

Monday 11 November 2024

BY EMAIL

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

1. The Law Association of New Zealand (previously known as the Auckland District Law Society or ADLS) (**TLANZ**) is a national lawyers membership organisation with multiple committees including the Property Law Committee (**the Committee**) where approximately 15 experienced lawyers meet monthly to discuss various issues in relation to property law.
2. Committee members are advising vendors and purchasers in relation to the sale and purchase of properties and are frequent reviewers of LIM reports. We agree that these reports can differ greatly from Council to Council and that some standardisation and better presentation of information is desirable so that they are more understandable.
3. We thank you for the extension to allow the Committee to make some comments in relation to the consultation on the proposed “*Local Government (Natural Hazard Information in Land Information Memoranda) Regulations 2025.*”
4. We have set out your questions in **bold**, and our answers in **blue** below.

### **Consultation Questions**

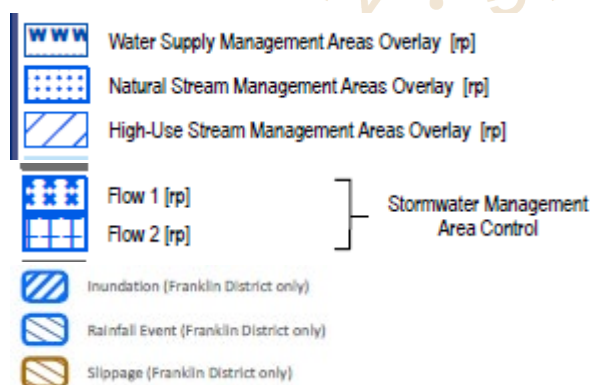
1. Provision of natural hazard information to property buyers:

**1.1 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?**

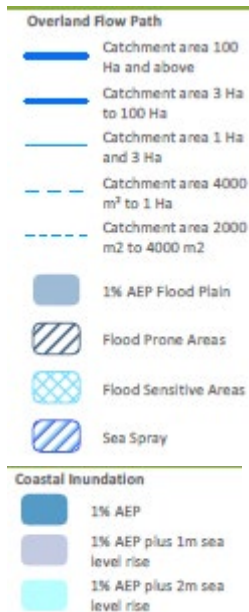
- a. While the regulations will improve the natural hazard information which is provided, as well as a consistent approach across the country we do not believe that the regulations in their present state will be as effective as they might for the following reasons:
- b. There is a difference between identifying a natural hazard and assessing risk. The regulations should require more information about risk assessment as that is what

purchasers need to be able to know – not just that there is a natural hazard but what is the risk being both the likelihood and the consequences.

- c. There is not enough guidance on the quality, relevance, and completeness of information for it to be included in reports – what is the threshold to be reached?
- d. What is the threshold of information which is known? See *Weir vs Kapiti Coast District Council*<sup>1</sup> for draft reports under consideration and whether they qualify or not. Information can have large impacts on the value of properties, their use, whether finance may be obtained or insurability.
- e. There also needs to be a definition of materiality for inclusion as well as materiality of difference between information held by territorial authorities and regional councils.
- f. There should be a requirement to have a date on assessments which have been made – for example flood plains mapped 40 years ago before intensification of housing can give an idea about reliability and impacts of changes in the area.
- g. Guidance will need to be developed, and we would encourage the use of templates and best practice examples developed. This should involve not only territorial authorities but lawyers who receive and assist their clients to interpret LIM reports.
- h. We are concerned that certain councils like Auckland Council already include information on “Hazards”, “Natural Hazards” and “Other” “Special Land Features”. The Auckland Council LIM report also includes a section on “Wind Zones”.
- i. Therefore, we are concerned that the additional “natural hazard section” may overload recipients with too much information, some of it doubling up.
- j. We believe that members of the public, conveyancers and lawyers already find it quite confusing to understanding the existing symbols and special features of a property. For instance, when assessing whether a property is “flood prone” the following existing symbols and features can get confusing:



<sup>1</sup> [2015] NZHC 43



- k. If Councils are going to add to this already complex information with another “natural hazard section” that includes “flooding” then users should have a clear guideline on what all the symbols relating to overlay, flows, catchments, and flood mean so they can make sense of all the different symbols and information provided. We also believe the symbols would be best placed within the relevant pages, or immediately after the relevant page, instead of being at the back to better assist users.

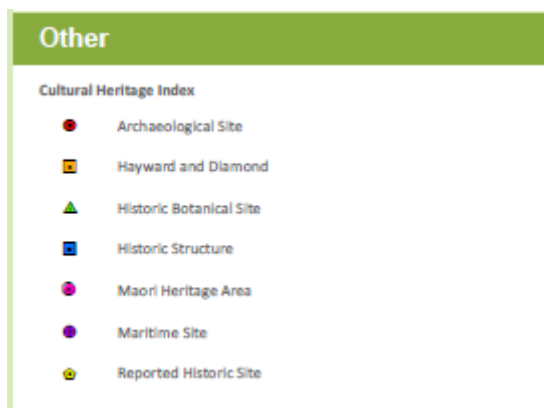
2. Certainty for local authorities:

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

- a. The term “in good faith” in s44D of LGOIMA to avert legal proceedings should be defined in this context in the regulations. Is there a presumption unless it is shown to be otherwise?
- b. Technical reports are not defined - do they cover only Council commissioned reports or include reports supplied by property owners, and any other reports they hold.
- c. Some hazards are known without reports based on national information relating to earthquakes, or rain induced flooding. Should this information be required to be covered also? With climate change and heavier rain this information is vital to house purchasers.
- d. Should information available on public portals such as the Natural Hazards portal be provided – or a link to the site provided?
- e. No, it is unclear what information local authorities are to put under “(a) coastal hazards, (b) earthquakes, (c) flooding, (d) landslides, (e) subsidence, (f) tsunamis, (g) volcanic and geothermal hazards, (h) wind and (i) any other natural hazards”. It is unclear how this would complement the existing information, and whether this would be an additional separate section called “Additional Natural Hazards” (for instance) or simply be added to the already existing “Natural Hazards” that Auckland Council for instance already have (see below)?



- f. Would the “any other natural hazard” be included in the “Natural Hazards” or double up with any of the “Other” information separate noted (see below)?



3. Feasibility for local authorities:

**3.1 Are the regulations efficient and technically feasible for local authorities to implement and administer?**

- a. The Committee is unsure whether this would affect the ability for territorial authorities to deliver an urgent LIM report which are often crucial for urgent property transactions and would hope that urgent LIM reports will still be available.
- b. There will need to be some consistency developed in terms of hazard modelling. There should be guidance provided here and there may be a role for Taiturā to assist with this.
- c. Different territorial authorities have different systems in place which will mean it will be different for each one to implement.
- d. People who compile LIM reports will not be natural hazard experts to summarise the information, so who will be making these decisions, and will this require more resourcing and how will this be charged?

4. Developments in natural hazard information and future needs:

#### **4.1 Will the regulations work for expected developments in natural hazard information and meet future LIM users' needs**

- a. The regulations are a starting point which will be a base for future development.
- b. There is an issue over assessing the quality of information and standard of care due to the economic impacts of the information.
- c. There is a need to assess the impacts of climate change that will exacerbate natural hazards which need to be covered. Has there been engagement with the Climate Change Commission?
- d. The inclusion of post-event assessment and notices under sections 133BQ and 133BT of the Building Act is a positive change. However, to fully prepare users, it should also cover any categorisation of Category 2C, Category 2P and Category 3 and any relevant work or payments made in that regard.
- e. There should be information on Natural Hazard claims which is now available on a website too.

#### 5. Guidance and support for local authorities:

##### **5.1 We would like to hear from you on what specific areas the guidance should cover. We also welcome your thoughts on what other support local authorities will need.**

- a. As above, the guidance should cover what all of the symbols and features mean and can mean as simply having the symbols and results makes it difficult for users to understand the comprehensive and detailed information that would likely be overwhelming for most people.
- b. Significant guidance, standards and support will need to be provided to territorial authorities ranging from modelling, natural hazard mapping, decisions on what is "known" information and what should be included, writing plain English summaries, systems to remove "resolved" information would be only some.
- c. Standardising information, having dates, scale ranges and so on will also be important.
- d. Developing templates and best practice examples.
- e. How will territorial authorities preparing a report liaise with property owners and resolve any disputes?
- f. What will be the status of the guidance if it is not in the regulations? Guidance is not necessarily binding.

#### 6. Limit on obligations on territorial authority:

##### **6.1 (Regulation 6) Do you consider that the regulation provides sufficient clarity to territorial authorities?**

- a. Yes, no further comments.

7. Content of natural hazard section:

**7.1 (Regulation 8) Do you consider that the proposed headings are the right ones? Are there any missing?**

- a. We think care needs to be taken on ensuring there is no “double up” and provide the comments for each heading below.
- b. **coastal hazards:** Auckland Council LIM report already has an existing heading of “coastal inundation” so the regulation needs to be clear on whether it would replace or add to the existing heading.
- c. **earthquakes:** would this list **all** prior earthquakes for this property, OR only list of above a certain magnitude, OR only list if the property suffered damages as a result?
- d. **Flooding:** as per above, there is already quite comprehensive information on LIM reports (for Auckland Council) on overland flow, catchment, flood prone, flood sensitive and so on. What **ADDITIONAL** information (if any) would this provide?
- e. **landslides:** Auckland Council LIM report presently only provides slippage information for Franklin only, so this would be helpful.
- f. **subsidence:** Auckland Council LIM report presently only provides subsidence information for Franklin only, so this would be helpful.
- g. **tsunamis:** would you provide information on history or risk?
- h. **volcanic and geothermal hazards:** Auckland Council LIM report already has information on “volcanic ones”. What additional information would this provide?
- i. **wind:** Auckland Council LIM report already has wind information. What additional information would this provide?
- j. **any other natural hazards:** what kind of information would this entail and would this replace the “other” section on the Auckland Council LIM report as per above?
- k. **Storm:** we wonder whether you should have a separate heading for “storm”?
- l. Will there be guidance as to the difference between landslides and subsidence?
- m. Regulation 7(4)(b) while noting that it knows of no information should this also be clarified to state that it does not mean there is no hazard under that category? That could be in guidance on this.

8. Minimum requirements for technical reports:

**8.1 (Regulation 9) Are these the right minimum details that councils should include in LIMs for each technical report?**

- a. Yes. Under regulation 9(a) it would be good to clarify whether or not third parties that are not the named persons can rely on the report.
- b. Do technical reports include maps?
- c. What is the threshold against which a technical report is to be assessed and accepted? What happens if a report has been superseded to the old report?
- d. Councils will need to decide who makes decisions and how they communicate with the owner of the property.
- e. If Councils have online portals for natural hazards there should be links provided to these.

9. Sharing natural hazard maps:

**9.1 (Regulation 10) Does this regulation provide sufficient clarity for territorial authorities on how to share natural hazard maps in LIMs?**

- a. As stated above there needs to be standards set as to whether the map reaches the standard required of a technical report.
- b. There should be a definition of what a “potential effect” is, with a level of proof required to be met, as well as dealing with the issue of materiality.

10. Plain language summaries:

**10.1 (Regulation 11) Should this requirement apply to all pieces of natural hazard information or only to technical reports?**

- a. We think plain language should apply to natural hazard information as well as technical reports.
- b. Summaries are useful however care needs to be taken as summaries can end up removing information which is necessary to understand the report or can be critical as to the effect. Who will be writing these summaries and what will their training be? Copies of the reports should be provided. I note often when a LIM report is obtained there is a reference to a technical report however a property file needs to be purchased as well to obtain the report. These technical reports should be provided with the LIM report.
- c. Guidance will need to be provided.

11. District plan information:

**11.1 (Regulation 12) Does this regulation sufficiently clarify for territorial authorities what district plan information related to natural hazards should be included in LIMs?**

- a. Yes, but as per above, guidance should be provided on how to amalgamate or add the headings to the existing dataset.

12. Notices under the Building Act 2004:

**12.1(Regulation 13) Does this regulation sufficiently clarify how territorial authorities should include information on Building Act notices related to natural hazards in LIMs?**

- a. Yes, disclosing the notices and information under the Building Act 2004 is a positive change.
- b. It is important that the reasoning or justification as to why the notice was placed on the property, and what the consequences are.
- c. A link to the Natural Hazards portal should also be provided so there is an understanding in relation to insurance claims which may have been brought (although the portal doesn't show current claims).

13. Natural hazard information provided by a regional council:

**13.1(Regulation 14) Does this regulation sufficiently clarify the responsibilities of territorial authorities and regional councils in the LIM system?**

- a. Yes, but further guidance, templates and standards will need to be provided.

14. Limit on obligations for regional councils:

**14.1 (Regulation 15) Does this regulation sufficiently clarify the responsibilities of regional councils in the LIM system?**

- a. Yes
- b. As raised above there are issues about the relevancy and standard of information to be included in a LIM report which needs to be addressed.

15. Meeting requirements:

**15.1 Regulation 16) 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?**

- a. Yes

16. Further comments

- a. Disclosing further information on natural hazards is a positive change, but the regulations and territorial authorities need to be careful that the information does not unnecessarily double up or overload the user and clear guidelines are provided on what each data, symbol or information means.
- b. As Councils will be making decisions about properties there needs to be a process under which owners may dispute notations through the regulations with a mapped dispute resolution process rather than having to file proceedings in court.

- c. There also needs to be a process for dealing with information which is out of date or inaccurate.
- d. If there is going to be new hazard information added to LIM reports, there should be a notification process with provision for feedback.
- e. There needs to be communication with insurers and banks to ensure that these impacts can be discussed also.
- f. Lastly, the regulation defines “Act” as “Local Government Official Information and Meetings Act 1987” under regulation 3 interpretation. However, under the explanatory note, “Local Government Act 2002” is also defined as “the Act” so this should be amended.

## Conclusion

- 17. We would like to once again thank Te Tari Taiwhenua, Department of Internal Affairs, for the opportunity to make these submissions.
- 18. We would like to thank the Subcommittee of the Committee for working on these submissions, particularly Tina Hwang and Joanna Pidgeon on behalf of the Committee.
- 19. If you have any questions or queries please contact the Committee Executive, Gandhya Senanayake [gandhya.senanayake@thelawassociation.nz](mailto:gandhya.senanayake@thelawassociation.nz).

Your sincerely



**Tina Hwang**

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*Disclaimer: While this letter has been carefully prepared, it may contain errors and omissions, and the views contained in this letter are those of the Committee and do not necessarily reflect the position of The Law Association of New Zealand. This letter is not intended to provide legal advice.*