

2 February 2023

Committee Secretariat
Governance and Administration Committee
Parliament Buildings
Parliament

Uploaded to: [Local Government Official Information and Meetings Amendment Bill Submission - New Zealand Parliament \(www.parliament.nz\)](https://www.parliament.nz/Local-Government-Official-Information-and-Meetings-Amendment-Bill-Submission-New-Zealand-Parliament)

Dear Members of the Governance and Administration Committee

Submission from the Manawātū District Council on the Local Government Official Information and Meetings Amendment Bill

The Manawātū District Council (MDC) thanks the Committee for the opportunity to submit on the Local Government Official Information and Meetings Amendment Bill (LGOIMA Bill).

MDC is supportive of the intent of the amendments to provide clarity and certainty for local authorities in relation to natural hazard information provided in land information memoranda (LIMs). However, MDC has some concerns with aspects of the draft Bill, which are outlined in this submission.

Statutory Responsibility for Regional Councils

In general, MDC supports the statutory responsibility for regional councils to provide natural hazard information (including about the impacts of climate change) and support to territorial authorities. However, the draft Bill does not clarify the role or responsibilities for Crown Agencies and Government Ministries that also have responsibilities in relation to natural hazard information.

For example, the National Institute of Water and Atmospheric Research (NIWA) has within its Statement of Core Purpose to provide *“understanding of climate and the atmosphere and increase resilience to weather and climate hazards to improve the safety and wellbeing of New Zealanders.”* NIWA is the lead Crown Research Institute (CRI) in the areas of *“climate and weather hazards”* and works with other research providers in relation to *“climate change adaptation and mitigation.”*

Fire and Emergency New Zealand (FENZ) have responsibilities in relation to firebreaks and fire control to minimise the risk of wildfire. The Ministry for Primary Industry also has a role in wildfire management in plantation and exotic carbon forests through its National Environmental Standards for Plantation Forestry.

The purpose of GNS Science is *“to undertake research that enhances our understanding of geological and Earth system processes and increases Aotearoa New Zealand’s resilience to natural hazards and climate change.”* GNS Science has committed to contributing to greater resilience to a significant geohazard event (earthquakes, tsunami, landslides, volcanic

eruptions) through a range of planning, regulatory, and education measures, improved response, and improved forecasting of scale and breadth of impact.

Much of the natural hazard information that regional councils hold in relation to property has been provided by Crown Research Institutes such as NIWA and GNS Science, and Ministries such as FENZ. MDC considers that the scope of the draft Bill is too narrowly focussed on regional council responsibilities in relation to natural hazard information. It does not outline any expectations on the provision of quality information from Crown entities to regional councils or territorial authorities.

MDC is also concerned that the proposed amendments do not address who must pay for the collection of new natural hazard information. If regional councils are going to be required to hold information on all applicable natural hazards, they will be required to utilise the expertise of CRI's such as NIWA and GNS Science from time to time, particularly for property-scale modelling/mapping. These CRIs essentially have a forced monopoly over this information and MDC is concerned that the cost of obtaining this information will be passed onto ratepayers.

Decision sought:

- That the Bill be amended to include expectations for those Crown Research Institutes and Ministries that have roles and responsibilities in relation to natural hazards and climate change.
- That the Committee clarify expectations around who pays for new natural hazard information, particularly if the intent of this Bill means that regional councils must hold information on all relevant natural hazards that affect land in the region.

Section 2 (Interpretation)

Section 2 of the draft Bill refers to the definitions of “climate change” and “natural hazard” contained within the Resource Management Act 1991 (RMA). The RMA defines these terms as follows:

climate change means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods

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

It is assumed that when the RMA is repealed, the definitions for these terms in the LGOIMA Act will be amended to refer to the new definitions contained in the Natural and Built Environments Act (upon commencement). While the definition for “climate change” is generally consistent between the RMA and the Natural and Built Environment Bill, the definition of “natural hazard” is not entirely consistent. The definition of natural hazard in the Natural and Built Environment Bill includes a new sub-part (b) as follows:

(b) includes soil that contains concentrations of naturally occurring contaminants that pose an ongoing risk to human health.

Will the scope of the natural hazard information that must be disclosed in LIMs be extended to include soil naturally high in contaminants? Or will further amendments to the Local

Government Official Information and Meetings Act be necessary to resolve these inconsistencies?

MDC is also concerned that the definition of “natural hazard,” as currently contained in the Resource Management Act 1991, does not align with the definition for this term in the Building Act 2004. The Building Act 2004 definition of “natural hazard” does not include liquefaction. This inconsistency complicates local authorities ability to provide clear and consistent information that is relevant to property buyers.

Decision sought:

- That the Committee clarify how those terms that are proposed to be defined by reference to the RMA will be considered when the RMA is repealed and replaced by the Natural and Built Environment Act.
- That the Committee must also consider implications of the inconsistencies between the definition of “natural hazard” in the Resource Management Act 1991 and the Building Act 2004.

S44B Natural hazard information to be included in land information memoranda

MDC is concerned about the phrasing of section 44B(2)(a)(ii), particularly in relation to the vagueness of the term “*reasonable possibility*.” MDC asks that the Minister provide local authorities with clear guidance on what is meant by this term. Alternatively, MDC requests that the Act, or associated regulations, specify a return period (or annual exceedance probability) for each type of natural hazard.

Decisions sought:

- That the Minister provide local authorities with clear guidance on what is meant by “reasonable possibility” in section 44B(2)(a)(ii).
- Alternatively, the Act, or associated regulations, specify a return period (or annual exceedance probability) for each type of natural hazard.

S44C Obligation on Regional Council to provide territorial authorities with natural hazard information

MDC generally supports the requirement placed on regional councils through this Bill to provide territorial authorities with information about natural hazards and the impacts of climate change that exacerbate natural hazards. This information is critical for informing local authorities growth planning, land use planning and decision-making.

However, MDC wants clarification as to what this section means in practice. For example, is the expectation that regional councils will effectively ‘hand-over’ their natural hazard information to territorial authorities to consider? Or will regional councils still ‘own’ that information, regularly review and update that information, and assist local authorities in the interpretation of that information on a case-by-case basis as required? It is MDC’s preference that regional councils retain ownership of this natural hazard information and therefore responsibility to ensure that any changes or revisions to natural hazard information are communicated to all relevant territorial authorities as soon as reasonable practicable.

Section 44B(1) refers to land information memoranda containing “*understandable information about...(a) natural hazards and (b) impacts of climate change that exacerbate natural hazards.*” This clause sets and expectation that local authorities will provide

information from technical reports in a manner that can be understood by the layperson. It will be difficult for council officers to achieve this in a consistent manner across the country. There is also a risk that by simplifying technical information this removes the onus from the layperson to seek professional advice, increasing the risk of the information being misinterpreted.

Section 44C(2) of the LGOIMA Bill requires that regional councils provide territorial authorities with natural hazard information that has been “*summarised and presented in the form required by the regulations (if any).*” In the Manawatū-Whanganui Region, the Coordinator District Advice at the regional council (Horizons) assists territorial authorities and members of the public through the provision of natural hazard information for individual properties, or parcels of land, upon request. This information is accompanied by information on how the data is to be interpreted, as well as any disclaimers and limitations to do with the models on which the data/information is based. For example, Horizons holds flood information for properties that is based on different annual exceedance probabilities (such as a 0.5% AEP or 1 in 200 year flood, a 1% AEP or 1 in 100 year flood and a 2% AEP or 1 in 50 year flood). These models are based on a set of assumptions and do not include other sources of flooding such as stormwater and overland flow paths.

The technical expertise to understand the assumptions and limitations with natural hazards modelling generally sit within regional councils, or Crown Research Institutes such as NIWA, GNS Science etc. MDC would be concerned if regional councils were to ‘hand-over’ natural hazard information to territorial authorities for their interpretation and dissemination without providing technical oversight and support. MDC would also be concerned if regional councils are required to simplify natural hazard information to the point where the assumptions and limitations that are inherent in any hazard modelling are lost. MDC concurs with Taituarā that any regulations relating to making information contained in land information memorandum “understandable” (as required by s44B(1)) must maintain scientific accuracy and clearly communicate any uncertainties within the data presented.

MDC also supports the recommendation by Taituarā that the regulations referred to in new section 44C be developed in consultation with local government.

MDC requests that the Committee clarify what is meant by ‘as soon as is reasonably practicable’ in relation to section 44C(1). MDC has a statutory obligation to respond to requests for information under the Local Government Official Information and Meetings Act within 20 working days (s13(1) of the LGOIMA), and to respond to Land Information Memorandum (LIM) requests within 10 working days (s44A(1)). If natural hazard information is to be provided by regional councils to territorial authorities on an ‘as required’ basis in relation to property requests, there needs to be consideration of these statutory timeframes. If regional authorities do not provide information to territorial authorities in a timely manner, this could result in territorial authorities failing to meet their statutory deadlines, exposing them to risk. Ideally, if natural hazard information is to be provided by regional councils to territorial authorities in response to individual LGOIMA or LIM requests, this information should be provided within 5 working days, so as to not impact on territorial authorities statutory deadlines.

MDC supports the recommendation in the submission from Taituarā that guidance be developed to provide clarity on how to coordinate the sharing of information.

Decisions sought:

- That the Committee clarify the intent of section 44B. That is, does this section require regional councils to ‘hand-over’ all natural hazard information to territorial authorities for their interpretation and use, or will regional councils assist territorial authorities in the LIM and LGOIMA requests through the provision of timely natural hazard information on a case-by-case (or property by property) basis?
- That the Committee support the recommendation by Taituarā that the regulations relating to making information for land information memorandum “understandable” (as required by s44B(1)) must maintain scientific accuracy and clearly communicate any uncertainties with the data presented.
- That the Committee support the recommendation by Taituarā that the regulations referred to in new section 44C be developed in consultation with local government.
- That the Committee clarify who will retain ‘ownership’ of the hazard information and responsibility for ensuring its ongoing revision/re-modelling.
- That the Committee clarify what is meant by the phrase “as soon as is reasonably practicable” in section 44C(1).
- That the Committee support Taituarā’s request for guidance to be developed that provides clarity on how to coordinate the sharing of information.

Section 44D – Territorial authority and regional council protected against certain actions when providing information in good faith

MDC supports section 44D and asks that it be retained as drafted.

Decision sought:

- That section 44D be retained as drafted in the Bill.

Flooding from Stormwater or overland flow paths

Responsibilities in relation to stormwater management sit with territorial authorities, not regional councils. It is not clear to MDC how this bill relates to flood risk associated with flooding from stormwater or overland flow paths. Territorial authorities differ significantly in the quality of information they hold in relation to stormwater flooding.

Stormwater flooding is a significant hazard in the Manawatū District. In the 9 months from 17 September 2021 to 13 June 2022, four significant rain events throughout the district cause flooding in Colyton, Feilding, Halcombe, Kairanga, Newbury, Rangiotu, Reu Reu Valley, Rongotea and Sanson. During these flood events, floodwaters entered 36 dwellings, 29 of which are within the Feilding stormwater network area.

In response to these flood events, MDC has committed to carrying out stormwater modelling for Feilding, at a cost of approximately \$130,000. This modelling will inform upgrades to the Feilding stormwater network, which are estimated to cost \$18 million.

MDC questions whether section 44C shifts current responsibilities around the modelling of flood hazard as a result of stormwater or overland flow paths from territorial authorities to regional councils.

Decisions sought:

- That the Committee clarify how flood information from stormwater or overland flow paths is to be considered in light of this Bill.

Timeframes, Responsibilities and funding to address natural hazard information gaps

Section 44C requires regional councils to provide information (to the extent that it is known to Council) about “each hazard or impact that affects land in the region”. MDC questions whether this means that regional councils will be responsible for obtaining natural hazards information, where this information is currently unknown. A lack of national direction around who is responsible for obtaining natural hazard information leads to inconsistency in approach, scale and accuracy of this data. This also makes information sharing across regions and territorial authorities difficult.

For example, changes to the Building Code in November 2019 revised B1/AS1 (acceptable solutions for foundation design), requiring robust foundations on liquefaction-prone ground. To give effect to this change, regional and territorial authorities were advised to undertake hazard mapping to identify liquefaction-prone areas.

The liquefaction mapping undertaken by Horizons was at a regional scale, and was not granular scale (property-specific) that would enable its use to confirm ‘good ground’ for building consent applications. This has meant that each territorial authority in the Horizons Region has had to engage their own experts to undertake detailed liquefaction hazard mapping. MDC is spending \$39,500 (GST exclusive) for a basic level A and B assessment across the district. This excludes any geotechnical reports or site investigations that could be required through the process if gaps in the dataset are identified.

Tsunami hazard is another information gap for the Horizons region. We currently only have tsunami evacuation zones, not modelled inundation zones for tsunami hazard. There is currently no bathymetric data or Lidar data for the coast that would enable more detailed tsunami hazard modelling to be undertaken. If such modelling were to be required, this would be at substantial cost to ratepayers.

Due to the cost associated with obtaining Lidar information and carrying out flood modelling, Horizons only holds modelled flood information for high priority rivers and streams in the Region. Flood hazard information is not available for the whole region. Nor does the current modelling consider flooding from stormwater or overland flow paths.

MDC considers that the key barrier to high quality natural hazard information in New Zealand is cost. Projects that seek to obtain new natural hazard information must compete for funding with other local government responsibilities and priorities.

Decisions sought:

- That section 44C of the draft Bill be amended to clarify what central governments expectations are with respect to current natural hazard information gaps. That is, does this Bill require regional councils to hold information on all applicable natural hazards, including those that may be exacerbated by climate change? If so, will central government provide funding to contribute to this new data?

- If central government wishes to prioritise the collection and disclosure of natural hazard information, MDC requests that the Central Government fund and commission the following information and make this available to all regional and territorial authorities:
 - National Lidar and bathymetric information at a scale that enables detailed modelling of flood hazard, tsunami and landslide hazard;
 - regional or local level modelling (by NIWA) of tsunami hazard and coastal inundation from sea level rise on behalf of local authorities; and
 - seismic hazard modelling and liquefaction modelling by GNS Science.

Support for other Submissions

MDC supports the submission by Taituarā.

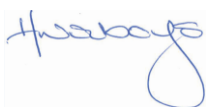
MDC **supports in part** the submission by Local Government New Zealand (LGNZ) in relation to this amendment Bill. MDC supports the recommendations contained in this submission except recommendations 7 and 8.

MDC only supports in part LGNZ's recommendation 7 which requests that *"the Government further investigates, in partnership with local government, the possible introduction of a requirement for LIMs to be obtained by vendors in relation to land or properties located in identified high risk or high hazard areas, or subject to an assessed high level of risk from particular features/characteristics affecting specific land."*

As noted in LGNZ's submission, if accepted, this recommendation would require the inclusion of a statutory requirement for councils to map natural hazard areas, and then determine a threshold which would require a LIM to be compulsory. This requirement would come with significant cost and resourcing implications that we consider would outweigh the potential benefits. MDC is also concerned about potential litigation in relation to council decisions about what constitutes a "high hazard area." MDC would only support this recommendation if there is clear national guidance on what constitutes a "high hazard area," limited liability on councils for such determinations, and central government funding.

MDC does not support LGNZ's recommendation 8, that the Building Act 2004 be amended so that information requirements for PIMs align with the requirements for LIMs. While the work required to prepare a PIM is similar to that of a LIM, they serve two different purposes. As PIMs are specific to a proposal for building work, they require a Building Officer undertake an assessment of the natural hazard information as it relates to the proposal. The information disclosed in a PIM may differ depending on the location and nature of the building work proposed. MDC disagrees that local authorities would require "two different systems for recording natural hazard information – one for PIMs and one for LIMs..." The same records of natural hazard information are used for both PIMs and LIMs, the difference lies in the expert interpretation of that information.

Yours sincerely



Helen Worboys
Mayor, JP