

Local Government Official Information and Meetings Amendment Bill

Government Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Local Government Official Information and Meetings Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill would make changes to the Local Government Official Information and Meetings Act 1987. These amendments relate to the provision of natural hazard information in land information memoranda (LIMs). LIMs convey essential information about the natural hazard risks in a particular area to help property buyers to make more informed decisions. Section 44A of the Act states that a person may apply to a territorial authority for a LIM in relation to matters affecting any land in the authority's district.

The bill as introduced would amend the Act to set out clearer requirements to provide natural hazard information in a LIM. It would also introduce provisions to allow regulations to be made for the purpose of providing natural hazard information.

Providing natural hazard information in LIMs is important for property buyers, particularly as weather patterns are increasing in intensity. Recent severe weather events in the upper North Island have demonstrated the risks some property owners face in the event of a natural disaster. Therefore, it is crucial that property buyers are fully informed about the issues that might affect a property.

The bill would require regional councils to provide natural hazard information and support to territorial authorities. The bill would also limit the legal liability of local authorities when providing natural hazard information in good faith. This would align

with the liability limitation in section 41 of the Act for local authorities when making official information available in good faith.

The bill would also add new conclusive reasons for withholding information based on national security risks. This would align the Act with the Official Information Act 1982. The additions are intended to reduce the risk of information being disclosed that could damage New Zealand's national security.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality.

We identified one issue regarding clause 9 of the bill that we discuss later in this commentary.

Proposed amendments

This commentary covers the main amendments we propose to the bill. We do not discuss minor or technical amendments.

Changes to commencement date

Part 1 of the bill would come into force on 1 January 2025 or an earlier date set by Order in Council. We were concerned that the proposed commencement date would truncate the process for the development of regulations. We recommend extending the date to 1 July 2025 to allow regional councils and territorial authorities more time to adequately prepare for the requirements this bill would impose.

Requirements for natural hazard information in LIMs

Clause 8 would insert new section 44B into the Act. This would set out what natural hazard information, including the impacts of climate change that exacerbate natural hazards, must be included in a LIM. It would require that "information about" natural hazards is provided, rather than "information identifying".

We were concerned that this could require territorial authorities and regional councils to produce new data and information or property specific assessments. We note that this is not the policy intent of the bill.

We recommend that new section 44B and 44C be amended to state that territorial authorities and regional councils must provide information "that identifies" hazards and impacts affecting land in a district, and their cumulative or combined effects. This would align with the wording of existing provisions for including natural hazard information in LIMs in section 44A(2)(a) of the Act.

This change would ensure that territorial authorities and regional councils are not required to create new information for each individual LIM.

Statutory responsibilities of regional councils

Proposed new section 44C would set out the responsibilities of regional councils when providing natural hazard information to territorial authorities. This section would require regional councils to provide territorial authorities with natural hazard information that affects land in the “region”.

We were concerned this would require regional councils to provide natural hazard information to a territorial authority even if that information did not relate to land in that territorial authority’s district.

We recommend amending proposed section 44C to refer to “territorial authority’s district” instead of “region” to ensure that a regional council’s requirement to provide natural hazard information would only apply to the area within the territorial authority’s district. This would make it clear that regional councils only need to provide territorial authorities with natural hazard information that is relevant to that territorial authority.

Consultation requirements for making regulations

Clause 9 of the bill as introduced would amend section 55 of the Act to set out the process for making regulations for the purposes of LIMs. The bill would require the Minister to consult the appropriate persons and organisations before recommending that regulations be made.

The Legislation Design and Advisory Committee guidelines (19.2) state that “an obligation to consult should clearly identify who must be consulted”.

We were concerned that section 55 as amended would not clearly indicate the persons and organisations to be consulted. We were particularly concerned that there would not be a specific requirement for consultation with councils and territorial authorities, given that they are central to providing LIMs.

We recommend that section 55(1A)(a) be amended to specify that the Minister must also consult regional councils and territorial authorities that may be affected before recommending that regulations be made. This would ensure that all relevant entities are engaged in the regulation-making process and improve how natural hazard information is communicated in LIMs.

We also recommend inserting section 55(1B) to state that the Minister would not be required to consult the entities specified in subsection (1A) if a proposed amendment “has no more than a minor effect, corrects errors, or makes similar technical alterations”. This exemption would give the provision flexibility, while requiring consultation for more substantial amendments.

Appendix

Committee process

The Local Government Official Information and Meetings Amendment Bill was referred to the committee on 22 November 2022.

We called for submissions on the bill with a closing date of 3 February 2023. We received and considered submissions from 36 interested groups and individuals. We heard oral evidence from 10 submitters at hearings in Wellington and via videoconference.

We received advice on the bill from the Department of Internal Affairs. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ian McKelvie (Chairperson)

Rachel Boyack

Hon David Bennett (from 8 February 2023)

Naisi Chen

Jamie Strange

Hon Michael Woodhouse (until 8 February 2023)

Hon Poto Williams also participated in consideration of this bill.

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Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kieran McAnulty

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Local Government Official Information and Meetings Amendment Act **2022**.

2 Commencement

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(1) **Part 1** comes into force as follows:

- (a) on a date set by Order in Council; but
- (b) on **1 January July 2025**, if it has not come into force by then.

(2) **Part 2** comes into force on the day after Royal assent.

(3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

3 Principal Act

This Act amends the Local Government Official Information and Meetings Act 1987.

Part 1

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Amendments relating to land information memoranda

4 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

climate change has the meaning given in section 2(1) of the Resource Management Act 1991 20

natural hazard has the meaning given in section 2(1) of the Resource Management Act 1991

regional council has the meaning given in section 5(1) of the Local Government Act 2002

regulations means regulations made under section 55 25

territorial authority has the meaning given in section 5(1) of the Local Government Act 2002

5 Section 4 amended (Purposes)

After section 4(c), insert:

- (d) to provide for the issue of land information memoranda. 5

6 Cross-heading above section 44A replaced

Replace the cross-heading above section 44A with:

Part 6A
Land information memoranda

7 Section 44A amended (Land information memorandum) 10

Replace section 44A(2)(a) with:

- (a) the information about natural hazards that is required by **section 44B**:
(aa) information about other special features or characteristics of the land concerned, including information about the likely presence of hazardous contaminants, that— 15
- (i) is known to the territorial authority; but
 - (ii) is not apparent from a district plan under the Resource Management Act 1991:

8 New sections 44B to 44D inserted

After section 44A, insert: 20

44B Natural hazard information to be included in land information memoranda

(1) The purpose of this section is to ensure that land information memoranda contain understandable information about the following in relation to land:

- (a) natural hazards: 25
- (b) impacts of climate change that exacerbate natural hazards.

(2) A land information memorandum must include—

- (a) information that identifies the following information, to the extent that it the information is known to the territorial authority: 30
- (i) information about each hazard or impact each natural hazard, and each impact of climate change that exacerbates natural hazards, that affects the land concerned:
 - (ii) information about each potential hazard or impact, each potential natural hazard, and each potential impact of climate change that exacerbates natural hazards, to the extent that the territorial 35

	authority is satisfied that there is a reasonable possibility that the hazard or impact may affect the land concerned (whether now or in the future):	
	(iii) information about the cumulative or combined effects of those hazards or impacts the cumulative or combined effects of the hazards and impacts referred to in subparagraphs (i) and (ii) on the land concerned; and	5
	(b) any further information required by the regulations to make the information provided under paragraph (a) more understandable.	
(3)	The information must be summarised and presented in the land information memorandum in the form required by the regulations (if any).	10
44C	Regional council must provide territorial authority with natural hazard information	
(1)	A regional council must, as soon as is reasonably practicable in the circumstances, provide to each a territorial authority within or partly within its region—	15
	(a) information that identifies the following information, to the extent that it the information is known to the regional council, about natural hazards and impacts of climate change that exacerbate natural hazards:	
	(i) information about each hazard or impact each natural hazard, and each impact of climate change that exacerbates natural hazards, that affects land in the region territorial authority's district:	20
	(ii) information about each potential hazard or impact, each potential natural hazard, and each potential impact of climate change that exacerbates natural hazards, to the extent that the regional council is satisfied that there is a reasonable possibility that the hazard or impact may affect land in the region territorial authority's district (whether now or in the future):	25
	(iii) information about the cumulative or combined effects of those hazards or impacts the cumulative or combined effects of the hazards and impacts referred to in subparagraphs (i) and (ii) on land in the region territorial authority's district; and	30
	(b) any further information required by the regulations to make the information provided under paragraph (a) more understandable.	
(2)	The information must be summarised and presented in the form required by the regulations (if any).	35
44D	Territorial authority and regional council protected against certain actions when providing information in good faith	
	A territorial authority or regional council is not liable in civil or criminal proceedings for making available in good faith,—	40

- (a) in the case of a territorial authority, information in a land information memorandum under **section 44A(2)(a)**; or
- (b) in the case of a regional council, information to a territorial authority under **section 44C**.

9 Section 55 amended (Regulations) 5

After section 55(1), insert:

(1A) The Minister must not recommend that regulations be made for the purposes of **Part 6A** unless they have consulted ~~the persons or organisations that the Minister considers appropriate to consult.~~—

- (a) each regional council and territorial authority that the Minister considers may be affected by the proposed regulations; and 10
- (b) the persons and organisations that the Minister considers appropriate to consult.

(1B) However, the Minister is not required to consult the entities set out in **subsection (1A)(a)** if satisfied that a proposed amendment to regulations has no more than a minor effect, corrects errors, or makes similar technical alterations. 15

10 Schedule 1 amended

In Schedule 1, Part 1, item relating to territorial authorities, delete “within the meaning of the Local Government Act 2002”.

Part 2 20

Amendments relating to official information

11 Section 6 amended (Conclusive reasons for withholding official information)

- (1) In section 6, renumber paragraphs (a) and (b) as paragraphs (c) and (d).
- (2) Before section 6(c), insert: 25

- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
 - (i) the Government of another country or an agency of that Government; or 30
 - (ii) any international organisation (as defined in section 2(1) of the Official Information Act 1982); or

- (3) In section 6, replace the compare note with: 35
Compare: 1982 No 156 s 6(a)–(d)

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Part 2 cl 11A

11A Section 7 amended (Other reasons for withholding official information)

In section 7(2)(f)(i), delete “, or any persons to whom section 2(5) applies,”.

12 Section 31 replaced (Disclosure of certain information not to be recommended)

Replace section 31 with:

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31 Disclosure of certain information not to be recommended

- (1) An Ombudsman must not recommend that information be made available if—
- (a) the Prime Minister certifies that making the information available would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (b) the Attorney-General certifies that making the information available would be likely to prejudice the prevention, investigation, or detection of offences.

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- (2) However, the Ombudsman may recommend that the appropriate local authority give further consideration to making the information available.

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Compare: 1982 No 156 s 31

Legislative history

22 November 2022

Introduction (Bill 202–1), first reading and referral to
Governance and Administration Committee