutions outlined in the February 2021 discussion document, including the potential to:
- 25.1 Reach agreement on the core information required within any LIM (rather than a broad capture of all natural hazard information, as set out in the Bill);
 - 25.2 Develop a centralised information hub, that is administered by central government;
 - 25.3 Provide a detailed regulation that clarifies how information is to be presented; and

25.4 Require that a LIM becomes a mandatory component of the sale and purchase of a property, at least in cases of high risk.

26. In preparing the draft submission we will also consider the interface between the changes being proposed to the RMA and other reform programmes that are underway, against the changes proposed in the Bill.

**Please call or
email to discuss
any aspect of
this advice**

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Appendix

44A Land Information Memorandum

- (1) A person may apply to a territorial authority for the issue, within 10 working days, of a land information memorandum in relation to matters affecting any land in the district of the authority.
- (2) The matters which shall be included in that memorandum are—
 - (a) information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation, or likely presence of hazardous contaminants, being a feature or characteristic that—
 - (i) is known to the territorial authority; but
 - (ii) is not apparent from the district scheme under the Town and Country Planning Act 1977 or a district plan under the Resource Management Act 1991:
 - (b) information on private and public stormwater and sewerage drains as shown in the territorial authority's records:
 - (ba) any information that has been notified to the territorial authority by a drinking-water supplier under section 69ZH of the Health Act 1956:
 - (bb) information on—
 - (i) whether the land is supplied with drinking water and if so, whether the supplier is the owner of the land or a networked supplier:
 - (ii) if the land is supplied with drinking water by a networked supplier, any conditions that are applicable to that supply:
 - (iii) if the land is supplied with water by the owner of the land, any information the territorial authority has about the supply:
 - (c) information relating to any rates owing in relation to the land:
 - (d) information concerning any consent, certificate, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority (whether under the Building Act 1991, the Building Act 2004, or any other Act):
 - (da) the information required to be provided to a territorial authority under section 362T(2) of the Building Act 2004:
 - (e) information concerning any certificate issued by a building certifier pursuant to

the Building Act 1991 or the Building Act 2004:

- (ea) information notified to the territorial authority under section 124 of the Weathertight Homes Resolution Services Act 2006:
 - (f) information relating to the use to which that land may be put and conditions attached to that use:
 - (g) information which, in terms of any other Act, has been notified to the territorial authority by any statutory organisation having the power to classify land or buildings for any purpose:
 - (h) any information which has been notified to the territorial authority by any network utility operator pursuant to the Building Act 1991 or the Building Act 2004.
- (3) In addition to the information provided for under subsection (2), a territorial authority may provide in the memorandum such other information concerning the land as the authority considers, at its discretion, to be relevant.
- (4) An application for a land information memorandum shall be in writing and shall be accompanied by any charge fixed by the territorial authority in relation thereto.
- (5) In the absence of proof to the contrary, a land information memorandum shall be sufficient evidence of the correctness, as at the date of its issue, of any information included in it pursuant to subsection (2).
- (6) Notwithstanding anything to the contrary in this Act, there shall be no grounds for the territorial authority to withhold information specified in terms of subsection (2) or to refuse to provide a land information memorandum where this has been requested.