

Review of Land Information Memorandums: Achieving best practice

Opportunity for a National Template

February 2021



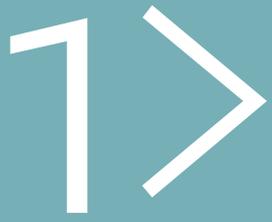
**We are.
LGNZ.**

Te Kāhui Kaunihera o Aotearoa.



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Executive Summary

Executive Summary

This report provides a summary of discussion between central and local government to consider the merits of a national Land Information Memorandum (“LIM”) template.

Government has identified several key priorities that involve a combined central and local government approach to building community resilience to natural hazards and climate change. Introducing a new national LIM template for use across the local government sector was identified as a non-legislative option that could help build resilience.

The function of a LIM is to provide information held by a council on a property including natural hazard information known to the council. The LIM however, is not a risk disclosure mechanism.

The report identifies problems with the LIM system and a variety of short and long-term solutions.

The key short-term and long-term solutions include:

- The development of a central portal for national science and research on natural hazards;
- Agreement on the core information that is included within LIMs relating to natural hazards;
- The development of a central legal hub administered by central government;

- Wider discussion and engagement with the legal fraternity (New Zealand Law Society), REINZ and consumers on the use of LIMs;
- Support for local government capacity in terms of electronic retrieval of data and the move towards E-Plan and integration of information management systems into the LIM system;
- Consistency of information; and
- Requiring a LIM as a compulsory component of the sale and purchase of a property.

The implementation of these solutions will assist local government to make some immediate on the ground improvements to the LIM system.

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Introduction

Introduction

Land Information Memorandums (“LIMs”) capture a range of information councils hold in relation to a property. The Local Government Official Information and Meetings Act 1987 (“LGOIMA”) was amended in 1992. The changes included inserting a LIM mechanism by which potential purchasers can inform themselves of potential property risks. LIM reports are prepared by councils and provide information that is known to them about a given piece of land and buildings on that land. A LIM is required to be provided within 10 working days to anyone that makes an application to a council.

This report provides a summary of a recent workshop held with expert local government practitioners, Local Government New Zealand, Department of Internal Affairs, Land Information New Zealand and Civil Defence staff to discuss the functions of LIMs and councils processes in recording natural hazard information on LIMs.

The workshop had a particular focus on the effectiveness of LIMs as a tool in relation to disclosure of natural hazard information. A LIM is one of the few tools currently available to Councils to ensure available natural hazard information about a property is documented for those purchasing properties to enable them to make informed purchase decisions. While a LIM is a method to communicate information known to a Council, it only needs to provide natural hazard information “known” to it. For example, a LIM may include a flood hazard map or link to flood mapping tools, but it is for the purchaser of the LIM to inquire further about a particular natural hazard.

The discussion sought to identify the short-term opportunities to improve the effectiveness of the LIM system in the disclosure of natural hazard information.

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Purpose

Purpose

The purpose of this report is to:

- Explore approaches to the use of LIMs as a tool to communicate natural hazard information;
- Identify the complexities around the disclosure of natural hazard information in a LIM;
- Identify and summarise the current limitations of the LIM process;
- Provide options for the improvement of LIMs to enable natural hazard information disclosure; and
- Summarise the key recommendations and actions to be taken to improve the LIM system to provide national consistency.

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Background

Background

LIMs are administered by councils under LGOIMA in order to provide landowners and prospective landowners information that a local authority has in relation to a specific property including any special feature or characteristic of the land i.e. natural hazards.

While it is not a legal requirement at the time of the sale of a house or property to obtain a LIM report the standard Agreement for Sale and Purchase of a property includes a clause relating to obtaining a LIM. The LIM is one of the few tools that ensures information relating to a piece of land is available to property owners and those purchasing properties to base decisions on.

Local Government New Zealand (“LGNZ”) has worked alongside councils to develop guidance material in relation to decision making that concerns climate change and natural hazards and in 2018 produced a legal toolkit for councils “Climate Change and Natural Hazards Decision Making Toolkit”. This guidance document included specific consideration of councils’ obligations under the LGOIMA with respect to LIMs. That guidance identified that the statutory framework for LIMs is governed by section 44A of LGOIMA (attached as Appendix 1) and section 44(2) sets out the matters that must be included within a LIM; 44A(2)(a) states:

Information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation or likely presence of hazardous contaminants, being a feature or characteristic that –

- (i) is known to the territorial authority; but*
- (ii) is not apparent from the district scheme under the Town and Country Planning Act 1977 or a district plan under the Resource Management Act 1991*

The guidance noted that 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 in the LIM.

This issue of potential litigation for councils is discussed in further detail in this report. The legal toolkit highlights that apart from LIMs and Property Information Memorandums (PIMs), there is no statutory obligation for a council to actively disclose natural hazard matters to property owners. It also includes a step by step guide of what should be included within a LIM and reviews the Kāpiti District Council LIM improvement project as a case study which may be applicable to other councils.

Another relevant report is “Out on a LIM” by WSA Saunders and J E Mathieson of GNS Science, published in 2016 (“GNS Science report”) which provides a comprehensive review of LIMs and how the LIM contributes to the management of natural hazards through the provision of information. The report sets out the requirements of section 44A(2)(a) and identifies that the LIM provides a key method to communicate hazard information. In addition, it identifies that there are close linkages between the district plan and LIMs and includes a useful table identifying the legislative context of LIMs.

The GNS Science report sets out in detail the legislative context for LIMs and includes a legal opinion which considers the liability for councils regarding the level and type of information to be included within LIMs. The legal review confirms that it is not a function of a LIM prepared under section 44A(2)(a) to be advisory rather it is to provide “information including natural hazard information”.

The GNS Science report also highlights the role of the real estate industry in obtaining LIMs as part of the process of the sale of a property and the need for urgency in obtaining a LIM during a property sale and the reliance on council to interpret information in a LIM. The report sets out a range of recommendations in relation to the LIM process at both a national and regional level. A number of these recommendations were discussed in more detail at the workshop and a summary of those discussions is set out in Section 7.

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Opportunities to Communicate Risk

Opportunities to Communicate Risk

Since 2018 an all of government Community Resilience Work Programme, has been established with a range of central government agencies working in partnership with local government to better understand how to manage natural hazards. This work stream has identified that the management of natural hazards is covered by a range of legislation administered by different agencies. Reports prepared for government such as Adapting to Climate Change in New Zealand by the Climate Change Adaptation Technical Working Group (“CCATWG”) in 2018 signalled the need for immediate action in this area. As part of this work programme central and local government staff members have been working together to identify opportunities to be more effective in making significant, on the ground differences in the provision of public information relating to the risk of natural hazards.

The Resource Management Act 1991 (“RMA” or “the Act”) is the primary legislative document regulating the natural and built environment in New Zealand, and along with the Local Government Act 2002 (“LGA”), the Building Act 2004 (“Building Act”), and the Civil Defence and Emergency Management Act 2002 (“CDEM”), provide the framework councils use to undertake their responsibilities in relation to responding to natural hazards. There are a number of legislative and practice changes that relate to natural hazards and climate change adaptation that have recently been enacted or are signalled for possible changes in the future.

There have been several recent changes to the RMA and national policy statements, new guidance information, and several new statutes to fast track development as well as changes to the Climate Change Response Act 2002 as reflected in the Climate Change Response (Zero Carbon) Amendment Act 2019. Given this environment of changing legislation and identification that New Zealand is exposed to significant risk from natural hazards, in July 2020, Cabinet met to consider a framework for community resilience and a suite of actions to improve resilience to flood risk. Cabinet directed Department of Internal Affairs staff to undertake further work in partnership with local government to discuss LIMs and the opportunity for a new national template as a prompt non-legislative option to improve community resilience. Officials are due to report back to Cabinet on this work in 2021. The outcomes of the workshop are therefore key in determining whether or not a LIM template is a practicable and workable option that will assist in making an on-the-ground difference in the short term to improve community resilience.

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The Workshop

The Workshop

The workshop held on Tuesday 21 October 2020 (“the October 2020 workshop”) was part of the ongoing work being undertaken by central and local government to identify areas to improve community resilience. It followed a community resilience workshop held in November 2019 between local government expert practitioners (“the November 2019 workshop”). One of the key outcomes of the November 2019 workshop was a suite of policy solutions that could be implemented to make the most significant on-the-ground difference in the short term. One of these proposals was a national LIM template as an interim solution aimed at improving community resilience and awareness of natural hazards.

The October 2020 workshop facilitated discussion between local government experts and central government officials on the role of LIMs and council processes in recording natural hazard information in LIMs. It also provided the forum to explore how central and local government can better work together to improve the LIM drafting process. This involved discussing what could be included in a national LIM template and other areas for alignment and co-ordination between central and local government as well as between councils. Ideally, such policy solutions would strengthen the role of LIMs providing hazard information.

The focus of the workshop was to discuss:

- the role of a LIM;
- LIM best practice;
- barriers to best practice;
- whether a national template would enable LIMs to be a more effective tool; and
- the implications of moving to a national template.

Prior to the workshop several questions were put to the participants to direct conversation to explore avenues for a national template. A list of attendees at the October 2020 workshop is attached as Appendix 2.

The summary below provides an overview of the questions discussed in the workshop and the opportunities and constraints to the development of a national template.

6.1 The role of a LIM

As previously identified LIMs are one of the tools available to councils to ensure information about a property is documented for property owners and those purchasing properties. It was noted that LIMs are a disclosure of “information for a particular property held by a council at a point in time”. A council only needs to provide natural hazard information “known” to it whether or not that information is actually held by the council. This may include information held by a regional council or agencies such as GNS Science. The purpose of a LIM was identified as being a way of providing information at a relatively high level. The wording in the LGOIMA section 44(2) is clear that it is about providing hazard information and not risk information. If further information is required, it is necessary to contact council staff and experts to discuss the information provided or delve deeper for further information regarding a particular issue e.g. to request geotechnical reports relating to a particular property to better understand the natural hazards affecting it.

One of the purposes of a LIM is to inform the reader of the natural hazards that may affect the property. Information that is known to council such as liquefaction risk provides an indication of potential hazards to landowners and potential purchasers. LIMs pull a range of information into a report including information provided from regional councils such as flood risk. It is the responsibility of the purchaser of a LIM to inquire further to obtain a more detailed report or discuss the information contained in a report with the relevant council or regional council staff to understand the information. As noted above, it was further iterated in the workshop that a LIM is a disclosure of information at a point in time, not a risk disclosure.

LIMs are considered to be high risk for councils in terms of legal challenge and all wording on council LIM templates are checked by legal counsel / staff every time there is a change to the LIM when new information becomes available to reference. Each council uses their own legal team to review LIM wording.

There have been several legal cases that have led to councils being cautious in ensuring that the LIM system is robust. This has had the consequence that councils generally only include information that is known to the council included in the LIM with the aim of avoiding legal liabilities i.e. judicial review or damage claims in negligence. Legal cases such as *Weir v Kapiti Coast District Council* have identified that ultimately, a territorial authority needs to be satisfied that the natural hazard information falls within section 44A(2)(a) and is sufficiently site specific.

It was agreed at the workshop that councils need to take reasonable care to ensure that a LIM factually and accurately informs the recipient about any special feature of the land. The earlier work and research undertaken by GNS Science and LGNZ has identified that a number of legal cases such as *Altimarloch Joint Venture LTD v Moorehouse HC 2008* and subsequently *Marlborough District Council v Altimarloch Joint Venture Ltd [2012 NZSC 11]*, determined that there is a relatively low threshold for the identification of potential risk and that the council has a duty of care in relation to the provision of a LIM. While these cases centred around specific issues, they highlight that councils have a statutory duty in relation to the information which is mandatory to provide under section 44A(2)(a). The workshop attendees highlighted that the legal peer review of a change to a councils LIM wording resulting from adding a new document or information is extensive. Therefore, one of the key areas that would assist local government is the establishment of a central repository of legal opinions and latest legal reviews to reduce duplication in seeking legal advice. Such legal advice, particularly regarding natural hazards, is a significant ongoing expense to the councils in managing the LIM process.

The community resilience work undertaken in 2019 previously identified that there may be value in ensuring LIMs are routinely made available by the vendor at the time of a property is listed on the market.

This issue was discussed in detail and while LIMs are not compulsory it was agreed that real estate agents play an important role and are often the purchaser of the LIM providing it as part of the marketing information which a purchaser relies on. One of the reasons for the trend in real estate agents obtaining a LIM was suggested as a way to speed up the sale and purchase process particularly in the current very hot property market across the country with many properties being sold at auction. The increase in volume of property transactions across the country has resulted in currently high numbers of LIM requests. Christchurch City for example, has up to 1,295 LIMs processed each month with approximately a third processed as fast track applications prepared in 1 - 4 days. In addition, it was noted that pressure is on to deliver fast track consents and where it is not possible to get a very quick turnaround of LIM applications the number of applications has decreased.

While LIMs were legislated to be completed in 10 working days the real demand for LIMs are in the 1 - 4 days or short turnaround to enable them to be included as part of the purchaser's due diligence on a property. This short turnaround reflects New Zealand's highly competitive property market. However, as noted above LIMs are not compulsory at the time of purchase of a property. Consequently, given the high demand for property and the short turnaround issue, LIMs may not be issued during property transactions. There may be the opportunity to identify whether or not requiring a LIM as a compulsory component of the sale and purchase of a property is a possibility.

The view of the participants was that the majority of LIMs are obtained by real estate agents and provided to potential purchasers of property as part of the marketing information. People are therefore relying on a LIM that may not have necessarily been individually purchased but rather included as part of the marketing of a property. This has the effect that purchasers are not owed a duty of care given they have not obtained LIMs themselves. It was agreed that working more closely with professional bodies such as the Real Estate Institute of New Zealand ("REINZ") and the New Zealand Law Society to ensure a consistent approach and advice on a national scale would assist local government in their role providing LIMs to real estate agents.

6.2 Best practice

In terms of ensuring best practice, councils are thorough in the preparation of LIMs and undertake careful legal peer review of the wording included in relation to natural hazards. In addition, councils endeavour to provide links to regional council and national reports relating to natural hazards. Councils seek to ensure that information included in LIMs has been peer reviewed to ensure a LIM is robust. For example, including the latest flood model data requires careful consideration as to how final the data is in terms of its suitability for inclusion in a LIM.

The development of standard terminology for LIMs was identified as another key area that could be beneficial. Greater Wellington Regional Council (“GWRC”) has developed some best practice guidance on flood hazard terminology to encourage a consistent approach across the Wellington Region and built on work undertaken by Christchurch City Council and Auckland Council. This consistent terminology could be used as a starting point for developing a template of standard wording for natural hazard terms used within LIMs nationally. The draft terminology developed by GWRC is attached as Appendix 3.

Each time a LIM is applied for a new LIM is generated to ensure that it is current and captures the information known to the council at the “point in time” of the application. A LIM provides information only and cannot be taken as a full complete risk profile for a property. It is not a risk assessment only a tool to identify natural hazards “known” to the council.

The time and cost of producing LIMs was discussed, with a time frame of 2 – 3 days for the production of a LIM seen as ideal. A number of councils fully recover costs from LIM processing, with best practice identified as reinvesting the cost to improve the LIM system.

Providing links to other documents used in LIMs for example to tsunami evacuation zones and links to national databases such as the Ministry of Business, Innovation and Employment building.govt.nz/managing-earthquake-prone-buildings was also considered best practice.

6.3 Barriers to best practice

Some of the key issues identified in terms of barriers to delivering best practice include.

- Limited staff resourcing:
 - A number of councils such as Auckland City and Kāpiti Coast District Council have undergone extensive reviews and upgrades of systems to provide an integrated data management system that pulls information into a LIM, but not all councils have the same ability to dedicate staff and resources to the production of LIMs;
- Limited knowledge in the community of what a LIM is;
 - It was identified that there is an opportunity to work with the New Zealand Law Society and REINZ to raise awareness of the LIM process and purpose;
- Limited capacity and record keeping;
 - Some councils are still in the process of digitising files and upgrading IT and GIS systems which impact on LIMs particularly in the ability to produce fast track LIMs and integrate data included in a LIM;
 - For some councils, staff availability and IT systems constraints limit their ability to track developments in resilience research and data sets produced by other agencies. This can impact their ability to include this information in LIM reports; and
 - Some councils have dedicated LIMs teams while others do not even have a dedicated LIMs lead. These issues affect the ability to produce fast track LIMs.
- Short-term timeframe considerations;
 - Particularly by financial institutions and banks who do their own risk modelling and do not consider the longer-term effect of natural hazards;

- LIMs are often considered part of councils' administration functions;
- The development of a LIM system however, is highly technical and pulls a range of information from across various council departments into the document meeting the requirements of section 44A and the council's duty of care in terms of representing voluminous information on a LIM that is accurate and must not mislead the recipient;
- LIMs are not compulsory;
 - Properties in new subdivisions for example are often perceived as a less risk, however LIMs are still relevant as they can provide information such as geotechnical reports that have been produced or updated as part of the subdivision consent process;
- Councils have moved away from the auditing of LIMs as part of the Riskpool audit system;
- The definition of a 'hazard' differs between LGOIMA, the Building Act, and the RMA. Each of the respective definitions are included in Appendix 4; and
- A lot of complex information that is difficult to understand can be held within a LIM;
 - It is often confusing for a lay person to interpret, particularly in relation to the differences between LIM & PIMs and property files and comprehending the different terminology.

6.4 Effectiveness and implications of moving towards a National Template

There was discussion around the option of moving towards a formal national template. It was agreed that there were some difficulties in developing a national template format in the short term. It was also discussed how useful a LIM can be as an information tool in changing people's awareness of the risk of natural hazards and in the understanding of natural hazards as they affect a property.

Some of the attendees stated that there "was no real appetite for change". The reason for this was that a number of councils such as Auckland Council have undergone significant changes and it has taken years to amalgamate and develop information systems to enable the development of an efficient LIM system. Similarly, councils such as Gisborne District Council have had delays in digitising core information required to be included in LIMs. Other councils such as Kāpiti Coast District Council have had a significant upgrade to the LIM process with new integration of GIS systems to enable digitised LIM production.

It was also clear that there were several differences between unitary authorities and city and district councils who rely on information from regional councils, with unitary authorities more directly linked with access to regional information. In addition, there are different IT and GIS systems across councils and therefore developing a template that works across different systems and different council structures is not straight forward.

Another issue highlighted is that councils have very limited staff resourcing and such a project would take considerable implementation given the specific IT and GIS systems that each council has established.

Therefore it was considered that moving to a full national template for LIMs in the short term would cause a significant cost burden on local government and should be considered as a longer term option following wider discussion amongst local government practitioners and engagement with outside consumers such as the New Zealand Law Society and REINZ.

It was noted that each council has developed their own brand and identity which is reflected in their LIMs and has invested in systems which work across council and it would be necessary to ensure that a national template would not incur significant cost in reworking current systems. Hutt City for example has a different approach to information included in LIMs than Kapiti Coast District Council. Some participants considered that having a national template would be a good option to move to particularly if parties such as the New Zealand Law Society were supportive of such an option.

It was agreed that there was a need to identify some short-term and longer-term initiatives to improve the workability of LIMs in relation to natural hazards for local government, and a role for central government in enabling this.

The wording in section 44A(2)(a) was seen as a starting point for the development of consistent national guidance around natural hazard information requirements to be included on LIMs but better linkages with the definition of natural hazards in the RMA and Building Act would provide a clearer starting point for a LIM template.



Next steps

Next steps

A number of opportunities to assist local government make some on the ground improvements to the LIM system are set out below including steps to provide national consistency and alignment across local government as the first move towards a national LIMs template:

7.1 Short-term priorities (3 – 6 months)

- Agreement across councils on what core natural hazards information is included, and on high level principles for how that information is presented;
 - This could be agreed nationally based on section 44A LGOIMA (attached as Appendix 1) with agreement on what discretionary natural hazard information should be included in a LIM at a national level.
 - It is suggested that the work undertaken by GWRC (attached as Appendix 3) to develop some consistent flood hazard terminology could be expanded to include a range of terminology for other natural hazards for inclusion in a national database for LIMs.

7.2 Longer-term priorities (6 – 18 months)

- The development of a central portal for research and data on natural hazards;
 - There is a significant amount of research being undertaken by the National Science Challenge and a number of central government agencies in relation to national hazards and climate change. The ability to communicate this clearly to local government is important and it could be achieved through the development of national data sets held in a central portal.
 - In addition, as noted changes to the relevant RMA, Building Act and LGOIMA legislation so that the definitions of natural hazards are consistent would also assist.

- The development of a central legal advice hub with support from central government;
 - A key issue facing councils is that LIM contents require ongoing legal review and to date councils rely on using their own legal advisors. A central hub may provide efficiencies and cost savings across local government in relation to the use of standard wording and disclaimers. For example, including standardising wording for LIMs to communicate the qualifications and caveats that apply to information provided. It was noted, that if the advice comes from central government then it may be less likely to be subject to legal challenge.
- Wider discussion and engagement with the legal fraternity (New Zealand Law Society), REINZ and consumers concerning the operation of the LIM system;
 - There is the opportunity for central government to lead the engagement with these parties and discuss potential improvements to the LIM system.
- Support for local government capacity;
 - That is, in terms of electronic retrieval of data and the move towards E-Plan and integration of information management systems.
- Consistency of information and agreement across councils on how to assess information concerning natural hazards for inclusion on a LIM;
 - i.e. use of links to on-line coastal hazard viewers; and
 - Requiring that information recorded on a district plan and that known to regional councils be recorded on LIMs.
- Requiring a LIM as a compulsory component of the sale and purchase of a property;
 - This obligation could rest with the vendor or their agent/s when carrying out a property transaction. This would require further discussion within central government.

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Appendices

Appendix 1

Copy of Section 44A of the Local Government Official Information and Meetings Act 1987

44A Land information memorandum

- (1) A person may apply to a territorial authority for the issue, within 10 working days, of a land information memorandum in relation to matters affecting any land in the district of the authority.
- (2) The matters which shall be included in that memorandum are—
 - (a) information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation, or likely presence of hazardous contaminants, being a feature or characteristic that—
 - (i) is known to the territorial authority; but
 - (ii) is not apparent from the district scheme under the Town and Country Planning Act 1977 or a district plan under the Resource Management Act 1991:
 - (b) information on private and public stormwater and sewerage drains as shown in the territorial authority's records:
 - (ba) any information that has been notified to the territorial authority by a drinking-water supplier under section 69ZH of the Health Act 1956:
 - (bb) information on—
 - (i) whether the land is supplied with drinking water and if so, whether the supplier is the owner of the land or a networked supplier:
 - (ii) if the land is supplied with drinking water by a networked supplier, any conditions that are applicable to that supply:
 - (iii) if the land is supplied with water by the owner of the land, any information the territorial authority has about the supply:
 - (c) information relating to any rates owing in relation to the land:
 - (ca) if the land concerned is located in a levy area that is subject to a levy order under the Infrastructure Funding and Financing Act 2020, information about—
 - (i) the levy period:
 - (ii) how liability for a levy on the land is assessed:
 - (iii) amounts of any unpaid levy:
 - (cb) if the land concerned is located in a project area that is subject to a targeted rates order under the Urban Development Act 2020, information about—
 - (i) the financial years to which the order applies; and
 - (ii) how liability for targeted rates under that Act on the land is calculated; and
 - (iii) amounts of any unpaid targeted rates under that Act:
 - (d) information concerning any consent, certificate, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority (whether under the Building Act 1991, the Building Act 2004, or any other Act):
 - (da) the information required to be provided to a territorial authority under section 362T (2) of the Building Act 2004:
 - (e) information concerning any certificate issued by a building certifier pursuant to the Building Act 1991 or the Building Act 2004:
 - (ea) information notified to the territorial authority under section 124 of the Weathertight Homes Resolution Services Act 2006:
 - (f) information relating to the use to which that land may be put, and conditions attached to that use:
 - (g) information which, in terms of any other Act, has been notified to the territorial authority by any statutory organisation having the power to classify land or buildings for any purpose:

- (h) any information which has been notified to the territorial authority by any network utility operator pursuant to the Building Act 1991 or the Building Act 2004.
- (3) In addition to the information provided for under subsection (2), a territorial authority may provide in the memorandum such other information concerning the land as the authority considers, at its discretion, to be relevant.
- (4) An application for a land information memorandum shall be in writing and shall be accompanied by any charge fixed by the territorial authority in relation thereto.
- (5) In the absence of proof to the contrary, a land information memorandum shall be sufficient evidence of the correctness, as at the date of its issue, of any information included in it pursuant to subsection (2).
- (6) Notwithstanding anything to the contrary in this Act, there shall be no grounds for the territorial authority to withhold information specified in terms of subsection (2) or to refuse to provide a land information memorandum where this has been requested.
- Section 44A: inserted, on 1 December 1992, by section 2 of the Local Government Official Information and Meetings Amendment Act (No 2) 1991 (1991 No 151).
 - Section 44A (2) (ba): inserted, on 1 July 2008, by section 18 of the Health (Drinking Water) Amendment Act 2007 (2007 No 92).
 - Section 44A (2) (bb): inserted, on 1 July 2008, by section 18 of the Health (Drinking Water) Amendment Act 2007 (2007 No 92).
 - Section 44A (2) (ca): inserted, on 7 August 2020, by section 161 of the Infrastructure Funding and Financing Act 2020 (2020 No 47).
 - Section 44A (2) (cb): inserted, on 7 August 2020, by section 300 of the Urban Development Act 2020 (2020 No 42).
 - Section 44A(2)(d): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).
 - Section 44A (2) (da): inserted, on 28 November 2013, by section 77 of the Building Amendment Act 2013 (2013 No 100).
 - Section 44A(2)(e): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).
 - Section 44A (2) (ea): inserted, on 1 April 2007, by section 127(5) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).
 - Section 44A(2)(h): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Appendix 2

LIM Workshop Attendees – 20 October 2020 – at the LGNZ offices in Wellington (and via Zoom)

Greater Wellington Regional Council:

- Sharyn Westlake, Team Leader, Floodplain Management Plan Implementation

Waimakariri District Council:

- Simon Markham, Manager Strategy and Engagement
- Nick Harrison, Manager, Community and Recreation

Auckland Council:

- Nick Brown, Regional Planning Manager, Healthy Waters
- Pam Styles, Manager Regulatory Support, Building Consents Department Operations Division
- Joanne Brennan, Regulatory Support Team Leader
- Senior Eveni, Regulatory Support Advisor

Tasman District Council:

- Glenn Stevens, Resource Scientist

Gisborne District Council:

- Ian Petty, Building Services Manager

Queenstown District Council:

- Emily Grace, Senior Policy Planner

Hutt City Council:

- Susan Quickfall, LIM Lead

Christchurch City Council:

- Rob Carlisle, Team Manager PIM/LIM

Central Government

- Julia Porter Directory Strategy, LINZ
- Paul Barker Partnership Director, Central Local Government Partnerships Group, DIA
- Pam Johnston Principal Analyst, Community Resilience, DIA
- Brooke Goodey, Policy Analyst, Community Resilience, DIA

Local Government New Zealand

- John Stewart, Senior Policy and Regulatory Advisor

Civil Defence

- Sarah-Jayne McCurrach, Team Leader

Appendix 3

National Hazard Terminology

The purpose of this document is to provide best practice recommendations on flood hazard terminology across the Greater Wellington region to encourage a consistent approach and collaboration between Greater Wellington Regional Council (GWRC), Wellington Water and Territorial Authorities.

This glossary is developed on the basis of terms defined from GWRC's Guide to Flood Protection Advisory Responses Section 11. All attempts to define the terminology are from a New Zealand (in particular Greater Wellington Region Flood Protection Department's) perspective.

Suggested amendments are made in blue and underlined for reviews.

Glossary of Flood Hazard Terminology

Glossary of Flood Hazard Terminology	
Risk	A measure of the probability and severity of an adverse effect to life, health, property, or the environment. In the general case, risk is estimated by the combined impact of all triplets of scenario, probability of occurrence and the associated consequence. In the special case, average risk is estimated by the mathematical expectation of the consequences of an adverse event occurring (that is, the product of the probability of occurrence and the consequence, combined over all scenarios).
Direct Flood Risk	Direct flood risk affects areas that are not protected from flooding by flood protection structures (such as stop banks or floodwalls) built to the design flood event standard. A direct flood risk can also occur where existing structural protection, built to less than the design flood event standard, is vulnerable and likely to fail in a flood event that exceeds the design standard of the protection works.
Residual Flood Risk	Residual flood risk is the total risk to that community, less any measure in place at any time before, during and after a risk mitigation programme has been taken. For a town protected by flood protection structures, the residual flood risk is associated with the consequences of breaching or overtopping of flood protection structures (such as stopbanks or flood works) built to the design flood event standard. For an area where flood risk is managed by land-use planning controls, the residual flood risk is the risk associated with the consequences of floods larger than the design flood event (DFE) on the community.
Tolerable Risk	A risk within a range that society can live with so as to secure certain net benefits. It is a range of risk that we do not regard as negligible or as something we might ignore, but rather as something we need to keep under review and reduce it still further if and as we can.
Annual Exceedance Probability (AEP)	The estimated probability that an event of specified magnitude will be equaled or exceeded in any year.

Average Recurrence Interval (ARI)	<p>The long-term average number of years between the occurrences of a flood as big as or larger than the selected event.</p> <p>For example, floods with a flow as great as or greater than the 20-year ARI (5% AEP) flood event will occur, on average, once every 20 years. ARI is another way of expressing the likelihood of occurrence of a flood event.</p>
Design Flood Event (DFE)	The defined flood (volume, peak, shape, duration, timing) which a flood defence system and its associated facilities are designed to safely pass.
Flood Hazard	
	The potential for flooding and associated erosion and deposition.
Building Setback Area / Erosion Hazard Line	Identifies land potentially at risk of lateral river erosion. Land on the riverside of the line could be at risk from erosion over time due to the flow, velocity and meandering patterns of rivers. A set-back distance (to the edge of the setback area) from the top of bank is given, this is to ensure that the risks from erosion to any new building structure have been minimised.
Fill Control Area	Fill Control areas are undrained “Basin” type catchments and areas of storage on the floodplain where filling will raise the level of flooding on the property and on adjoining land.
Floodplain	An area of land that is subject to inundation by river floods up to and including the probable maximum flood event.
Flood Hazard Area	An area where there is a risk of inundation from a flood of a specific magnitude.
Flood Sensitive Area	Flood sensitive area is the flood hazard area resulting from the application of mapping freeboard. This is the remaining area affected by flooding after overflow and ponding areas have been defined for a particular event.
Flood Storage Area	The extent of land within a topographical depression that water will pond on in a 1% AEP flood event, assuming any outlet to the depression is blocked. Topographical depressions occur either naturally or as a result of man-made features which act as dams when stormwater outlets are blocked.
Freeboard	An allowance added to predicted flood water levels to account for uncertainties, such as: flood modelling error margins; inaccuracies in surveying land levels; construction tolerances; obstructions within drainage networks and waterways; and natural phenomena (e.g. wave and wind effects, changes in bed level).

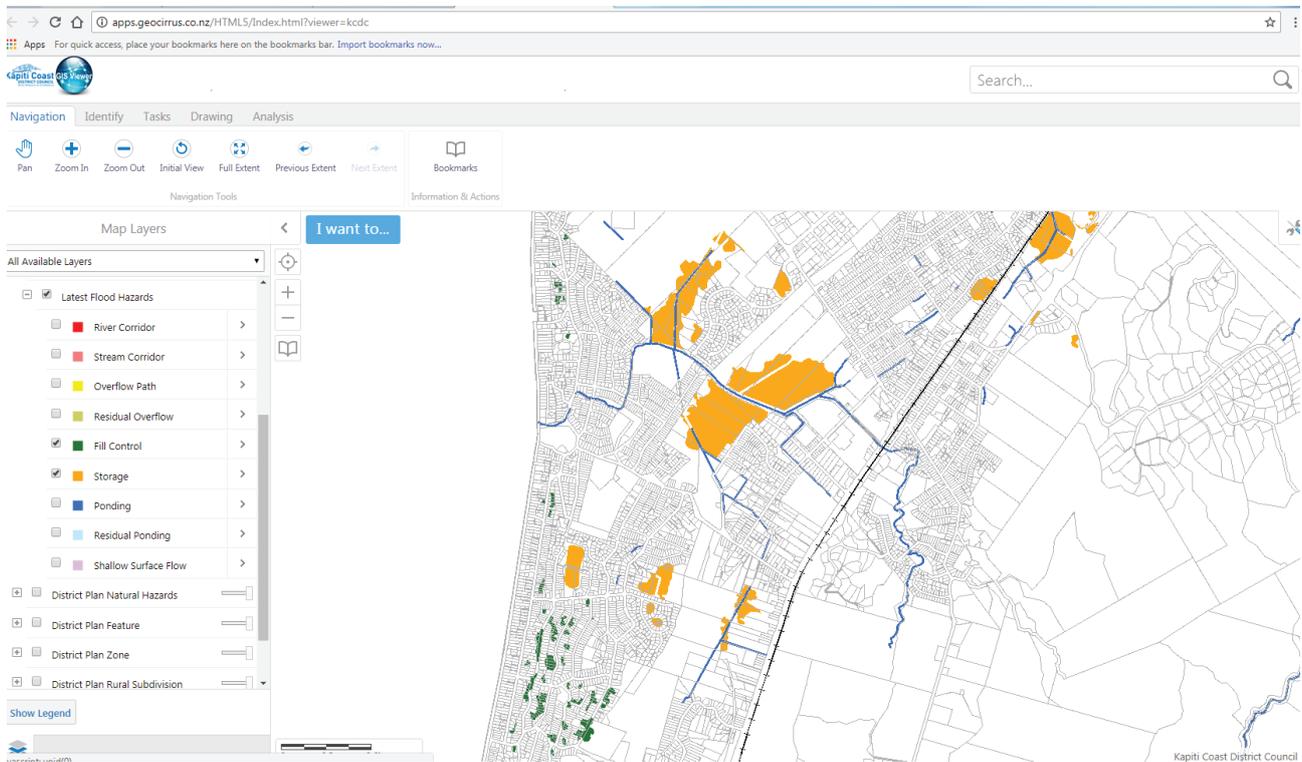
Overflow Path & Residual Overflow Path	<p>Overflow Paths generally occur in lower-lying areas on the floodplain which act as channels for flood waters. They can be natural, or artificially formed, and are often areas of land that lead deep or fast-flowing water away from the river corridor and over the floodplain during a flood event. A blocked overflow path could potentially cause a redistribution of flood flows to other areas.</p> <p>An Overflow Path may be a direct flood risk or a residual flood risk where protected from flooding by structural measures, such as stopbanks or floodwalls, constructed to the design flood return period event standard.</p>
Ponding Area & Residual Ponding Area	<p>These are areas of inundation that have slow-flowing water.</p> <p>A Ponding Area may be affected by a direct flood risk or by residual flood risk where they are protected from flooding by structural measures, such as stopbanks or floodwalls, constructed to the design flood return period event standard.</p>
Probable Maximum Flood (PMF)	<p>An estimate of a hypothetical flood (peak flow, volume and hydrograph shape) that is considered to be the most severe "reasonably possible" at a particular location and time of year.</p>
River Bed (RMA definition)	<p>River bed is defined in the Resource Management Act 1991 as:</p> <p>"For the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks;</p> <p>And in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks."</p>
River Corridor	<p>Includes land adjacent to the river and is the minimum area able to contain a design flood and enable water to pass safely to the sea. It includes flood and erosion prone land immediately adjacent to the river, where the risk to people and development is significant. Sometimes defined as the area including the stopbanks and their buffer zones.</p>
Recommended Building Level (in relation to flood hazards)	<p>The level taken to the underside of the floor joists for wooden structures, or to the base of the concrete floor slab.</p>
Stream Corridor	<p>The minimum area able to contain a design flood and enable flood water to safely pass to the stream confluence or the sea. It includes flood and erosion prone land immediately adjacent to the stream.</p>

Appendix 3 A – Methodology, Investigations and Understandings

The basis of this glossary is the GWRC Guide to Flood Protection Advisory Responses document, which outlines eight terms in relation to flood hazards and two additional terms of direct flood risk and residual flood risk. A spreadsheet (link provided in Appendix B) has then been populated with flood hazard terminologies from Flood Management Plans (FMPs) in GW, District Plans from TAs and other parts of the country, and also overseas (primarily Australia and UK) documents for comparison. Relevant flood hazard terms not provided in the current Advisory Responses document are also added.

Understandings from this process are outlined below:

1. Attempt has only made to provide a definition for 'freeboard'. The current version is developed from Christchurch City Council District Plan. It is noted that there are variations to the presentation and methodology behind 'freeboard' in flood modelling, but a standard practice is beyond the scope of this document. Here it is raised that increased impact of flood events due to obstructions within drainage networks and waterways, and operation of structures (as the approach under UK Fluvial and Freeboard Guidance Note) should be incorporated under the 'base model'. For further investigations see [15] in Appendix B.
2. Risk is commonly determined by "Risk = Hazard × Consequence". Care should be exercised when using the term 'Flood Risk', as if consequences are not taken to account, 'Flood Hazard' would be the actual term that is being referred to and vice versa. It may be said that 'Flood Hazard' is more material in existence whereas 'Flood Risk' can change as people's perceptions change over time.
3. Amendments to 'Residual Flood Risk' have been made from the Australian Disaster Resilience Handbook 7. Definitions to 'Annual Exceedance Probability (AEP)' and 'Average Recurrence Interval' are derived from [2] & [17] in Appendix B.
4. 'Flood Sensitive Area' is the terminology currently used which has the same meaning as the old 'Flood Fringe Area'. It has relevance to flood sensitivity analysis, see definition.
5. There is a difference between 'Flood Storage Area' and 'Ponding Area & Residual Ponding Area'. 'Flood Storage Area' arises due to its depressed topology. A better definition to 'Flood Storage Area' has been made from [16] a legal submission on the Proposed Auckland Unitary Plan.
6. It is suggested that 'Fill Control Area' and 'Flood Storage Area' from description are quite similar. From what the Kapiti Coast District Council District Plan in [8] and [15] describes, and mapped out below, 'Flood Storage Area' only occurs in local streams and 'Fill Control Area' is located closer to the shorelines. But the exact boundaries as to extent and characteristics are not clear verbally. Another question is do they actually need to be differentiated (e.g. could an area be both 'Fill Control' and 'Flood Storage')? It has been raised that as 'Flood Storage Area' does have "stormwater outlet" in its description, it implies that it is on urban streams.
7. As 'River Corridor' is mapped out, extensive verbal descriptions such as that of FMPs are not relevant.



8. Due to different statutory obligations, GWRC can only give Territorial Authorities 'Recommended Building Level', whereas at a district level, 'Minimum Floor Level' / 'Building Floor Level' are used. An example from Christchurch would be its 'Minimum Floor Level Certificate'. They are all given in respect to flood hazards.
9. Document [17] contains a table interpreting 'Annual Exceedance Probability (AEP)' & 'Average Recurrence Interval (ARI)' into 'Exceedance per Year (EY)', but 'Exceedance per Year' is not common practice in New Zealand.
10. Document [21] developed by Flood Protection Department of GWRC recommends 'Overflow Paths' to be defined as areas of flooding (outside the river corridor zone) where the depth exceeds 0.25 m AND the velocity exceeds 0.5 m/s during a 1% AEP flood event AND the velocity/depth product (VxD) is greater than 0.25, apply to the 100-year plus climate change flood event model. This is determined from existing modelling work.
11. Attempts have only been made to define 'Flood Hazard' according to [22] NZS 9401:2008. One could argue that the difference between 'Direct Flood Hazard' and 'Residual Flood Hazard' is the extent of the hazard. 'Residual Flood Hazard' is the remaining hazard once structural protection means such as stopbanks constructed to a certain designed level of service, are put in place. Hence there is no need to differentiate the extent in terms of definitions, but rather reflected under flood modelling.
12. 'Stream Corridor' is the terminology currently used instead of 'Floodway', as the wording of 'Floodway' does cause confusion.
13. Examples of AEP were avoided as giving numbers could be misleadingly taken as the given event. Floodplain definitions are made from a river flooding perspective, as the term is not commonly used in a stormwater context.

Appendix 4

Definitions of a Natural Hazard

Resource Management Act 1991

Natural hazard means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment

Building Act 2004

Natural hazard has the meaning given to it by section 71 as follows:

71 Building on land subject to natural hazards

- (1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if—
 - (a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or
 - (b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- (2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to—
 - (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or
 - (b) restore any damage to that land or other property as a result of the building work.

(3) In this section and sections 72 to 74, natural hazard means any of the following:

- (a) erosion (including coastal erosion, bank erosion, and sheet erosion):
- (b) falling debris (including soil, rock, snow, and ice):
- (c) subsidence:
- (d) inundation (including flooding, overland flow, storm surge, tidal effects, and ponding):
- (e) slippage.

Local Government Official Information and Meetings Act 1987

The LGOIMA does not refer to natural hazards but includes the following requirement for inclusion in a LIM:

Section 44A(2)(a)

information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation, or likely presence of hazardous contaminants, being a feature or characteristic that—

- a) is known to the territorial authority; but
- b) is not apparent from the district scheme under the Town and Country Planning Act 1977 or a district plan under the Resource Management Act 1991.



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