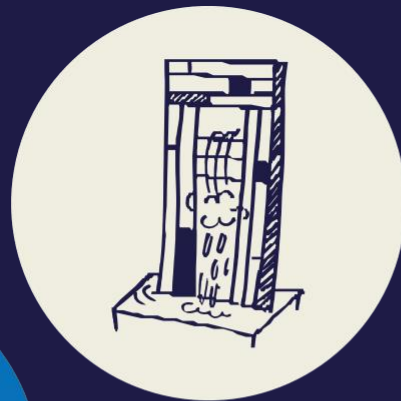


HAMILTON CITY COUNCIL – STAFF SUBMISSION

Local Government Official Information and Meetings Amendment Bill

Parliament's Governance and Administration Committee



3 February 2023



**Hamilton
City Council**
Te kaunihera o Kirikiriroa

Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- **A city that's easy to live in**
- **A city where our people thrive**
- **A central city where our people love to be**
- **A fun city with lots to do**
- **A green city**

The topic of this submission is aligned to the priority '**A city where our people thrive**'.

Council Approval and Reference

This staff submission was approved by Hamilton City Council's Chief Executive on 3 February 2023.

Hamilton City Council Reference D-4557440 - Submission # 717.

It should be noted that the following submission is from staff at Hamilton City Council and does not therefore necessarily represent the views of the Council itself.

Key Messages and Recommendations

1. **INTRODUCTION:** Overall, Hamilton City Council staff support the purpose and proposals outlined in the **Local Government Official Information and Meetings Amendment Bill**.
2. **DEFINITIONS OF CLIMATE CHANGE AND NATURAL HAZARD:** We support in principal use of the Resource Management Act 1991 definitions for Climate Change and Natural Hazards.
3. **PROVISION OF NATURAL HAZARD INFORMATION:** We note the change from “*identify each (if any) special feature of the land concerned*” to include “*information about each hazard or impact that affects the land concerned*”. Further clarity on what is expected through sector guidance or regulation is recommended to provide clarity on compliance with this requirement, if retained.
4. **INTERACTION BETWEEN THE WATER SERVICES ENTITIES AND LOCAL GOVERNMENT:** We recommend that the Bill recognise and align with the responsibilities of Water Service Entities under the Water Services Entities Act and proposed amendments.
5. We support the proposed requirement for Regional Councils to provide information to Territorial Authorities and encourage further requirements for Regional Councils to share natural hazards information with other relevant entities such as Water Services Entities.
6. **CONSISTENCY WITH RELATED LEGISLATION AND LOCAL GOVERNMENT REFORM:** We request consistency with the Building Act 2004 and the Natural and Built Environment Bill.
7. **LEGISLATIVE INTERPRETATION (PROPOSED S44B LGOIMA): Information known to the territorial authority -** The use of this phrase is useful in our understanding of the scope of information to be included in a LIM on these matters. The Governance and Administration Committee is invited to consider whether it would be appropriate to codify case law on this point in the amendments to LGOIMA.
8. **Understandable information -** We support the general principle that information provided to prospective purchasers is digestible. The inclusion of the phrase ‘understandable information’ in 44B(2) without clear regulatory guidance on the format may lead to an oversimplification of the nature and risks associated with any Natural Hazards and the impact of Climate Change on a specific property.
9. **Information about each hazard or impact that affects the land concerned -** We request clarification of the scope of the word ‘impact’ in section 44B (2)(a)(i) and (ii). Presumably this refers to the impact of climate change in section 44B (1)(b)?
10. **Scope and definition of ‘land concerned’ -** We recommend that the Bill clarify the scope of ‘impacts that affect the land concerned’.
11. We recommend that the Bill clarify the definition of land. If it comprises ‘anything on the land (e.g., buildings)’ it would require a greater magnitude of assessment to be delivered.
12. **Information about each potential hazard or impact, to the extent that the authority is satisfied that there is a reasonable possibility that the hazard or impact may affect the land concerned -** We note the use of ‘potential hazard’ and ‘reasonable possibility’ in section 44B (2)(a)(ii). Both of these phrases require significant levels of judgement by councils as to what may be relevant to any particular property.
13. **COSTS AND REGULATORY IMPACT:** The DIA Regulatory Impact Statement (RIS - found [here](#) for reference), notes that “*given the short timeframe for developing these policy options, it has been difficult to estimate the monetized benefits and costs of these changes, particularly local government implementation costs*”.
14. We agree that without further clarity on the scope of information to be provided, it is difficult for a council to quantify the cost to ratepayers of this change.

15. **COMMENCEMENT:** The drafting regarding commencement is noted as standard - by Order in Council and at latest on 1 January 2025. We request further consultation with the local government sector as to the ability to meet the proposed sunset date, or any contemplated date for an Order in Council.
16. **PROTECTION AGAINST LIABILITY (PROPOSED S44D LGOIMA):** We strongly support legislative provision to limit the liability of councils in the provision of information in a LIM under section 44A(2)(a).
17. We request consideration and clarification of whether the limitation non-liability would extend to the provision of discretionary information relating to Natural Hazards provided under section 44A(3).
18. We invite the Governance and Administration Committee to consider the extension of the limitation of liability to all information being provided in a LIM.
19. We request clarity on the application of the section 44D provisions to investigations by the Ombudsman's Office and availability of the Judicial Review process. Both of these avenues for review of public body decisions are considered fundamental to enabling communities to hold public bodies accountable.
20. **CONCLUSIVE REASONS FOR WITHHOLDING INFORMATION (S6 & 31 LGOIMA):** We support the proposed amendments to [Section 6 and 31 LGOIMA](#) to provide conclusive withholding grounds for information that would likely prejudice the security or defence of New Zealand or the international relations of the Government.
21. We note that and request that if the amendments to section 6 LGOIMA are progressed, that consideration is given to the application of the [Privacy Act 2020](#) and the [Privacy Principles](#) to any information shared regarding individuals.

Introduction

22. Hamilton City Council staff appreciate the opportunity to make a submission to Parliament's Governance and Administration Committee on the **Local Government Official Information and Meetings Amendment Bill**.
23. Overall, we support the purpose and proposals outlined in the Local Government Official Information and Meetings Amendment Bill, noting that it includes changes to improve natural hazard information provided in Land Information Memoranda, and aligning withholding and certification processes with the Official Information Act 1982.

Definitions of Climate Change and Natural Hazard (S2 LGOIMA)

24. Hamilton City Council staff support in principal use of the Resource Management Act 1991 definitions for Climate Change and Natural Hazards. Staff note that as drafted, further clarity (for example specific definition) of the terms 'special feature or characteristic' that currently appears in section 44A(2)(a) of LGOIMA should be considered.

Provision of Natural Hazard Information

25. Staff note the change from "*identify each (if any) special feature of the land concerned*" to include "*information about each hazard or impact that affects the land concerned*". There is a difference between identifying a hazard, and providing information about it, the latter of which can be taken to require more information that explains the hazard or impact (or potential hazard/impact). Further clarity on what is expected through sector guidance or regulation is recommended to provide clarity on compliance with this requirement, if retained.
26. Section 44C states that regional councils will be required to send territorial authorities information relating to natural hazards and impacts of climate change that exacerbate natural hazards. This is supported by staff.

27. We recommend that the Bill clarify the expectations for communicating different climate change scenarios, especially given the changing landscape with respect to climate change modelling and scenarios. For example, the External Reporting Board's December 2022 standard 'NZ CS 1 Climate-related Disclosures' requires three climate change scenarios be considered in their scenario analysis.
28. Section 44B additionally contains wording that will require judgments to be made by councils, specifically as underlined *...information about each potential hazard or impact, to the extent that the 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)...* The use of this wording will require councils to judge whether information meets the test above. There is scope for inconsistency and disagreement with landowners and other community stakeholders on how this is assessed. Any regulation and sector guidance needs to address this assessment and how it should be treated.

Interaction Between the Water Services Entities and Local Government

29. We recommend the Bill recognise and align with the responsibilities of Water Service Entities under the Water Services Entities Act and proposed amendments.
30. We support the proposed requirement for Regional Councils to provide information to Territorial Authorities and encourage further requirements for Regional Councils to share natural hazards information with other relevant entities such as Water Services Entities.
31. The proposed amendments would require a transparent and collaborative data sharing system between the Regional Councils, Territorial Authorities and Water Services Entities.

Consistency with Related Legislation and Local Government Reform

32. We request consistency with the Building Act 2004 in relation to Property Information Memorandums (PIMs). Noting that the proposed definition in LGOIMA is different to the definition of natural hazards contained in section 71 of the Building Act 2004, section 71 does not cover all of the natural hazards proposed.
33. We request consistency with the Natural and Built Environment Bill, in particular the definition of 'natural hazard' in the Bill.
34. Staff also note the current reports into Local Government Reform being prepared for Central Government. We request that the Governance and Administration Committee consider the draft recommendations in that report and whether they impact decisions to amend LGOIMA.

Legislative Interpretation (Proposed s44B LGOIMA)

35. **Information known to the territorial authority** - Staff note the use of this phrase is useful in our understanding of the scope of information to be included in a LIM on these matters. Specifically, leading case law (e.g., *Weir v Kapiti Coast District Council* [2013] NZHC 3522) that is referred to for guidance on this point by councils on a regular basis. The Governance and Administration Committee is invited to consider whether it would be appropriate to codify case law on this point in the amendments to LGOIMA.
36. **Understandable information** - Staff support the general principle that information provided to prospective purchasers is digestible. The inclusion of the phrase 'understandable information' in 44B(2) without clear regulatory guidance on the format may lead to an oversimplification of the nature and risks associated with any Natural Hazards and the impact of Climate Change on a specific property.

37. The word 'understandable' is ambiguous and leaves the section open to interpretation. There is a risk of oversimplifying the information for use. Taking out technical background information from a LIM would risk the integrity and correctness of the information available. It could then make the reports seem vague and subject to interpretation.
38. Councils currently take their own approach to displaying and categorising information. For example: Hamilton City Council's [flood viewer](#) uses a simple low, medium, high filter to categorise hazards. Hamilton City Council's internal viewer holds more detailed data, including actual modelled maximum depths, velocities and water surface levels, which can be made available upon request. The data is highly technical to understand and can be confusing to use.
39. We recommend that the Bill further clarify the extent and level of details of information that councils will be expected to supply. For example - would councils be expected to supply data acquired through individual consents, or could the councils only provide data they have produced as part of catchment studies?
40. **Information about each hazard or impact that affects the land concerned** - We request clarification of the scope of the word 'impact' in section 44B (2)(a)(i) and (ii). Presumably this refers to the impact of climate change in section 44B (1)(b).
41. **Scope and definition of 'land concerned'** - We recommend that the Bill clarify the scope of 'impacts that affect the land concerned'. If it comprises specific impacts for the land (i.e., site specific) then it would require councils to undertake a site-by-site risk assessment approach. These assessments would be difficult to produce from the perspective of resourcing and availability of information.
42. We recommend that the Bill clarify the definition of land, if it comprises 'anything on the land (e.g., buildings)' it would require a greater magnitude of assessment to be delivered.
43. **Information about each potential hazard or impact, to the extent that the authority is satisfied that there is a reasonable possibility that the hazard or impact may affect the land concerned** - Staff note the use of 'potential hazard' and 'reasonable possibility' in section 44B (2)(a)(ii). Both of these phrases require significant levels of judgement by councils as to what may be relevant to any particular property. This leads to a risk of different/inconsistent approaches by councils across the country and a lack of clarity for prospective purchasers. If retained, further guidance or regulation should be considered to assist councils with making these assessments.

Costs and Regulatory Impact

44. The DIA Regulatory Impact Statement (found [here](#) for reference), notes that *"given the short timeframe for developing these policy options, it has been difficult to estimate the monetized benefits and costs of these changes, particularly local government implementation costs"*.
45. Staff agree that without further clarity on the scope of information to be provided that it is difficult for a council to quantify the cost to ratepayers of this change. As also noted in the DIA Regulatory Impact Statement, there are significant variances and gaps in information nationally, and we expect that costs will similarly vary from council to council.
46. Cost recovery is also not as simple as increasing fees for people requesting LIMs. In certain housing markets, purchasers can be reluctant to purchase LIMs, and if fees become prohibitively high, this may disincentivise purchasers further. Staff view this as undesirable from a policy perspective.
47. Councils also set their revenue streams from fees and other sources via their Revenues and Finance Policies. Part of the assessment in this process is the nature and extent of public versus private benefit from an activity. As a consequence, there is scope to argue the cost of the change should in part be borne by the ratepayer.

48. Currently, Hamilton City Council offers an [urgent LIM service \(three working days\)](#) at a premium over the 10 day service. This is a common service offered by councils nationally. Depending on the nature and complexity of information to be provided as a result of the proposed changes, there may be a shift to extending the timeframe of the urgent LIM offering, or removing this as an option entirely.

Commencement

49. The drafting regarding commencement is noted as standard - by Order in Council and at latest on 1 January 2025. Staff request further consultation with the local government sector as to the ability to meet the proposed sunset date, or any contemplated date for an Order in Council. The ability of councils to comply will be contingent on clarity regarding information to be provided, capacity of council officers to produce information and other more administrative matters - such as compatibility of data between regional councils and territorial authorities.

Protection Against Liability (Proposed s44D LGOIMA)

50. Staff strongly support legislative provision to limit the liability of councils in the provision of information in a Land Information Memorandum under section 44A(2)(a). Noting that this extends to include information about other special features and the likely presence of hazardous contaminants.
51. We request consideration and clarification of whether the limitation non-liability would extend to the provision of discretionary information relating to Natural Hazards provided under section 44A(3). We submit that an extension of this nature would be consistent with the purpose articulated in proposed section 44B of LGOIMA.
52. We also invite the Governance and Administration Committee to consider the extension of the limitation of liability to all information being provided in a LIM.
53. We request clarity on the application of the section 44D provisions to investigations by the Ombudsman's Office and availability of the Judicial Review process. Both of these avenues for review of public body decisions are considered fundamental to enabling communities to hold public bodies accountable. A clear understanding of their availability and that the risk of litigation is not entirely removed in sector guidance, will assist councils to understand their obligations to the community and the risks associated with preparation of natural hazard information.

Conclusive Reasons for Withholding Information (S6 & 31 LGOIMA)

54. Hamilton City Council staff support the proposed amendments to [Section 6 and 31 LGOIMA](#) to provide conclusive withholding grounds for information that would likely prejudice the security or defence of New Zealand or the international relations of the Government.
55. Staff are supportive of legislative provisions that will allow the intelligence agencies to expand their outreach and share detailed information with local authorities regarding specific sources of risk. Following the start of the Covid 19 pandemic, our understanding (and our anecdotal experience as a Metro Council in the domestic setting) is that foreign and domestic threats and interference with both central and local government have increased. It will also allow local authorities to proactively seek assistance regarding security issues without the risk that the information could be released.
56. Staff note that and request that if the amendments to section 6 LGOIMA are progressed, that consideration is given to the application of the [Privacy Act 2020](#) and the [Privacy Principles](#) to any information shared regarding individuals.

57. For example, the current exemption afforded to intelligence and security agencies under section 28 of the Privacy Act 2020. The Privacy Act 2020 would potentially require councils to apply for authorisation under section 30 of the Privacy Act 2020, or for an information sharing agreement between councils and the relevant agencies to be approved by the Governor-General under section 145, before engaging with intelligence agencies on security matters.

Further Information and Hearings

58. Should Parliament's Governance and Administration Committee require clarification of the submission from Hamilton City Council staff, or additional information, please contact **Michelle Hawthorne** (Governance and Assurance Manager – Governance Unit) on 07 2450008 or email michelle.hawthorne@hcc.govt.nz in the first instance.
59. Hamilton City Council representatives **do wish to speak** at the Governance and Administration Committee hearings in support of this submission.

Yours faithfully



Lance Vervoort
CHIEF EXECUTIVE

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