

Local Government Official Information and Meetings Amendment Bill (LIM Reform)

Submission to the Governance and Administration Committee

January 2023



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What is Taituarā?

Taituarā – Local Government Professionals Aotearoa is an incorporated society of nearly 1,000¹ members drawn from local government chief executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Our vision is:

Professional local government management, leading staff and enabling communities to shape their future.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the

¹ As at 1 July 2022.

management of local authorities from the provision of advice to the planning and delivery of services, infrastructure and climate resilience and mitigation. Local authorities have responsibility for preparing and providing Land Information Memorandums (LIMs) as well as related natural hazard functions due to their role in the resource management system.

Introduction

There is an urgent need to make better land use decisions to mitigate the impact of natural hazards and climate change. Natural hazards pose a risk to both people and property, these risks will increase over time as the impacts of climate change are already increasingly being felt. NZIER “found that the total expected cost of all natural hazards to the Crown will increase from \$0.7 billion in 2020 to \$3.3 billion in 2050.”² While some progress has been made to avoid and mitigate these risks, for example, the release of the first National Adaptation Plan, significant improvements to the way land use decisions are made is still needed.

LIMs “can play a role in managing natural hazards, as they can raise public awareness, are relatively inexpensive and can enable purchasers to make better decisions.”³ Enabling better decisions that encourage adapting and avoiding natural hazards is a core pillar of NAP. Action 3.6 outlines the need to improve natural hazard information on LIMs. Taituarā welcomes the Local Government Official Information Amendment Bill (the Bill) and believes the proposed improvements to Land Information Memoranda (LIMs) will go some way to achieving the adaptation goals of the government. Implementation will be crucial to realising the full benefit of these improvements, so in addition to recommendations on the text of the Bill we have suggested some key pillars for effective implementation.

We wish to speak to our submission.

Improving Land Information Memoranda

1. In principle, Taituarā supports the proposed amendments to improve the release of natural hazard and climate impact information not only as it aligns with the principle that information should be made available unless there is

² NZIER, (July 2020) ‘Investment in natural hazards mitigation: Forecasts and findings about mitigation investment’ at pp 32-33

³ RIS pg. 9

good reason for withholding it⁴, but also because property purchasers being made aware of current and projected natural hazard risks will facilitate decisions to adapt and retreat from the impacts of climate change. Including providing LIMs in the purpose of the Local Government Official Information Act (LGOIMA) provides this role with the appropriate weight in legislation and acknowledges the importance of this local government function.

2. Improving the information relating to natural hazards is crucial to enabling better decisions which acknowledge the natural hazard and climate impacts. Taituarā supports *clauses 7 and 8* requiring natural hazard and climate change impact information on LIMs. The new *section 44B* provides a good framework for communicating the natural hazard and climate risk for properties.
3. While we agree with the new *section 44B* which proposes to include information on LIMs to the extent it is known by the authority, we would like to acknowledge the variation in the available information and the way in which it is held. Data quality and form varies significantly around the country and is largely dependent on the affluence of the rating base and consequently the resourcing of local authorities. There is confusion around what information should be included in LIMs and the degree of collaboration required between councils in a region. Even the digital platforms used to store this information varies between councils in regions. "Improvements are needed to natural hazard data and information currently available to inform LIMs"⁵ this includes filling gaps in national data, updating risk assessments in light of new scientific information, and standardising data terminology to improve interoperability between datasets hosted on different platforms. Clear funding sources will be needed to support improving data and information if the full benefits of this reform are to be realised. If the Government does not support including improving data and information as part of the implementation plan, funding and support will still be needed for councils to meet the obligations under the new section 44B. Because despite the Bill not putting a duty upon local authorities to gather further data, the mere exercise of amalgamating and reconciling information will be a significant undertaking.
4. LIMs currently have limitations on their efficacy in communicating risk to property purchasers. The content and format of LIMs vary significantly and they are often lengthy and difficult to navigate. In addition to this, LIMs often refer

⁴ Section 5 LGOIMA

⁵ RIS pg. 4

to publicly available information, but technical reports are difficult to understand and have limited value informing a purchaser's decision.

5. New section 44B also empowers the Minister to make regulations that ensure natural hazard and climate change information is understandable. This will improve the decision-making abilities of home buyers who should not be expected to grapple with lengthy technical reports. These regulations need to strike a balance between simplifying information and maintaining the accuracy of the information provided. Furthermore, communicating the uncertainty related to this information will be crucial. Data held by councils currently does not usually go down to the property parcel level meaning the natural hazard or climate impact may relate to the general area the property is in rather than parcel of land the house is built on. In addition to this, the science relating to climate impacts is constantly evolving, for example last year sea level rise predictions⁶ were revised to include vertical land movement resulting from minor earthquakes.

6. Taituarā supports the new *section 44C* which provides an obligation on regional councils to share information to territorial authorities. Territorial authorities are responsible for providing LIMs but responsibility for gathering and storing information relating to natural hazards lies with regional councils. Not only will this improve the information provided on LIMs but will improve the consistency of information provided between unitary and territorial authorities. However, it should be noted that "there is a risk that territorial authorities could disagree on how to share and coordinate the provision of natural hazard information, as well as the nature and extent of natural hazard information included on the LIM".⁷ If national consistency is desired it will be imperative to clearly demarcate when information should be shared (e.g., should a draft report be shared or only final reports) and what standard should the information adhere to (i.e. what level of certainty in the data is expected). We request that (statutory or non-statutory) guidance be developed to coordinate the sharing of information between regional councils and territorial authorities. Furthermore, the information provided by regional councils will need to conform to regulations on its form. We request that these regulations are developed in consultation with local government representatives to ensure they are practicable and workable.

⁶ NZ SeaRise, 2022, see: <https://www.searise.nz/about>

⁷ RIS pg. 28

Recommendations

- Taituarā supports *clause 5* and the inclusion of providing LIMs in the purpose of LGOIMA.
- Taituarā supports the new section 44B requiring natural hazard and climate impact information in LIMs in an understandable way.
- The regulations relating to making the information understandable must maintain scientific accuracy and clearly communicate any uncertainties with the data presented.
- Taituarā supports the new section 44C, but request the regulations referred to are developed in consultation with local government.
- Request guidance is developed to provide clarity on how to coordinate the sharing of information.

National Direction for Natural Hazard Information

7. "There are inconsistencies in the natural hazard information provided in LIMs".⁸ This is largely due to ongoing uncertainty about what information should be included in a LIM, information held in district plans, and difficulties territorial authorities face updating and interpreting new datasets. Furthermore, there is a reticence to include the impacts of climate change on frequency and severity of natural hazards on LIMs or "provide summaries or explanations of natural hazards due to concerns over liability and all LIM notations are subjected to careful legal scrutiny".⁹ Therefore, Taituarā *supports clause 9* which provides the Minister with regulation making powers in principle. National direction is welcomed by the sector as it would provide greater certainty around what natural hazard information should be included on a LIM and provide guidance on how to include it.
8. National direction should include templates and broader information requirements to ensure LIMs include more consistent and comprehensive natural hazard information. Requirements to incorporate information from national sources will improve the user interface as LIMs would become a more comprehensive source of information for a property's risk. Furthermore, guidance on how to communicate risk and the uncertainty data and assessments have will be crucial to ensuring accessible information is provided to purchasers. Regulations relating to the level of detail and quality of

⁸ RIS pg. 16

⁹ RIS pg. 18

information, the processes and the timeliness of regional authorities providing information, and natural hazard terminology will be necessary for ensuring a consistent approach is taken to communicating this information across the country.

9. While we support *clause 9* in principle, we believe more specificity is required to avoid unfettered decision making. The process for developing National Direction needs further elaboration within the Bill. The Regulatory Impact Assessment states that it is likely the process for developing National Direction will follow the process outlined in *section 34 of the Resource Management Act*. If this is the case, we would like to stress the importance of local government representation on any technical working group advising the minister. Early engagement with local government officials who understand the practical barriers councils face will be needed to ensure the guidance is practicable and effective implementation. Taituarā believes that specifying the Minister must consult with local government. Having one representative is unlikely to be helpful. Instead, representation covering territorial authorities, unitary councils, and regional councils. We also believe there will be value in including representative organisations such as Taituarā and LGNZ.

Recommendations

- Taituarā supports national direction be set to provide certainty and clarity around the form and content of LIMs.
- Taituarā supports national direction on making the information provided in LIMs understandable.
- Amend clause 9 to specify the process for developing national direction.
- Amend clause 9 to require consultation with local government representatives.

Reducing Liability for Local Authorities

10. Including natural hazards and climate impacts on LIMs has been a source of litigation for councils. While it is understandable that property owners do not want the value of their property to be impacted by the inclusion of updated risks on LIMs, without this information purchasers are unaware of the real risk associated with a property. Following cases such as *Weir v Kāpiti Coast District Council [2013] NZHC 3522*, Councils have become reticent to include information that would clearly articulate the level of risk a property will face. Furthermore, when information is included lengthy processes and costly legal advice designed to avoid litigation puts increased costs on Councils.

11. Removing all liability for Councils *carte blanche* when there is a possibility it could impinge on property rights would be unnecessary overreach. Therefore, Taituarā supports the new *section 44D* which reduces the liability of councils when providing information on LIMs in good faith. Good faith is a term with significant legislative and case law precedence. Despite this, it is possible litigation will test this in the new context. In this case, the Government should support any test litigation that arises.

Recommendations

- Taituarā supports the new *section 44D* which reduces the liability of councils when providing information on LIMs.

Official Information

12. Taituarā supports *clauses 11 and 12* relating to the reasons and situations in which official information should be withheld. The provisions are sensible and will align LGOIMA with the Official Information Act.

Recommendations

- Taituarā supports the reasons for withholding official information under *clauses 11 and 12*.

Alignment with Local Government Reforms

13. Local government is facing a suite of reforms that constitute changes not seen by the sector since the 1980s. From Three Waters to resource management reform and a series of unfunded mandates, local authorities are under pressure and will require support to implement these changes by 2025. A key thing that needs to be considered throughout implementation is how it aligns with other reform packages which will affect how these improvements will work in practice.

14. In the first instance, it will be impacted by concurrent reforms. Both the Future for Local Government review and the resource management reforms will potentially change councils' roles and responsibilities for managing natural hazards and the impacts of climate change. Alignment between the implementation of these changes with other reforms will reduce duplication of effort and wasted resource. For example, the development of regional spatial

strategies and natural and built environment plans will inevitably involve collecting and assessing data regarding natural hazards and climate change and should be used as an opportunity to address the variability and gaps within existing data noted on LIMs. In addition to this, it is our understanding that a digital platform for resource management will be rolled out at part of the reform of the RMA. Integrating LIMs into this nationwide platform could reduce wasted resource by removing the need for each region to move to a new – often unique – system.

15. Furthermore, as a result of these reforms subsequent amendments may be necessary to the Bill currently before the Committee. For example, information relating to natural hazards and climate impacts may be commissioned and held by a Regional Planning Committee however the proposed amendments only require Regional Councils to provide this information to territorial authorities. We would also note that Clause 4 which amends the interpretation section of the principal Act refers to the definitions of 'climate change' and 'natural hazard' in the RMA. Furthermore, Clause 7 refers to information apparent in district plans. While the RMA definitions align with the proposed definitions in the Natural and Built Environment Bill (NBEA) and district plans will be replaced by NBE plans which contain this information, subsequent amendments may be necessary once the NBEA is passed into law.

16. In the second instance, the timing and sequencing of this implementation will need to accommodate the immense pressure on local government. The capacity for local authorities to implement a raft of reforms is further diminished by significant vacancy rates and a competitive job market. Support building capacity and capability, central government funding, training, and clear guidance will also be required to ensure the full benefits of these improvements are realised. Taituarā recommends that concrete and targeted support is given to local authorities who will now be tasked with improving the interoperability of their varied data systems, updating LIMs and increasing the capacity and capability of staff to communicate information in the way prescribed by regulations.

Recommendations

- Request officials to coordinate implementation with other reform packages such as the resource management reform.
- Note that further amendments may be necessary to accommodate subsequent reform packages.

Implementation

17. The RIS notes that “local government will incur low-medium costs to implement the changes to the LIM system, including one-off updates to LIM systems and processes, and additional regional council resourcing to provide natural hazard information.”¹⁰ We understand the uncertainty around exactly what the implementation costs will be given this will largely be dependent on the specific requirements of national direction. However, costings and funding sources should be identified to support the implementation of these improvements to LIMs. This is crucial because a key risk of the proposals “is that it may not be properly implemented by councils due to costs, a lack of supporting natural hazard data, and limited capability and capacity, particularly given other reform demands”.¹¹

18. In addition to aligning the proposed changes with other reforms, a clear implementation plan which accommodates the various pressures local government is facing will be necessary to ensure the success of these changes. This may include training and capability building, capacity building, improving natural hazard data and the development of templates and guidance where appropriate. The plan will also need to identify funding sources for implementing changes to the LIM system. Getting local government buy in is crucial to the success of this plan and we encourage DIA to work with Taituarā LGNZ to develop a practical implementation plan.

Recommendations

- Recommend DIA work with Taituarā, LGNZ and the local government sector to develop an implementation plan that aligns with other reform packages and is backed by funding commitments.

Conclusion

Including natural hazard and climate change impact information on LIMs is a crucial step in supporting New Zealanders to adapt to climate change. Providing clear legal parameters and national direction on including this information in addition to reducing the liability is important for local authorities who have been left to defend litigation for including this important information for home buyers on LIMs.

¹⁰ RIS pg. 3

¹¹ RIS pg. 28

Taituarā would like to acknowledge the work the Department of Internal Affairs has undertaken to engage with local authorities in the policy development process for the proposed reform. We hope this engagement to continue throughout the development of national direction and implementation

Summary of Recommendations

Improving Land Information Memoranda

- Taituarā supports *clause 5* and the inclusion of providing LIMs in the purpose of LGOIMA.
- Taituarā supports the new *section 44B* requiring natural hazard and climate impact information in LIMs in an understandable way.
- The regulations relating to making the information understandable must maintain scientific accuracy and clearly communicate any uncertainties with the data presented.
- Taituarā supports the new *section 44C*, but request the regulations referred to are developed in consultation with local government.
- Request guidance is developed to provide clarity on how to coordinate the sharing of information.

National Direction for Natural Hazard Information

- Taituarā supports national direction be set to provide certainty and clarity around the form and content of LIMs.
- Taituarā supports national direction on making the information provided in LIMs understandable.
- Amend *clause 9* to specify the process for developing national direction.
- Amend *clause 9* to require consultation with local government representatives.

Reducing liability for local councils

- Taituarā supports the new *section 44D* which reduces the liability of councils when providing information on LIMs.

Official information

- Taituarā supports the reasons for withholding official information under *clauses 11 and 12*.

Alignment with Local Government Reforms

- Request officials to coordinate implementation with other reform packages such as the resource management reform.

- Note that subsequent amendments may be necessary because of subsequent reforms to the resource management system and local government.

Implementation

- Recommend DIA work with Taituarā, LGNZ and the local government sector to develop an implementation plan that aligns with other reform packages and is backed by funding commitments.

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Professional excellence in local government

Taituarā — Local Government Professionals Aotearoa

Level 9, 85 The Terrace, Wellington
PO Box 10373, Wellington 6143

T 04 978 1280

E info@taituara.org.nz

W taituara.org.nz