

3

Natural hazards information on LIMs

Disclaimer

Local Government New Zealand and the individuals associated with the production of this guidance material give no warranties of any kind concerning the accuracy or completeness of the contents of this document, and accept no responsibility for any actions taken based on, or reliance placed on the contents of this document and exclude to the full extent permitted by law liability for any loss, damage or expense, direct or indirect, and however caused, whether through negligence or otherwise, resulting from any person or organisation's use of, or reliance on, the contents of this document. The contents of this document are guidance materials only and should not be treated as a substitute for independent legal advice.

What natural hazard information should be included on a LIM?

Territorial authorities are required to issue Land Information Memoranda (LIMs) on request under the Local Government Official Information and Meetings Act 1987 (LGOIMA). LIMs must identify information that is “known” to the territorial authority regarding any special feature or characteristic of the land concerned that is not included in a district plan. A special feature or characteristic of the land may include, amongst other things, potential erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation.

< LIMs must identify information that is “known” to the territorial authority regarding any special feature or characteristic of the land concerned that is not included in a district plan. >

There is growing awareness regarding climate change. Work is being carried out in the local government sector on natural hazard risks¹, and increasing volumes of information are becoming available regarding geological, weather, flood and coastal hazards. This information may sometimes be at a fairly high level and there may be difficulties in relating the information to particular properties. This information may also be difficult to interpret or summarise.

This document is intended to assist territorial and unitary authorities to discharge their responsibilities under section 44A of the LGOIMA. It includes a step by step table which councils can use to determine what information should be included in a LIM. Some comments are also made below about the necessity of ensuring that information on a LIM is up to date and accurate.

Section 44A(2) of the LGOIMA sets out the matters that must be included in a LIM. In addition, councils have a discretion under section 44A(3) to provide on a LIM any other information concerning the land that it considers relevant. Good practice and compliance with section 44A is important given the potential for litigation by landowners and others affected by information included, or not included, on LIMs².

This document is for guidance purposes only. This area is complex and councils should seek specific legal advice where necessary.

< This document is for guidance purposes only. This area is complex and councils should seek specific legal advice where necessary. >

The step by step table is only directed to compliance with section 44(2)(a) where the information relates to natural hazards. However, as already mentioned, there may be instances where the Council considers information concerning particular land, but not falling within section 44A(2)(a), should be disclosed under section 44A(3). While section 44A(3) confers a broad discretion, it must be exercised consistently with the purpose behind the statutory provisions and a decision to release information under section 44A(3) can still be challenged in court proceedings.

Apart from LIMs and PIMs, there is no general statutory obligation to actively disclose natural hazard matters to a property owner, although it may become necessary to do so where, for instance, a building becomes dangerous for occupation, or some other regulatory or enforcement action needs to be undertaken.

The disclosure of natural hazard information may also become necessary when processing building consent applications, including for instance where sections 71 to 74 of the Building Act 2004 may be applicable.

< Councils need to have robust procedures in place to ensure that they have the most up to date information available for LIM (and PIM) purposes. >

Councils need to have robust procedures in place to ensure that they have the most up to date information available for LIM (and PIM) purposes. Information may be held within the Council for a variety of purposes, and it will not necessarily be held in a single system. For instance, the Council may hold natural hazard information required or obtained during the processing of a resource consent application. This should be made available for LIM purposes. In other instances, information known to the Council but held in external databases or portals will need to be checked and the most up to date information from these sources included on a LIM.

¹ In 2009 the Natural Hazards Research Platform was established by the New Zealand Government to provide long-term funding for natural hazard research.

² Case law contains a number of examples where landowners have taken legal action against council in relation to information included, or not included on a LIM. See for example *Weir v Kapiti Coast District Council* [2013] NZHC 3522, *Resource Planning and Management Ltd v Marlborough District Council* HC Blenheim CIV 2001-485-814, 10 October 2003, *Trustees of the THP Trust v Auckland Council* [2014] HC 435.

Step by step guide: What information should be included on a LIM?

Step 1: Collate information from all sources in the Council

- It is important to have a systematic approach to compiling information known to or actually held by the Council covering all records/ information that relate to a particular property.
- Check information held on internal and external databases/websites and that it is up to date.
- Make sure that any qualifications or assumptions provided with the information are included.
- See also Step 5.

Step 2: Determine whether the information identifies a special feature or characteristic of the land

- The LGOIMA does not define the phrase “special feature or characteristic” but section 44A(2)(a) states that the words may include (but are not limited to) potential erosion, avulsion, falling debris, subsidence, slippage, alluvion or inundation.
- While seismic risk information is not specifically referred to in section 44A(2)(a), it can be regarded as a specific feature or characteristic of the land. It can in any event encompass tsunamis, inundation, fault lines, earthquake liquefaction or amplification.
- Other forms of natural hazards that are not specifically mentioned in section 44A(2)(a) may also be relevant for the purpose of section 44A(2)(a), provided that they involve a special feature or characteristic of particular land.

Step 3: If the information involves one of the specific natural hazards referred to in section 44A(2)(a), is it a potential hazard?

- “Potential” is a relatively low threshold requirement and must be distinguished from a likely future event.
- The test is not “probable” or “inevitable”.
- According to case law, information held by a council that relates to the natural hazards referred to in section 44A(2)(a) only needs to be included on a LIM if there is a reasonable possibility objectively determined that they may occur in the future.

Step 4: Does the information relate to a feature or characteristic of the applicant’s land?

- Is the information sufficiently site specific to be caught by section 44A(2)(a)?
- The information can be a special feature or characteristic of specific land without a site-by-site analysis being undertaken. However, whether or not the information is sufficiently site specific will need to be determined in each situation for LIM purposes, and it will inevitably involve a judgement call on the part of councils.
- If the information is not at a level of detail that allows each individual property to be clearly identified, it will be important to ultimately obtain or produce more detailed assessments that can identify all individual properties affected.

Step 5: Is the information known to the Council?

- “Known” simply means that the Council needs to know about the information and it does not need to believe that the predictions contained in the information are accurate or even probably accurate.
- Information does not need to be included on a LIM if it is apparent from an operative district plan. It follows that until a proposed district plan is operative, the relevant information must still be included on a LIM. Councils could provide links to any relevant proposed and operative district plans where there are differences.
- A Council is required to provide natural hazard information known to it whether or not it is actually in the possession of the Council. It may be on a database or a portal maintained by another entity (such as a regional council or a civil defence emergency management group). That information could be provided by way of a link.

- It is not required to search out or otherwise make enquiries as to whether other information may exist.
- There is no obligation to disclose a view held by an employee that has not been adopted by the Council.
- The Council has a broad discretion as to how it represents voluminous information on a LIM but any summary must be accurate, state the position fairly and not mislead.
- If providing a summary, the Council should include important conditions and assumptions and state where relevant that the information is subject to scientific challenge or is yet to be fully tested.
- A summary may be augmented or even replaced by a link to an external website, portal or database. Where possible it is preferable to simply include a link rather than provide a summary.
- Councils should not provide advice or suggest a specific course of action in a LIM.

Step 6: Is the information apparent from the operative district plan?

- Under section 44A(2)(a), information identifying each special feature or characteristic of the land concerned, does not need to be included in a LIM if it is apparent from the operative district plan.
- Regional plans do not fall within section 44A(2)(a)(ii). Accordingly qualifying information about natural hazards in a regional plan will need to be disclosed under section 44A(2)(a)(i).
- If in doubt about the level of information disclosed in a district plan and whether it reflects the totality of the information held by the Council, include the additional information on the LIM.

Kāpiti Coast District Council LIM review and improvement project case study

LIM review process

In 2015, Kāpiti Coast District Council (KCDC) undertook a review of its LIM process. The purpose of the review was to identify areas for improvement in the way that LIMs were processed and delivered to KCDC's customers, particularly with respect to timeliness of delivery, and accuracy and consistency of information provided.

The review identified a number of systemic issues with KCDC's existing LIM system, including:

- Governance of the overall LIM system;
- Quality and reliability of data of going on LIMs; and
- Quality of the LIM report format.

LIM Improvement Project

In response to the issues it identified, KCDC undertook a LIM Improvement Project. The impetus for the project was to:

- Ensure that KCDC's systems and processes were focused on the best product for the customer;
- Improve the efficiency, effectiveness and consistency of the LIM production process; and
- Ensure that KCDC was fulfilling its statutory obligations under section 44A of LGOIMA.

< Two overarching outcomes were sought from the Improvement Project, being an improved LIM process and improved products. >

Specific outcomes sought (and achieved) were:

- Clarity about what information to include on a LIM;
- Assured quality of information;

- Compliance with the requirements of section 44A of LGOIMA;
- Oversight of the LIM process; and
- A LIM report format consistent with KCDC's 'open for business' outcomes.

Specific outputs sought (and achieved) included:

- An electronic LIM production process with associated electronic progress reports;
- A revised LIM format;
- A revised LIM production and delivery process and management and governance structure;
- Development of quality controls for LIM content, including criteria and mechanisms for determining what information goes onto a LIM;
- Improved mechanisms for reviewing data quality and accuracy; and
- Improved mechanisms for staff feedback on LIM production and content.

Project board and review process

A project board was set up to undertake the LIM Improvement Project. The project board was responsible for overseeing the development and implementation of the project plan and work programme, and for keeping track of issues and monitoring progress.

Before improvements were made to the old system, KCDC began by deconstructing its existing LIMs to identify what information was and wasn't being included, alongside the requirements of section 44A of LGOIMA.

KCDC's new LIM format went live in August 2016.

Improvements made

The table on the following pages identifies the key differences between KCDC's former LIM system and new system.

Former LIM system	New LIM system
Governance	
<ul style="list-style-type: none"> No governance of the overall LIM system. No one team responsible for producing the LIM – responsibility spread across a number of teams. Issues with LIMs not always identified, shared and appropriately addressed. 	<ul style="list-style-type: none"> Overall responsibility for LIMs sits with the Group Manager of Regulatory Services. Management of quality assurance around the LIM process system is administered by the Business Improvement Team. Electronic processing status report shows what is being processed at any given time – all staff able to access and monitor progress reporting. Quarterly LIM management review meeting, allowing for discussion of critical issues. Electronic audit of problems now possible.
Production process	
<ul style="list-style-type: none"> Cumbersome manual and linear process for preparing LIMs. Issues with physical LIM folders being “lost on desks”. Delays in delivery of LIMs. 	<ul style="list-style-type: none"> Instigated an automated, electronic LIM preparation process. Staff now able to concurrently enter data into electronic programme which collates all individual components into one document once all components completed. Electronic progress status reporting shows which components of the LIM data have been provided and indicates areas where there are delays in completion of data compilation – system provides staff with a better indication of LIMs that are coming through the system.
<ul style="list-style-type: none"> Lack of guidance around LIM production for staff to follow, including guidance on assessing what information to include in the LIM and/or how that information should be presented. Staff development of their own processes, leading to variability in outputs. Reactive guidance provided by senior management and Senior Legal Counsel in the event of information being challenged by a LIM applicant. 	<ul style="list-style-type: none"> Quality Assurance System LIM manual developed to support the new process and ensure consistency in producing LIM reports. The manual outlines in detail the processes KCDC staff must follow when producing a LIM. Guidance prepared for making decisions on what information should be included in LIMs – emphasis on only including information required by section 44A LGOIMA. Protocol in place for getting approval for changes to LIM content/new information for inclusion on LIMs.
<ul style="list-style-type: none"> The process for providing maps for LIMs required staff to access two versions of GIS – time consuming and left room for mistakes to be made. Inconsistent scaling of maps included on LIMs and instances of inappropriate scaling. 	<ul style="list-style-type: none"> New GIS LIM viewer has been developed for producing maps included within a LIM. Ensures correct maps are being used and enables staff to produce maps quickly and efficiently. Greater consideration given to the scaling of maps included in LIMs – with particular emphasis on what scaling is relevant for the customer’s purposes.

Former LIM system	New LIM system
Template documents	
<ul style="list-style-type: none"> No comprehensive review of language used to describe the information going onto LIMs for some time. Heavy use of jargon and acronyms. Application form and LIM report not easy for customers to understand. 	<ul style="list-style-type: none"> Wording on LIM reports reviewed, corrected and made simpler – emphasis placed on providing a more customer friendly product. Formatting changes to the LIM report to make it easier for people to identify and access in short form the information they are entitled to. Headings/clauses in the new look LIM now correspond to a part of section 44A of LGOIMA. Application form simplified and now able to be populated (but not yet submitted) online. KCDC soft launched the new application forms and LIM reports to customers for feedback before going live.
Data quality control	
<ul style="list-style-type: none"> No review of the quality and reliability of LIM data carried out for some time. Out of date information included on LIMs. No shared understanding of protocols in respect of data to include on LIMs. Issues around inclusion of third party data – out of date and inaccurate interpretations. Inclusion of large amounts of unnecessary discretionary information. Development of a perception that inclusion of information was the customer-centric approach to take. 	<ul style="list-style-type: none"> Developed a process/guidance around putting new information on LIMs (see below for specific detail on that process). In respect of planning information, quality control includes getting formal Policy Planning approval of the relevant Planning Notes, and any associated changes. All data included on LIMs reviewed and corrected where possible. Out of date data removed from LIM reports. Reduction in amount of discretionary information included on LIMs – emphasis on including information required by section 44A(2) of LGOIMA. Decision to remove inclusion of “copied and pasted” third party data on LIMs; instead, customers are referred to any relevant third party data via links. Protocol adopted on how to initiate a change process to ensure that data on LIMs is updated and errors are fixed. Introduced legal considerations around whether information is robust enough to include on a LIM.

It should be noted that under the revised production process it is still taking individual teams the same amount of time to complete their component of a LIM report. However, because individual components of a LIM report are now being completed concurrently via an electronic system, the final delivery of each LIM report to the customer is now more timely than was the case under the old system.

The average time for completion of a LIM under the new system is three to four working days; compared to the average time for completion of six working days under the old system.

Process for inclusion of new information on LIMs

KCDC now has a process in place that must be followed before any new information can be included on LIM reports.

The process involves completing a case-by-case assessment of any new information against a set of criteria designed to determine the specificity, robustness and appropriateness of the information against section 44A of LGOIMA. The assessment criteria are:

- Is the information required by section 44A of LGOIMA?
- Does the information relate to an individual property/properties?
- Is the information robust?
- Is there contradictory information that should also be included?

If the criteria are met, the information will be included on a LIM. If the information does not meet the criteria but may still be of interest to LIM purchasers, consideration is given to releasing the information as discretionary information under section 44A(3) of LGOIMA. This discretionary information appears in the LIM template under a content category titled "Other Information Concerning the Land".

Any amendments to LIMs must be:

1. Reviewed by the relevant Team Leader / Manager; and
2. Approved by the relevant Group Manager; and
3. Reviewed by KCDC's in-house legal team; and
4. Approved by the Group Manager Regulatory Services for inclusion in the LIM.

The review and approval process ensures that there is careful consideration and a robust decision in respect of inclusion of new information on LIMs.

< KCDC has developed a process for documenting and putting in place continuous improvements to its new LIM system. >

Continuous improvements

KCDC has developed a process for documenting and putting in place continuous improvements to its new LIM system. The Continuous Improvement Process involves the following steps:

- Any member of staff may suggest an improvement to the policies, systems and procedures used in the production of a LIM document, by completing a Continuous Improvement Service Request (Request).
- The Request is forwarded to the relevant Team Leader/Manager, who approves or declines the Request.
- If a Request for a continuous improvement is approved, certain staff members are assigned and required to complete identified actions to implement the improvement.
- Once implementation actions are completed, the Request is signed off by the Team Leader/Manager. The Continuous Improvement is then monitored by the Business Improvement Team, and monitoring reports on implementation are provided to relevant managers on a regular basis.

The implementation of this process means that there is now greater oversight of issues, and that those issues are appropriately elevated and addressed as they are raised.

Ongoing work

KCDC has recently convened a LIM Management Review meeting, which takes place quarterly and involves staff from key teams involved in the production and delivery of LIMs. The purpose of the meeting is to ensure that there is ongoing oversight and review of continuous improvements, internal audit processes, changes impacting LIMs (such as legislative or planning changes), training needs and work volumes.

It has, for example, been identified that there is a need to continually monitor staff use of the LIM system to ensure that staff are correctly using it and have been adequately inducted/trained on how to use the system that is in place.

What does this mean for your council?

LGNZ recognises that each council will have in place its own process for meeting its obligations to produce and deliver LIMs, and that a “one size fits all” approach to LIM production and delivery is not necessarily appropriate or feasible. LGNZ also recognises that aspects of the KCDC LIM production and delivery process described in this case study may already be in play in other councils, and equally, may not work for other councils.

< All councils are encouraged to draw on the learnings provided in this case study and are encouraged to give thought to whether there is a need to undertake a similar review and improvement project in respect of their LIM processes. >

However, all councils are encouraged to draw on the learnings provided in this case study and are encouraged to give thought to whether there is a need to undertake a similar review and improvement project in respect of their LIM processes. The scope of any review, and the number of changes needed as a result of any review, will likely depend on the nature of the processes that are already in place within your council. However, there are likely to be ongoing improvements that your council can make to its LIM processes in order to improve efficiencies, improve the quality of the product delivered to customers and to reduce the likelihood of your council facing legal challenge for providing out-of-date or inaccurate information on LIMs. This case study demonstrates the importance of ongoing scrutiny of your council’s LIM production and delivery processes, and making improvements where needed.