

# Consultation on the proposed regulations for natural hazard information in LIMs

A submission to the Department of Internal Affairs (DIA)

October 2024





# Taituarā

Local Government Professionals Aotearoa

## **Submission of Taituarā – Local Government Professionals Aotearoa (Taituarā) on: Consultation on the proposed regulations for natural hazard information in LIMs**

This is a submission to the Department of Internal Affairs (DIA) on an exposure draft of regulations (the regulations) for natural hazard information in land information memoranda (LIMs). The submission responds to DIA document: [\*Consultation: Proposals for regulations for natural hazard information in LIMs, September 2024.\*](#)

The regulations (as published in Appendix A to the consultation document) have been drafted with the objective to support local authorities to implement changes to the Local Government Official Information and Meetings Act 1987 (LGOIMA) that are due to come into effect on 1 July 2025. Specifically, the regulations aim to:

- ensure that LIMs share information about natural hazards in a way that's clear, concise, easy to understand, and more consistent across the country, and,
- give councils greater certainty about the changes and reduce their risk of legal liability.

The regulations give direction both for territorial authorities, when sharing natural hazard information in a LIM, and regional councils, when sharing natural hazard information with territorial authorities. The regulations set requirements for:

- any additional information to make natural hazard information more understandable, and,
- how natural hazard information is summarised and presented.

However, a further aim of the regulations is stated in the DIA response to Taituarā (document *Natural Hazard Information in LIMs – Webinar Questions and Answers* (n.d.) refers). That aim is summarised as:

- The aim of the regulations is that the LIM applicant will have enough information so that they can make their own judgment call on how much reliance to place on the information (be it a model, report, or any other form of information on natural hazards).

This stands even where information at a Territorial Authority level may conflict<sup>1</sup> with that provided at a Regional Council level (see page 1, item 1; and page 2, items 2 and 5). It also stands without guarantee of the quality, relevance, validity, suitability<sup>2</sup> and (it is inferred) completeness of the information (see page 1, item 1; and page 2, items 2 and 5).

Taituarā understands that DIA is consulting to ensure that proposed changes will meet the abovementioned objectives and aims.

Taituarā thanks DIA for the opportunity to submit on the consultation on the proposed regulations for natural hazard information in LIMs, including an exposure draft of regulations for natural hazard information in LIMs. The submission is due by the 28<sup>th</sup> of October 2024, to: [communityresilience@dia.govt.nz](mailto:communityresilience@dia.govt.nz).

Feedback offered in this consultation document is given in good faith and does not constitute legal advice.

In consideration of the Privacy Act 2020, Taituarā represents a collective of members in their professional capacity only. No specific member, nor their details, is included in the submission. No individual member is given unequal weight or privilege in relation to consultation. No consent is given by Taituarā for the naming of any member, nor any information that makes any individual member identifiable in relation to the submission, in any information request response, or any public forum whatsoever.

### **What is Taituarā?**

Taituarā<sup>3</sup> is an incorporated society of approximately 1000 members drawn from the local government sector (the sector). Our members include chief executives, senior managers, and council officials with significant policy or operational responsibilities. Taituarā is an apolitical organisation, with a wealth of knowledge about the sector and the technical, practical, and managerial implications of local government legislation and regulations.

### **The purpose of Taituarā is: To promote and support professional management for all staff working in local government.**

We are committed to the ongoing development of local government capability to enhance service delivery to local communities throughout Aotearoa New Zealand. Our focus is on providing professional leadership development, and the promotion of innovation and excellence in regulatory and management practice.

We have an interest in all aspects of the management of local authorities from the provision of advice to the planning and delivery of services, infrastructure and climate resilience and mitigation. Providing hazard information in LIMs is part of the sector's purpose and their

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<sup>1</sup> Noting here that information may conflict due to different reported outcomes by expert consultancies, the level of granularity of a model or map, or due to the different natural hazard assessment/identification programmes/systems (which could be standardised).

<sup>2</sup> For example, is the information at the right granularity, such that it can be applied to a specific parcel of land/property. In considering a 'reasonable' certainty of impact, how material is that impact?

<sup>3</sup> For additional information see the Taituarā website: <https://taituara.org.nz/>. Our [Annual Report 2024](#) provides further detail.

broader role in providing for and supporting the sustainable environmental, economic, and social wellbeing of their communities. Taituarā support the sector in achieving their purpose.

## A. Feedback on the wording of the exposure draft

This response document provides feedback from Taituarā on the *Exposure draft of the regulations*, provided as Appendix A to the *Consultation: Proposals for regulations for natural hazard information in LIMs* document. This exposure draft was provided by DIA to show what the regulations “will” look like “when” they come into effect.

DIA have requested feedback on the wording of the exposure draft and have posed some questions, including on specific regulations listed within the consultation document as questions 1 to 15. Taituarā presents the section, the question posed and responds to each question in chronological order.

In addition, Taituarā submits additional information and recommendations outside of the questions asked, and in line with prior consultation, analysis, and engagement with DIA and with the sector. These are included as items noted as “further” within sections, and in responses 16 to 19 in the submission.

### **1. Will the regulations ensure that LIMs provide property buyers with natural hazard information that is clear, concise, easy to understand and presented in a way that is nationally more consistent?**

The regulations do not ensure that LIMs provide property buyers with natural hazard information that is clear, concise, easy to understand and presented in a way that is nationally more consistent. The regulations should be more prescriptively drafted. We raise the following areas of concern:

- a. There is insufficient regulatory emphasis on the quality, relevance, validity, suitability/specificity, and completeness of information on natural hazards to be included on a LIM. The regulations should define a threshold for quality, relevance, validity, suitability/specificity, and completeness of the information such that it can be relied upon by a property buyer. Guidance<sup>4</sup> should support the acquisition of and/or assessment against a regulatory threshold but cannot overrule the regulations.
- b. The regulatory emphasis on information that is “known” is a required but insufficient threshold. The broad reference to the LGOIMA 1987 is insufficient, as clause 44A of that Act does not define the threshold for what is “known” and differs by exception (44A(2)(a)(ii)) to the draft regulations.

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<sup>4</sup> We will work with DIA on the development of any administrative (non-statutory) guidance that supports the sector to operationalise changes. We can also provide feedback on any statutory guidance developed by the regulator that is subject to enforceability.

- c. The Case Law emphasis on *Weir vs Kapiti Coast District Council* (the case law) is correct in form—the Shand Report was known to Council. However, the reference to the case law is insufficient in substance as it does not directly support the sector in determining a threshold for the quality, relevance, validity, suitability/specificity, and completeness of information related to natural hazards.
- d. The case law accepted that the Shand report was “known” in that instance and relied upon inclusion based on the apparent criteria: a reasonable possibility of erosion. However, the judgement was not finalised due to concerns about the way in which “the Shand lines” were portrayed.
- e. An expert panel was later convened and found the “Shand lines” were not sufficiently robust to warrant their inclusion on a District Plan, and wording on the LIM was reduced to “precautionary wording”. Nevertheless, it was then decided that including the Shand lines on a LIM report met the requirements of the Act.
- f. We caution that a lack of clarity regarding what constitutes **any known information** leaves the door open to a quality of information that is not relevant, valid, suitable/specific, and complete that could negatively impact the value, use, financing, and insurability of properties. Sector feedback provides a further practical example:

*“In our view, there should be a clearly defined threshold. For instance, a draft report currently under review should not qualify, whereas a report presented at a Council meeting (even if staff does not fully endorse it) should/could qualify.”*

Sector feedback, October 2024

- g. Allowing a lower quality of information to be added to LIMs may also result in gaming of the LIM system to benefit buyers, further recourse to legal action by property owners, a diminution of trust in LIM reports, and more broadly, in the local government sector. Regulations must ensure that the purpose of the information being placed against a specific parcel of land/property accords with the intention of the primary Act and the Regulations.
- h. We note the importance of current information and highlight that the nature of natural hazard information is that it will change across time—therefore LIMs will be ‘living documents’ and subject to constant assessment and change.
- i. Taituarā supports positive relationships between the sector and the constituents they serve and a LIM system that is reliable and trustworthy.

## 1. Recommendations

- a. **That any known information** is clearly defined in the Regulations and must meet a regulatory threshold. All “known information” should be provided by a relevant expert or experts using appropriate methods of discovery (valid and substantiated), be relevant to the natural hazards specific to a clearly specified land or water area, suitable for application to a particular parcel of land/property, be accurately dated at completion and current, and be complete (neither in draft, nor in part). It should be made available via hyperlink in full to any interested party to the property (in a form that is published, that is, not allowing the encumbrance of hearsay) to support the property buyer (or developer) to conduct their own thorough assessment and, where desired, further investigation of the validity of the information and its source. Such information would meet the purpose of the primary Act.
- b. That administrative guidance be developed that supports the sector in assessing any known information to meet the regulatory threshold. Such guidance should provide for the assessment of natural hazards as an ongoing process, and not a single point in time for LIMs.
- c. We agree and recommend that templates and best practice examples be developed with the sector that support the consistent quality of natural hazards information applied to LIMs.
- d. That we are involved in the development of administrative guidance, templates and best practice examples.

### Further:

- j. The sector raised the issue previously (*Natural Hazard Information in LIMs – Webinar Questions and Answers*, Item 5, refers) of information held in Territorial Authorities that is inconsistent with, or that contradicts that held by Regional Councils. DIA’s response was (summarised): “Both sets of information will need to be included in the LIM.”
- k. This response is insufficient to meet the stated aim that natural hazard information be provided “that’s clear, concise, easy to understand, and more consistent”.
- l. To some degree, it is the course of ordinary business that differing viewpoints will occur in relation to a natural hazard issue, particularly where the degree of uncertainty increases—such as climate change impacts on natural hazards across time.

- m. While a summary can outline this in a LIM, summarising inconsistency does not resolve it.
- n. The Taituarā recommendations in response 1, above, will assist by supporting the quality of information on LIMs. Taituarā also offers the following recommendations:

### **1. Recommendations, continued ...**

- e. That the regulations include **materiality** as a condition for the inclusion of inconsistent information to support Territorial Authorities and Regional Councils. That being, if the information is not materially different, then only the information from the Regional Council is included.
- f. That where information is materially different, it should only be included where it is subject to greater regulatory rigor (per our recommendation 1a).
- g. That DIA put in place a robust, efficient and effective process to assess conflicting information held by Territorial Authorities and Regional Councils and provide adjudication toward resolution of such conflicting information within 12 months of the conflict becoming known. This will provide clarity to the sector, property owners, buyers and developers, through a formal process of improvement.
- h. We note that the condition of materiality arises in the Local Government Act 2002 though not specific to the context of natural hazards. We recommend a definition be included in the regulations, **alongside** the inclusion of the conditions of materiality in the regulations. This must include materiality, more broadly, in terms of differences in information and in impact.

### **2. Do the regulations provide certainty to local authorities on the natural hazard information they need to share?**

The regulations do not provide certainty to local authorities on the natural hazard information they need to share. We note the concerns and recommendations outlined in answer 1, above, and add:

- a. The reliance on the term “in good faith” in the Local Government Official Information and Meetings Amendment Act 2023 (44D) to avert legal proceedings being filed against local government, yet the term is not defined for this context.
- b. Further, we address the matter of indemnification, which is not addressed in the regulations.

## **2. Recommendations**

- a. That the term “in good faith” be defined for the regulations.
- b. That the regulations include an indemnification clause. We refer you to the Local Government Act 2002 clauses 43 and 46(4)(d) as examples.
- c. That there be inclusion of wording to the effect that the local authority is considered to have acted in good faith unless otherwise shown in legal proceedings.
- d. That administrative guidance be developed for the sector on the process of good faith actions (the “how to” act in good faith), how this links to guidance on quality of known information and technical reports, as well as the importance of a high standard of record-keeping (evidence of good faith) in relation to the same.
- e. That Taituarā is involved in the development of administrative guidance on information sharing protocols between sector members, acting in good faith, the process of record-keeping, and associated assessments.

## **3. Are the regulations efficient and technically feasible for local authorities to implement and administer?**

The regulations are not yet efficient and technically feasible for local authorities to implement and administer. We refer to the feedback in this document, where we direct you to specific areas for clarification, and make recommendations. The different contexts and needs of local authorities will be apparent in their submissions and could be construed as points of difference in opinion on specific regulations—whereas these signal points where clarification is required due to differences in implementation contexts. The regulations must work for all local authorities, supporting system-wide coherence.

## **4. Will the regulations work for expected developments in natural hazard information and meet future LIM users’ needs?**

The regulations will not work for expected developments in natural hazard information and will not meet future LIM users’ needs. We have strong concerns in relation to the quality of information informing the analysis of both current and future impacts of climate change. In part, these concerns are covered in our responses in 1, 2 and 3 above, more specifically:

- a. DIA’s response to the sector (*Natural Hazard Information in LIMs – Webinar Questions and Answers* (n.d.), Item 2, refers) states: “The impacts of climate change that exacerbate natural hazards must also be covered.”

- b. You clarify, in the above response (Item 17 refers) to the sector that “Councils will need to include [known] information on climate change impacts like sea level rise that “will” exacerbate natural hazards. Further, that this extends to information on “cumulative or combined effects”.
- c. The sector raised the issue of the levels of uncertainty local authorities are dealing with in relation to climate change impacts. The response from DIA (*Natural Hazard Information in LIMs – Webinar Questions and Answers* (n.d.), Item 25, refers) states: “We’d be keen to hear in your submission if you think there are ways that regulations or guidance could address the issue of increasing risks and levels of uncertainty.”
- d. We draw your attention to the way in which risk and uncertainty is managed in the Climate Change Response Act 2002 (CCRA 2002) through careful delineation of the discovery and information requirements the Climate Change Commission must meet in their work to assess the risk and impacts of climate change.
- e. As noted above, information on LIMs may impact the value, use, financing, and insurability of properties. We advocate for the same standard of care in relation to the quality of information included on LIMs in relation to climate change and its impacts, as is required by the CCRA 2002. We see this as a matter for the regulations and not an element of guidance, so lower quality information is not added to LIMs.
- f. We contend that enabling engagement between the Climate Change Commission and the sector will capitalise, meaningfully, on the excellent work the Commission has undertaken to date to understand climate impacts and Aotearoa New Zealand’s significant investment in climate science.
- g. In particular, the sector will require assistance in interpreting national information, and regional information, to each parcel of land/property against which a LIM is developed. The effects of climate change are very complex and constantly changing (as is the science). We question whether each local authority has enough verified information and understanding to provide information on a LIM **that is meaningful at a property level.**

#### **4. Recommendations – with urgency**

- a. That DIA run a strategic session on the climate change aspects of the amendments to legislation and the regulations, that addresses the issues of uncertainty, what constitutes “known” information, risk, risk assessment, impacts, and materiality on natural hazards. This should include relevant ministries, the National Institute of Atmospheric Research (NIWA) climate-related expertise, sector representation, and expert legal guidance.
- b. The strategic session should be guided by the Climate Change Commission and seek to align the quality of climate change-related information on LIM reports to that required of the Commission. We note that information produced by the Commission and NIWA should be known to Councils, and that the Climate Change Commission and NIWA, amongst others, provide thought and discovery leadership on climate change risk, assessment, and impacts and are authoritative sources on the same.
- c. That the same threshold of information and discovery requirements required of the Commission under the CCRA 2002, set the regulatory threshold for information for inclusion on LIMs.
- d. That a workstream of awareness raising—supporting the sector—on the legislative requirements and management of climate change related information be implemented by DIA, supported by the Climate Change Commission and NIWA.
- e. That administrative guidance and educational materials be developed to assist and enable the sector in understanding uncertainty, the quality and the materiality of information and impacts, and how to communicate complex and uncertain information in plain language.
- f. Taituarā recommends that we are involved in the development of this workstream, administrative guidance, and educational material.

## **B. Guidance and other support for local authorities**

*Consultation document: DIA is working with Taituarā to help develop guidance for local authorities to implement the changes to the LGOIMA and the regulations. It is expected that the guidance will provide best practice examples and templates for sharing natural hazard information in LIMs. The guidance could also potentially clarify key points for local authorities when making decisions on sharing natural hazard information. For example, when information is known to a local authority and what level of confidence is needed before including it in LIMs. DIA have posed the following, as question 5, to which Taituarā responds.*

**5. We would like to hear from [Taituarā] on what specific areas the guidance should cover. We also welcome your thoughts on what other support local authorities will need.**

Taituarā have made recommendations, throughout this response, for on areas of administrative guidance, templates, best practice examples and educational materials. We have also noted where strategic sessions are, in our opinion, required and where workstreams should be initiated. Local authorities will require additional resourcing for the greater complexity and heightened public interest in the LIMs process. The additional steps to provide a LIM will encompass the following:

- Review and decisions on regional modelling
- Review and decisions on national hazard mapping known to councils
- Decisions on what is known information and what will be included
- Decisions on conflicting natural hazard information
- Writing plain English summaries
- Engagement with landowner prior to final LIM
- Resolution of opposing council/landowner positions
- Printing and postage of large documents in instances where landowners do not have access to electronic documentation
- Review of natural hazard information on LIMs and removal of information where situations resolve, e.g., red and yellow placards following a weather event

We support these two broad areas of assistance for local authorities as they adjust to these changes. In doing so, we signal concern within the sector regarding the 1 July 2025 timeline.

**5. Recommendations**

- a. That a Local Government Guidance and Resourcing workstream be initiated by DIA that includes participation by Taituarā. Under this workstream, the focus of administrative guidance should be set, the content of that guidance established, and a programme of work initiated to support local government to meet the required changes. The development of the programme of work should be consulted with the sector, and Taituarā can assist with that consultation.
- b. That the programme of work should consider council timeframes, costs, and resourcing required, and there be central government support of the sector to achieve efficient and effective change. This should allow for a budget and bid process should the cost of change prove prohibitive for any Territorial Authority or Regional Council—thus ensuring change is manageable and meets all requirements of the primary Act and Regulations. Noting the concerns regarding the 1 July 2025 timeframe, any support should be sufficient to help local government to achieve *within* the required timeframe. Taituarā can assist with the coordination of bids and/or the allocation of any fund where this does not create a conflict with our primary purpose.

## C. Regulations for territorial authorities when providing natural hazard information in LIMs

### ***i. Limit on obligations on territorial authority (Regulation 6)***

*Consultation document: This regulation aims to address concerns from councils that they would need to provide detailed, property-specific analysis for each LIM under the amendments to the LGOIMA. It confirms that territorial authorities are not required to provide property-specific risk assessments or other further analysis for each LIM. This is intended to confirm the purpose of the LIM as an information disclosure tool. The property buyer is still expected to undertake their own risk assessments based on information in the LIM.*

#### **6. Do you consider that the regulation provides sufficient clarity to territorial authorities?**

##### **Taituarā response:**

Yes, we consider that the regulation provides sufficient clarity to territorial authorities.

### ***ii. Content of natural hazard section (Regulation 7)***

*Consultation document: The regulations prescribe broad headings that territorial authorities must use in the natural hazard section in LIMs. The headings are intended to cover each class of the most common natural hazards with a catch-all heading for any other natural hazards. Territorial authorities can add sub-headings for more specific hazards e.g. Liquefaction under Earthquakes. This will ensure that LIMs have greater national consistency in how they set out natural hazard information. Territorial authorities will also need to note if they have no known information for each class of natural hazard information. This will make it clear to the reader if there is known information or not for a specific natural hazard.*

#### **7. Do you consider that the proposed headings are the right ones? Are there any missing?**

##### **Taituarā response:**

We note an error on the consultation document. The *Content of natural hazard section* is Regulation 8 of the draft regulations on the exposure draft. We respond to both Regulation 7 and Regulation 8, as follows:

##### Regulation 7

We have raised concerns aligned with Regulation 7 in relation to quality, relevance, validity, suitability/specificity, and completeness of information to be included in LIMs. We refer to responses 1, 2, 3 and 4 above and their recommendations.

## Regulation 8

We note the alignment of headings to the Resource Management Act 1991, and we are comfortable with that alignment. There is some clarification required as to **liquefaction** as a natural hazard, and thresholds/materiality are not clear. For example, for earthquakes, wind and wildfires - what are the thresholds for each parcel of land/property where there is a reasonable certainty of impact, and what is the threshold for materiality of the impact?

- a. We note that Regulation 8, as provided, does not mention climate change and its impacts. Nor does it include cross reference to climate change and its impacts within the primary legislation.
- b. We refer to our recommendations under question 4. There is urgent work required on climate change information and impacts, including improved understanding regarding the intersects with the CCRA 2002 and other work currently underway at the legislative and regulatory levels. We consider this work to be substantive, requisite, but outside of the scope of the current consultation document – more information and engagement is needed.
- c. The DIA response to the sector (Natural Hazards Information in LIMs – Webinar Questions and Answers, Item 31, refers) states: "... the regulations are intended to be broad enough to work for any data and information that may be **produced by** councils as a result of this legislation."
- d. We contend that no such limitation to data and information **produced by** councils is apparent in the draft regulations—rather, the focus is on any known information to/by councils. This is a material difference, and we seek regulatory clarity.

### ***i. Minimum requirements in relation to a technical report (Regulation 9)***

*Consultation document: This regulation sets the minimum requirements for describing each technical report that needs to be included in the LIM. This will make clear for territorial authorities the base level of information that they need to include for technical reports. It will also help ensure that territorial authorities take a more consistent approach to sharing natural hazard information in LIMs. It will give the reader an easy to find, all-in-one-place list of technical reports on natural hazard risks that relate to a property in a LIM, with consistent key basic details for each of those reports.*

## **8. Are these the right minimum details that councils should include in LIMs for each technical report?**

### **Taituarā response:**

We support the minimum requirements for describing each technical report as a starting point, with the following additions:

- a. Sector feedback tells us that a concise definition is also required (either in the Interpretation section or within the text of Regulation 9) for a “technical report” that is inclusive of all forms of technical report, this may include maps or may—in addition—include a clear definition of what is meant by “maps” under the Regulations<sup>5</sup>.
- b. Once there is a clear definition and clearer threshold against which a technical report is assessed and accepted (i.e., the technical report achieves the threshold in relation to quality, relevance, validity, suitability/specificity, and completeness) the sector requires clarity about **who** makes that decision, and **who** holds the responsibility for informing the property owner of impending changes to their LIM.
- c. We support that grouping information on natural hazards within each LIM is likely to be helpful for those reviewing LIM reports.
- d. More broadly, we refer to wider issues in relation to quality, relevance, validity, suitability/specificity, and completeness of information to be included in LIMs. We refer to responses 1, 2, 3, 4, and 7 above and their recommendations.

#### **ii. Maps (Regulation 10)**

*Consultation document: This regulation requires territorial authorities to include in LIMs either:*

- *known maps of natural hazards affecting a property or*
- *provide a link to an online natural hazard mapping portal/s with the known maps of natural hazards affecting a property.*

*Maps are a visual tool that make clear for the reader if a property is affected by a natural hazard. Most regional councils, and some territorial authorities, have developed interactive online portals with natural hazards mapping that are searchable by property address. By making clear that sharing a link will meet requirements, the regulations will promote the use of these portals in LIMs where available.*

### **9. Does this regulation provide sufficient clarity for territorial authorities on how to share natural hazard maps in LIMs?**

#### **Taituarā response:**

No, this regulation does not provide sufficient clarity for territorial authorities on how to share natural hazard maps in LIMs.

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<sup>5</sup> We note, here, that maps are interpreted as a ‘document’ in LGOIMA 1987 2(1)(d) please ensure alignment across instruments.

- a. We raise the issue of the use of the words any maps that are known to the territorial authority without reference to the quality, relevance, validity, suitability/specificity, and completeness of such maps.
- b. This issue is exacerbated in 10(a)(ii) which states: "show the natural hazards that affect or have the potential to affect the land concerned".
- c. Without a regulatory threshold on the quality, relevance, validity, suitability/specificity, and completeness of such maps we foreshadow the potential for gaming of the LIM system by buyers, recourse to legal action by property owners, and in a diminution of trust in LIM reports, and more broadly, in the sector.

## **9. Recommendations**

- a. That there be minimum requirements (and definition) of both "technical report" in relation to any map to be included on a LIM report where that map may depict or describe a natural hazard currently affecting land.
- b. Within those minimum requirements we recommend specific detail on what constitutes a "potential effect", and the quantum of proof required to support the validity of that potential effect. This is also an issue of materiality.

### **iii. Plain language summaries (Regulation 11)**

*Consultation document: This regulation requires the natural hazard section to include a plain language summary of each new piece of known natural hazard information. Plain language is defined as appropriate to the intended audience and clear, concise and well-organised. This requirement only applies to new information that is produced after the date that the regulations come into effect. This is due to the high cost for local authorities to retrospectively create the summaries for existing information. In the future, we anticipate local authorities will request summaries for natural hazard information from technical consultants that can be included in LIMs when commissioning this information.*

## **10. Should this requirement apply to all pieces of natural hazard information or only to technical reports?**

### **Taituarā response:**

We support summarising all information, however:

- a. We have raised concerns in relation to quality, relevance, validity, suitability/specificity, and completeness of information (including maps) to be included in LIMs. We refer to responses 1, 2, 3, 4, 7, 8, and 9 above and their recommendations.

- b. We direct attention to the importance of the **source** of **any known** information, and the improbability that non-expert sources of information will provide summaries.
- c. While we support summarising all information, the issue of the quality, relevance, validity, suitability/specificity, and completeness of information (including maps) to be included in LIMs must be resolved.
- d. Further, simplifying technical information can remove critical context, this may include reducing the specificity of information (or over-stating it) in relation to a particular parcel of land/property. As covered elsewhere in this submission, training is required to assist relevant sector personnel to summarise technical information accurately.
- e. Further, all natural hazard data and information that meets the threshold should be made available with the LIM report, in full, through hyperlinks to, or hard copy of, that information.
- f. Regulation 11(2) states: "The obligation in subclause (1) does not apply in relation to a piece of natural hazard information that was created before the date on which these regulations come into force." This covers the plain language summary, but not the substance of any known information. This may create dissonance for buyers when older information is treated inconsistently on a LIM (although we agree with the resourcing constraint reasons behind 11(2)). This issue will resolve over time as new information supersedes existing data.

## **10. Recommendations**

- a. We note the definition used for plain language in Regulation 11 is drawn from the Plain Language Act 2022. While local government entities are not listed in the Schedules to that Act, we recommend that administrative guidance be developed for the sector which draws from that already available in the public sector to ensure consistency in approach, and to capitalise on prior work and learnings from the implementation of that Act.
- b. The use of plain language should be shown in any LIM templates and exemplars created. Training should be provided on the use of plain language.
- c. Administrative guidance should be provided to the sector on how they should include information, including the management of complex and/or conflicting information.
- d. That Taituarā is involved in the development of this guidance so that we may consult and ensure that the guidance can be practically applied, such the condition "in good faith" is fully met, and can be shown to have been met.

#### **iv. District plan information (Regulation 12)**

*Consultation document: This regulation requires the natural hazard section to include natural hazard information from the district plan:*

- *maps of natural hazards affecting the property in the district plan or a link to an online portal with the district plan maps and*
- *any planning rules that affect the property relating to natural hazards.*

*The changes to the LGOIMA introduced a new requirement to include natural hazard information such as maps from the district plan. Although this is a new requirement, some territorial authorities already include this information in LIMs. In addition, the LIM already needs to include any information relating to the use to which that land may be put, and conditions attached to that use (section 44A(2)(f)). This regulation is intended to ensure that any rules in district plans related to natural hazards are included in the natural hazard section of the LIM.*

#### **11. Does this regulation sufficiently clarify for territorial authorities what district plan information related to natural hazards should be included in LIMs?**

##### **Taituarā response:**

Yes, regulation 12 does sufficiently clarify for territorial authorities what district plan information related to natural hazards should be included in LIMs. We note here that the planning process leads to a higher quality of information available for LIMs.

#### **v. Notices under the Building Act 2004 (Regulation 13)**

*Consultation document: This regulation will require the natural hazard section to include Building Act notices related to natural hazards:*

- *any notice under section 73 that a building consent has been granted on land subject to natural hazard(s)*
- *post-event assessments under section 133BQ (known as a rapid building assessments) and*
- *signs and notices under section 133BT (including those commonly known as red or yellow "stickers").*

*The LGOIMA already requires information on Building Act notices (under section 44A(2)(d)) in LIMs, but this regulation ensures that notices related to natural hazards are included alongside other natural hazard information in LIMs.*

**12. Does this regulation sufficiently clarify how territorial authorities should include information on Building Act notices related to natural hazards in LIMs?**

**Taituarā response:**

The regulation provides a good starting point for territorial authorities. However, the sector requests clarification in relation to seismic activity. With an awareness of the considerable seismic modelling that is undertaken, and the emerging nature of the science, sector feedback directs us to practicalities that must be considered:

*“Given that New Zealand is a seismically active country, does that then require Councils to always list the effects of a strong earthquake (e.g. AF8) on a **potentially** affected property?”*

Sector feedback, October 2024

**12. Recommendation**

- a. That the regulations be clearer in relation to include seismic modelling information, the threshold, and how to assess how information applies to a specific parcel of land/property.

***vi. Natural hazard information provided by a regional council (Regulation 14)***

*Consultation document: This regulation ensures that when a territorial authority shares natural hazard information provided by a regional council in LIMs, it must not change the wording of that information provided by the regional council. The LIM must also note where the information came from and include information on how to access the regional council information via an online portal if that is available.*

**13. Does this regulation sufficiently clarify the responsibilities of territorial authorities and regional councils in the LIM system?**

**Taituarā response:**

Yes, we consider that the regulation provides sufficient clarity to territorial authorities, and we encourage the provision of further guidance, templates, and standards that support consistent application of the information to LIMs and have made recommendations

accordingly. We note that in any instance fuller/more complete LIM information should be shared via hyperlinks.

## D. Regulations for regional councils when sharing natural hazard information with territorial authorities

### ***i. Limit on obligations for regional councils (Regulation 15)***

*Consultation document: Similar to Regulation 6 for territorial authorities, this regulation confirms that the regional council is not required to provide property-specific risk assessments or other further analysis when sharing natural hazard information with territorial authorities. In addition, this regulation confirms that regional councils are not required to provide natural hazard information for each LIM application. Processing LIM applications remains the responsibility of the territorial authority. Regional councils only need to share natural hazard information when it is known to the council, as soon as is reasonably practicable.*

#### **14. Does this regulation sufficiently clarify the responsibilities of regional councils in the LIM system?**

##### **Taituarā response:**

Yes, we consider that the regulation provides sufficient clarity to regional councils.

### ***ii. Regional councils must ensure that the natural hazard information they provide meets the requirements (Regulation 16)***

*Consultation document: This regulation requires a regional council to provide natural hazard information in a manner that helps the territorial authority to comply with the LGOIMA and the regulations. This means that a regional council will need to provide:*

- *a description for each technical report to meet Regulation 9 and*
- *a summary for each piece of natural hazard information (from when the regulations take effect) to meet Regulation 11.*

*This will ensure that regional councils provide information to territorial authorities in a way that is ready to include in LIMs. The regional council, as the owner of the information, will most often be best placed to meet these requirements. This regulation is intended to make clear that the regional council is responsible for ensuring that information it provides meets any requirements under the LGOIMA or these regulations. This regulation will also give greater certainty and promote greater consistency on how regional councils share information with territorial authorities.*

**15. Will this regulation be sufficient to ensure territorial authorities are able to share regional council information in LIMs in a way that complies with the LGOIMA and the regulations?**

**Taituarā response:**

No, the regulation is not sufficient to ensure territorial authorities are able to share regional council information in LIMs in a way that complies with the LGOIMA and the regulations. Specifically:

- a. Taituarā has raised concerns in relation to quality, relevance, validity, specificity, and completeness of information (including maps) to be included in LIMs. We refer to responses to questions 1, 2, 4, 7, 8, 9, 10 and 12 above and their recommendations.
- b. We note that Regulation 16 limits the requirements to “technical reports”. However, we also note that in question 10 of the consultation document Taituarā has been asked: “Should this requirement apply to all pieces of natural hazard information or only to technical reports?” We refer to our response to question 10, and subsequent recommendations, in this regard.
- c. If limited to technical reports, and when item ‘a.’ is addressed, we agree that the regulation is sufficient.

## E. Other matters arising from the consultation at this stage

**16. Providing for a process for property owners, interested parties (including local government entities), and relevant experts to request to remove or correct natural hazard information on LIMs.**

- a. In the sector response to the consultation detailed in *Natural Hazard Information in LIMs – Webinar Questions and Answers*, Item 23, the question was asked: “Is there any intention to establish a process whereby an affected property owner can request that the LIM notation is reviewed or removed?” The answer received was: “This is outside of the scope of what can be included in the regulations but is something that could be considered in the guidance.”
- b. Taituarā does not support that approach. Where the regulations do not provide for such a process, and where the requirement is that all known information be included by local authorities, guidance cannot “override” the regulations and allow information to be removed by the property owner.
- c. Further, the legal recourse for the property owner is reduced in the regulations (though not entirely removed). We support effective review, dispute resolution,

complaint, and removal processes, rather than the creation of a litigious environment. Sector feedback supports the need for clarity around this issue, and provides a further practical example signalling other unanticipated consequences:

*“Following the weather events of last year, red and yellow placards have caused significant dissent. Unless there are clear rules made around how long the notification of a placard being issued should remain on a LIM, we are likely to see the building emergency management system undermined at the next event, i.e., homeowners refusing access to any assessment as they see placards as devaluing their property for the long term even though [the placard’s] purpose is **immediate** safety of occupation.”*

Sector feedback, October 2024

- d. This issue of having no process to address changes to LIMs raises the spectre of fairness to property owners, and we would like this addressed.
- e. Similarly, there is an issue with how, when and by whom property owners will be advised of changes to their LIM.

## **16. Recommendations**

- a. Taituarā recommends a regulation that covers the removal of information that is shown to be out of date, inaccurate, or that is otherwise shown to be inappropriately applied.
- b. Such removal should be open to request by any party with an interest in the property, including local authorities, financing institutions, or any expert with new relevant, valid, suitable/specific, and complete information that shows that the information contained in the LIM is materially insufficient or incorrect and may, therefore, be misleading.
- c. The same quality of information would be required, no matter who requests the removal of any information, to support the removal.
- d. In which case, the new information would be added, and a notation made on the LIM that information has been removed as it was shown to be materially insufficient or incorrect. The summary of the new information would explain the need to retire the insufficient or incorrect information.
- e. Property owners should, at minimum, be advised in advance of new natural hazard information being added to their LIM and asked for feedback or updated information. This form of engagement ensures that property owners are apprised and can provide valid information for inclusion on the LIM that may not be known to the local authority. We consider this reasonable.

## 17. Impact on insurability

- a. In the sector response to the consultation detailed in *Natural Hazard Information in LIMs – Webinar Questions and Answers*, Item 42, the question was asked: “Will there be nationally-driven engagement or education of the insurance sector around natural hazard disclosure on LIMs and what the effect of these regulations may mean in relation to customer perceptions about insurance premiums increasing?”
- b. DIA’s answer was: “We have regularly engaged with the insurance sector on the changes and will continue to do so. We are considering options to promote the changes to LIMs once the regulations have been approved and before they come into effect.”
- c. Taituarā considers that response insufficient as this is an important issue with significant potential impacts. We note, with concern, the Insurance Council Guidance: *The implications of section 74 notices on your property title*. We seek clarity on the potential effects of the current legislation and regulations on insurability and consultation on options to reduce harm.

### 17. Recommendations – with urgency

- a. That there be a formal report back by DIA to Taituarā/the sector on discussions with insurers (including public insurance) on the likelihood of natural hazards information impacting the insurability or the cost to insure properties, where LIMs have natural hazards information added to them through the new regulations so we may consult with our members.
- b. That DIA consider other regulatory protections for property owners. This may include regulatory control of insurers based on LIM information current at the time of the purchase of a property, or the provision of public insurance where the private sector assesses the risk as prohibitive. Failure to do this could claw the estimated future impacts of potential natural hazards back into today’s property market, negatively impacting the economic and social wellbeing of our sector and their communities, even in the absence of an actualised event.
- c. That DIA coordinate information sharing forums with insurers where impacts on property owners and the sector can be discussed. These forums should include Taituarā and other representation from the sector.
- d. That DIA coordinate strategic engagement with the sector to support the interests of property owners as the transition to new legislation and regulations occurs.

## 18. Climate change-related information produced by/commissioned by central government entities

- a. In the sector response detailed in *Natural Hazard Information in LIMs – Webinar Questions and Answers* (Item 19 refers), the sector raised the issue of climate and hazard related information—at a national level—produced by central government entities. We have noted herein the substantive work of the Climate Change Commission, and further note (as example) the work programmes carried out within the Ministry of Business Innovation and Employment (MBIE). We add the valuable work done by the National Institute of Atmospheric Research (NIWA), and that detailed by the Ministry for the Environment (MfE)<sup>6</sup>.
- b. DIA’s response states: “If the territorial authority knows that information and if it is a natural hazard/potential natural hazard that affects the land concerned, they will need to include that information. Territorial authorities do not need to go and search for that information when preparing a LIM.”
- c. We signal risk in this approach, especially in relation to any such authoritative source information or modelling produced or commissioned by central government entities.
- d. We encourage clarity around the requirements for Territorial Authorities to include property related information produced by central government or other national authoritative sources (and for Regional Councils in what, of this information, they must provide to Territorial Authorities). Sector feedback provides the following practical example:

*“An example of this is [GNS Active Fault Lines/ Fault Avoidance Zones](#). It is not a report held by Council, but it is site specific and at face value has a robust evidential basis. It was brought to my attention by our civil defence team so technically Council officers know about it and are using that info. Similar situation would apply to an increasing number of central govt reports.”*

Sector feedback, October 2024

- e. Taituarā, and the sector, value the work and investment made by central government in helping us all to understand climate change and natural hazard risks and impacts. This work, coming from such authoritative sources, can meaningfully support us—as a joined-up layer of government at the implementation level—to better prepare our communities.
- f. We would wish to fully capitalise on such knowledge. We would also wish to allay any perception by any person whatsoever that we are ignorant of, or ignoring, such valuable resources.

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<sup>6</sup> See, for example, NIWA: <https://niwa.co.nz/climate-and-weather/climate-change>. MfE: <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/>.

- g. The importance of this information is such that we encourage an open data approach, co-ordinated by DIA, that proactively provides central government (produced and commissioned) natural hazard information to local government with the intention that property buyers, owners, and communities more generally will be supported with quality information provided in a timely manner. We discourage monetising this data and information due to concerns for regional equity and this making the concept of “known” information even more problematic for the sector through barriers to access.
- h. Taituarā see the current legislative and regulatory process as an important catalyst in further deepening the relationship with central government and knowledge leaders; and to openly sharing vital high-quality information between local government and central government in the support of Aotearoa New Zealand’s current and future communities.

## 18. Recommendations

- a. That the regulations support the open and proactive sharing of information between central and local government on natural hazards and climate change impacts on those hazards.
- b. Acknowledging our different, but equally valuable expertise, that DIA establish a process whereby local government and central government can cooperate in all discovery processes that support a safer future for Aotearoa New Zealand in relation to natural hazards and climate change impacts on those hazards.
- c. That barriers to quality information be removed.

## 19. Guidance, templates, and standards

- a. As requested (variously by DIA) in *Natural Hazard Information in LIMs – Webinar Questions and Answers*, we have included recommendations where we see administrative guidance etc being useful or required.
- b. While this does not provide substantive operational/administrative guidance, that is not the focus of the consultation document. When the regulations are through their process and impending enactment, Taituarā can offer more operationally focused guidance.
- c. This fits with the Taituarā purpose: **To promote and support professional management for all staff working in local government.**

Thank you for your consideration of this submission. Please do not hesitate to contact us for any clarification, or further information.

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