

Climate change and natural hazards decision-making

A legal toolkit for councils

May 2018



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Disclaimer

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Foreword

Foreword



Local government in New Zealand has direct responsibility for adaptation. Councils have responsibilities to prepare their communities for, and manage the risks of, climate change.

Adapting to the impacts of climate change is a significant challenge and a new priority focus for councils. The importance of effective climate change adaptation to the creation of safe, resilient and prosperous communities cannot be over-estimated. However, decisions on how best to adapt to the changing climate are complex and, at times, controversial.

Local government in New Zealand has direct responsibility for adaptation. Councils have responsibilities to prepare their communities for, and manage the risks of, climate change related natural hazards. They are increasingly facing, and assessing how best to address, the risks, challenges and opportunities presented by climate change. Although councils are well placed to understand how their regions, cities and districts can best adapt to these impacts, adaptation decisions are complex. They demand a long-term view and may need to be made in circumstances where the full extent of risk is not properly understood. Decisions about how best to adapt can be controversial, as they have impacts on community well-being and prosperity, individual lives and private properties. The best course of action is not always clear.

As part of our Climate Change Project, LGNZ is undertaking work to identify the changes that are needed to existing law to better support councils with their climate change adaptation responsibilities. Although our early analysis and engagement with councils has revealed some of the shortcomings of the existing legal framework, the significance of the impacts of climate change and the urgent need to build resilience means that councils will have no choice but to take tough and courageous decisions to adapt to climate change.

LGNZ's Climate Change Project is in part designed to assist councils with the work that they are already doing, and must continue to do, to adapt to climate change. LGNZ is therefore pleased to provide councils with a toolkit of resources to assist with local decision making as they confront adaptation to climate change and natural hazards.

This toolkit provides guidance in respect of areas of local government decision making that are challenging, but which require careful and considered decision making if communities are to be able to effectively adapt and build resilience to climate change.

LGNZ will continue to work with councils and the Government to identify the ways in which existing legal frameworks can be improved to better support councils in undertaking their responsibilities for climate change adaptation. This initial toolkit will be followed up with a "second phase" toolkit containing additional resources on other aspects of councils' adaptation decision making obligations, which LGNZ knows are complex and present challenges for councils.

A handwritten signature in black ink, which appears to read "Dave Cull". The signature is fluid and cursive, written over a white background.

Dave Cull
President
LGNZ

Introduction

Introduction

This toolkit contains advice and guidance materials on three areas of local government decision making that relate to climate change related natural hazards:

1. Councils' ability to stop or limit the provision of services infrastructure in areas affected by climate change natural hazards and potential liability consequences;
2. Councils' ability to limit development in natural hazard areas; and
3. Councils' obligations under the Local Government Official Information and Meetings Act 1987 with respect to the issue of Land Information Memoranda (LIMs).

The guidance materials contained in this document are supplemented by more detailed legal opinions, which are referenced in each of the relevant guidance documents.

While local circumstances will undoubtedly have a bearing on the way in which a council chooses to approach adaptation in its community, the toolkit's resources do outline a consistent set of principles which should be followed when making adaptation decisions.

Both the legal opinions and the materials contained in this guidance document have been designed to provide councils with information on the steps that they can take to ensure that their adaptation decisions are robust, and that the risk of successful legal challenge of those decisions is minimised. However, councils must note that the contents of this legal toolkit are for guidance purposes only. Climate change decision making is a complex area and councils should seek specific legal advice where necessary.

What your council can do with this toolkit

LGNZ encourages all councils to review the contents of this document and the accompanying legal opinions.

Councils should give thought to whether their existing processes for making decisions and/or sharing information about climate-related natural hazards with communities are consistent with the advice contained in the toolkit materials. Councils should draw on the advice and recommendations contained in the toolkit to make changes in areas where decision making and information sharing processes should be more robust.

This legal toolkit has been developed in conjunction with Simpson Grierson, and with assistance from LGNZ's National Council, Policy Advisory Group and the members of a Climate Change Legal Toolkit Working Group, and GNS Science.

Climate Change Legal Toolkit Working Group

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< The guidance materials contained in this document are supplemented by more detailed legal opinions, which are referenced in each of the relevant guidance documents. >

1

**Provision
of services
infrastructure in
areas affected by
climate change**

Provision of services infrastructure in areas affected by climate change

This guidance document provides a brief overview of Simpson Grierson's legal opinion on councils' ability to stop or limit the provision of services infrastructure and potential liability consequences, available at www.lgnz.co.nz/climate-change-project.

Note that this guidance document is not comprehensive, and should not be treated as a substitute for review of the detailed legal opinion or independent legal advice.

What does this legal opinion consider?

The legal opinion considers the ability of local authorities to limit or stop the provision of services and related infrastructure in areas that are, or might be, affected by climate change natural hazards and risks.

The opinion considers the following services and related infrastructure:

- Flood and erosion protection works;
- Roads and bridges; and
- Three waters services.

For the purposes of the opinion, climate change natural hazards and risks include sea level rise (and consequential inundation, erosion and rising ground water levels) and extreme weather events causing slips and flooding.

For the purposes of the advice, limiting or stopping services may in some cases involve ceasing to maintain services, physically removing them or deciding not to reinstate services that are destroyed or significantly damaged.

Flood and erosion protection works

Question: Can a local authority cease or limit the provision of flood and erosion protection works?

Short answer:

Decision-making about constructing or ceasing to support, or limiting support for, flood and erosion protection works should be considered as being of an essentially discretionary nature. However, a local authority should ensure that it fulfils its public law responsibilities when making a decision of this nature.

What public law responsibilities should a local authority fulfil when making a decision to cease supporting flood and erosion protection works?

- A local authority must properly consider whether it should cease to support or limit support for flood and erosion protection works.
- A local authority should take into account all relevant matters when making a decision to cease supporting or limiting support for flood and erosion protection works. Some relevant matters that should be taken into account are set out in the attached legal opinion, and councils should seek specific legal advice. If a local authority can show it has turned its mind to those issues, it is more likely to be able to defend a decision to cease supporting flood and erosion protection works.
- Local authorities should have in place strategies for managing the consequences of ceasing to maintain or support, or limiting support for, flood or erosion protection works if such a decision is made.

Roads and bridges

Question: Can a territorial authority cease maintaining or repairing roads because of climate change impacts so that they are no longer available for vehicular access and/or pedestrian traffic?

Short answer:

A local authority has no statutory obligation to repair roads. As such, a local authority has discretion to decide not to undertake repair or

remedial works on a public road or bridge because of climate change impacts. However, a council should ensure that it fulfils its public law responsibilities when making a decision of this nature.

What public law responsibilities should a council fulfil when making a decision not to undertake repair or remedial works on a road or bridge?

- Although the power to repair roads and bridges is discretionary, a local authority should properly consider whether or not to exercise that power.
- A local authority should not adopt a blanket policy not to maintain any roads.
- A local authority should be able to demonstrate that it has taken all relevant matters into consideration when deciding whether to repair a road or bridge, and has not taken any irrelevant considerations into account. Local authorities should seek legal advice on the relevant matters that should be factored into their decision making.
- There may be instances where a decision not to repair a road might be characterised by a Court as so unreasonable that no reasonable local authority could decide not to repair the road. In those circumstances, there would effectively be a public law duty on the council to repair the road.

Three waters services

Question: Does a local authority have power to limit or stop provision of three waters services?

Short answer:

The Local Government Act 2002 (LGA) places strict limitations on councils' ability to stop or limit the provision of three waters services.

What requirements must be met before a water service can be closed down?

Section 131 sets out the strict requirements that a local government organisation must meet before a water service can be closed down.

If one or more of the requirements is not met, a council may not close down the water service.

Can a local government organisation make changes to the way it delivers water services?

There are good arguments for the view that a local government organisation has power to make changes to the way it delivers water services from time to time.

It may be possible to argue that a reduction in the level of service in a particular case could amount to an effective "close down" of the service. However, this argument is only likely to prevail in extreme situations.

< Local authorities must take a long-term view when making decisions about the development of new infrastructure. >

General comments

- When making decisions of the nature outlined in this summary document, a local authority should ensure that its decision making complies with the general requirements under the Local Government Act, including the obligation to carry out robust engagement and consultation.
- A person who is affected by a local authority's breach of a public law obligation can bring judicial review proceedings seeking to have the relevant decision quashed or revisited. If a decision is made in a robust manner, in compliance with a local authority's statutory decision making responsibilities and administrative law principles, this will assist in successfully resisting such proceedings.
- It is clear that local authorities need to plan for climate change both at a regulatory and policy level, as well as in terms of actual provision of infrastructure that will need to accommodate climate change over at least the next 50 – 100 years. Local authorities must take a long-term view when making decisions about the development of new infrastructure, and should consider how they can build resilience into that infrastructure, so as to minimise the likelihood of it being adversely affected by climate change risks and hazards in the future. This is particularly important in terms of infrastructure that has a long life and/or is essentially permanent.

2

Development in natural hazard areas

Development in natural hazard areas

This guidance document provides a brief overview of Simpson Grierson's legal opinion on councils' ability to limit development in natural hazard areas, available at www.lgnz.co.nz/climate-change-project.

Note that this guidance document is not comprehensive, and should not be treated as a substitute for review of the detailed legal opinion or independent legal advice.

Question: Can councils prevent new development and/or the extension of existing development in natural hazard areas, under the Resource Management Act 1991 (RMA)?

Short answer:

Yes. The RMA provides councils with a comprehensive mandate to prevent or restrict new development and the extension of existing development in natural hazard areas.

Note: It should also be noted that the legal opinion sets out councils' ability to prevent new development and extended development in natural hazard areas under the provisions of the Building Act 2004.

What does the RMA say about how councils should deal with risks from natural hazards?

The RMA states that the management of significant risks from natural hazards is a matter of national importance, which decision makers must recognise and provide for.

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This means that a council's planning provisions now need to recognise and provide for the management of significant risks from natural hazards.

What tools can a council use to prevent or restrict development in hazard areas?

The RMA provides a number of tools that councils can use to prevent or restrict new or extended development in hazardous areas, including:

- Objectives and policies in planning documents;
- Non-complying activity status;
- Prohibited activity status; and
- Sections 106 and 220 of the RMA if the development is in a subdivision in a hazard area.

The most effective mechanism councils can use to prevent development in hazard areas is classifying such developments as a prohibited activity, but it requires appropriate analysis and consideration.

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What high level planning provisions need to be in place to enable a council to classify developments in hazard areas as a prohibited activity?

The ease with which planning prohibitions on development can be put in place depends on how supportive national and regional planning instruments are of prevention of development in hazard areas.

Including prohibited activity status for an activity in a natural hazard area will be easier to justify if higher order planning documents provide a substantial basis for doing that (ie if higher order planning documents require councils to make such provision in their plans).

A Regional Planning Statement (RPS) that clearly states that development in hazard areas should be "avoided" would send a strong message that regional and district plans need to contain provisions that prevent development in hazard areas.

< Including prohibited activity status for an activity in a natural hazard area will be easier to justify if higher order planning documents provide a substantial basis for doing that. >

When should an activity be prohibited?

An activity should only be prohibited if that is the most appropriate option available.

To determine whether prohibited activity status for new or further development in hazard areas is the most appropriate option, councils must:

1. Identify whether there is any other reasonably practical option for achieving the objective of no new or further development in the hazard area;
2. Assess the efficiency and effectiveness of prohibited activity status for achieving the objective of no new or further development in the hazard area; and
3. Summarise the reasons for deciding on prohibited activity status.

What can councils do if someone seeks to subdivide in areas at risk from natural hazards?

The RMA now provides that councils may refuse subdivision consents if there is a significant risk from natural hazards. Councils should take a risk-based approach to granting subdivision consents.

Alternatively, councils can grant subdivision consents in areas at risk from natural hazards but include a condition that requires provision to be made for the protection of the land against natural hazards, generally arising or likely to arise as a result of the subdividing of the land subject to the consent.

Practical implications

If a council is considering a consent for development in a hazard prone area that is not a subdivision, it will not be able to rely on the subdivision provisions outlined above.

As such, councils will need to ensure that appropriate planning provisions are in place to ensure that new or extended developments in hazard-prone areas are avoided, or their effects mitigated.

Territorial authorities and regional councils should work together to ensure that the RPS is consistent with the objective they are trying to achieve. If there is a desire to prevent development in hazard areas, the word “avoid” should be included in an RPS. This sends a strong message that the intention is that new or further development be prevented.

3

Natural hazards information on LIMs

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.

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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 KDCD 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.



We are. LGNZ.

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