

Regulatory Impact Statement: Improving disclosure of natural hazard information in the land information memorandum system

Coversheet

Purpose of Document	
Decision sought:	Analysis produced to inform Cabinet decisions on options to improve the disclosure of natural hazard information in the land information memorandum system, including legislative amendment to the Local Government Official Information and Meetings Act 1987.
Advising agencies:	Department of Internal Affairs
Proposing Ministers:	Minister of Local Government
Date finalised:	2 November 2021
Problem Definition	
<p>Land Information Memoranda (LIMs) do not currently deliver all key natural hazard information for properties in a way that helps support purchaser decision-making. This is a multi-faceted problem with three key aspects:</p> <ul style="list-style-type: none"> • there are inconsistencies in the natural hazard information councils provide in LIMs and they may not contain all known information • LIMs do not currently communicate natural hazard information in a way purchasers can easily locate and understand • council concerns about legal liability can inhibit full disclosure of natural hazards information. 	
Executive Summary	
<p>For many people, buying a property is the most significant investment decision in their lives. The land information memorandum (LIM) under the Local Government Official Information and Meetings Act 1987 (LGOIMA) is the main source of property information for purchasers and is currently a key tool for communicating natural hazard information to buyers so they can make informed decisions.</p> <p>Government provision of natural hazard information is required under LGOIMA because of the important public benefits to informing purchasers (and the wider public) about natural hazards. If purchasers do not make decisions that reduce natural hazard risks, it may have significant consequences for community wellbeing, including the impact of natural hazard emergency response and recovery programmes. Risk-informed purchasing decisions may also reduce future government liability.</p> <p>The policy objective is an improved LIM system, where local authorities confidently provide key natural hazard information to purchasers, in a clear and nationally consistent manner, to support their understanding of natural hazards risks and help them make informed property decisions.</p>	

To address problems with the current LIM system and achieve the policy objective, the Department looked at options to:

- improve natural hazard information content and communication in the LIM system
- reduce the negative impact of potential legal actions on councils sharing natural hazard information in the LIM.

Improving natural hazard information content and communication in the LIM system
Option 1A – status quo
Option 1B – Amend LGOIMA and introduce national direction (preferred)
Option 1C – Non-statutory guidance and regional council support for territorial authorities
Reducing the negative impact of potential legal actions on councils sharing natural hazard information
Option 2A – status quo
Option 2B – statutory clarification of natural hazards information disclosed in a LIM (Preferred)
Option 2C – Limit all council liability for providing natural hazard information in the LIM
Option 2D – Council liability limited when providing natural hazard information in good faith (preferred)

Our preferred package of options is to:

- amend LGOIMA to more clearly specify the natural hazard information to be included in LIMs and give regional councils statutory responsibility for providing natural hazard information and support to territorial authorities to include on the LIM (Option 1B), and
- provide statutory clarification of natural hazards disclosed in a LIM and limit council liability when providing natural hazard information in good faith (Options 2A and 2D).

This preferred package of options is recommended for approval in the Cabinet paper.

The key benefits of the proposed package are:

- benefits to purchasers of a single source of relevant natural hazard information, which will support understanding of natural hazards and help them to make better informed property decisions
- better informed property decisions that reduce or avoid natural hazard risks can have wider benefits to long-term community wellbeing and help reduce future government liability from natural hazard events
- greater certainty for councils about what natural hazard information to include in LIMs
- potential reduction in council legal costs as a result of limited liability.

Given the short time frame for developing these policy options, it has been difficult to estimate the monetised benefits and costs of these changes, particularly local government implementation costs.

We consider that local government will incur low-medium costs to implement the changes to the LIM system, including one-off updates to LIM systems and processes, and additional regional council resourcing to provide natural hazard information. However, local government is likely to benefit from greater clarity and limited liability for disclosing natural hazard information. Property purchasers will also benefit from improved natural hazard information in a LIM.

The implementation costs incurred due to the proposed package will also depend on the specific requirements set in future national direction.

In the absence of monetised costs and benefits, we have assessed the costs of the package will be low to medium and the benefits will be medium to high overall compared to the status quo.

Time only allowed for targeted stakeholder engagement rather than full public consultation and hui with iwi/hapū. The Department undertook targeted engagement with the local government sector (Local Government New Zealand and Taituarā– Local Government Professionals Aotearoa), central government agencies, Māori data experts and other representative stakeholders to test the problem narrative and options to improve the LIM system.

Stakeholders agreed with our problem definition and nearly all supported statutory amendment to LGOIMA to provide clearer direction to councils about the content and communication of natural hazard information in LIMs. Most stakeholders supported limiting liability for councils when providing natural hazard information in good faith, although some considered that only greater statutory certainty was required. However, further engagement is planned, particularly with local government, to test detailed changes to legislation and to inform the future development of national direction.

Limitations and Constraints on Analysis

Scope of analysis limited to improvements to natural hazard information in the LIM system

The focus of the current policy process is limited to the sharing of natural hazard information in the existing LIM system. This responds to Cabinet's invitation to the Department to report-back on legislative and non-legislative options for substantive changes to the LIM system to achieve more active disclosure of natural hazard risk by September 2021 [DEV-21-MIN-0074]. The Cabinet paper specified that this would include investigating options to:

- ensure information on district plans and held by regional councils are included in LIMs
- remove barriers and incentivise councils to communicate natural hazard risks to the public, including addressing legal risks for councils disclosing information.

The review is deliberately focussed on natural hazards and does not extend to broader consideration of other LIM information, such as building and resource consenting. Although there may be consequential impacts on the communication of information in LIMs more generally.

The Department recognises that LIMs are only one method of communicating natural hazard information and its target audience is generally limited to property purchasers, given the charges for LIMs and their accepted role in property conveyancing due diligence. LIMs are not an effective tool for communicating natural hazard information to other audiences, such as renters or the general public. Other agencies, including the Earthquake Commission are working on natural hazard information tools, such as

national hazard portals, which will provide up-to-date information that is accessible to a wider range of audiences.

Initial engagement by Department officials indicates that the LIM is not an appropriate tool for communicating natural hazard information about whenua Māori to Māori landowners. Whānau, hapū and iwi landowners are unlikely to purchase a LIM as whenua Māori is generally transferred through succession under the rules of the Māori Land Court. Future work may be carried out to consider options to respond to these problems.

Analysis did not consider wider natural hazard data and information challenges

The LIM work is limited to improving the communication of natural hazard information currently available and ensuring future data and information can be effectively and efficiently referenced as it becomes available.

We are aware improvements are needed to natural hazard data and information currently available to inform LIMs, including the need to address critical gaps in national data. Natural hazard data and information is not equally available across regions and local authorities may not have sufficient resources or expertise to commission their own modelling. This work was originally part of the wider Community Resilience work programme but was scaled back due to the level of funding provided through Budget 2021/22. Some of these issues are being addressed through other agency work programmes, including EQC's Risk and Resilience Portal, Toitū Te Whenua – Land Information New Zealand's (LINZ) property data work, and Ministry for Business, Innovation and Employment's (MBIE) Endeavour fund and National Science Challenge projects.

Time and cost challenges are not addressed in this RIS

Policy research and engagement identified the time and cost of obtaining a LIM as an additional challenge to the effectiveness of the LIM system at informing purchasers, alongside the inconsistency and communication of information. Pressure to make an offer on a property in the current market and the cost incurred, are barriers to purchasers obtaining a LIM.

This challenge is not addressed in the current RIS and policy options, as the focus of current policy is on the natural hazard content of LIMs. Time and costs are challenges that affect the entire LIM system, not just the disclosure of natural hazards. Potential options to reduce the time and cost of LIMs were not sufficiently developed and tested with stakeholders to assess within the Cabinet report back time frame.

Potential measures for future consideration include compulsory vendor provision of LIMs and reductions to the cost and statutory timeframes for LIMs. Compulsory vendor provision of a LIM to purchasers was discussed with stakeholders during engagement. However, the significant interactions with the wider property conveyancing system and potential for regulatory change outside of LGOIMA, means this change needs to be considered further as part of future work.

Further assessment of any proposal to reduce the cost or time frames for councils to produce a LIMs is required, given the potential financial and resourcing implications for councils.

Limitations on iwi/Māori and stakeholder engagement due to time frames

The short time frame for developing options to improve the LIM system required that the Department undertake targeted stakeholder engagement rather than a full public consultation process. We worked with Taituarā – Local Government Professionals Aotearoa and Local Government New Zealand (LGNZ) to plan engagement and seek feedback from technical experts from a range of local authorities. Officials also met with stakeholders who have an active interest in LIMs including property and local government lawyers, Māori data experts, and representatives from the property investment, real estate, banking and insurance sectors. The Department did not engage directly with all local authorities.

Due to time constraints, officials did not engage with iwi and hapū directly about their experiences with the LIM system, but received helpful feedback from Māori data experts and other agencies.

The Department recognises that the limited time available does not mitigate consultation expectations during policy development. In recognition of this, the Department plans to engage with key stakeholders, particularly local government, on the details of changes to the LIM system prior to drafting legislative amendments. Subject to Cabinet approval of the package of options, broader engagement with iwi/Māori, local government and other key stakeholders would also take place during the development of national direction and any future work on communicating natural hazard information relating to whenua Māori.

Limitations on data and evidence

Evidence to support the Department's analysis was obtained from a review of research papers, advice from technical experts and a series of local government and central government workshops. Limited quantitative evidence was available to assist analysis of the LIM system which affected our assessment of the scale of the problem, such as the number of LIM complaints and threatened legal actions against councils.

Within the time and resourcing available, the Department was unable to carry out a robust cost benefit analysis including monetised potential costs, particularly for local government. Further analysis of costs and benefits will be carried out when specific proposals are developed for national direction.

Responsible Manager(s) (completed by relevant manager)

Frédérique Bertrand
Policy Manager
Local Government Branch - Ue te Hinātore
Department of Internal Affairs



2 November 2021

Quality Assurance (completed by QA panel)

Reviewing Agency: Department of Internal Affairs

Panel Assessment & Comment: The Department of Internal Affairs' Quality Assurance Panel has reviewed the Regulatory Impact Statement: *Improving disclosure of natural hazard information in the land information memorandum system*.

The panel considers that the information and analysis summarised in the RIA **meets** the Quality Assurance criteria.

The RIA clearly explains complex concepts using plain English and is concise relative to the technical nature of the issues being discussed. It convincingly describes the problem to be addressed, the issues impacting on the current situation and sets out the full range of options. Assumptions, constraints and uncertainties are clearly stated and it provides balanced analysis. Complete information is provided by setting out likely costs, where they fall, risks and mitigation measures. The RIA also identifies the range of potential impacts from options and links to other wider work. The RIA acknowledges the limited consultation undertaken owing to time constraints but intends to mitigate this through further consultation including with local government, iwi and Māori stakeholders.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The status quo: current role of the LIM in the New Zealand property market

The Local Government Official Information and Meetings Act 1987 regulates LIMs

1. The purpose of the Local Government Official Information and Meetings Act 1987 (LGOIMA), which is administered by the Department of Internal Affairs (the Department), is to increase the public availability of official information held by local authorities (section 4(a)). A key principle is that information should be made available unless there is good reason for withholding (section 5).
2. LGOIMA was amended to provide for the Land Information Memorandum (LIM) system as part of the same statutory package as the Building Act 1991. This was intended to provide a simple mechanism to deliver property information to potential purchasers to ensure they could make informed decisions.¹ Under section 44A, a person may apply to a territorial authority for a LIM within 10 working days on payment of a fee.²
3. LGOIMA requires that LIMs include a wide range of information about a property, including: special features and characteristics of land (natural hazard information), building and resource consents, drainage, water supply, rates, weather tightness events (section 44A(2)). The territorial authority may also include any other information it considers relevant (section 44(3)).

The Ombudsman investigates public complaints about LIMs

4. Under the Ombudsmen Act 1975, the Ombudsman can investigate complaints about information included in LIMs.³ The Ombudsman can recommend that the inclusion or omission of information on a LIM be cancelled, varied, rectified or reconsidered if it is:⁴
 - contrary to law
 - unreasonable, unjust, or improperly discriminatory
 - a mistake in law or fact or
 - wrong.
5. The Ombudsman can also recommend that an ex gratia payment be made.⁵ While the Ombudsman's recommendations are not binding on local authorities, in practice they have significant weight and councils will usually comply.

¹ Building Bill, Report of Internal Affairs and Local Government Committee, Hansard (vol 520), 31 October 1991.

² On average \$297 for a standard LIM request based on LIM processing fees information available on council websites in September 2021.

³ Ombudsmen Act 1975, section 13. This process is distinct from the Ombudsman review of local government provisions of official information under LGOIMA.

⁴ Ombudsmen Act 1975, Section 22.

⁵ For example, where a local authority unreasonably failed to provide information about an outstanding capital contribution for a sewer on a LIM the Ombudsman recommended that the Council make an ex-gratia payment of \$2000 (Case number 336855, 1 January 2012).

6. The Ombudsman also regularly reviews and reports on LGOIMA practice and compliance at councils, including LIM policies, procedures and resources.
7. During the period January 2020 to September 2021, the Ombudsman received 26 LIM related complaints, investigated and formed an opinion on one LIM complaint and resolved one complaint during the course of its investigation.⁶

What natural hazard information needs to be provided in a LIM?

8. Under section 44A(2)(a), territorial authorities must provide information identifying each (if any) special feature or characteristic of the land that is known to the territorial authority and not apparent from the relevant district plan. This can include, but is not limited to potential:
 - erosion (process where gravity, wind and water wear away soil and rock)
 - avulsion (land is suddenly cut off by flood, currents, or change in the course of a river or stream)
 - falling debris (falling soil, rock, snow and ice)
 - subsidence (type of land instability where earth and rock fall into a cavity that has formed below the ground's surface)
 - slippage (movement downslope of a mass of rock, debris, earth or soil)
 - alluvion (the increase of land resulting from the action of water such as sea tides/currents, or river flow), or
 - inundation (includes flooding, overland flow, storm surge, tidal effects, and ponding).
9. The LIM is also required to include any information regarding the likely presence of hazardous contaminants.
10. Three key questions can help determine if natural hazard information needs to be included in a LIM:⁷

1. Does the information relate to a potential relevant hazard?

"Potential" is a low threshold and includes future events that have a reasonable possibility of occurring.

2. Does the information relate to a feature or characteristic of the specific land?

This is a judgement call for the council but does not require a site-by-site analysis. A local assessment finding a natural hazard is a special feature of an area or type of land may be sufficient.

3. Is the information "known" to the council?

"Known" simply means that the territorial authority needs to know about the information. The territorial authority is not required make enquiries about whether such information exists.

⁶ Complaints information provided by the Office of the Ombudsman.

⁷ *Weir v Kāpiti Coast District Council* [2013] NZHC 3522.

Information tools can help raise public awareness of natural hazards and manage risks

11. New Zealanders' properties are at risk from a range of geological and weather-related natural hazards, including volcanic unrest, earthquakes, land instability and flooding. Flooding is our most common natural hazard and on average a major flood event occurs every eight months.⁸ Most of New Zealand's major urban centres and most of our population are located on the coast or floodplains of major rivers.
12. Climate change is increasing New Zealand's exposure to natural hazards, putting many more properties at risk from impacts such as sea level rise, coastal inundation and storm events.⁹ Climate related natural hazards like these are projected to become more frequent and severe.¹⁰
13. Information tools, such as LIMs, can play a role in managing natural hazards, as they can raise public awareness, are relatively inexpensive and can enable purchasers to make better informed decisions.¹¹
14. While it is normally the responsibility of individuals to acquire information to support their decision-making, Government provision of information can be justified if this is not provided in the private market or if there are significant positive spill overs – i.e. the benefit to the community exceeds the benefit to individual property buyers.¹² In the current situation, there are important public benefits to informing purchasers (and the wider public) about natural hazards.
15. The provision of natural hazard information supports central and local governments' goals to reduce natural hazard risk for communities by incentivising better long-term investment decisions. Improving information for the public to promote better decision making around natural hazard risk is also aligned with New Zealand's natural hazard resilience strategies and international obligations.¹³

⁸ New Zealand Institute of Economic Research "Investment in natural hazards mitigation – forecasts and findings about mitigation investment" August 2020.

⁹ See Ministry for the Environment. 2020. National Climate Change Risk Assessment for Aotearoa New Zealand: Main report – Arotakenga Tūraru mō te Huringa Āhuarangi o Aotearoa: Pūrongo whakatōpū. Wellington: Ministry for the Environment. at p 84; NIWA. 2019. New Zealand Fluvial and Pluvial Flood Exposure. Wellington.

¹⁰ Ministry for the Environment. 2020. National Climate Change Risk Assessment for Aotearoa New Zealand: Main report – Arotakenga Tūraru mō te Huringa Āhuarangi o Aotearoa: Pūrongo whakatōpū. Wellington: Ministry for the Environment.

¹¹ Saunders, W.S.A., Mathieson, J.E. 2016. Out on a LIM: The role of Land Information Memorandum in natural hazard management, *GNS Science Miscellaneous Series* 95.

¹² Australian Productivity Commission 2012. Barriers to Effective Climate Change Adaptation, Report No. 59, Final Inquiry Report, Canberra, at p. 119.

¹³ New Zealand's *National Natural Disaster Resilience Strategy* [National-Disaster-Resilience-Strategy-10-April-2019.pdf \(civildefence.govt.nz\)](#); EQC's *Resilience Strategy for Natural Hazard Risk Reduction* [EQC Resilience Strategy 2019.pdf](#) which includes a goal that homeowners are risk-aware and understand the choices they can make to become more resilient to natural hazards; United Nations' Sendai Framework for Disaster Risk Reduction supports increasing public understanding of natural hazard risk.

16. Better purchasing decisions by the public that take into account natural hazard risks may also reduce future liability for government. Government has spent over \$11.4 billion on natural hazards over the last decade. The total expected cost of all natural hazards is estimated to increase from \$0.7 billion in 2020 to \$3.3 billion in 2050, or a compounding annual growth rate of 5.5%.¹⁴

The LIM is a key source of information for purchasers including natural hazard information

17. For many people, buying a property is the most significant investment decision in their lives. The LIM is one of the key information documents that prospective buyers and their advisors review when considering whether to purchase a property. Buyers commonly purchase their own LIM, but real estate agents may also provide a LIM to purchasers on behalf of vendors, particularly where a property is intended to be sold at auction.
18. The LIM is the main source of property information for purchasers and is currently a key tool for communicating natural hazard information to buyers, so they can make informed decisions. While there is no legal requirement to obtain a LIM, this is a common condition included in the standard Agreement for Sale and Purchase.¹⁵
19. LIMs are recognised as a valuable information tool for communicating natural hazards information to owners and potential property purchasers, which can be updated as hazard data and information is received.¹⁶ The purpose of providing this information is to “inform the market of special features or characteristics of the land that may affect value, suitability or saleability.”¹⁷ This is a key consumer protection document for purchasers of real estate in New Zealand.
20. However, LIMs do not perform the same functions as a natural hazard risk assessment. Natural hazard risk involves not only understanding the hazard but also a range of other components including exposure and vulnerability. LIMs do not warrant that land is good or safe, or provide advice¹⁸, but simply provide information based on which a purchaser can decide whether to buy a property.¹⁹ LIMs also only provide natural hazard information known to the council at the time.

There are other sources of natural hazard information for purchasers and the public

21. LIMs are only one tool for communicating natural hazard information to the public. Other sources of council-held natural hazard information include planning instruments (e.g. district plans), regional council land information requests, local authority websites, property files, and project information memoranda and natural hazard notices (Building Act 2004).

¹⁴ NZIER *Investment in natural hazards mitigation: Forecasts and findings about mitigation investment* (July 2020) at pp 32-33.

¹⁵ Auckland District Law Society / Real Estate Institute of New Zealand, *Agreement for Sale and Purchase of Real Estate* (10th edition), subclause 9.3.

¹⁶ Saunders, W.S.A., Mathieson, J.E. 2016. Out on a LIM: The role of Land Information Memorandum in natural hazard management, *GNS Science Miscellaneous Series* 95. Gunnell SN, Grace ES. 2018. A review of how Land Information Memorandum, Project Information Memorandum and Land Information Request reports for the Canterbury Region address natural hazards. Lower Hutt (NZ): GNS Science. 71 p. (GNS Science consultancy report; 2018/113).

¹⁷ *Weir v Kāpiti Coast District Council* [2013] NZHC 3522, at [49].

¹⁸ *Trustees of the THP Trust v Auckland Council* [2014] NZHC 435, at [92].

¹⁹ *Trustees of the THP Trust*, at [92].

22. Property purchasers can also obtain natural hazard information from site specific engineering reports, private data specialists (e.g. CoreLogic, Risk Management Solutions), EQC, advice from property and legal professionals, local community knowledge and mātauranga Māori.
23. There are a range of online natural hazard mapping portals which allow property buyers to access hazard information, including regional council hazard portals which currently provide information across a spectrum of natural hazards.
24. Current research programmes will provide significant improvements in hazard information and risk modelling over the next five to ten years that will help decision-makers understand natural hazard risk, including at the property level. This includes key natural hazard research being carried out by agencies (e.g. the Earthquake Commission's (EQC) Risk and Resilience portal and 9(2)(f)(iv) [REDACTED] [REDACTED] as well as national research (e.g. National Science Challenge projects, the NIWA-led flood hazard risk model project funded by Endeavour). Some of this information will be included in LIMs as it becomes available.

Understanding and assessing natural hazard risk is challenging for purchasers

25. While providing natural hazard information to purchasers is an important precursor for risk-informed decision making, there is evidence that information alone will not impact purchasing decisions.
26. Home buyer decisions are influenced by multiple factors including the character of the house and its proximity to work, schools and other amenities. These factors may outweigh considerations about natural hazards impacting a property at the time of purchase.
27. People have well-known cognitive biases that negatively impact their ability to make good decisions about natural hazard risk, including discounting future risk, fatalistic attitudes and ignoring risks until they have experienced a natural hazard event.²⁰ There is evidence that the public is not good at incorporating risk in their property investment decisions, for example reductions in house prices in hazard prone areas have been small.²¹

We can learn from overseas approaches to communicating natural hazard information

28. As part of our research, we considered approaches taken in the United Kingdom, Australia and the United States.

²⁰ Henrich, L., McClure, J., & Crozier, M. (2015). Effects of risk framing on earthquake risk perception: Life-time frequencies enhance recognition of the risk. *International Journal of Disaster Risk Reduction*, 13, 145-150; McClure, J., Allen, M. W., & Walkey, F. (2001). Countering fatalism: Causal information in news reports affects judgments about earthquake damage. *Basic and Applied Social Psychology*, 23, 109-121; Storey, Belinda, and Ilan Noy. (2017). Insuring Property under Climate Change. *Policy Quarterly* 13 (4): 68-74.

²¹ O. Filippova, C. Nguyen, I. Noy and M. Rehm (2019) *Who cares? Future sea-level-rise and house prices* (Victoria University of Wellington, Working Paper); Yang, K W. & Sharp, B. (2016). Spatial analysis of flood risk effects on house prices in Auckland (prepared by Uniservices Centre for Infrastructure Research for Auckland Council).

29. In the jurisdictions reviewed, there is not a single council property information document akin to a LIM (although the planning certificate in New South Wales (NSW) comes close). In NSW, Victoria, Scotland²² and states in the US (including California²³ and Florida) the vendor is responsible for providing natural hazard information to potential purchasers, with relevant natural hazard information often obtained from councils to support this disclosure. For example, in NSW the vendor must provide a planning certificate from the council that outlines a range of property and planning information, including potential natural hazards such as bush fire, flooding, land slip and inundation.²⁴
30. In these jurisdictions, failure to make the required disclosure may mean that the purchaser can cancel the contract, or the vendor or agent may be liable for any damages suffered by the purchaser as a result.
31. Central or state governments provide online hazard mapping tools in all jurisdictions reviewed. For example, in Scotland the Scottish Environment Protection Agency provides interactive flooding maps with property-level flood information²⁵ and the Australian federal government provides online hazard tools for a wide range of natural hazards, including bushfires, flooding, earthquakes and cyclones.²⁶
32. Vendor disclosure requirements in other jurisdictions are a useful mechanism to ensure purchasers are informed about natural hazards impacting a property. However, New Zealand's property conveyancing system differs from these jurisdictions and the introduction of a vendor disclosure requirement could have implications for property and conveyancing law.

LIMs and the resource management system

33. Councils' role in providing LIMs is closely tied to the natural hazard management functions of regional councils and territorial authorities under the Resource Management Act 1991 (RMA).²⁷ Local authorities have a duty under the RMA (section 35) to research and gather information about natural hazards within their geographic area.
34. While territorial authorities do not need to include natural hazards information that is apparent from the district plan in LIMs, they are required to include natural hazard information for a specific property collected as a result of planning and consent

²² In Scotland the vendor is legally required to provide a Homes Report which includes a statement by the vendor about whether the property has experienced any storm, flood, fire or other structural damage. (Housing (Scotland) Act 2006, section 104).

²³ In California vendors must provide a Natural Hazard Disclosure Statement based on the seller's knowledge of the property lying in flood, fire, or earthquake zones. Failure to make the required disclosure may make the seller or agent liable for damages suffered by the purchaser. (Natural Hazards Disclosure Act, under section 1103 of the California Civil Code).

²⁴ Section 52A(2) Conveyancing Act 1919 (NSW) requires a vendor to attach certain documents to a contract for the sale of land including a planning certificate issued under section 149(2) of the Environmental Planning and Assessment Act 1979 (NSW).

²⁵ Scottish Environment Protection Agency Flood Risk Management Maps [Flood Risk Management Maps \(sepa.org.uk\)](http://sepa.org.uk).

²⁶ Geoscience Australia. Australian Hazards Interactive Maps <http://maps.ga.gov.au/interactive-maps/#/theme/hazards>

²⁷ See sections 30(1)(c)(iv), (d)(v) and (g)(iv) for regional council and section 31(b)(i) for territorial authority responsibilities for natural hazard management under the RMA.

processing functions under the RMA. This may include proposed plans and plan changes, coastal management strategies, technical reports and other research to support planning processes.

35. As a result, updates to LIMs can occur as a council engages with its community on the development of RMA planning instruments. Councils will sometimes notify property owners directly of new natural hazard information that will be included in LIMs, for example, the release of coastal hazard mapping in the last few years in Northland, Nelson, Auckland, and Tauranga, as part of work on coastal management plans.

Cabinet requested options for substantive changes to the LIM system as part of the Community Resilience programme

36. The Community Resilience programme is an all-of-government approach to reducing natural hazard risks and the impacts of climate change. Since 2018, the Minister of Local Government has convened a group of Community Resilience Ministers to oversee the programme. Community Resilience Ministers are: Minister of Local Government; Minister of Finance; Minister for the Environment; Minister for Emergency Management; Minister for Climate Change; Minister for Economic and Regional Development; and Minister for the Community and Voluntary Sector.
37. As a result of decisions in Budget 2021, the programme was scaled back due to resource constraints and is currently focussed on improving natural hazard disclosure in the LIM system. In April 2021, Cabinet invited the Minister of Local Government to report-back by September 2021 on legislative and non-legislative options for substantive changes to the LIM system to achieve more active disclosure of natural hazard risk [DEV-21-MIN-0074]. The Cabinet paper specified that this would include investigating options to:
 - ensure information on district plans and held by regional councils are included in LIMs
 - remove barriers and incentivise councils to communicate natural hazard risks to the public, including addressing legal risks for councils disclosing information.

Links to other work programmes

38. The table below summarises significant work programmes at central government agencies and crown research institutes (CRIs) that are related to LIMs.

Table 1: Related work programmes

Agency	Programmes related to LIMs
<p>Ministry for the Environment</p>	<p>Resource Management system reforms</p> <ul style="list-style-type: none"> • Three proposed new pieces of legislation – the Natural and Built Environments Act (NBA), Strategic Planning Act (SPA) and Climate Change Adaptation Act. • There is potential to change local authority roles and responsibilities for managing natural hazards risks and the impacts of climate change, and planning and consenting processes, which could impact natural hazard information available for LIMs. • The proposed National Planning Framework under the NBA is proposed to include mandatory national direction on climate change natural hazards, and regional spatial strategies under the SPA are proposed to identify areas affected by natural hazards and climate change impacts. These may identify additional natural hazard impacted areas and limitations on land use that should be noted on LIMs. <p>National Adaptation Plan (the NAP)</p> <ul style="list-style-type: none"> • The NAP sets out the Government's response to the National Climate Change Risk Assessment. 9(2)(f)(iv)
<p>Treasury</p>	<p>Government response to the EQC Public Inquiry</p> <ul style="list-style-type: none"> • The Public Inquiry into EQC²⁸ recommends (6.4.1) making changes to enable greater availability and use of information to inform land-use decision-making and to support current and prospective property owners.²⁹ Improvements to the disclosure of natural hazard information in LIMs will assist with meeting this recommendation.
<p>EQC</p>	<p>Natural hazards portal</p> <ul style="list-style-type: none"> • EQC is proposing to develop a Risk and Resilience portal in stages over the next four to five years, which will include property level information. The Department proposes to engage with EQC on the development of this portal to ensure there are clear linkages with the LIM system.

²⁸ Report of the Public Inquiry into the Earthquake Commission (March 2020).

²⁹ DEV-20-MIN-0116 and CAB-20-MIN-0329 refers.

What is the policy problem or opportunity?

LIMs do not currently deliver all key natural hazard information for properties in a way that helps support purchaser decision-making. This is a multifaceted problem with three key aspects:

- there are inconsistencies in the natural hazard information councils provide in LIMs and they may not contain all known information
- LIMs do not currently communicate natural hazard information in a way purchasers can easily locate and understand
- council concerns about legal liability can inhibit full disclosure of natural hazards information.

We are addressing three key challenges that contribute to the less-than-effective disclosure of natural hazard information by LIMs

39. We have identified three key challenges to the main problem of LIMs in the disclosure of natural hazard information to potential property buyers:
1. there are inconsistencies in the natural hazard information provided in LIMs and they may not contain all known information
 2. LIMs do not currently communicate natural hazard information in a way purchasers can easily locate and understand
 3. council concerns about legal liability can inhibit full disclosure of natural hazards information.
40. As set out in the constraints above, time and cost barriers are also an important challenge for the LIM system overall but are not limited to natural hazard disclosure. The 10-working day time frame and fees may be barriers to a purchaser obtaining a LIM, particularly if they need to make an offer on a property quickly.³⁰
41. Potential options to address time and cost barriers, such as compulsory vendor disclosure of a LIM or mandatory limits on timeframes and LIM fees, warrant careful consideration as part of future policy work. A proper assessment of policy options would require specific engagement with local government and other stakeholders, and further analysis of the potential costs and impact on the wider property conveyancing system.

³⁰ The average fee is approximately \$297 for a standard LIM or \$446 for a fast-tracked LIM based on LIM processing fees information available on council websites in September 2021.

There are inconsistencies in the natural hazard information provided in LIMs and they may not contain all known information

42. Based on a review of research papers³¹, local and central government workshops³², a sample of LIMs³³, and expert engagement, there is evidence that LIMs from different territorial authorities are inconsistent in the type of natural hazard information and level of detail provided.
43. The key reasons identified for these inconsistencies are:
 - LIMs may not include all relevant natural hazard information available from regional and national sources, and coverage of different national hazards is variable. Most natural hazard information is held by regional councils and CRIs (e.g. NIWA, GNS) and territorial authorities can find it difficult to keep up to date and interpret new natural hazard research and datasets as they often lack staff with natural hazard expertise³⁴
 - there is on-going uncertainty about what information should be included in the LIM (and at what time), as well as the applicability to specific properties due to the complexity of natural hazard information³⁵
 - LIMs are currently not required to include information about the potential for climate change to exacerbate natural hazard risks

³¹ Local Government New Zealand (October 2014) *Managing natural hazard risk in New Zealand – towards more resilient communities* at p. 42; W.S.A. Saunders and J.E. Mathieson *Out on a LIM: The role of Land Information Memorandum in natural hazard management* (October 2016). GNS Science Miscellaneous Series 95; Gunnell SN, Grace ES. 2018. *A review of how Land Information Memorandum, Project Information Memorandum and Land Information Request reports for the Canterbury Region address natural hazards*. Lower Hutt (NZ): GNS Science. 71 p. (GNS Science consultancy report; 2018/113).

³² LGNZ and the Department held joint workshops with local and central government LIM experts in November 2019 and October 2020. Findings from the October 2020 workshop can be found in *LGNZ Review of Land Information Memorandums: Achieving best practice* (February 2021).

³³ To supplement previous research, the Department analysed a small survey of LIMs from nine councils: Auckland Council, Christchurch City Council, Far North District Council, Kaikōura District Council, Kāpiti Coast District Council, Nelson City Council, Queenstown Lakes District Council, Tauranga City Council, and Whakatāne District Council. These councils were selected due to their differing size, geographical location and exposure to different natural hazards. Councils were asked to provide a sample of five to 10 LIMs for properties impacted by a range of natural hazards. A total of 38 LIMs were received and reviewed, including two LIM templates. This analysis was intended to provide a snapshot of natural hazard information being provided by councils and is limited in that it is not a statistically significant sample size, does not cover all territorial authorities, and includes council selected LIMs.

³⁴ W.S.A. Saunders and J.E. Mathieson *Out on a LIM: The role of Land Information Memorandum in natural hazard management* (October 2016). GNS Science Miscellaneous Series 95; local government workshop; and Department analysis of LIMs.

³⁵ Community Resilience Workshop, 21 November 2019.

- district plan information (such as planning overlays and rules for natural hazard management) and information held by regional councils is not required to be included in a LIM³⁶
- there are legal incentives for councils not to release natural hazard information, such as concerns over potential exposure to legal action.³⁷

LIMs do not currently communicate natural hazard information in a way purchasers can easily locate and understand

44. Making property decisions can be a challenging and costly process for purchasers. It takes time and effort to gather, process and analyse information when buying a house and the LIM is only one of the complex documents that a property buyer needs to review.³⁸ The LIM needs to strike the right balance in providing information that is not so complex that it may be misinterpreted or lead to 'decision paralysis', but not so simple that it glosses over important complexities.³⁹
45. Based on research and engagement with the local government sector, LIMs do not always effectively communicate natural hazard information to purchasers:
 - LIMs are required to include a wide range of property information and as a result are often lengthy and difficult to navigate.
 - LIM content and format varies significantly across the country, making it more difficult for people to navigate if considering purchasing properties in different districts⁴⁰
 - natural hazard information is often presented in multiple locations or under the ambiguous heading 'special features and characteristics of the land'
 - LIMs often refer the reader to publicly available natural hazard information or technical reports. However, readers may find technical reports challenging to understand in practical terms and may not follow links to further information if they do not understand their importance.

Council concerns about legal liability can inhibit full disclosure of natural hazards information

46. If a LIM fails to properly identify natural hazards affecting a property or includes new natural hazard information that potentially impacts the value or marketability of a property, property owners may be motivated to take legal action against the council.
47. Property owners can bring three potential legal actions against councils relating to LIMs:

³⁶ Local Government New Zealand (October 2014) *Managing natural hazard risk in New Zealand – towards more resilient communities*; Community Resilience Workshop, 21 November 2019.

³⁷ Local Government New Zealand (October 2014) *Managing natural hazard risk in New Zealand – towards more resilient communities*.

³⁸ Australian Productivity Commission 2012. Barriers to Effective Climate Change Adaptation, Report No. 59, Final Inquiry Report, Canberra, at p. 137

³⁹ Department of Environment, Food and Rural Affairs (2011) *Managing Adaptation: Linking Theory and Practice*.

⁴⁰ Community Resilience workshop, 21 November 2019.

- a claim in negligence for providing inaccurate information or failing to communicate known information about a natural hazard in a LIM⁴¹
 - a claim for breach of the council's statutory duty to provide natural hazard information under LGOIMA⁴²
 - an application to the High Court for judicial review of the council's decision to include natural hazard information on a LIM, potentially on the grounds that the council has based its decision on incorrect or insufficient information.⁴³
48. Property owners have brought legal actions against councils for including coastal erosion hazard prediction lines on LIMs⁴⁴ and failing to provide information in LIMs about seismic faults, land instability, flood hazards and contaminated land.⁴⁵
49. While these legal actions have largely been unsuccessful, there is some evidence that the actual or perceived threat of legal action has contributed to councils taking a risk averse approach to natural hazards information. Councils may be reluctant to provide summaries or explanations of natural hazards due to concerns over liability and all LIM notations are subjected to careful legal scrutiny.⁴⁶ The “chilling effect” on sharing information and concern about liability may have been exacerbated by housing weathertightness claims⁴⁷, with courts observing that local authorities are attractive defendants because of their deep pockets and continuing legal existence.⁴⁸
50. As natural hazard risks are exacerbated by climate change, property owners may consider taking legal action against councils for economic loss from the effect on the value of the property where information on the likely impact of climate change has not been provided.⁴⁹

⁴¹ The Supreme Court in *Marlborough District Council v Altimarloch Joint Venture Ltd* [2012] NZSC 11 found that a “person requesting a LIM from a territorial authority is clearly in a position of proximity to the authority” and the “relationship between the parties is closely analogous to a contractual one. See also *Trustees of the THP Trust v Auckland Council* [2014] NZHC 43.

⁴² A breach of statutory duty will rarely add much to a claim in negligence. See *Trustees of the THP Trust v Auckland Council* [2014] NZHC 43.

⁴³ See *Weir v Kāpiti Coast District Council* [2013] NZHC 3522.

⁴⁴ *Weir v Kāpiti Coast District Council* [2013] NZHC 3522.

⁴⁵ *York v Westland District Council* [2014] NZSC 71; *Trustees of the THP Trust v Auckland Council* [2014] NZHC 43; *Resource Planning and Management Ltd v Marlborough District Council (Resource Planning)* HC Blenheim CIV 2001-485-814 10 October 2003; *Monticello Holdings Ltd v Selwyn District Council* [2015] NZHC 1674.

⁴⁶ Saunders, W.S.A., Mathieson, J.E. 2016. Out on a LIM: The role of Land Information Memorandum in natural hazard management, *GNS Science Miscellaneous Series* 95; Iorns Magallanes, CJ & J Watts, *Adaptation to Sea-Level Rise: Local Government Liability Issues* (Deep South National Science Challenge, Wellington, 2019).

⁴⁷ Iorns Magallanes, CJ & J Watts, *Adaptation to Sea-Level Rise: Local Government Liability Issues* (Deep South National Science Challenge, Wellington, 2019).

⁴⁸ *Monticello Holdings Ltd v Selwyn District Council* [2015] NZHC 1674, [2016] 2 NZLR 148, at [62].

⁴⁹ Ministry for the Environment. 2020. *National Climate Change Risk Assessment for Aotearoa New Zealand: Main report – Arotakenga Tūraru mō te Huringa Āhuarangi o Āotearoa: Pūrongo whakatōpū*. Wellington: Ministry for the Environment citing Iorns C. (2019). Treaty of Waitangi duties relevant to adaptation to coastal hazards from sea-level rise. June, 190; Iorns C, James V and Stuart T. (2017). Courts as decision-makers on sea-level rise adaptation measures: Lessons from New Zealand, in W Leal Filho (ed) *Climate change impacts and adaptation strategies for coastal communities*. Springer International Publishing.

Without further action LIMs will continue to not meet their potential for communicating natural hazard information to the public

51. The current LIM regime was introduced into LGOIMA in 1992 and the requirements for providing natural hazard information have not been updated since. While numerous reports have identified issues with LIMs as a tool for communicating natural hazards and the courts have interpreted key legislative requirements, inconsistencies and uncertainties about natural hazard information in LIMs remain.
52. Without changes to the LIM system, it is likely that current inconsistent practices will continue and LIMs will not meet their potential to better inform purchasers about natural hazards. This view was strongly supported in stakeholder engagement.

Stakeholder views of the problem

53. Any changes to council provision of property information, such as natural hazard information, will be of interest to a wide range of stakeholders. Table 2 provides a high-level overview of stakeholders and the nature of their interest.

Table 2: High-level overview of stakeholders and the nature of their interest

The State	
	<ul style="list-style-type: none"> ensure purchasers have clear natural hazard information about properties as a lever for raising public awareness and helping to mitigate future natural hazard risk and Government contingent liability.
Local Government	
	<ul style="list-style-type: none"> impact of any changes on how they operate and any additional resourcing obligations any implications for potential liability for providing natural hazard information.
Community resilience agencies	
NEMA, MfE, Treasury, EQC, LINZ, MBIE	<ul style="list-style-type: none"> impact on agency work on natural hazard risk reduction and managing the effects of climate change across the system intersection with other natural hazard data and information work programmes, including hazard portal development.
Public	
Property buyers	<ul style="list-style-type: none"> expectation that all relevant natural hazard information will be included in LIM reports, so they can make informed purchasing decisions.
Property owners	<ul style="list-style-type: none"> interest in natural hazard information noted on the LIM and its potential impact on the value of their property expectation that all information noted on the LIM is evidence-based and they are at least informed about significant changes.
Property sector	
Property Council, Real estate industry	<ul style="list-style-type: none"> any impact on property market and insurance costs any obligations on real estate agents and vendors to provide natural hazard information.
Professional services industries	
Insurance and banking industries	<ul style="list-style-type: none"> any impact on property market impact on reduction of natural hazard risks and climate change impacts potential source of natural hazard information to inform lending decisions.
Legal profession	<ul style="list-style-type: none"> any impact on property conveyancing system and legal advice.
Regulators	
Real Estate Authority, Ombudsman	<ul style="list-style-type: none"> impact of any changes on operations and any additional resourcing obligations.
Registrar General of Land	<ul style="list-style-type: none"> impact on the property conveyancing and land registration system.
Research sector	
CRIs, private research companies	<ul style="list-style-type: none"> potential intersections with current modelling and research work and any future requirements for additional natural hazards data and information to support LIMs.

All stakeholders in targeted engagement consider that disclosure of natural hazard information in the LIM could be improved

54. Due to the short timeframe for policy development and engagement, the Department undertook targeted engagement to test our problem narrative and options to improve the LIM system. In April 2021, Cabinet invited a report back, by September 2021, on proposals for changes to the LIM system [DEV-21-MIN-0074]. To meet the report back deadline, we limited our engagement to a month and a half from late June to mid-August.
55. We worked with Taituarā – Local Government Professionals Aotearoa (Taituarā) and Local Government New Zealand (LGNZ) to plan engagement and seek feedback from technical experts from a range of local authorities. We did not have the opportunity to engage with the real estate industry or property purchasers, which may have provided additional insight into current barriers to obtaining and understanding LIMs.
56. Officials also met with stakeholders who have an active interest in LIMs including property and local government lawyers, Māori data experts, and representatives from the property investment, real estate, banking and insurance sectors.
57. Officials sought feedback from relevant technical experts at central government agencies MfE, LINZ and the Registrar General of Lands, the National Emergency Management Agency (NEMA), Te Puni Kōkiri, Te Arawhiti – the Office for Māori / Crown Relations, Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, the Real Estate Authority, and EQC.
58. All stakeholders the Department engaged with consider that, while LIMs are a useful tool, they currently do not effectively communicate natural hazard information to property purchasers.
59. Stakeholders raised concerns about current communication of natural hazard information to other audiences, including natural hazard information for renters and the general public, as well as tools for iwi/hapū/whānau to inform them about natural hazards affecting whenua Māori. However, this is outside of the scope of the policy problem and options to respond to these problems are not considered in this paper. Future work may be carried out to consider options to respond to these problems.

Assumptions

60. The following assumptions have been made in this analysis:
 - the defining characteristics of a LIM are that it is a compilation of property information held by a council at that time about a specific property provided to a requester on application
 - current and proposed natural hazard portals will not replace the LIM as the main source of natural hazard information for purchasers in the near future – while some regional councils have natural hazard platforms and national portals are being developed, the LIM is likely to remain the main property information source given the other information it contains (e.g. building and resource consents)
 - there will continue to be significant demand for houses which will place pressure on buyers to make property purchasing decisions quickly – there is likely to be continued high demand for housing, particularly in urban centres

- the public will continue to rely on councils as the main source of natural hazard information and not pay for independent risk assessments by consultants – in general, the New Zealand public relies upon councils for property information and are not accustomed to commissioning independent reports (outside of building inspections) to inform property purchasing decisions.

What objectives are sought in relation to the policy problem?

61. The policy objective is an improved LIM system that provides key natural hazard information in a clear and consistent manner, to support purchasers' understanding of natural hazard risks and help them make informed property decisions.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

62. Assessment criteria have been identified based on the policy problem and objectives set out above.

Criteria	Explanation
Fit-for purpose	<ul style="list-style-type: none"> Does the option provide potential property buyers with natural hazard information that: <ul style="list-style-type: none"> supports buyers to understand natural hazards related to a property and make good decisions? is broadly consistent in presentation and approach across local authorities?
Efficiency	<ul style="list-style-type: none"> Is the option administratively efficient? Is it technically feasible? How long and how much would it cost to implement? Does it provide certainty to local authorities on the information they need to share? Does it address potential legal liability and associated legal costs? Does it lower the barriers for local authorities to share information?
Accessibility	<ul style="list-style-type: none"> Does the option improve the LIM as a one-stop-shop for the key natural hazard information for property buyers? <p>Note: this criterion was important for the assessment of potential options to improve natural hazard content, communication and accessibility in LIMs. But was not considered relevant to the assessment of options to reduce the negative impact of potential legal actions on councils sharing natural hazard information in the LIM.</p>
Future-proof	<ul style="list-style-type: none"> Will the option be compatible with new natural hazard data and information and information sharing tools as they become available? Will it work for developments in the property market and future user needs?
Access to justice	<ul style="list-style-type: none"> Will the option unreasonably limit or remove the ability of a property owner to complain or take legal action for natural hazard information disclosed in a LIM? <p>Note: this criterion is only considered relevant to the assessment of options reduce the negative impact of potential legal actions on councils sharing natural hazard information in the LIM. The options considered to improve natural hazard content, communication and accessibility do not limit access to justice.</p>

What scope will options be considered within?

63. The scope of the options considered has been limited by the following:
- In April 2021, Cabinet invited a report back, by September 2021, on legislative and non-legislative options for substantive changes to the LIM system to achieve more active disclosure of natural hazard risk [DEV-21-MIN-0074]. This specifically included investigating options to:

- ensure information on district plans and held by regional councils are included in LIMs
- remove barriers and incentivise councils to communicate natural hazard risks to the public, including addressing legal risks for councils when disclosing information.
- To meet the report back deadline, we limited our engagement to a month and a half from late June to mid-August 2021.
- The focus on the LIM system and purchasers meant we have not considered options to support communication of natural hazard information to other audiences, including existing property owners, renters and the general public.
- While there is an unmet need for specific information tools for iwi, hapū and whānau about natural hazards affecting whenua Māori, this is also outside of the scope of the policy problem and options considered. Future work is proposed to consider options to better meet iwi, hapū and whānau needs.
- Measures to improve the quality and coverage of natural hazards data and information across different regions, while important to the long-term usefulness of natural hazard information tools, fall outside of the scope directed by Cabinet.
- Time only allowed for targeted stakeholder engagement rather than full public consultation and hui with iwi/hapū. As a result, Treaty partners and stakeholders may have raised additional options for improving the communication of natural hazards that have not been considered in this paper.
- We have included separate analysis of options to address legal liability issues for council in response to Cabinet’s directions and to enable consideration of distinct options that limit legal liability. The other aspects of the policy problem are addressed in the general consideration of options to improve natural hazard information content, communication and accessibility.

What options are being considered?

64. To address the problems identified with the current LIM system and achieve the identified objectives, we analysed options under two separate headings:
 - improve natural hazard information content, communication and accessibility
 - reduce the negative impact of potential legal actions on councils sharing natural hazard information in the LIM.
65. Options to improve natural hazard information content, communication and accessibility are intended to respond to the problems of inconsistent information and how understandable and accessible the information is for purchasers.
66. Options to reduce the negative impact of legal actions on councils sharing information were considered separately, given the specialised regulatory measures needed to limit liability. Table 3 summarises the options considered:

Table 3: options to address key issues

Improving natural hazard information content and communication in the LIM system
Option 1A – status quo
Option 1B – Amend LGOIMA and introduce national direction (preferred)
Option 1C – Non-statutory guidance and regional council support for territorial authorities
Reducing the negative impact of potential legal actions on councils sharing natural hazard information
Option 2A – status quo
Option 2B – statutory clarification of natural hazards information disclosed in a LIM (preferred)
Option 2C – Limit all council liability for providing natural hazard information in the LIM
Option 2D – Council liability limited when providing natural hazard information in good faith (preferred)

Improving natural hazard information content, communication and accessibility

67. This section looks at options for improving the natural hazard information contained in LIMs, how it is communicated and how accessible it is to purchasers.

Option 1A – Status quo

Key features

68. LGOIMA requires that LIMs provide information on potential natural hazards for a property known to a territorial authority.
69. While territorial authorities are solely responsible for providing LIMs, regional councils hold significant natural hazard information (although this varies across different hazards depending on the data and information available) such as regional hazard modelling. The extent to which this natural hazard information is shared varies across regions. Regional councils generally have officers with natural hazard expertise, while territorial authorities may not have the technical capability to interpret and summarise natural hazards data and information for LIM readers.
70. Central government agencies and CRIs also have significant natural hazards expertise and hold data and information, which may not be easily accessible to local authorities or referenced in LIMs currently.

Analysis

71. Key natural hazard information to inform purchaser decision making may be missing because the LIM does not need to include information contained in district plans or held by regional councils or national agencies unless known to the council. District Plans may hold important natural hazard information, such as hazard overlays and specific hazard rules. While it is now more common for territorial authorities to include relevant district plan hazard information, this is not a requirement.
72. The extent and presentation of natural hazard information in LIMs also varies across councils, even within the same region. Councils can be reluctant to provide summaries

or additional explanations due to the risks of legal action by property owners. This can make it more challenging for the public to identify and understand natural hazard information, including how it relates to a specific property.

73. The information included in LIMs will keep evolving as significant new regional and national level data and information is developed over the next five to ten years. However, without clear guidance on what should be included in LIMs there is a risk that key information may be missed, or territorial authorities may be less able to effectively incorporate and explain this new information to assist purchaser understanding.

Stakeholder views

74. The majority of stakeholders consider the current LIM system does not provide sufficient certainty and guidance about what natural hazard information should be included in LIMs, particularly as new data and information becomes available.
75. Local government sector representatives consider inconsistency issues in LIM natural hazard information result from discrepancies in data capabilities across councils and different levels for communication at the regional level. Differences between local and regional council capabilities can mean LIMs lack key natural hazard information available outside the territorial authority's own sources.

Option 1B – Amend LGOIMA and introduce national direction

76. This option would amend LGOIMA to:
- require broader information in LIMs and provide for national direction to clearly specify natural hazard information to be included in LIMs and
 - give regional councils statutory responsibility for providing natural hazard information to territorial authorities to include in the LIM.

Key features: requiring regional councils to provide natural hazard information for LIMs

77. This option would give regional councils statutory responsibility under LGOIMA to provide natural hazard information (potentially including interpretation and explanations) for inclusion in the LIMs to territorial authorities. Regional councils could update natural hazard information for LIMs on a periodic basis, as data and information are updated, rather than being an obligation to provide specific information for each LIM request. Territorial authorities would still be required to include specific natural hazard information held at a district level.
78. This option would better align the LIM obligations under LGOIMA with the shared responsibilities of regional councils and territorial authorities for natural hazard management under the RMA, as well as reflecting that regional councils hold significant natural hazard information. This option could better align with proposals for RM reform that take a more regionalised approach to planning, particularly proposed regional spatial strategies under the Strategic Planning Act.

Key features: broader information requirements and national direction for LIMs

79. LGOIMA would be amended to clearly specify the purpose of providing natural hazard information, broaden the information requirements and enable national direction on LIMs to be developed to set requirements about the type, source and format of natural hazard information included in LIMs.
80. A broader information requirement would also be introduced through a combination of statutory amendment and national direction. This could include:

- district plan information (or information held in a similar planning document proposed under the Resource Management (RM) reforms)
 - regional council information (e.g. regional plans and regional planning statements – or their equivalents under the RM reforms - hazard mapping/reports etc)
 - specific information held by national government agencies (e.g. EQC, MfE, FENZ, NEMA).
81. LGOIMA would be amended to provide a regulation making power to prescribe national direction for LIMs (similar to national environmental standards under the RMA). Provisions would also be introduced to make the preparation of national direction for LIMs mandatory and to prescribe a process for its development and consultation.
82. In practice, the preparation of national direction (which is a form of regulation) would likely involve Department officials working with a technical expert panel, including local government sector representatives, to draft standards for the content and presentation of national hazard information. This would be consulted on with the public before Cabinet approval and drafting by the Parliamentary Counsel Office.
83. National direction would likely provide:
- requirements to include data and information for key natural hazards
 - requirements to incorporate or reference natural hazard information contained in district and regional planning instruments, information held by national government agencies (e.g. EQC, MfE, Fire and Emergency New Zealand, NEMA) and regional and national hazard portals
 - principles and criteria for assessing whether and when natural hazard information should be included in a LIM
 - requirements for communicating natural hazard information – appropriate explanations of hazard and risk, visuals and mapping, discussion of assumptions and data certainty
 - requirements for regional councils to provide information to territorial authorities for the natural hazard section of LIMs
 - clear definitions of key terms (e.g. types of natural hazard).
84. To support council implementation of national direction, the Department would develop guidance in conjunction with local government, including best practice examples.

Analysis

85. Statutory national direction would help ensure that LIMs include more consistent and comprehensive natural hazard information, and clearly communicate this information in a way that better supports purchaser property decisions.
86. National direction would also provide councils with greater certainty about the requirements for providing natural hazard information on LIMs. There would be improved consistency across councils when determining what natural hazard information is included in LIMs and how it should be presented, and less chance of key natural hazard information being missed. Clear regulatory direction about LIM content may also help to reduce the potential for legal action by property owners.
87. Requirements to incorporate natural hazard information from district and regional planning instruments and national sources would improve accessibility for purchasers

and support the LIM as a one-stop-shop for property information. However, inclusion of additional information will need to be balanced with the potential for LIMs to become lengthier and more expensive. This could be mitigated by guidance to ensure LIMs helpfully summarise natural hazard information, use a consistent format, and highlight key information.

88. National direction may provide less flexibility than non-statutory national guidance for regional differences (e.g. regions impacted by specific hazards or with less data and information). Regulations would be harder to amend than non-statutory national guidance and would need to be carefully drafted to ensure LIMs reflect the latest data and information.
89. A key risk of this option is that it may not be properly implemented by councils due to costs, a lack of supporting natural hazard data, and limited capability and capacity, particularly given other reform demands (e.g. RM and Three Waters reforms). This risk could be mitigated by ongoing monitoring by the Department and the Ombudsman, and communications with councils to ensure they have sufficient resourcing and are on-track with implementation.
90. While territorial authorities will continue to provide the natural hazard information they hold, they will need to update current LIM systems to reflect new requirements. To give effect to their new statutory responsibility, regional councils would require additional resourcing to ensure natural hazard information is updated, appropriate interpretation and explanations are drafted, and information is regularly provided to territorial authorities in a compatible format. Regional councils would also be potentially liable if the natural hazard information they provide is inaccurate or does not include relevant information.
91. Territorial authority costs may reduce given greater support from regional councils and reduced need for legal advice when new natural hazard information is included on LIMs.
92. There is a risk that territorial authorities and regional councils could disagree on how to share and coordinate the provision of natural hazard information, as well as the nature and extent of natural hazard information included on the LIM. Careful consideration will need to be given to whether regional councils can recover their costs for providing natural hazards through the LIM fee and how this would be collected and transferred.
93. There is a risk that these changes could result in increased LIM costs for purchasers, which could negatively impact accessibility. If significant increases result, future consideration may need to be given to a maximum LIM fee or alternative funding sources.
94. These risks could be mitigated through:
 - working closely with local government, LGNZ and Taituarā to ensure that LIM requirements under national direction can be delivered efficiently in practice and are properly costed, including potential implications for information sharing, LIM fees and usability
 - developing guidance in partnership with local government to support the implementation of national direction, including best practice examples and methodologies for sharing natural hazard information across councils

- ensuring that an appropriate transition period is included in LGOIMA to provide sufficient time for councils to establish new systems and processes.

Stakeholder views

95. Most stakeholders support statutory amendments and national direction as it would clarify what natural hazard information needs to be included in LIMs, would provide greater certainty for councils and would help ensure compliance by all councils. None of the stakeholders we engaged with opposed statutory clarification of the requirements to disclose natural hazard information.
96. A requirement to include relevant district plan, regional council and national level natural hazard data and information would improve the LIM's value as a one-stop-shop for property information, provided it does not become overly long and difficult for lay people to understand.
97. Stakeholders consider that natural hazard portals being proposed by EQC **9(2)(f)(iv)** complement an improved LIM – providing a summary of natural hazards affecting a property and clearly directing purchasers to hazard portals for further information.
98. Many stakeholders support making regional councils statutorily responsible for providing natural hazard information to territorial authorities to incorporate in the LIM. This would help ensure all relevant regional information was incorporated in the LIM and help formalise existing information sharing between regional councils and territorial authorities. However, stakeholders consider that even if regional councils are given responsibilities, territorial authorities should still be required to include natural hazard information known to them.
99. Local government stakeholders we engaged with are generally supportive of regional councils being responsible for providing natural hazard information they hold to territorial authorities. This would have co-benefits for other territorial functions, like infrastructure design and maintenance, and RMA functions. However, regional councils would have a duty of care over the information provided and the LIM would need to clearly identify information sourced from regional councils, so that any queries or objections could be directed to them. The practicalities of regional councils providing information updates on a regular basis and integrating this information with different systems would also need to be worked through carefully as part of implementation.
100. While the Department engaged with Taituarā, LGNZ and representatives from territorial authorities and regional councils, this option was not tested with local authorities more broadly. If this option is advanced, the Department is seeking Cabinet approval to carry out additional consultation with local government, particularly regional councils, on the operation and implementation of the package of changes to the LIM system.

Option 1C – Non-statutory guidance and regional council support for territorial authorities

101. This option would involve the preparation of non-statutory guidance and facilitation of greater regional council support for territorial authorities to provide more consistent and helpful natural hazard information in LIMs.

Key features: non-statutory guidance

102. The Department, in partnership with the local government sector, develops best practice guidance on LIM content and format for territorial authorities. This could be prepared with the assistance of a panel of experts including scientists, planners,

lawyers, geographic information system (GIS) experts, and natural hazard practitioners within local authorities. The guidance would be similar to other central government non-statutory guidance for local government (e.g. MfE's guidance on coastal hazards and climate change guidance).⁵⁰

103. The guidance could provide similar content to national direction discussed above, as well as including:

- principles for sharing data and information between national agencies, regional councils and territorial authorities
- advice on undertaking natural hazard modelling
- best practice examples and templates.

Key features: regional council support for territorial authorities

104. As a supplement to guidance, the Department would help facilitate greater coordination, improved information sharing and natural hazard advice from national agencies and regional councils to territorial authorities. Territorial authorities would retain statutory responsibility for delivering natural hazard information in LIMs.

105. Regional councils could better support territorial authorities by:

- improving and formalising flows of natural hazard information from national agencies (including government-funded science/research programmes) and regional councils to territorial authorities
- providing explanations/interpretation/summaries of natural hazards data and information (including reports).

106. The Department could support regional councils by promoting regional council best practice for communicating natural hazard information to the public.

Analysis

107. National guidance, even non-statutory in nature, would encourage territorial authorities to take a consistent approach to the content, communication and format of natural hazard information contained in LIMs. This could better support purchaser decision-making by making natural hazard content more consistent and accessible. Guidance would also be easier to update regularly than statutory national direction to reflect developments in hazard data and information, and technology.

108. Overall, this option would be relatively low cost to implement within a short timeframe and would be flexible to future change. Regional councils currently share natural hazard information (to varying degrees) and this would be aligned with their existing natural hazard risk management role. Additional resourcing would be required to support greater interpretation and explanation of information for LIMs and for regional councils to provide additional technical hazard support to territorial authorities.

109. While national guidance and facilitation of greater regional council support for territorial authorities has the potential to improve the consistency and quality of natural hazard information in LIMs across councils, it would provide less certainty than clear statutory

⁵⁰ Ministry for the Environment. 2017. *Coastal Hazards and Climate Change – guidance for local government*.

requirements and councils would not be legally required to change their LIM systems. There is a risk that implementation may be uneven across the country depending on council priorities.

Stakeholder views

110. While most stakeholders support the development of guidance to encourage greater certainty about what natural hazard information should be included in the LIM, many consider that non-regulatory guidance would not be sufficient to achieve greater consistency across council LIMs.
111. Stakeholders were positive about regional councils providing greater support for territorial authorities, particularly if more interpretation and explanation of natural hazard information is needed in LIMs to aid purchaser understanding. Support could include technical training and guidance on natural hazards for territorial authority staff. Some stakeholders consider that regional councils will be less likely to prioritise this work if voluntary, given competing demands on their resources.

Multi-Criteria Analysis

	Status Quo	Amend LGOIMA and introduce national direction	Non-statutory guidance and support
Fit-for Purpose	<p>0</p> <p>Natural hazard information provided by territorial authorities in LIMs will continue to be inconsistent in content and format, and may not include key information held by regional councils.</p> <p>Purchaser understanding of natural hazards affecting a property is less likely to be supported by explanation or interpretation.</p>	<p>++</p> <p>National direction will ensure greater consistency and reduce the potential for missing key natural hazard information in LIMs.</p> <p>Purchaser understanding will be improved through standards for content and explanation of natural hazards and more user-friendly formatting.</p>	<p>+</p> <p>Guidance promotes improvements in the consistent provision of key natural hazard information in LIMs and supports better information flows from regional councils.</p> <p>Purchaser understanding may be improved if councils implement recommendations for content and explanation of natural hazards and more user-friendly formatting.</p> <p>But there will be less incentive to improve LIMs if this is not a statutory requirement, given competing priorities. This may mean that current LIM inconsistencies and information gaps remain.</p>
Efficiency	<p>0</p> <p>Territorial authorities continue to be uncertain about the nature and extent of natural hazard information they should include in LIMs. Barriers to natural hazard information flows between regional councils and territorial authorities will remain.</p> <p>Overall, costs and resourcing requirements remain stable - subject to individual council decisions to change LIM systems. Councils continue to incur significant legal costs due to uncertainty.</p>	<p>++</p> <p>Territorial authorities have clearer regulatory direction about what natural hazard information should be included in LIMs and information flows from regional councils are formalised.</p> <p>Resourcing and costs for both territorial authorities and regional councils may increase due to changes to LIM processes and systems, and likely requirements to provide greater explanation and interpretation of natural hazards. But territorial authority costs may reduce given greater support from regional councils and reduced need for legal advice when new natural hazard information is included on LIMs.</p> <p>There is a risk that LIM fees could increase if significantly more time required to collate LIMs.</p>	<p>+</p> <p>Territorial authorities have improved certainty about what natural hazard information should be included in LIMs and improved information flows from regional councils are encouraged and supported. But this may not be prioritised given competing demands on resources.</p> <p>There is potential for resourcing and costs to increase if councils give effect to guidance and non-regulatory support. Council costs for legal advice will be similar to status quo.</p>
Accessibility	<p>0</p> <p>Not all key natural hazard information held by regional councils and in planning instruments may be provided in the LIM.</p>	<p>+</p> <p>Ensures the key natural hazard information is provided in a single LIM document.</p>	<p>0</p> <p>Promotes the inclusion of all key natural hazard information in the LIM but any improvement is dependent on council's prioritising changes to LIMs.</p>
Future proof	<p>0</p> <p>Continues existing variable flows of natural hazard information between regional councils and territorial authorities and does not promote the incorporation of future data and information in LIMs.</p> <p>Ongoing uncertainty about how to incorporate climate change scenarios, data and information in LIMs.</p>	<p>++</p> <p>Helps ensure new natural hazard data and information is included in LIMs, including climate change impact scenarios and linkages to natural hazard portals.</p> <p>National direction can be amended more easily than LGOIMA but less flexible to change than guidance.</p> <p>Encourages greater cooperation between territorial authorities and regional councils.</p>	<p>+</p> <p>Promotes the inclusion of new natural hazard data and information in LIMs, including climate change impact scenarios and linkages to natural hazard portals. Easier to amend to reflect natural hazard information advancements but may be less incentive to update given non-regulatory status.</p> <p>Encourages greater cooperation between territorial authorities and regional councils.</p>
Overall assessment	<p>0</p>	<p>++</p>	<p>+</p>

Key for assessment

++	better than the status quo	0	about the same as the status quo
+	slightly better than the status quo	-	worse than the status quo
		--	much worse than the status quo

What other options have been ruled out of scope, or not considered, and why?

Provision of a separate regional council LIM

112. Under this option, purchasers could apply for a separate regional council LIM which would include regionally held natural hazard information (and other relevant property information such as regional consents). Some stakeholders considered this would provide greater clarity about the division between territorial authority and regional council roles and responsibilities for providing natural hazard information and addressing any complaints about this information.
113. This option was not considered as it would significantly worsen accessibility by requiring purchasers to obtain two separate LIMs and would not address current inconsistencies or improve natural hazard information flows between regional councils and territorial authorities. This would also be contrary to a consumer-centred approach, as property purchasers are not concerned about which local authority provides natural hazard information.

Conclusion

114. As indicated in the analysis table above, the preferred option for improving natural hazard information content and communication in the LIM system is **option 1B: amend LGOIMA and introduce national direction**.
115. This option would meet all assessment criteria better or much better than the status quo and option 1C. It would help ensure greater consistency and reduce the potential for missing key natural hazard information in LIMs compared to the current system.
116. The key benefit of option 1B over option 1C is the higher level of certainty national direction would provide to councils than non-statutory guidance. This would result in more consistent, complete and user friendly natural hazard information in LIMs to help inform purchaser decisions.
117. Option 1B would also formalise regional council responsibilities to provide natural hazard information to territorial authorities, encouraging improved information flows and sharing of technical expertise.

Reducing the negative impact of potential legal actions on councils sharing natural hazard information in the LIM

Option 2A – Status quo

Key features

118. As set out above, currently property owners can bring legal actions against territorial authorities for negligence and breach of statutory duty where councils provide inaccurate information or fail to communicate known information in a LIM. They can seek damages for economic loss from the council as a consequence of this negligence. Property owners (and others) can also apply to the courts for judicial review of a council's decision to include natural hazard information on a LIM.

Analysis

119. While property owners have had limited success in taking legal action against councils for disclosure of natural hazard information on LIMs, there is evidence that councils may be reluctant to provide additional information, summaries or explanations of natural hazards due to concerns over liability. This can negatively impact the clear

communication of natural hazard information and pose a barrier to realising potential benefits of LIMs in enhancing purchaser understanding of natural hazards and their potential impact on affected properties.

120. However, potential legal action can in some instances provide an incentive to ensure that information included on LIMs is accurate.

Stakeholder views

121. Most stakeholders consider that potential legal liability is a concern for councils and can impact the extent of natural hazard information they include in LIMs. Stakeholders consider that the current LGOIMA provisions are ambiguous and do not provide sufficient certainty to enable councils to make confident decisions about what information to include.

Option 2B - Statutory clarification of natural hazards information disclosed in a LIM (regulatory)

Key features

122. This option would involve clarifying the type of natural hazards information councils are required to disclose under LGOIMA. This could be provided directly in LGOIMA provisions or in national direction as set out in option 1B above. While this option overlaps with option 1B, we consider that specific analysis of whether statutory clarification could reduce the negative impact of potential legal actions is merited.
123. This could help reduce potential legal actions by specifying:
- the types of natural hazards that should be considered when preparing a LIM
 - the types of natural hazard information that should be disclosed, including explanation or interpretation of data and information provided
 - when this information is “known” to a council and should be disclosed (e.g. at what stages during hazard modelling work)
 - the meaning of “potential” and enabling a precautionary approach to disclosing natural hazard information where there is uncertainty (e.g. different climate change scenarios).

Analysis

124. Greater legislative clarity and specificity could help encourage councils to include natural hazards information on LIMs where information is less certain and support further explanation of hazard information for the public.
125. This option has the potential to reduce the risk of legal action compared to the status quo as it would provide a clear justification for including natural hazard information on LIMs and reduce the scope of council discretion over whether to include natural hazard information in LIMs.
126. Without a specific limitation on liability for councils, property owners would still be able to take legal action against councils. As a result, councils may continue to incur costs for detailed legal review of LIMs and potential litigation.

Stakeholder views

127. Nearly all stakeholders supported amending LGOIMA to provide greater certainty for councils when deciding what natural hazard information should be included in the LIM. Local government sector representatives consider that current LIM requirements create

potential legal issues as they are uncertain and leave too much discretion to councils about what information to include. A legal expert considers that the number of legal actions being taken against councils is likely to increase as the impacts of climate change on properties become more significant.

Option 2C – Limit all council liability for providing natural hazard information in the LIM

Key features

128. In this option either property owners would be unable to bring a claim of negligence or breach of statutory duty against a council, or council would have a good defence, for both including inaccurate information or failing to include known natural hazards information in a LIM. However, this would not prevent a person seeking judicial review of the council's decision to include or not include information on a LIM.
129. In practice, this would:
- extend to LIMs the current liability protections for councils providing official information under section 41 of LGOIMA, or introduce a natural hazard-specific limitation of council liability
 - clarify that this covers omissions or failures to include information as well as when providing information
 - be subject to the requirement that the information was provided or not provided in good faith, to ensure that liability is preserved where information is withheld for an ulterior purpose.
130. Council liability is limited in other legislation, for example the Building Act 2004 (no civil proceedings for anything done in good faith in reliance on certain documents)⁵¹ and the Health Act 1956 (protection of health officers from civil liability for acting or failing to act unless in bad faith or without reasonable cause).⁵² In New South Wales councils are not liable for any advice provided in good faith about the likelihood, nature or extent of any natural hazard.⁵³
131. If section 41 was extended to LIMs and expanded to include omissions, purchasers would be able to bring an action in negligence or breach of statutory duty, but the council would have an affirmative defence provided the information was disclosed/not disclosed in good faith (in line with the High Court's interpretation of a comparable provision in the Official Information Act 1982).⁵⁴ Another option would be to include a separate liability provision that limited liability for disclosure of natural hazards. This could act as either a good faith defence for council or more specifically limit the ability of a property owner to bring a claim.

⁵¹ Building act 2004, section 392.

⁵² Health Act 1956, section 129.

⁵³ Local Government Act 1993 (NSW), section 733.

⁵⁴ See the recent High Court decision of *Williams v Commissioner of Police* [2021] NZHC 808, which found that the analogous section 48 under the Official Information Act 1982 acted as an affirmative defence to an action where official information was provided in good faith, rather than a requirement to be established by the plaintiff as part of a claim.

132. This would mean that, in most circumstances, property owners would not be compensated for council failure to include natural hazard information that affected the value of the property they purchased. Property owners would also not receive compensation if their properties were devalued due to natural hazard information being included on LIMs without proper analysis. An application for judicial review of a council's decision to include natural hazard information on a LIM would be maintained and complaints could be made to the Ombudsman under the Ombudsmen Act 1975.

Analysis

133. This option could encourage councils to include natural hazards information on LIMs where information is less certain, such as hazards based on future climate change scenarios, and provide greater explanation or interpretation of hazard information. This would support the public interest by encouraging full disclosure of natural hazard information as part of consumer protection for real estate purchasers. Councils may reduce spending on legal advice before including natural hazards information in LIMs and litigation costs in event of legal action.
134. There is a risk that limiting liability would provide a disincentive for council officers to carefully consider whether natural hazard information should be included on a LIM. This could mean that either the council does not include information and a property owner suffers a loss because the risks were higher than realised, or the council includes information unnecessarily, impacting the property value. However, officers would still need to comply with the principle that information should be made available under LGOIMA and could be subject to an Ombudsman complaints process. Clearer guidance or direction on what natural hazard information should be included could also reduce the risk of omitting important information.

Stakeholder views

135. Most stakeholders, including local government representatives, were opposed to limiting council liability for failing to include required natural hazard information on a LIM. They considered that purchasers should be able to seek compensation if they have suffered loss due to such a failure.
136. A legal expert suggested that, as a substitute for legal action, a LIM dispute resolution process could be established to enable property owners to contest information included on a LIM. However, local government sector representatives were concerned that this would defeat the purpose of limiting liability as a 'back door' process could lead to greater pressure to remove natural hazard information from LIMs. The existing Ombudsman complaints process would remain.

Option 2D – Council liability limited when providing natural hazard information in good faith

Key features

137. This option is similar to option 2C, but liability would only be limited for actions claiming the council has provided inaccurate natural hazard information in LIMs.
138. This limitation of liability would not extend to a council's failure to include natural hazard information in a LIM that caused loss and a person could still apply for judicial review of the council's decision to include information on a LIM.
139. Property owners could not succeed in obtaining compensation from a council for including inaccurate information in good faith on the LIM that reduced their property's

value (although judicial review would still be available). Similar to option 2C, property owners could still have recourse through the Ombudsman process.

Analysis

140. Similar to option 2C, this option could encourage councils to include natural hazards information on LIMs where information is less certain and may reduce spending on legal advice before including natural hazards information in LIMs. Potential litigation costs would not be reduced as significantly as for option 2C, as there would not be a defence for a failure by a council to include relevant natural hazards information on a LIM, and an application could still be made for judicial review.
141. As discussed in option 2C, there is a risk that limiting liability would provide a disincentive for council officers to carefully consider whether natural hazard information should be included on a LIM. However, this option would maintain potential liability for failing to include natural hazards information on a LIM, which should encourage careful consideration of the information available. Officers would still need to comply with the principle that information should be made available under LGOIMA.

Stakeholder views

142. Most stakeholders support limiting council liability where they include natural hazard information on a LIM in good faith. There is general support for maintaining liability where councils do not include known natural hazard information. Some stakeholders identified that this would maintain property owners' ability to seek valid relief and support the objective of incentivising councils to provide more information.

Multi-Criteria Analysis

	2A – Status Quo	2B – Statutory clarification	2C – Limit all council liability for natural hazard information in the LIM	2D – Council liability limited when providing natural hazard information in good faith
Fit-for-purpose	0 Concerns about potential legal liability may continue to prevent councils from including more detailed information and explanations on LIMs that assist purchaser understanding of natural hazards affecting a property.	+	+	++
Efficiency	0 Councils continue to incur significant legal advice costs before including new information on LIMs due to uncertainty about the nature and extent of natural hazard information to include. Continued risk of litigation costs to defend legal actions for both including and failing to include natural hazard information on LIMs.	+	++	+
Future proof	0 Council liability risks are likely to increase as more natural hazard data and information becomes available for inclusion on LIMs. Potential for more litigation as impacts of climate change on properties increase.	+	+	++
Access to justice	0 Property owners have access to the Ombudsman complaints process. Property owners can take legal action against a council for negligence and breach of statutory duty (where councils provide inaccurate information or fail to communicate known information in a LIM) and apply for judicial review of a council's decision to include natural hazard information on a LIM.	0	--	-
Overall assessment	0	+	+	++

Key for assessment

++	better than the status quo	0	about the same as the status quo
+	slightly better than the status quo	-	worse than the status quo
		--	much worse than the status quo

What other options have been ruled out of scope, or not considered, and why?

Restricting judicial review of council decisions about natural hazard information on LIMs

143. This option would limit the ability of any person to bring an application to the High Court for judicial review of the exercise of a statutory power of decision. The decision by a council to include natural hazards information on a LIM is a reviewable exercise of a statutory power under LGOIMA.
144. This option would prevent property owners from seeking judicial review of council decisions to include natural hazard information on LIMs that could reduce property prices, as seen in *Weir v Kāpiti Coast District Council*.⁵⁵ While a successful judicial review application will only result in a direction from the court to reconsider the decision at issue, councils face significant costs in defending a judicial review application and this may ultimately lead to the removal of natural hazard information from LIMs due to community pressure.
145. This option has not been assessed, as removing the ability to seek judicial review of government decisions (known as an 'ouster clause') would interfere with the courts' constitutional role and may be inconsistent with the right to justice in the New Zealand Bill of Rights Act 1990.⁵⁶

Alternative LIMs complaints process for property owners

146. Some stakeholders suggested that, as part of any option to limit council liability for providing natural hazard information on LIMs, an alternative LIMs complaint process should be introduced for property owners. This could involve a specific ombudsman review power or separate consideration by independent commissioners.
147. This option was not assessed as officials consider that the current complaints process under the Ombudsmen Act 1975 is sufficient. Property owners can currently complain to the Ombudsman who can recommend councils amend LIM notations and provide an ex gratia payment to the complainant in appropriate circumstances.

Conclusion

148. As indicated in the analysis table above, the preferred option for reducing the negative impact of potential legal actions on councils sharing natural hazard information in the LIM is **option 2D: Councils liability limited when providing natural hazard information in good faith**. Officials also recommend **option 2B: Statutory clarification of natural hazards information disclosed in a LIM**.
149. Options 2B and 2D would meet all assessment criteria better or much better than the status quo. Option 2D would help reduce barriers to councils sharing additional natural hazard information and explanations to assist purchasers compared to the current system, and reduce legal advice and potential litigation costs for councils. Option 2B would also help create certainty for councils about what natural hazard information to include in LIMs and would complement statutory national direction in Option 1B.

⁵⁵ *Weir v Kāpiti Coast District Council* [2013] NZHC 3522.

⁵⁶ Section 27(2) of the New Zealand Bill of Rights Act 1990 provides that any person has the right to apply for judicial review of a determination by a public authority.

150. The key benefit of option 2D over option 2C is that it would avoid creating perverse incentives from the exclusion of liability for failing to include natural hazard information. Option 2D would also preserve the ability of property owners to claim damages where a council has failed to include natural hazard information on a LIM, which is seen as a fair circumstance warranting relief.

Package of options

151. Based on the analysis of the options above, the Department recommends the following package of options:

<p>Improving natural hazard information content and communication in the LIM</p>	<p>Option 1B – Amend LGOIMA to improve the LIM system:</p> <ul style="list-style-type: none"> • require regional councils to provide natural hazard information to include in LIM • broader information requirements • national direction under LGOIMA
<p>Reducing the negative impact of potential legal actions on councils sharing natural hazard information</p>	<p>Option 2B – statutory clarification of natural hazards disclosed in a LIM</p> <p>Option 2D – Councils liability limited when providing natural hazard information in good faith</p>

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	<p>Territorial authorities may incur one-off costs to update LIM systems and processes, including receiving and incorporating data and information from regional councils.</p> <p>Regional councils will incur additional ongoing costs to meet new statutory responsibilities to provide natural hazard information, explanations and interpretations in a compatible format.</p>	<p>Low-Medium</p>	<p>Medium</p> <p>Territorial authorities already have a duty to provide a LIM and existing LIM systems and processes.</p> <p>Regional councils already monitor and collect natural hazard information and most already share natural hazard information with territorial authorities. This would formalise and build upon existing communications.</p> <p>Costs incurred by councils will also depend on the specific requirements set in future national direction.</p>
	<p>LIM applicants may be required to pay more for LIMs if councils incur greater costs.</p>	<p>Low</p>	<p>Medium</p> <p>Any increases in LIM costs will also depend on the specific requirements set in future national direction.</p>
Regulators	<p>The Department will incur one-off costs to introduce and support implementation of national direction. Ongoing monitoring and evaluation costs will be incurred.</p> <p>There is potential for ongoing additional costs to the Ombudsman if there are increased requirements to review how well council LIMs meet any new standards. Increased natural hazard</p>	<p>Medium</p> <p>Estimated \$1-2 million based on cost of national direction under the RMA.</p>	<p>Medium</p> <p>Based on national direction costs incurred by other agencies.</p> <p>There are many factors that drive complaints, including the specific natural hazard information included on LIMs and property owner motivation to complain. Costs to the Ombudsman may increase over time as the</p>

	information and limitations on council liability may also result in more complaints to the Ombudsman.		potential impact of natural hazards and the relationship to insurance and property values is realised.
Others (e.g. wider govt, consumers, etc.)	Potential impact on property owners if the cost of the LIM increases as a result of information sharing requirements and including additional natural hazard information. Potential long-term impact on property values due to additional natural hazard information on LIMs.	Low	Low-Medium Increases to LIM costs will depend on national direction requirements and information sharing costs. Property markets are complex and natural hazard information has historically had a low impact on property values.
Total monetised costs		\$1-2 million for national direction but total monetised costs uncertain	We do not have sufficient information about the changes required to council LIM systems and processes to provide monetised costs. Costs will also depend on the specific requirements set in future national direction.
Non-monetised costs		Low-Medium	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Territorial authorities' legal costs and technical advice costs and resourcing to analyse natural hazard information are likely to reduce. Regional councils may benefit from having greater certainty about what natural hazard information should be shared with territorial authorities.	Medium	Medium Greater certainty about including the nature and extent of natural hazard information included on LIMs and limitations on liability are likely to help reduce territorial authority legal costs. Technical advice costs and resourcing may reduce due to greater regional council support. However, the extent of cost reduction is unknown.
	Property purchasers benefit from having a single source of relevant natural hazard information. Improved natural hazard information will support better purchaser understanding of natural hazards and help them to	Medium-high	Medium Clear improvements in the quality of natural hazard information for purchasers. Difficult to assess broader improvements to purchasing decisions without further quantitative analysis.

	make better informed property decisions.		
Regulators	There will not be a cost savings to the Department or Ombudsman.		
Others (e.g. wider govt, consumers, etc.)	Better informed property purchasing decisions that reduce or avoid natural hazard risks can have significant benefits for long-term community wellbeing, as well as potentially reducing future government liability from natural hazard events.	Medium	Low Difficult to attribute improved decision-making and reduced future liability to natural hazard content on LIMs, as a small part of a suite of natural hazard information and risk reduction measures.
Total monetised benefits		Unknown	We do not currently have sufficient information about the benefits, particularly long-term, to provide monetised costs.
Non-monetised benefits		Medium-High	

Section 3: Delivering an option

How will the new arrangements be implemented?

What will the implementation process look like?

152. The changes to the LIM system will be implemented through a bill with amendments to LGOIMA including:
- a new statutory responsibility for regional councils
 - a specific purpose for providing natural hazard information in LIMs
 - broader information requirements for natural hazard information
 - an empowering provision to set national direction for LIMs
 - removing legal liability for the disclosure of natural hazard information in good faith
 - clearer requirements for natural hazard disclosure.
153. Subject to Cabinet decisions, consultation with local government and other relevant stakeholders before drafting of legislation will inform decisions on the details of the legislative amendments including:
- whether specific requirements should sit in legislation or national direction
 - timeframes for new requirements to come into effect.
154. Following royal assent, the processes to implement national direction will begin. Details of the process for forming national direction have not been determined.
155. It is likely that the process will be similar to the alternative process for developing national direction under the RMA (section 46A). The Minister will direct officials to form a technical working group to draft a discussion document for public consultation on the proposed national direction. The final national direction will then be approved by order in council and gazetted.
156. The Department will work with LGNZ, Taituarā and the local government sector to draft national guidance to support territorial authorities and regional councils on the implementation and ongoing application of national direction.

Who will be responsible for the ongoing operation and enforcement of the new arrangements?

157. The ongoing operational and enforcement responsibilities as a result of the changes under the preferred package of options are summarised in table 4 below:

Table 4: Operational and enforcement responsibilities

Group	Responsibilities
Territorial authorities	Territorial authorities will continue to be responsible for processing LIM applications and ensuring the natural hazard content in each LIM meets new requirements under LGOIMA.
Regional councils	Regional councils will have a new statutory responsibility to provide natural hazard information to territorial authorities to include in the LIM that meets new requirements under LGOIMA.
The Department	The Department will: <ul style="list-style-type: none"> • provide ongoing advice and guidance to the local government sector in response to queries and concerns raised by regional councils and territorial authorities • monitor and evaluate the performance of local authorities in meeting the new requirements.
The Ombudsman	The Ombudsman will continue to investigate any complaints from the public of a local authority for failure to meet new requirements for under LGOIMA, review any decisions made under those provisions by a local authority, and make recommendations to the local authority to implement. Local authorities are able to veto any Ombudsman recommendations although this rarely happens in practice. The Ombudsman may also decide to undertake a review of the performance of one or more local authorities in meeting the new requirements.
The Courts	The courts will continue to have jurisdiction over local authorities' decisions under LGOIMA. Property owners will be able to bring claims for negligence or breach of statutory duty or make an application for judicial review of a local authority's decision to include natural hazard information on a LIM. However, a local authority would have a good defence if it has provided natural hazard information on the LIM in good faith.

What risks need to be managed and how will this be done?

158. A key risk is that territorial authorities may not be able to meet new requirements for LIMs due to costs, a lack of supporting natural hazard data, and limited capability and capacity, particularly given other reform demands (e.g. Resource Management and Three Waters reforms). Initial feedback from local government representatives is that resourcing for expert staff and training would be the main implementation cost, especially for the smaller councils.
159. Regional councils may need additional resourcing to give effect to their new statutory responsibility. Regional councils will likely need to find additional resourcing to regularly:
- assess regional council held natural hazard information is relevant to LIMs
 - draft appropriate interpretation and explanations
 - provide the information to territorial authorities in a format that is compatible with their LIM processing systems.

160. Regional councils may also be reluctant to share information for the LIM due to concerns over potential legal action.
161. Territorial authorities and regional councils may disagree on how to share and coordinate the provision of natural hazard information, as well as the nature and extent of natural hazard information included on the LIM.
162. These implementation risks could be mitigated by:
- partnering with LGNZ and Taituarā to support council implementation
 - development of national guidance to share best practice and support territorial authorities and regional councils on how to apply national direction
 - clear delineation of territorial authority and regional council roles and responsibilities for providing natural hazard information in national direction and best practice guidance
 - funding and technical support from central government and regional councils for implementation
 - careful consideration of legislative transition periods and implementation timeframes to enable improvements to territorial authorities' capability and capacity and natural hazard data and information
 - support to facilitate greater coordination and improved natural hazard information sharing between regional councils and territorial authorities including implementing data sharing systems
 - oversight and monitoring of territorial authority performance by the Ombudsman, who currently reviews local authorities' LIM practice and receives complaints.
163. In addition, there is a risk that fees for LIMs may increase to cover costs for territorial authorities and regional councils. This would impact the accessibility of LIMs for property buyers.
164. The risk of fee increases could be mitigated through:
- careful consideration of whether regional councils can recover their costs for providing natural hazards through the LIM fee and how this would be collected and transferred
 - reducing costs through technical support to implement data sharing between territorials and regional authorities and for improving territorial authorities' LIM processing systems.

How will the new arrangements be monitored, evaluated, and reviewed?

165. The monitoring, evaluation and review of changes to the LIM system will be integrated into pre-existing regulatory systems. The Department will undertake ongoing monitoring of Ombudsman decisions and reviews of local authorities' performance under the new requirements under LGOIMA.
166. The Department will also seek regular feedback from:
- the local government sector through LGNZ and Taituarā on the regulatory settings
 - relevant government agencies e.g EQC, the Ombudsman, MfE, and REA
 - peak professional bodies in the property conveyancing, banking and insurance systems eg property lawyers, real estate agents, banking and insurance for feedback on the effectiveness of natural hazard disclosure in the LIM.
167. Department monitoring will look to evaluate:
- local authorities' performance at meeting standards under LGOIMA for natural hazard disclosure
 - if key natural hazard information is included in LIMs
 - if the communication and format of natural hazard information in LIMs is fit-for-purpose for property buyers
 - the capacity and capability of territorial authorities to incorporate natural hazard information in the LIM
 - data sharing arrangements between territorial authorities and regional councils
 - the fees and processing times for LIM applications
 - the level of certainty for councils over legal requirements
 - the number of legal actions against councils.
168. If the Department identifies significant concerns with the settings for natural hazard disclosure in the LIM system, the Minister of Local Government may review regulatory settings for natural hazard disclosure and may as appropriate make recommendations to Cabinet to issue national guidance, amend national direction and/or amend provisions in LGOIMA.