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BIBLIOGRAPHIC REFERENCE


W.S.A. Saunders, GNS Science, PO Box 30368, Lower Hutt 5040, New Zealand
J.E. Mathieson, GNS Science, PO Box 30368, Lower Hutt 5040, New Zealand

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ABSTRACT

Land Information Memorandum (LIM) contributes to the management of natural hazards by providing information to property owners and potential purchasers. LIMs were included into the Local Government Official Information and Meetings Act (1987) in 1992, and after more than two decades of being enacted, there is still a lot of confusion and inconsistent approaches to managing information requirements within LIMs. The aim of this report is to document how natural hazard information is represented in LIMs produced in the Wellington Region. The following questions underpin the research:

1. What is the role of the LIM in communicating natural hazard information?
2. When should information be included in a LIM?
3. What improvements could be made to the LIM system?

The LIM can be used as static means of communicating site specific natural hazards information and the potential risk associated with the purchase of a property. Additionally, the information in the LIM is able to be updated more easily than the district plan, and can generally hold the most up to date information about a property. This makes the LIM a valuable tool for disseminating important information to the public about a hazard, and the potential risks associated with a property.

The research identified a number of challenges and opportunities with LIMs that currently hinder the effectiveness of them being able to effectively communicate information to the public. Councils have struggled with developing a consistent approach to effectively deliver a LIM within the statutory timeframes, while balancing the requirements of providing information. The type and level of information included varies considerably, and within the Wellington Region the natural hazards information has been used inconsistently. The LIM is considered to be council's biggest exposure to liability, making it vitally important for councils to get it right.

Three levels of recommendations have been made at national, regional, and local level scales. These include a full review of the LIM system; improving regional and district information sharing; and recommendations for information providers.

KEYWORDS

Land Information Memorandum, natural hazards, property, liability, Wellington region, RMA
1.0 INTRODUCTION

The purpose of this report is to provide a review of how Land Information Memorandum (LIM) contributes to the management of natural hazards through the provision of information. A LIM provides information held by the local authority on a property. While it is not a legal requirement, it is advisable for potential purchasers of a property to obtain a LIM report. The standard Agreement for Sale and Purchase has a clause relating to a LIM inserted as a standard term to allow the lawyer to consider the LIM before an agreement goes unconditional (Property Law Section - New Zealand Law Society, N.D.).

A LIM can include information about things such as potential erosion, contamination or flooding, structural requirements, where the street water pipes and sewerage run, rates details, consents and notices that have been issued relating to this or neighbouring properties, the district plan zoning, likely future use such as new roads, information from other utility providers, and any other information the local authority regards as relevant (Property Law Section - New Zealand Law Society, N.D.).

LIMs provide a static method for communicating hazard and risk to people seeking to purchase property, which should be used in conjunction with other methods to communicate and manage natural hazards.

There are two main implications of information on LIM:

- **Getting it right** - If the LIM report is accurate it means that councils can avoid or reduce any liability in relation to identified natural hazards.
- **Getting it wrong** - creates liability for the council if the information is incorrect or inaccurate.

LIMs were included into the Local Government Official Information and Meetings Act (1987) in 1992; after more than two decades of being enacted, there is still a lot of confusion and inconsistent approaches to managing information requirements within LIMs.

The aim of this report is to document how natural hazard information is represented in LIMs produced in the Wellington Region. The following questions underpin the research:

1. What is the role of the LIM in communicating natural hazard information?
2. When should information be included in a LIM?
3. What improvements could be made to the LIM system?

1.1 OUTLINE OF REPORT

This report begins by outlining the legislative context for LIMs and the statutory process and timeframes they are required to be produced within. Following this legislative outline are the findings from a legal opinion on the content of LIMs in regards to natural hazard information (Section 3).

The insurance implications of LIMs are discussed in Section 4, followed by an outline of the role of real estate agents in interpreting LIM information, along with challenges they face.

Section 6 presents three case studies, where LIM reports were purchased from three councils across the Wellington Region. The case studies outline the information contained
within each LIM, how that information was presented, what (if any) gaps are in the information provided, and opportunities for improving the LIM. This is followed in Section 7 by an example of how Kapiti Coast District Council went through a process of improving their LIM system, and the outcomes of that review.

The report concludes with three sections: Section 12 outlines the challenges of the current LIM system, Section 13 summarises the findings of the project, and Section 14 outlines recommendations for improving the LIM system at a national, regional and local.

1.2 LIMITATIONS

This report has solely focused on the natural hazard information in a LIM report for residential properties across the Wellington region. LIMs for commercial, rural, and industrial uses have not been considered for this project due to the scope this project had to work within. How the natural hazard information is included in the other LIMs will provide a valuable source of information, and the opportunity to undertake further research in the future to obtain a more complete picture.

The methodology for the project is outlined in Appendix 1.
2.0 LEGISLATIVE CONTEXT FOR LIMS

LIMs are administered by the Department of Internal Affairs under the Local Government Official Information and Meetings Act (LGOIMA) 1987. The following subsections outline the relevant sections of LGOIMA for natural hazard information in LIMs, and the broader contribution of LIMs to the legislative framework for managing natural hazards. The LIM gives information about a property including details about rates, water and drainage. They also alert any potential purchasers to issues relating to the possibility of flooding, boundary encroachments, building and resource consents issued for the property and any heritage features.

Section 44A, the provision for the LIM was added to the LGOIMA in December in 1992 by section 2 of the LGOIM Amendment Act (No. 2) 1991 (No. 151).

2.1 LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

The purpose of LGOIMA is three-fold:

1. to increase progressively the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at meetings of local authorities, in order:
   a. (i) to enable more effective participation by the public in the actions and decisions of local authorities; and
   b. (ii) to promote the accountability of local authority members and officials,
2. and thereby to enhance respect for the law and to promote good local government in New Zealand:
3. to provide for proper access by each person to official information relating to that person:
4. to protect official information and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy.

Section 44A of the LGOIMA is partially reproduced below, with only those sections relevant to natural hazards outlined. The full, unabridged version is reproduced in Appendix 2:

44A Land information memorandum

(1) A person may apply to a territorial authority for the issue, within 10 working days, of a land information memorandum in relation to matters affecting any land in the district of the authority.

(2) The matters which shall be included in that memorandum are—

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

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

(3) In addition to the information provided for under subsection (2), a territorial authority may provide in the memorandum such other information concerning the land as the authority considers, at its discretion, to be relevant.

(5) In the absence of proof to the contrary, a land information memorandum shall be sufficient evidence of the correctness, as at the date of its issue, of any information included in it pursuant to subsection (2).

(6) Notwithstanding anything to the contrary in this Act, there shall be no grounds for the territorial authority to withhold information specified in terms of subsection (2) or to refuse to provide a land information memorandum where this has been requested.

As can be seen from the excerpt above, the information to be included within the LIM includes natural hazards (i.e. not limited to those listed), information known to the council, and if the information is included within the district plan it does not have to be included within the LIM (although it is recognised as good practice to do so).

2.2 What’s Not Included in LIMs

LIM reports typically will not include information about contaminated land, development contributions, leaky building information, or certificates of title. Of relevance to this project, LIMs may also not include information about (Devine et al., 2014):

Resource consents issued by regional councils - LIM reports are only required to contain information about consents granted by the council that prepared the report. Accordingly, LIM reports often will not contain information about resource consents granted by regional councils, such as water and discharge permits.

Resource consent conditions - LIM reports frequently do not contain full copies of resource consents, even if the consents were granted by the relevant council. Typically, the information included on resource consents is limited only to what has been granted on the property, or on the surrounding properties. If the consents are required for the on-going use of the property, then it is important to obtain full copies from the council and review the conditions.

Compliance with resource consents - LIM reports are not required to record complaints the council may have received about activities at the property or any enforcement action the council may have taken. This information is particularly relevant when purchasing a business as it may suggest underlying compliance issues which could be costly to correct.

District plan information - LIM reports are not required to include information that is apparent from the relevant district plan. Accordingly, LIM reports may not contain information about the zoning of the property, activities that can be carried out on the property and neighbouring sites, designations affecting the property, protected trees, and other information relevant to the property’s use and potential development.
Leaky building information\(^1\) - Councils must identify properties that are, or have been subject, to Weathertight Home Resolution Service claims in LIM reports. However, properties that have been subject to leaky building claims through the courts or private actions do not have to be identified. This underscores the importance of obtaining a comprehensive builders report as part of the due diligence process.

### 2.3 Contribution of LIMs to the Management of Natural Hazards

LIMs provide a key method to communicate hazard and risk. Although a static means of communication, the LIM report does contribute to the awareness, and has the potential to increase people’s understanding of hazards and risks. LIMs therefore have a role to play in managing natural hazards, particularly when part of the wider legislative framework for managing natural hazards and risks (Figure 1). Additionally, the LIM process provides a responsive means for keeping natural hazards information up to date, and for conveying that information to property owners. To ensure the LIM reporting is accurate councils have to include all information held about a natural hazard, the LIM process can be utilised by council to convey that information without going through a formal district plan review. It should be noted that the intention of the LIM is not to warrant a property is safe, but rather to raise potential risks that might be associated with a property.

As shown in Figure 1, there is a close link between the district plan and LIMs. Ideally, natural hazard information within a LIM should include that within the district plan, as well as hazard information from the regional council. As a key method for increasing natural hazard and risk awareness, it is considered good practice to include reference to LIMs within policies and plans. However, in 2014 a study that assessed natural hazard provisions in all operative Regional Policy Statements (RPS), district plans and Civil Defence Emergency Management (CDEM) Group plans (Saunders, Beban, & Coomer, 2014), found that 49.3% of operative district plans referred to LIMs, followed by RPSs (37.5%) and CDEM Group plans at 21.4%.

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\(^1\) This is only if the house has been identified as a leaky home. There have been cases where home owners will undertake the repairs without having the weathertight issues listed on the property’s title. The only evidence that the house may have had weathertight issues is there may be resource consents issued to replace cladding or other external fittings.
Figure 1  Legislative context for managing natural hazards and risks in New Zealand (Saunders & Beban, 2012). Orange shows the national level policies and plans; green are regional level policies and plans; and blue are district level policies and plans. The dotted arrows show areas were information transfer can be improved. CDEM = Civil Defence Emergency Management; PIM’s = Project Information Memorandum; LIM’s = Land Information Memorandum; SOP’s = standard operating procedures.
3.0 FINDINGS OF LEGAL OPINION

A legal opinion was obtained which considered the liability for council regarding the level and type of information they include in their LIM reports. The advice was specifically concerned with how information was presented under section 44A of LGOIMA, and the implications for councils if they get it wrong. The three key matters that the legal opinion addressed included:

- How section 44A(2) of the LGOIMA should be interpreted for matters relating to natural hazards
- What level of information can or should be provided by council
- What is the council’s legal liability in relation to including or failing to include natural hazards information on LIMs issued by council.

The full legal opinion is provided in Appendix 3.

It is not the function of a section 44A(2)(a) LIM to be advisory in the sense of suggesting the recipient take a particular course of action. It is also not necessary or wise to state that the council is satisfied as to a particular matter. In that case the purpose of a LIM is not to warrant the land is good or safe, rather to put the recipient on notice of the facts which may affect the physical state and potentially value of the land.

Figure 2, included below, demonstrates where the natural hazard information contained in a LIM has been tested through the courts. The details of the case, the tests the judge used to assess the case and the outcomes are provided. The case was an important test of council liability for providing natural hazard information to potential purchasers of land.

3.1 MATTERS RELATING TO NATURAL HAZARDS

Section 44A(2)(a) of the LGOIM Act indicates that information identifying any special feature or characteristic that has the ‘potential’ or is ‘likely’ to affect the land concerned must be provided in the LIM report. ‘Potential’ and ‘likely’ were distinguished in Weir v Kapiti Coast District Council, where the court found that information in relation to hazardous contaminants must show they are ‘likely’ to be present in the land before the duty to include that information is triggered. ‘Likely’ is the standard in this instance as it relates to a present fact or probability which is discernible to a certainty if necessary by testing. Therefore ‘likely’ unquestionably refers to a probability, or specific state of facts that is more probable than not. ‘Potential’ is different in that it refers to a set or series of physical effects on the land that may not have occurred and, it is accepted that they may never occur. The consideration as whether the potential existence of a natural hazard is a special feature or characteristic of the land involves a judgement call by a territorial authority. It is therefore unfeasible to attach a probability to the ‘potential’ of an event occurring. The obligation instead is to refer in the LIM report to any information held by council relating to such features or future events only if there is a possibility they may occur.

3.2 LEVEL OF INFORMATION TO BE INCLUDED

The purpose of the LIM is not to warrant the land is good or safe, but rather to put the recipient on notice of the particular facts that might affect the physical state and potentially the value of the land. Information that is ‘known’ to council simply means that the council needs to know about the information relating to a special feature or characteristic, but it does
not have to believe the information is accurate or even probably accurate. Council is required
to supply known natural hazard information whether they are in possession of that
information or not. They are not however required to search out or make enquires as to
whether or not other such information exists. There is no obligation on council to provide
information over and above what is known to council. It is not the purpose of a LIM report to
be advisory in the sense of suggesting that a potential purchaser takes a particular course of
action. It is also not necessary or wise to state that the council is satisfied as to a particular
matter being resolved or rectified.

In some situations, the amount of information known to councils may be readily available,
and able to be provided in full. In other situations, the council may hold large amounts of
material and specialist reports that are impractical to provide in full. In these instances, the
council has broad discretion as to how it presents large amounts of information on a LIM,
but the summary must be accurate, state the position fairly and must not mislead the
recipient. The obligations of accuracy and fairness will be heightened when the information
will have a significant financial impact on the owners of properties affected. It is of
particular importance that a council refers to the precise source of the information, and how
that information may be accessed. Information in the district plan does not need to be
included in the LIM. It follows that until a proposed district plan becomes operative, the
relevant hazard information must be included on a LIM. There may be an obligation of
fairness owed the existing landowners. The council is expected, and may be obliged in
some cases, to consult with such an owner.

3.3 COUNCIL LIABILITY

The majority of damage claims relevant to natural hazards information included in a LIM are
likely to arise in relation to people who have purchased a property or have some other type
of legal commitment based on the information provided in the LIM. Alternatively, it is possible
that an existing property owner could bring a judicial review claim regarding a council’s
decision to include information in a LIM and seek its removal. Councils owe a duty of
reasonable care to ensure that a LIM factually and accurately informs the recipient
particularly about any special feature of the land as required by Section 44A(2)(a).
The greater the care taken to assemble and summarise the natural hazard information for a
LIM report lessens the chance for council’s decision to be successfully challenged. There are
three main types of liability claim that could be brought against council, these include:

- Damage claims in negligence;
- Breach of statutory duty; and
- Judicial review of proceedings.

3.3.1 Negligence

A duty of reasonable care is owed by council to ensure that a LIM factually and accurately
informs the recipient, particularly about any special feature of land as required by section
44A(2)(a). In order for a claimant to successfully claim damages, it is necessary to
establish not only an actual reliance, but also that the reliance on the LIM was reasonable.
Examples of where the reliance might not be reasonable include where the recipient of the
LIM did not read it, or had reliable information in his or her possession that contradicted
what was on the LIM.
3.3.2 Breach of Statutory Duty

To succeed in an action for damages for breach of a statutory duty, a plaintiff would need to prove the following:

1. A breach of statutory duty;
2. That the breach of duty caused damage to the plaintiff; and
3. A legislative intention that breach of that obligation:
   a. Should give rise to civil liability in relation to a class of person to which the plaintiff belongs; and
   b. Allows damages of a kind for which the law awards damages and against which the statute was designed to give protection.

A claim for breach of statutory duty will rarely add much to a claim in negligence.

3.3.3 Judicial Review of Proceedings

The bringing of an action for judicial review of a decision made by council to provide natural hazard information could be made on almost any of the grounds on which a judicial review action can be based.

1. The decision is unreasonable;
2. It failed to take into account considerations, or took into account irrelevant considerations;
3. The council made an error of law;
4. Or possibly a mistake of fact, or has acted outside of its powers or in abuse of them, or it acted unfairly/breached natural justice in arriving at a decision.

Whether or not a judicial review brought in relation to natural hazard information that informs a LIM decision will be successful will depend largely on the particular circumstances of the decision. The basis for a judicial review in relation to natural hazards information is most likely to be that the council has supplied incorrect or insufficient information. Each of these claims is dependent largely on the factual basis of the claim, and is assessed on a case by case basis.
York v Westland District Council

In August 2005, the first applicant, Mr York, entered into an agreement to purchase a motel (land and business) at Franz Josef, as agent for the second respondent, a company not then formed. The agreement was conditional on a land information memorandum (LIM) being obtained. The respondent Council provided a LIM on 19 August 2005. Having obtained the LIM, Mr York confirmed the contract, and the transaction settled in September 2005.

Under the heading “Special Land Features” the LIM said: “No information located”. The applicants allege that the Council was negligent in making this statement because, at the time, it was aware of the existence of the Alpine Fault, of the threat that it posed to the motel and to Franz Josef generally and of a Government suggestion that local authorities establish fault avoidance zones of at least 20 metres either side of fault lines. In November 2010, the Council proposed to establish such a zone in respect of the Alpine Fault. According to the applicants, this proposal resulted in a substantial reduction in the value of their land and motel business.

In July 2012, the applicants issued proceedings against the Council seeking damages for negligent misstatement. They claimed that they had not become aware of the Council’s negligence until the announcement in November 2010, when they learnt of the proposed zone and the reasons for it. The Council applied to strike out the proceedings as being outside the limitation period. It was unsuccessful in the High Court, but succeeded on appeal. The Court of Appeal accepted that the Council owed a duty of care to the applicants when providing the LIM but considered that this Court’s decision in Marlborough District Council v Altimarloch Joint Venture Ltd was not relevantly distinguishable, so that the applicants suffered loss when they settled the transaction in September 2005: at that time they paid a price for the property that exceeded its actual value. Accordingly, their claim against the Council was time-barred.

The applicants submit that the loss was suffered not at the date of the transaction but subsequently in November 2010 when the Council made public its proposal for a fault avoidance zone. They contend that they did not suffer loss until the issue affecting the property became known to the market, seeking to draw an analogy with a latent defect in a house, as addressed in Invercargill City Council v Hamlin.

The judge was not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. In addition to what was said in Altimarloch, this Court has considered aspects of limitation in Murray v Morel & Co Ltd (which held that the principle of reasonable discoverability should not be extended) and Thom v Davys Burton (which addressed contingent losses). We consider that the present case does not raise any issue of general or public importance but rather concerns the application of well-settled principles to a particular fact situation. Moreover, we are not persuaded that there is any risk that a substantial miscarriage of justice has occurred, particularly given the Court’s analysis in Altimarloch.

Accordingly, we dismiss the application for leave to appeal. The applicants are jointly and severally liable to pay costs of $2,500 to the respondent.

Figure 2    Judgement from York v. Westland District Council in the case of claim for economic losses from information omitted from LIM (York v. Westland District Council, 2014).
4.0 INSURANCE IMPLICATIONS OF LIMS

The Insurance Council of New Zealand (ICNZ) is the representative body for the insurance industry of New Zealand. ICNZ plays an active role in representing the insurance industry for matters that may affect how insurance is priced, provided and administered in New Zealand. The role of the insurance council also extends to informing and educating consumers about the key insurance issues and risks associated with purchasing insurance.

The ICNZ discussed how the information contained in LIM could be a key driver to sound property purchase, provided the LIM is complete and the information is up to date (personal communication, 2016). It was the ICNZs view that all information held on natural hazards should be included in the LIM, as it would provide a complete picture on the property for not only the purchaser but also for the insurance companies and mortgage providers. Although it is a legal requirement to include known natural hazard information, the ICNZ believed that more information should be provided on natural hazards in the LIM to enable the purchaser and the insurance companies to make more informed decisions about the level of risk associated with the property. Having a greater level of detailed information in the LIM would provide the insurers and mortgage providers more certainty about the property, and for insurers a better mechanism for pricing risk at the individual property scale. Currently the information that insurance companies hold is not granular down to the individual property scale. They rely on their own general knowledge of an area, any previous claims, and in some cases information provided from the regional council on natural hazards which has typically been for flooding. It is not current practice for an insurer to ask for a LIM before providing insurance, because the person taking out the policy may not be aware of the specific details about the property.

The information in a LIM at present is too unreliable to base an insurance policy on as they do not provide a complete picture of the potential risk associated with a property. It is also not a legal requirement for the insurance industry to require a LIM when creating a new policy, and therefore has not become common practice within the industry. For the insurance industry, if the LIM was a complete record, it could be a valuable policy underwriting tool for insurers to use to correctly price the risk of insuring individual properties. That price then could be fed back to the market to show that it is worth spending money on mitigating or treating a natural hazard’s risk because there will be more favourable insurance in terms of conditions and prices. However, not every home buyer purchases a LIM when they purchase property.

The ICNZ also discussed how banks have the potential to wear a lot of risk in the future if the insurers stepped away from providing insurance at any time (personal communication, 2016). The insurers only provide annual insurance contracts, and there is no obligation to renew the policy if the level of risk becomes too high. This could potentially be very problematic for the banks if they are stuck with hundreds of millions of dollars’ worth of uninsured mortgage debt. The LIM could be required to be produced as part of the mortgage application which would give the bank an indication of the level of risk they are potentially being exposed to. If the LIMs are produced to a high standard, the information could be used as the basis for granting a standard mortgage of 25-30 years, or to require a shorter term proportionate to the risk. The LIM could also be used to inform the insurance companies about the level of risks associated with an individual property, and the insurance premiums and terms of the mortgage could be tailored to match the corresponding risk.
5.0 THE ROLE OF REAL ESTATE AGENTS IN TRANSLATING LIM INFORMATION

A real estate agent acts as the middleman, or broker at the 'coal face' between two parties seeking to buy or sell a property. Real estate agents are often required to negotiate the details and conditions of the sale of a property on behalf of the vendor with the purchaser, and this is often based on the information in the LIM. The real estate agent typically works on behalf of the seller of a property and is paid by the seller when the property sells. However, they have an obligation to treat the buyer fairly. Real estate agents develop the marketing strategy on behalf of the vendor, as a part of this the agent may apply for a LIM to assist in the sale of a property going to auction or being sold at tender. This is to reduce the potential for the sale to be drawn out by a purchaser placing LIM conditions in the sale and purchase agreement.

Real estate agents are guided by a professional code of conduct that has been established by their governing body the Real Estate Institute of New Zealand. Within the Code of Conduct, Section 10.7 – disclosure of defects, the agent’s responsibilities for handling known or unknown defects of a property are outlined. The agent is not required to discover any hidden or underlying defects in the land or building, but must disclose any known defects to a customer. Where it would be likely to a competent agent that the land may be subject to any hidden or underlying defects, an agent must either:

1. Obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect; or

2. Ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.

5.1 FINDINGS FROM THE FOCUS GROUPS

A real estate agency was selected from Wellington, Lower Hutt, and Kapiti. Each of these agencies are in the districts where the LIMs had been purchased. Each of the selected real estate agents were invited to participate in a focus group to discuss their personal and professional insights into the value of a LIM, how they interpret the information contained in the LIM and how that information is conveyed to potential purchasers. The focus groups were informally structured, and asked a series of open ended questions that were designed to prompt the real estate agents to share their experiences.

Initially all three of the real estate agents agreed to participate in the research. A project brief and the questions used in all the focus groups were sent via email prior to the focus groups being held. However, one of the agencies was unable to schedule a time to meet with the researchers due to a heavy work load. Eventually the response the researchers got from this agent to the questions were in the form of ‘yes’ ‘no’ answers, providing no meaningful context to the research.

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2 This provision is particularly relevant for houses built during a particular period, and with particular materials that are likely or may be at risk of weathertightness problems.
5.1.1 Cost

The cost of obtaining a LIM, and their subsequent value in assisting in the sale of property was questioned by all the real estate agents. The agents identified that there is potential for the LIM to be a valuable tool, but that they currently cost too much to produce them. The high cost of obtaining a LIM (approximately $300 each) and the perceived value for money was seen as prohibitive to some home buyers. The fee for the LIM also varies between council’s, with fees ranging between $290 and $350 per LIM. The agents discussed how they thought the price seemed excessive, especially where councils were getting the multiple LIM requests for the same property. This can lead to buyers not getting LIMs especially where they have to purchase a LIM for multiple properties they have been considering. Purchasing multiple LIMs can quickly eat into a buyer’s deposit or savings, and the time taken to process a LIM could mean they continue to miss out on a property if other offers are made without the purchase of a LIM as a condition of the sale.

This was especially the case for first time home buyers who more likely to purchase a LIM because they were following a home buyer’s checklist. The more experienced home buyers are more likely to forgo getting a LIM in favour of checking the council property files as they held the same information as a LIM, but cost a fraction of the price of a LIM. Generally, house buyers are happy to read a LIM if it is provided to them, but they are less enthused about purchasing them because of the high cost.

5.1.2 Time

The real estate agents discussed the difficulty of getting some clients to purchase a LIM in a ‘hot property market’ because of the time it takes to produce the LIM. The LIM can be seen as deterrent to people if they feel that waiting 10 or more working days will mean they miss out on a property. One agency discussed how they combat this by advising the vendor to purchase a LIM and a builder’s report as part of the marketing package for the property, especially for those being sold by tender or going to auction. By having the vendors provide the LIM, it speeds up the sales process by reducing the potential for a LIM condition to be attached to the sale. The standard sale and purchase agreement for properties states if a LIM is listed as condition of sale, the sale can be drawn out to 25 working days with no guarantee the property will sell. The purchaser has five working days after signing the sale and purchase agreement to purchase the LIM, 10 working days for the council to produce the LIM, and then the purchaser can issue a ‘purchasers notice’ to the vendor if they wish them to remedy any problems with the property before they finalise the transaction. The section of the sale and purchase agreement relating to the LIM has been included in Appendix 2. The agents also discussed that the council’s liability only extends to the person who purchased the LIM. This would have implications for people who purchase a property based on the information in a LIM issued to the vendor or the real estate agent. There was no mention by the agents if they disclosed this detail to potential purchasers.

5.1.3 Information Contained in the LIM

There was a consensus amongst the real estate agents that there is too much information provided in a LIM, and a lot of the information was irrelevant to the sale of a property. The agents discussed that conveyancer and the purchaser are typically only concerned with what resource or building consents are shown in the LIM versus what is, or is not, at the property. Purchasers have generally not been concerned with natural hazards information as they do not understand it, or they do not think an event will occur while they own the property. This has changed since the Canterbury earthquakes, with more home buyers now...
questioning what the natural hazard information means and how it may affect the property. The real estate agents are at the forefront of the sale, and are finding themselves being relied upon to interpret the natural hazard and other technical information contained in the LIM. This has made the agents consider their own liability for disclosing or interpreting information, especially when the information is vague and often ambiguous. Couple this with the lack of support the agents feel they receive from council in interpreting the LIM. It has created a sense of frustration within the agents who believe the council is more concerned with protecting their own liability than providing any real support. An example was provided by one of the agents about a LIM they had recently received on behalf of a vendor for a property they were selling. The LIM itself did not reflect the foundation requirements established for the liquefaction potential in that suburb. The agent discussed how the council had missed an important piece of information in the LIM, and that it could have significant implications for the owner in the future if they were unaware about the details or existence of liquefaction in that area.

5.1.4 Understanding the Information

The real estate agent focus groups highlighted that although the LIM has been around since 1992, there is little known about the LIM outside of the statutory timeframes and a general understanding of what information to expect. The assumption was that the LIM is a ‘one stop shop’ of information about the property that included everything that the council knew. The real estate agents were unaware that any information that was included in the district plan did not have to be included in the LIM, and that the LIM contained two sections of information. The agents felt including some district plan information in the LIM is important, as it provides context and details about the property that might otherwise get missed.
6.0 CASE STUDIES: ASSESSMENT OF THREE LIMS

A LIM was requested for three residential properties from different district councils within the Wellington Region. The aim of these requests was to assess the type of information provided within the LIM to see:

1. What natural hazard information was provided;
2. What natural hazard information was not provided, but is included in the district plan;
3. What natural hazard information was not provided, but is known to be publically availability e.g. It’s Our Fault hazard information;
4. To assess the consistency of the natural hazard information being reported across the district;
5. If the LIM refers to hazard, risk, or hazard and risk; and
6. How the wording of the LIM reflects the hazard and risk.

The criteria was established for each district in order to assist in selecting appropriate sites to for the case studies. The criteria for each site has been included within each of the case study descriptions.

Under Section 44A(2)(a)(ii) of the LGOIMA, information is not required to be included in the LIM if it is included in the district plan. It is therefore important to review what natural hazards and provisions are included are in each of the respective district plans in order to assess if all of the available natural hazard information is being incorporated into either the district plan or the LIM. Each of the following case studies will include an assessment of the district plan in order to evaluate the information provided in the LIM.

6.1 CASE STUDY 1: 1 BAY STREET, PETONE, LOWER HUTT (HUTT CITY COUNCIL)

6.1.1 Selection of Site

To assist in the selection of a Hutt City property for this research, the following additional criteria was applied:

1. The property had to be close to the Petone Plan Change 29 area as the plan change area does not include any residential land use. Due to this restriction the selected property had to be outside the plan change area, but close enough so that the natural hazard extents provided for in the plan change were applicable to the selected property;
2. The property had to have a recent history of development. This allows for an assessment of the natural hazard information provided for any resource consents granted, and how the information has been included in the LIM; and
3. The property had to be located in an area exposed to multiple natural hazards.

Based on these criteria, the property at 1 Bay Street, Petone was selected as being appropriate for use in the case study. The location of the property is on the Petone esplanade, shown in Figure 3, is close to the Petone Plan Change 29 area, is outside of the Jackson Street heritage shopping area, and is exposed to multiple natural hazards (e.g. ground shaking, fault rupture land-level changes, flooding, storm surge, tsunami, liquefaction).
6.1.2 Review of District Plan Provisions Relevant to this Property

The Hutt City District Plan has a section dedicated to natural hazards. Within this section, it lists four main types of natural hazards present in Lower Hutt: seismic (including earthquake, liquefaction, ground shaking, and tsunami), landslide, flood, and coastal hazards. The section includes an explanation on risk and vulnerability, which states that “Vulnerability can be reduced by various measures, including the provision of information ….” (page 14H2).

As shown in Figure 4, the district plan has zoned the red hachured area as the Wellington Fault Special Study Area; the pink area as Petone Commercial Area; and the yellow hachured area that incorporates 1 Bay Street is zoned Medium Density General Residential. The property is near the Shore Exclusion Zone, shown as a solid red hachure along the waterfront of The Esplanade. Apart from seismic, flood and land instability hazards (discussed below), no other layers for natural hazards for this site or the immediate surrounding area are included in the district plan.
Figure 4  1 Bay Street, Petone and the associated district plan zones. Light yellow = residential, grey hachure = medium density properties, pink = commercial, green = special recreation, red hachure = Wellington fault special study area, purple = general business, and orange = hill residential.
6.1.3 Seismic Hazards

While the district plan contains an issue, objective and policies around reducing risks to people and property from natural hazards, the only rules are for restricted discretionary activities within the Wellington Fault Special Study Area, which is included on the district plan map in Figure 4.

These rules relate to the separation distance of structures and buildings from the Wellington Fault. They do not relate to liquefaction, fault rupture subsidence, or tsunami.

6.1.4 Flood Hazards

While there are no specific natural hazard rules for landslide, flood or coastal hazards within the natural hazards section of the district plan, the explanatory text does provide guidance as to mitigation measures to reduce risks to acceptable levels, such as raising floor levels to levels above the 100-year flood event. Primary and secondary river corridors and associated flood protection banks are shown to the east of the site, in the area of the Hutt River.

6.1.5 Land Instability

Land instability on steep slopes is managed via the Hill Residential Activity Areas, Landscape Protection Residential Activity Areas and Passive Recreation Activity Areas. Areas most susceptible to coastal hazards are identified as a Significant Natural Resource in a separate chapter in the District Plan.

6.1.6 Review of Requested LIM

The LIM received for 1 Bay Street was received on the 13th of August 2015, at a cost of $320.00 including GST. The LIM was ordered on the 5th of August, taking a total of six working days to prepare and deliver. At the time of purchase the LIM was requested to be emailed to the applicant, although there is the option to collect the LIM from the council offices or have it posted to a residential address. The document had a total of 265 pages, which is a large document for a purchaser to receive and make sense of and base an important decision on in a short period of time. There is no contents page, nor are there page numbers within the document, making it difficult to navigate. The following information was included in the LIM:

- Legal overview
- Property details
- Locality map
- Aerial photograph
- Digital title plan
- Rates
- Building work (including copies of building consents for new dwelling)
- Plumbing and drainage
- Hazards
- District plan
- Resource consent (for demolition of existing building)
- Environmental health
• Road and traffic
• Archives;
• Information on previous house (e.g. housing improvements); and
• Information on community services.

The majority of the 265 page LIM is made up of copies of the resource and building consents for both the old and the new dwelling. All of the original resource consent applications and plans were included for the original building. These were no longer applicable to the site as the house had been completely demolished and replaced with a new build.

The information provided on natural hazards is very limited. There were a total of four pages devoted to hazards. Of those four pages, two were maps: one to show that the site is in a high wind zone and a second to show the Lower Hutt tsunami evacuation zones produced by GNS Science and the Hutt Valley Emergency Management Office.

The two written pages on hazards have the following subheadings:

• Certificate of title interests
• Flooding (inundation, alluvion, avulsion)
• Slips (slippage, falling debris and subsidence)
• Erosion
• Earthquake-prone building
• Earthquake-risk building
• Contaminated sites
• Liquefaction
• Ground shaking
• Tsunami (inundation, warnings and responses)
• A table of contacts

While there are 11 subheadings (over two pages), the information provided under each is very limited, which for some hazards is appropriate, as the land is flat (i.e. no slips or falling debris), away from the immediate coast (i.e. no erosion and is on flat land), and has a new build on the site (i.e. not an earthquake prone or at-risk building). A review of the remaining natural hazard information follows.

Flooding

The LIM states that:

_Council records show flooding has been reported in the area in 2008. Numerous stormwater upgrades along The Esplanade in recent years has alleviated this problem._

No further information is provided under this subsection. The two sentences appear to provide certainty that although flooding has been a problem in the past, it has been “alleviated” – so it will not happen again. This is a bold statement, especially considering the recent flooding that occurred in Petone during May 2015, and the potential effects of climate change and sea level rise on Petone.
Liquefaction

The LIM states that:

The property is in a zone of high liquefaction potential. See Greater Wellington regional council [sic] publication WRC/PP-T-93/74 for more information.

No further information is provided under this subsection. The author did try to access this publication online (at http://www.gw.govt.nz/hazard-publications/), however no publications were listed. Contact was then made with the hazards analyst at Greater Wellington, however the name of the publication was required along with the report number. The report was finally accessed through the internal library system at GNS Science. This highlights the difficulty in trying to access further information, and the importance of having more detailed information and better bibliographical references within the LIM.

It is noted that in September 2015 revised liquefaction maps and information were released by GNS Science to Hutt City Council.

Ground shaking

The LIM states that:

The property is in a zone five ground-shaking area, which is characterised by high to very high amplification. The ground is underlain by more than 10 metres of loose material. Refer to Greater Wellington Regional Council publication WRC/PP-T-92/47 for more information.

This statement raises a number of questions, which could be expanded upon. For example, what is a zone five ground shaking area, and what does it mean for the property? What is the relevance of the ground being underlain by more than 10 metres of loose material?

No further information is provided under this subsection. Similar to the liquefaction report, the author did try to access the referred publication online (at http://www.gw.govt.nz/hazard-publications/), however no publications were listed. Contact was then made with the hazards analyst at Greater Wellington, however the name of the publication was required along with the report number. The report was finally accessed through the internal library system at GNS Science. This highlights the difficulty in trying to access further information, and the importance of having more detailed information within the LIM.

Tsunami

Tsunami is the most detailed subsection, with three small paragraphs explaining evacuation zones:

The council has divided the Hutt Valley coastline into three tsunami evacuation zones – red, orange and yellow (see attached map). The property is in the orange zone. In the case of a natural or official warning, all three zones should be evacuated immediately. Do not return until an official all-clear is given.

Warnings:

A natural warning is defined as: a strong earthquake (one in which it is hard to stand up); unusual noises from the ocean (for example, the ocean rushing in or out); or a weak rolling earthquake that lasts more than a minute. An official
warning may come from local Civil Defence officials or emergency services using sirens, text messages or radio and TV broadcasts.

And refers to a GNS Science report for more information:


Unfortunately, the link provided above does not work (“page not found” error message, accessed 17 September 2015).

For the evacuation paragraph, alternative wording would clarify the correct evacuation actions:

... In the case of a natural or official warning, all three zones should be evacuated immediately. Official warnings will state the zone(s) to be evacuated. Do not return until an official all-clear is given.

This subsection relates to the tsunami evacuation map, although details of expected wave heights from distal and local events are not provided. As the site is located directly across from Petone beach, it is assumed the applicant would like further information on wave heights, and their evacuation response.

6.1.7 Table of Contacts

A table of contacts with phone numbers is provided for flood modelling (Greater Wellington flood protection officer), contaminated sites (Greater Wellington environmental scientist), liquefaction and ground shaking (Greater Wellington hazard officer), earthquake prone and earthquake risk buildings (PIM officer), and all other hazard information (LIM officer). The numbers were not ‘tested’ to see if they were still relevant.

6.1.8 Gaps in LIM Information

Although the site is adjacent to Wellington harbour, there was no mention of potential climate change impacts, particularly sea level rise. While not property specific, it may have been useful to include under s44A(3) reference to a report by NIWA in 2012 on “Sea level variability and trends: Wellington Region”. This report is available on the Greater Wellington website.

A 2004 report on subsidence and other tectonic land-level changes in Lower Hutt was also not referenced. Again, while not site specific to the property, it could have been referred to under s44A(3). This 2004 report was updated in 2015, and the updated report was also not included.

The “further information” links in the LIM did not work, and searching the Greater Wellington Regional Council website did not return any results (i.e. ‘page not found’, and the link to publications [http://www.gw.govt.nz/hazard-publications/](http://www.gw.govt.nz/hazard-publications/), did not list any publications (access date 17 September 2015 and checked 4 August 2016).

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6.1.9 Opportunities for Improvement

As discussed in the review of the LIM, the liquefaction, ground shaking and tsunami reports were not found at the links provided and proved difficult to track down. If a potential purchaser has the LIM listed as condition of sale and is trying to track down that information they may not be able to make a fully informed decision if they are unable to track down the report in time. The supplementary reports that are discussed in the LIMs natural hazards section should be accessible to the purchaser of the report, and working links should be provided. Additionally, the vendor may not allow an extension on the LIM condition and the sale could fall through. More detail about what the hazards are, inclusion of the relevant maps, and how the property could be affected should be provided. This would help to inform the purchaser what that might mean to them if they purchase the property.
6.2 CASE STUDY 2: 3 SCHOOL ROAD, TE HORO, KAPITI (KAPITI COAST DISTRICT COUNCIL)

6.2.1 Selection of Site

To assist in the selection of a Kapiti Coast District property, the following criteria was applied to the selection process:

1. The property or surrounding properties have a history of development. This will allow for an assessment of the natural hazards information provided for any resource consents granted, and how that information has informed the LIM;
2. The property is not in a commercial zone; and
3. The property is exposed to multiple natural hazards.

Based on these criteria, the property at 3 School Road, Te Horo was selected as being appropriate for use in the case study. Although the property is in a rural zone, the current land use is residential and is located away from any commercial activity. The property sits alongside State Highway 1, and the main railway line out of Wellington. The property is exposed to multiple natural hazards (e.g. ground shaking, fault rupture displacement, flooding, and liquefaction). Figure 5 shows the location of the property in relation to the State Highway and the railway line. The green shading in the figure identifies the rural zone.

Figure 5 Location of 3 School Road, Te Horo. State Highway 1 can be identified by the solid blue line, and the railway lines by black line running parallel to the State Highway.

6.2.2 Review of District Plan Provisions Relevant to this Property

The Kapiti Coast District Plan has a section solely dedicated to natural hazards. Within this section, it identifies three main types of hazards present in the Kapiti District: earthquake and geological hazards (including strong ground shaking, liquefaction, earthquake induced slope failure and active faulting), coastal hazards, and flood hazards. Each of the hazards has a detailed description of what the hazard is, what the risks of the hazard are, and the areas likely to be affected in the district.
Figure 6 shows the district plan natural hazard overlays for 3 School Road (outlined in bold red). The property is within both the flood hazard and fault avoidance zones. The flooding overlays show the ponding areas as dark blue, stream corridor as pink, and the overflow path as yellow. The Greater Wellington Regional Council flood extents overlay the modelled flood areas, and are shown by the red hachure. The property has sections of Well-Defined, Distributed, and Uncertain Constrained sections of the fault avoidance zones for the Northern Ohariu Fault (Figure 6).
Figure 6 3 School Road outlined in bold red with the natural hazards and zoning layers from the district plan shown (see legend of figure for definition of the flood and fault avoidance layers). The fault avoidance zones extend over the top of the flood zones.
6.2.2.1 Earthquake and Geological Hazards

The district plan identifies that Kapiti is subject to several earthquakes hazards including ground shaking, liquefaction, earthquake induced slope failure, tsunami and active faulting. The plan contains an issue, objective and policies for reducing the risk to people and property from natural hazards. The rules for the fault avoidance zones leave a high degree of discretion with the decision makers i.e. for resource consent decisions.

The council’s discretion on these matters relate to the location of the fault trace, the location and design of buildings, the level of risk associated with fault rupture, the topography of the land and the ability to locate buildings and infrastructure, and the scale, nature, and intensity of the development. The district plan does not include specific rules for liquefaction, subsidence, ground shaking, slope failure and tsunami.

6.2.2.2 Flood Hazards

The Kapiti Coast District Plan supports a combination of methods to avoid, remedy or mitigate potential flood hazards. These methods include a mixture of physical works, the district plan, LIMs, and building consents. Information on specific controls has been created for each zone, and the nature of these controls depends on where each site is located within the 1 in 100-year flood areas. Nine flood hazard categories have been created to describe the varying flood hazard across the district.

6.2.3 Review of Requested LIM

The LIM received for 3 School Road was received on the 9th of November 2015, at a cost of $299.00 including GST. The LIM was ordered on the 27th of October and took 10 working days to produce and deliver. At the time of purchase the LIM was requested to be delivered via the postal service. The document had a total of 143 pages and is split into two sections. The first section contained the mandatory LIM information, and the second section is the information supplementary to the LIM. While the LIM contains a useful contents page, the pages are not numbered making it difficult to navigate through the document. The following information was included in the LIM:

- Land Information Memorandum report
- Land Information Memorandum index to maps
- Aerial photographs
- Oblique coastal aerial photograph
- Planning zone map and zone rules
- Designations, national roads, noise protection, ecological, and heritage site maps
- Resource consents and consents reports
- Road hierarchy
- Aerodrome designation
- Flood hazard maps
- Location of hazardous substances
- Location of health and liquor licences
- Services network map
- Coastal corrosion and high wind zone maps
There was no specific section for natural hazards included in the LIM. Rather, the natural hazards information for flooding and active faults was included in two separate paragraphs within the first six pages of the LIM section. Throughout the remainder of the section a number of district plan maps and aerial photos have been provided which indicate the site’s zone, district plan features (including designations), resource consents, flood maps and service networks.

The second section includes the additional information to the LIM. The rural zone rules and standards were provided, which counted for 62 of the 143 pages of the LIM alone. The remainder of the additional information section included more aerial photographs of the property showing the fault avoidance zones, demographic and neighbourhood profiles, dog walking areas, and a geological engineering report on the Northern Ohariu Fault.

6.2.3.1 Flooding

The information included on flooding identifies the three categories of flooding the property is subject to, and provides reference to the reports the flood information has been based upon. A contact number for Greater Wellington Regional Council (GWRC) flood control department is also provided for readers to contact for further information, or to request information about minimum floor levels for buildings.

6.2.3.2 Fault Avoidance Zones

The LIM shows that the Northern Ohariu Fault extends through the property at 3 School Road, Te Horo. The LIM identifies that the property is located within the ‘distributed/well defined’, ‘uncertain – constrained’, and ‘uncertain – poorly constrained’ sections of the Northern Ohariu Fault Avoidance Zone. A short discussion is provided about how these sections of the fault avoidance have been determined, and who undertook the research. The remainder of the information refers the LIM recipient to the attached district plan maps, or to the council’s policy team for further information on the hazards associated with an earthquake on this fault. Some additional information about the ‘Fault Trace Survey’ has also been included in the LIM, along with a working URL of where to find the report on the council’s website.

6.2.4 Kapiti LIM Process and Standard Wording

The Kapiti Coast District Council indicated after purchasing the LIM report that they were in the process of undertaking a complete review of the internal LIM process. The review was aimed at improving internal reporting processes, and ensuring the LIMs are meeting the statutory timeframes and obligations for information provided. While the standard wording below was in use at the time of the project, the Council has since updated this wording as part of their LIM review (refer Section 9.2 of this report).

The following two statements were included on LIMs related to hazards:

Since 2003, the Council has commissioned a number of coastal erosion hazard studies within the Kapiti Coast District.

An independent expert panel has concluded that the studies to date are not appropriate for incorporation into the Proposed District Plan (PDP). Further work has been recommended in regard to the underlying methodologies. This will result in a review of methods to be adopted in the future. It will include District Plan provisions that address coastal hazard risk.
The Council has also separately commissioned an independent review of the whole PDP. The report concluded that the PDP does not represent good practice. The report has made seven recommendations including the preferred option that the Council proceed with the PDP if all the elements of a modified process of hearing and making decisions set out in the report are adopted. The recommendations also include clarifying the list of rules in the PDP which must have immediate legal effect. Another recommendation is that the Council withdraw from the PDP the coastal hazard management areas on the plan maps along with the associated policy section and rules. It further recommends that the Council clarify the parts of the operative District Plan which provide stop-gap coverage relating to coastal hazards.

The report and PDP are available online at the Council’s website. The Operative District Plan contains the current planning controls.

This is the Land Feature note regarding earthquakes

The Council holds information relating to the Hadfield Fault which may be relevant to the property. The information the Council holds is inconclusive as to the existence and location of the fault. A copy of that information is available from the Council on request (GM Regulatory Services, personal communication, November 8, 2015).

6.2.5 Gaps in LIM Information

There were no gaps in information identified in the LIM. Rather, there was an abundance of information provided, such as dog walking areas, neighbourhood profiles, chapters from the district plan, and technical reports. There was also still no information provided in the LIM about liquefaction.
6.3 Case Study 3: 20 Trent Street, Island Bay, Wellington (Wellington City Council)

6.3.1 Selection of Site

To assist in the selection of a Wellington City property for this research, the following criteria was applied to the selection process:

1. The property or surrounding properties have a history of development. This will allow for an assessment of the natural hazards information provided for any resource consents granted, and how that information has informed the LIM;
2. The property is not located within a commercial zone; and
3. The property is exposed to multiple natural hazards.

Based on this criteria, the property at 20 Trent Street, Island Bay was selected as being appropriate for use in the case study. The property is located back from the coast, shown in Figure 7, and is a multi-unit complex within the residential zone. There have also been a number of previous resource consents issued for the property. The property sits within the hazard (ground shaking area), and is also close to the south coast of Wellington.

Figure 7 Location of 20 Tent Street, Island Bay, Wellington.

6.3.2 Review of the District Plan Provisions Relevant to this Property

The Wellington City Plan does not contain a natural hazards specific chapter. Rather each zone or area around the city has a set of natural and technological hazards provisions established for that zone or area. The advice given is the same or similar across all of the zones, in that it discusses the threats to health and safety throughout the city, and the need to identify the hazards and the risks they pose to people and property. Hazard management in Wellington involves four phases – mitigation, preparedness, response, and recovery. Only a description of mitigation is provided, which describes this being achieved through land use management under the district plan and Building Act controls.
As shown in Figure 8, 20 Trent Street, Island Bay (outlined with the black and yellow border) has been zoned Outer Residential in the district plan. The property is within the ‘Hazard (Ground Shaking) Area’, indicated by the red line with running across the property, and has a site of high significance for Māori. Apart from the ‘Hazard (Ground Shaking) Area’ (discussed below), no other layers for natural hazards are included on this site. Nor is there any other natural hazard information for the surrounding area included in the district plan or the district plan maps.
Figure 8  20 Trent Street, Island Bay and the associated district plan zones. The red polygon is a ground shaking hazard zone.
While other natural hazards are addressed in the Wellington District Plan (e.g. hazard fault line areas and flooding), the site of this LIM does is not identified as being within these zones in the district plan.

6.3.3 Review of the LIM Report

The LIM for 20 Trent Street was received on the 20th of November 2015, at a cost of $323.50 including GST. The LIM took a total of 9 working days to complete and deliver. At the time of purchase the LIM was requested to be emailed to the applicant, although there is the option to have the LIM mailed to a residential address or to collect it from the council offices. The document contains a total of 86 pages, and was split into two sections although this division was not immediately apparent as there was nothing to signal the break in sections. A table of contents was included, and there the first 25 pages were numbered. This was the extent of the information in the required LIM section. The second section was the property summary and included chapters from the district plan, district plan maps and information on rates, building warrant of fitness and resource consents issued. The following information was included in the two sections of the LIM:

- Special features of the land
- District plan
- Heritage
- Resource consents
- Town planning and/or Local Government Act 1974
- Legal documents
- Rates
- Buildings
- Compliance schedule and building warrant of fitness
- Earthquake prone buildings
- Wind zones for Wellington City
- Corrosion zones
- Swimming pools
- Weathertightness
- Drainage
- Potential flooding
- Water
- Hazardous substances
- Encroachment licence: Road reserve land and/or air space
- Encroachments: parks and reserve land
- Land and structure/access

A table was included under the heading Special Features at the beginning of the LIM section, which included a list of hazards (including erosion, avulsion, falling debris, subsidence, slippage, alluvion, and inundation) that Wellington City Council assess for the LIM. The table identified that there were no information found on any of these hazards in relation to 20 Trent Street, Island Bay. The property was identified as being within the Hazard (Ground Shaking)
Zone, but no other information was found in the LIM or the district plan about what that meant or how it may affect the property. The property was identified in the wind and corrosion zones. A brief description of what that meant was included, both of which related to building standards within those zones. In the second section of the LIM, the district plan chapters (albeit the chapter introductions, not the rules or standards) are provided, along with the rates information, and the resource consents that have been issued for the property.

As part of the application process for the LIM, a certificate of title had to be first obtained from Land Information New Zealand. Although this was a simple process, it meant an additional cost of $15.00 and two extra working days before the LIM could be purchased. Wellington was the only council to require the certificate of title to be purchased separately. Hutt City and Kapiti Coast District Council provided the certificate in the LIM. This made the Wellington LIM the most expensive at $338.50 (including the certificate of title), and the longest timeframe (12 working days including two days for the certificate of title) to purchase.

6.3.4 Gaps in LIM Information

There was no information included in the LIM or the district plan about tsunami, or the tsunami evacuation safe zones that are in the area. Figure 9 shows the Wellington City Council tsunami evacuation maps for Island Bay, this information would be useful to include in the LIM to show that the southern coast has the potential to be affected by tsunami, and that there are emergency evacuation routes in place should a tsunami event occur.

![Figure 9](http://wellington.govt.nz/~media/about-wellington/emergency-management/files/tsunamiflyer2.pdf)
There were no descriptions readily available for the hazard areas (i.e. Hazard (Ground Shaking) Area, Hazard (Fault Line) Area, and Hazard (Flooding) Area), nor was there any discussion as to what they meant or what to expect in those areas. The liquefaction potential for this property was not mentioned in the LIM report, and was unable to be located in the district plan.

6.3.5 Opportunities for Improvement

The LIM should include a description on what the different types of hazard areas mean. There was no clear definition of what these meant, and where the description could be found in the district plan. This made it difficult to identify what, or if any additional, rules or standards applied in these zones.

The LIM should include tsunami information and maps as a natural hazard that could potentially affect the property. The property is within the tsunami hazard area, yet this is not identified in either the LIM or the district plan. Greater Wellington Regional Council and the Wellington Regional Emergency Management Office (WREMO) have identified that the area has the potential to be affected by tsunami, and there has been extensive modelling done to establish the extent to which the area could be affected. The LIM should provide links to the work done by regional council and WREMO to identify that the hazard exists for the property.

It would be useful to understand the context of the ground shaking hazard zone, what it is based on, and how it relates to the loading and building standards. It is beneficial that the hazard zone has been identified, but there is nothing in the LIM and nothing could readily be found in the district plan to identify what the definition of the zone meant, especially in relation to:

1. Mitigation of the risks associated with that hazard; and
2. Ties to existing legislation and/or other guidelines and standards.

Ideally, it would be good if there were stronger links between LIM info (and district plan info), and the relevant pieces of legislation, standards, and guidelines aimed at hazard reduction and mitigation.
7.0 WHAT’S WORKING WELL

It is important to acknowledge the parts of the LIM service that are working well with each council, and to provide them with feedback on the positive aspects from other councils. This section will look at the parts of the LIM process for each of the three councils individually, and will discuss the aspects of the service that currently work well.

7.1 HU TT CITY COUNCIL

The Hutt City Council LIM application is a simple to use online service that allows the user to select the type of LIM they want, select the property through the council’s GIS viewer, fill in the details and submit all from the one place. This made making the application very straightforward as the applicant could view the property they were applying for and there were no forms to download and send back. Other methods were available to obtain the LIM for people if they did not have internet access.

There are two options for residential LIMs which include the standard processing time of 10 working days, and a fast track service which will have a LIM report produced in 5 working days. The fast track service comes at a cost of $480 to the applicant (as opposed to $320).

A useful table was included at the end of the natural hazards section for the applicant to contact the relevant department or person at the regional and city council if further information was required.

The relevant sections of the district plan have been included in the LIM to highlight the rules and activity standards in the residential zone. This is useful information to include in the LIM report.

7.2 KAPITI COAST DISTRICT COUNCIL

The Kapiti Coast District Council has recently acknowledged the current system for producing LIM reports is not the most efficient, and has undertaken a review of the process. The review is now complete and the new process implemented. It has improved the way LIMs are prepared, and the accuracy and quality of data used in the preparation and processing of LIM requests. The review looked at the content of the information and the formatting of the report to ensure the LIM is accurate, and is able to be produced within the statutory timeframe (see section 9 for more information). The LIM included a geotechnical report for the Northern Ohariu Fault: this provided useful context about the geomorphology of the fault, the fault characteristics and expected recurrence intervals for fault ruptures.

The information about the designations that have been placed on the site have been included, which show the upgrades to State Highway One and how they will affect the site. This is important information to include as it will limit how the property can be used and developed in the future.

The relevant sections of the district plan have been included in the LIM to highlight the rules and activity standards in the rural zone.

There was some useful information included in the second section of the LIM, which would provide potential purchasers a good overview of the amenity in the surrounding area.
7.3 **Wellington City Council**

The Wellington City Council online LIM application is a simple to use online service that allows the user to select the LIM they are wishing to obtain, fill in the property details and complete the application, making the application very straightforward. The council provides other methods to obtain a LIM if people do not have access to the internet. There are three options for how the recipient would like to receive the LIM. These options include having the LIM posted, emailed, or collected from council.

A 5 working day fast track LIM is also available at a cost of $485. The process for applying for the fast track LIM is not straightforward. The applicant must apply and pay for the standard LIM service. Then they must contact the LIM team to request a fast track LIM and to pay the additional fee for the fast tracked LIM.

After the application was made, the property was identified by the council’s LIM officer as being part of a multi-unit complex. Contact was quickly made with GNS Science to ensure a LIM was issued for the correct property.

The LIM included a good amount of information on the building’s weather tightness and earthquake prone building ratings. This was supported by the information in the second section which included the previous building and resource consents issued for the property and screen shots from an evaluation report the council had on file.

Unlike the Hutt and Kapiti LIMs, the information in the Wellington LIM related directly to the property land. There was little supplementary information included in the LIM, and for the most part section 44A of the LGOIM Act had been followed as a template.
8.0 OPPORTUNITIES FOR IMPROVEMENT

After the LIM report was received from each of the councils, contact was made with each of the councils to discuss the content of the LIM and the process of producing the LIM. The meetings were informal, and a series of semi-structured questions and observations the researchers made about the LIMs were used to guide the conversation. The outcomes of these meetings have been summarised:

8.1 HUTT CITY COUNCIL

Hutt City Council believed that their process of creating a LIM, and type of information they included, met all their statutory requirements. Subsequently they believed that there was no need for looking at how their LIM processing service could be improved. However, the researchers found that a subsidence report that was produced by GNS Science in 2015 for the Hutt City Council had not been included in the LIM. Hutt City Council said that they limit what information is included in a LIM as having a lot of information in the LIM can increase the council’s liability, and the LIM is often the council’s biggest source of liability. Hutt City Council often relies on external sources such as the regional council and GNS Science to provide them with natural hazards information and advice. From this a set of standard wording has been created for natural hazards, and has been agreed upon by Greater Wellington Regional Council and the council’s in-house lawyer to ensure it is fit for purpose but also to cover any potential liability. The LIM officers have discretion over what level of information is included, and the standard wording is then applied to that. They run the process from start to finish, and contact the other agencies or council departments as needed.

8.2 KAPITI COAST DISTRICT COUNCIL

Kapiti Coast District Council said that their internal information management systems were the biggest challenge to pulling all of their information together to create a LIM report. The information is currently being pulled together from a number of places, and compiling it into one report was a challenge, especially where the information systems were incompatible. An outline of this case has been provided in Section 3 of this report, as part of the legal opinion. KCDC had included sections of the district plan in the LIM as best practice to ensure as much information as possible is provided. They pointed out that the district plan is not a good substitute for the LIM as the information in the plan is often out of date and unreliable. The LIM was a good way of ensuring the most up to date information was being used.

KCDC identified to the researchers they were in the process of undertaking a review of the LIM reporting process. The details of the review have been included in the Chapter 9.

8.3 WELLINGTON CITY COUNCIL

Wellington City Council was contacted on several occasions, and messages were left with the LIM officers and their managers to discuss the LIM. However, after multiple requests they did not respond to the researchers and due to project time constraints it was unfeasible to continue to wait for their response. The decision was eventually made to progress the research without their input into how their LIM reporting system operated. General observations about the LIM have already been made in Section 6.3 of this report.
9.0 KAPITI COAST DISTRICT LIM IMPROVEMENT PROJECT

9.1 REVIEW PROCESS

In 2015 the KCDC identified that the existing LIM process had a number of systemic issues that needed to be fixed in order to deliver the desired outcomes of accurate and timely LIMs. Deficiencies and/or process failures have the potential to significantly affect the council’s reputation, and generate a legal risk for the council. The key issues identified were:

- Governance of the overall LIM system – no one team was responsible, rather it was spread across a number of teams with the result that problems and issues were not necessarily being identified, shared, escalated and addressed comprehensively;
- Quality and reliability of the data going on LIMs – no review had been carried out recently so some of the discretionary data was out of date. There was no shared understanding of protocols across LIM data; and
- Quality of the LIM report format – a review suggested that it was not easy for customers to understand and needed to be improved to deliver on council’s open for business outcomes.

In response, the KCDC undertook a LIM Improvement Project. The aim of this project was to improve the way that LIMs are prepared, including checking the quality of data used in LIMs, systems and processes for preparing LIMs, report contents and format, and management and governance of LIMs processes. The impetus for this project was to: ensure that council systems and processes were focused on what the customer needs; improve the efficiency and effectiveness of council systems; and ensure that council was meeting the requirements of S44A of LGOIMA.

Two key outcomes were desired: an improved LIM process, and improved products, as shown in Table 1. All of these outcomes were achieved. In total, 36 changes were made or are underway, with a customer - rather than council – focus. Table 2 outlines the key differences the LIM Improvement Project made to the LIM process, presenting the original and revised process.

### Table 1 Outcomes of the Kapiti Coast District Council’s LIM improvement project.

<table>
<thead>
<tr>
<th>Desired Outcomes</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improve the LIM processes</td>
<td>To achieve: Clarity about what information is included in LIMs</td>
</tr>
<tr>
<td></td>
<td>• Assured quality of information, including quality control</td>
</tr>
<tr>
<td></td>
<td>• Operational efficiencies</td>
</tr>
<tr>
<td></td>
<td>• An ‘Open for Business’ report format</td>
</tr>
<tr>
<td></td>
<td>• Effective oversight of the LIMs process</td>
</tr>
<tr>
<td>Products</td>
<td>• Criteria and protocols for determining what information goes in LIMs</td>
</tr>
<tr>
<td></td>
<td>• Review of data quality and accuracy</td>
</tr>
<tr>
<td></td>
<td>• Revised LIM format</td>
</tr>
<tr>
<td></td>
<td>• Revised LIM process, management and governance</td>
</tr>
</tbody>
</table>
**Table 2** Key differences between the current and new LIM process, Kapiti Coast District Council.

<table>
<thead>
<tr>
<th>Current LIM Process</th>
<th>New LIM Process</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Governance</strong></td>
<td></td>
</tr>
<tr>
<td>No governance of the overall LIM system. Currently no one team is responsible for producing the LIM it is spread across a number of teams. This means some problems and issues are not always being identified, shared, escalated &amp; addressed comprehensively.</td>
<td>Overall responsibility for LIMs is with the General Manager of Regulatory Services. Management of the LIM process system will be administered by Business Improvement (BI) Team (Note: interim arrangement until a long-term solution is agreed on).</td>
</tr>
<tr>
<td><strong>Production process</strong></td>
<td></td>
</tr>
<tr>
<td>Process for preparing LIMs is linear and cumbersome.</td>
<td>Instigate a new, more automated, LIM preparation process that enables staff to enter data in parallel, and creates efficiencies and is expected to result in LIMs being processed in a shorter amount of time.</td>
</tr>
<tr>
<td>Lack of corporate manual or guidance for staff to follow. Staff have developed their own processes which has led to some variability.</td>
<td>Quality Assurance System LIM manual will support the new process and ensure consistency in processing LIM reports.</td>
</tr>
<tr>
<td>No corporate guidance on assessing what information should go onto a LIM or how the information should be presented in the LIM. Guidance provided reactively by senior managers and Senior Legal Counsel if the information has been challenged by a LIM applicant.</td>
<td>Guidance prepared for making decisions on information to go on LIMs combined with a new protocol for getting approval for a proposed change. This will ensure the quality of the information contributing to LIMs is managed.</td>
</tr>
<tr>
<td>The process for providing maps for LIMs required staff to access two versions of GIS which was time consuming and left room for inadvertent mistakes to be made.</td>
<td>New GIS LIM viewer has been developed for producing all maps included with a LIM. This ensures that the correct maps are being used and will enable staff to produce maps quickly and efficiently.</td>
</tr>
<tr>
<td>The range of information available to the public to assist them to make a LIM application is confusing.</td>
<td>New information has been prepared for Councils’ website including how to apply for a LIM, what to expect from a LIM, processing times etc.</td>
</tr>
<tr>
<td><strong>Template documents</strong></td>
<td></td>
</tr>
<tr>
<td>There had been no comprehensive review of the language used to describe the property information going onto LIMs for some time.</td>
<td>The wording on the LIM reports has been reviewed, corrected and improved (i.e., made simpler) to provide a more customer friendly product.</td>
</tr>
<tr>
<td>Application form and LIM report are not easy for customers to understand and need to be improved to deliver on Council’s Open for Business outcomes.</td>
<td>A new LIM report template, cover letter and application form prepared to support the new process and provide a more customer friendly product, for example, application form has been simplified and can now be completed online.</td>
</tr>
<tr>
<td><strong>Data quality control</strong></td>
<td></td>
</tr>
<tr>
<td>There has been no review of the quality and reliability of the LIM data carried out for a while. Some data is out of date. No shared understanding of protocols across LIM data.</td>
<td>All data has been reviewed and corrected where possible. Out of date material has been removed from LIM reports. A new protocol has been prepared on how to initiate a change process to ensure that data on LIMs is updated</td>
</tr>
</tbody>
</table>
Current LIM Process | New LIM Process
--- | ---
and errors are fixed. The teams who own the information held in MagiQ\textsuperscript{5} / GIS will be responsible for ensuring that new and updated information about properties is promptly made accessible for LIMs. The BI Team is responsible for managing quality control process for LIM data, e.g., new data appearing on a LIM. A continuous improvement process managed by the BI Team will ensure that changes are made and the LIM process continues to be fit for purpose. Where the information on a property is gathered and owned by another organisation, customers are referred to that organisation to obtain information. For example, Greater Wellington Regional Council for information on contaminated sites (the Selected Land Use Register (SLUR) Register) and Earthquake Risk maps.

KCDC staff directly involved in processing LIMs were consulted on the new process and the LIM report template. They have also been consulted on revised wording, for example, revisions of material about planning and resource management have been reviewed and approved by Council planners. Staff also contributed to the new index order of the LIM report. Likewise, the legal team has reviewed the new process, template and wording. After testing of the new format, the new LIM process went live on 1 August 2016.

The KCDC have identified a number of remaining issues that need to be resolved. These include data (e.g. hazard information) quality control; on-going daily management of the LIM processing; LIM fees; and the online LIM application process.

### 9.2 Revised LIM for 3 School Road, Te Horo

The revised copy of the LIM for 3 School Road, produced in the new format, was received on the 27\textsuperscript{th} of June 2016. The new format is currently being trialled to ensure the process provides the customer with the most up to date information about a property, while meeting the council’s statutory obligations for the information they provide.

#### 9.2.1 Comparison of the LIMs

The size of the LIM was reduced, from approximately 1.3 cm to 0.3 cm thick. The revised LIMs (since 1 August 2016) now have a contents page and page numbering.

The original version of the LIM was comprised of two sections; the first was the LIM, and the second was relevant information not required to be in the LIM. The revised version has removed the discretionary information section (i.e. dog walking areas, neighbourhood profiles (which were out of date), chapters from the district plan, and technical reports), and has focused on the quality of information provided in the LIM section. The Council has another project under development that will include a ‘Welcome to Kapiti’ package including

\textsuperscript{5} MagiQ is a finance and administration, business performance and document management software package that is designed to create efficiency in reporting and sharing information across an organisation.
the sorts of discretionary information previously provided through a LIM. These changes make the LIM significantly smaller and easier for the customer to identify and access the information about the property.

A new section titled ‘Document Information’ has been included at the beginning of the LIM which states it has been prepared in accordance with section 44A of LGOIMA, and the information provided is a summary of what the council holds. A disclaimer states the information is based on a search of the council files and is not a physical inspection of the property.

The following sections of the new format correspond with each of the clauses outlined in section 44A of LGOIMA. Each section is clearly identifiable, and includes the information that directly relates to the property. The information is in short form and has been designed to put the customer on notice about the features that relate to the property. The natural hazards information has been retained in a similar format to the original LIM, identifying the flooding areas and the fault avoidance zones. The flooding information identifies the flood maps show a 1 in 100-year flood with an allowance for high tide and climate change. Further information about floods and building in the identified flood areas is directed to Greater Wellington Regional Councils floodwater department, and stormwater and coastal asset manager. The earthquake information is listed under Special Features and Characteristics of the Land. The information provided in this section is brief, however it does include web links to the district plan, planning maps and additional information the council holds on earthquakes and fault rupture hazards.

A glossary of terms has been provided following the LIM information to help simplify some the terms used in the LIM. A neighbourhood profile has been included which identifies the notified and non-notified resource consents in the immediate area surrounding the property. These resource consents have then been plotted on a map showing them in relation to the location of the property. The remainder of the LIM is comprised of aerial photographs and maps showing the locations of the features identified in the LIM.
10.0 IF NOT A LIM, THEN WHAT?

During the course of this project, the researchers discovered other options that enabled the councils to outsource their LIM reporting to a third party. There was little open information available about what the service provided, other than the service that was being offered was designed to pull information from multiple sources across council in order to speed up the reporting process. These alternative LIM systems are outside the scope of this project. However, it is important to acknowledge there are other systems available which have the capability to produce LIM reports.

10.1 QV PROPERTY REPORTS

Quotable Value Limited (QV) is a New Zealand’s leading provider of rating and Full Market Valuations. Their website – www.qv.co.nz – provides a portal for prospective property sellers and buyers to make informed, smarter, more confident property decisions with information available online. Users can gain access to property information for a specific address, street, suburb or region, including rating valuations, previous sales of the property, detailed local sales, Certificate of Title, building consent information, and natural hazard risk information https://www.qv.co.nz/ (18 September 2015).

The figure below lists the property information available within each pack and costs. Alternatively, there is the option of purchasing individual information packs.

![Figure 10 QV options for property information reports and packages.](image)
Each of the property reports can provide information for a specific address, street, suburb or region. The details of the property information available in the QV reports include:

- **Property overview** – the basic details of the property including number of bedrooms, land area, and the age of the building

- **Property photo** – taken from the street, if available

- **Rating valuation** – this is an indicative market value of the property, which is done every three years. This valuation includes capital value, floor area and construction materials. It can be helpful when comparing properties.

- **Property changes** - Before investing in a LIM report from the council, this report can help identify if there have been any extensive renovations and subdivisions, by tracking changes to floor and land area as well as changes to value since 1991.

- **Building consent** - If you have any questions over recent renovations or additions on a property this report provides information on what has been approved since 2010.

- **Hazard risks** - This hazard summary allows you to gain better understanding of the natural hazards that may affect a property. Non-property specific natural hazard information is sourced from GNS Science, dated 2013.

The cost of the QV reports individually, or as a package shown in (Figure 10), are substantially less than the cost of obtaining a LIM from any of the three council’s studied. The reports are also available immediately, as opposed to waiting 10 working days (sometimes longer) for a LIM. The natural hazards report is available for $9.95, and provides a snapshot of natural hazard information for the property. A comparison of the information provided in a QV natural hazard report against what is included in a LIM has been provided in Appendix 3.

The QV website (https://www.qv.co.nz/terms-and-conditions) provides a disclaimer for the information provided on natural hazards under the Terms and Conditions.

1. The hazard summary is not based on any site-specific geological or engineering investigation at the relevant property. It is not a geological or engineering report for a property and does not replace the need for a site inspection in respect of any issues relating to geological, foundation or other hazard related conditions at the relevant property.

2. The information and data contained in a property hazard report has been obtained from a variety of third party sources.
10.2 **FILE CHECK**

Anybody can request a copy of a property file from their local council if they are considering purchasing a property, or applying for a building or resource consent. The information in the property file varies between councils but will typically include:

- Completed resource consent applications
- Drainage plans
- Copies of building plans and specifications
- Code of compliance certificates
- Project Information Memorandums (PIMs)
- Planning reports
- Resource consent decisions
- Property inspection reports
- Associated documents

A property file search at a council is limited to the above types of information. There would not typically be natural hazard information in the property file unless there has been a specialist assessment done as part of a resource consent.

The challenge with searching the property files is you need to know what you are looking for, what is missing, and to be aware that not all of the information will be available in the file. Councils provide access to the files for a small fee. There can be a vast amount of information in the files, which means the person doing the search will have to understand what is at the property, what is in the files, and what (if anything) differs between them. A similar online service is also available, where the property file can be ordered without having to physically do the property search. Council staff will undertake the property file search, and provide the findings on a USB stick or on a compact disc. The search takes between three and five working days to complete and the results can either be collected from the council, or couriered to the purchaser.

10.3 **INDEPENDENT ADVICE**

Independent advice can be purchased from geotechnical consultants or natural hazards specialists to identify specific concerns relating to the property. Hiring a specialist can be expensive, as the work they undertake is often a detailed analysis of the site, the underlying soils, and the geography of an area. The standard of the information that specialists provide is generally high, however it will take time for them to undertake the site investigations and then to report the findings. This could potentially take longer than waiting for a LIM report, or obtaining similar information through another source. There are some limitations to receiving independent advice in that the information will only address site specific concerns, and will typically not consider the effects of the wider area.
10.4 COMPARISON OF EXISTING APPROACHES

Figure 10 compares the different methods for gaining natural hazard and property information. The four main methods that can be used have been assessed for their costs and the quality of their information. Each of the methods has been discussed further below for their ability to provide information.

Table 3 Comparison of the indicative costs and timeliness of different methods of searching natural hazards or property specific information.

<table>
<thead>
<tr>
<th></th>
<th>LIM</th>
<th>QV Natural Hazard Report</th>
<th>Council File Search</th>
<th>Independent Advice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Costs</strong></td>
<td>$320.00 - $330.00</td>
<td>$ 9.95</td>
<td>Price can range from no cost to a small fee for accessing the councils records</td>
<td>Varies depending on type of report and technical information sought</td>
</tr>
<tr>
<td><strong>Timeliness</strong></td>
<td>Within 10 working days</td>
<td>Immediate</td>
<td>Immediate if the file search is done in person. Some councils offer a service to undertake the file search on your behalf. Having the council undertake the file search can take up to 10 working days.</td>
<td>undefined</td>
</tr>
<tr>
<td><strong>Quality of natural hazard information</strong></td>
<td>Variable</td>
<td>Generally a good overview, but may not be property specific</td>
<td>Would vary depending on duration of search and understanding of what to search for</td>
<td>Excellent</td>
</tr>
<tr>
<td><strong>Supporting information</strong></td>
<td>Variable</td>
<td>Very good explanation of general natural hazard information, however was not site specific.</td>
<td>Poor</td>
<td>Variable</td>
</tr>
</tbody>
</table>
11.0 INTERNATIONAL COMPARISON - CALIFORNIA, UNITED STATES

This section provides an alternative example of natural hazard disclosure from California. The purpose of this example is to explore whether an alternative system to hazard disclosure could be an option in New Zealand.

The California Natural Hazards Disclosure Act requires that sellers of a property and their real estate agents provide prospective buyers with a ‘Natural Hazard Disclosure Statement when the property being sold lies within one or more hazard areas. The official maps and lists come from state and federal sources, depending on the type of natural hazard. The state and federal bodies involved in producing the maps and lists include:

- FEMA is responsible for producing the flood maps,
- The State Board of Forestry designates the wildland areas at risk of wild fire,
- California Department of Forestry and Fire Protection is responsible for the ‘high fire hazard severity zones’,
- The State Geologist produces earthquake fault zone and seismic hazard maps
- The Office of State Emergency Services creates the dam failure maps

The maps that are created by each of the state or federal departments are produced following a uniform standard to ensure a consistent approach across the board. Quality controls and checks are performed internally, and all of the maps are subject to an independent peer review (Englin, 2006).

The natural hazard disclosure is an important item on a home buyer's check list, whether the buyer is purchasing for the first time or they are seasoned purchasers. The law specifies that the six required hazards be disclosed on a statutory form called the Natural Hazard Disclosure Statement (NHDS). The hazards that are required to be disclosed include:

- A Special Flood Hazard Area
- Dam Inundation
- Very High Fire
- Wildland Fire
- Earthquake Fault Zone
- Seismic hazard

A copy of the disclosure statement has been provided in Appendix 4, which shows the standard disclosure for natural hazards.

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6 The Government agencies that are tasked with providing official information and maps are required to produce them in a consistent form state wide.
11.1 **When Must The Disclosure Be Made?**

The disclosure of hazard information must be made if the seller or seller's agent has actual knowledge that the property is located within one of the designated hazard zones. Disclosure from the seller or agent must be made even where the local jurisdiction has provided either:

1. A list by parcel of the properties within the area (special flood and dam failure inundation areas); or
2. The required maps (high fire severity zones, wildland fire area, earthquake fault zones, and seismic hazard zones), and the required notice regarding the location of the list or map has been posted in the applicable local governmental offices.

11.2 **Who Must Make The Disclosure?**

The seller’s agent has the primary responsibility to make the disclosure for properties located in an earthquake fault zone, seismic hazard zone, and in a dam failure inundation area. If the seller elects to not have an agent, the seller has the same obligations to make the disclosure. The seller will have the direct responsibility for making the disclosure for properties located in a high fire severity zone and wild fire areas.

There are some transactions that are exempt from obtaining the natural hazard disclosure. These types of sale include bankruptcy, foreclosure sales, transfers in probate, and transfers between co-owners. Even though there are exemptions, it is still advised that the disclosure is made in order to fulfil the state requirements.

11.3 **How Must The Disclosure Be Made?**

If the sale is subject to a transfer disclosure statement, the disclosure must be made follow Californian Civil Code §1102.6c(b), or a comparative local provision so long as it includes the same information and warning required by the statutory disclosure. The natural hazard disclosure form contains a warning in bold print that the hazards may limit the buyer’s ability to develop the property, to obtain insurances, or to receive assistance after a disaster.

However, this comes with a caution that the Natural Hazards Disclosure Statement may not be sufficient in every transaction, and that a property’s individual circumstances may require additional hazard information. They expressly provide that the specific disclosure obligations do not limit or curtail any disclosure duty created by any other provision of law.

11.4 **Consequences of Not Disclosing The Information**

Failure to make the required disclosure will not invalidate the transaction. However, any person who wilfully or negligently fails to make the required natural hazards disclosure is liable in the amount of the actual damages suffered by the purchaser.

This has caused some unintended consequences for the sellers, where the victims of a fire, flood or earthquake may now have a potential source of financial recovery, particularly where insurance pay-outs are inadequate or non-existent. The legislation in this instance has created the potential of converting the seller into insurers against natural hazards. The seller of a property needs to ensure that the correct disclosures are made for the property at the time of sale, otherwise they are liable for the damages. No information could be found on the statute of limitations for sales, and whether properties sold before the Hazard Disclosure Statements were required would be open to liability.
11.5 Types of Hazard Disclosure Statements

11.5.1 Premium Report

This report is produced at a cost of approximately $129.00 USD

- Basic statutory requirements – Six (6) natural hazard zones
- Additional disclosures and notices.
- Expanded Natural Hazard information identified by local jurisdictions.
- Colour reference maps for both the required and expanded Natural Hazard Disclosure zones (Local information).
- Notice of Assessment and Taxes against the subject property.
- Environmental Information available from state and federal agencies on the location of known and potential environmental concerns or environmentally sensitive business practices that may affect a property.

11.5.2 Expanded Report

This report is produced at a cost of approximately $89.00 USD

- Basic statutory requirements – Six (6) natural hazard zones.
- Additional disclosures and notices
- Expanded Natural Hazard information identified by local jurisdictions.
- Colour reference maps for both the required and expanded NHD zones (Local information).
- Notice of Assessment and Taxes against the subject property.

11.5.3 Real Estate Only report

This report is produced at a cost of approximately $79.00 USD. This level of report is only available for bank-owned real estate transactions in regards to property foreclosures. The report includes:

- Basic statutory requirements – six (6) natural hazard zones.
- Additional disclosures and notices such as: toxic mould, commercial/industrial zoning; military ordnance, Megan’s law, airport influence and proximity.
- Expanded natural hazard information identified by local jurisdictions
- Colour reference maps for both the required and expanded natural hazards zones (local information)
- For electronic delivery only.
11.6 Summary

The main difference with the Californian approach, and a very important one, is that there are official government agencies that are funded and tasked to provide fit-for-purpose hazard information for the Hazard Disclosure Statements. Also, the seller of a property and their real estate agent is required to disclose the information that has been produced under the Natural Hazards Disclosure Statement endeavour if the property being sold is within one or more state of locally mapped hazard areas. The disclosure statement informs the purchaser in bold print that their ability to develop the property, obtain insurance, or receive assistance following an event may be limited. This has created an anomaly, in that the seller may become the insurer if incorrect disclosures are made, as they would be liable for material damages to house and property. In New Zealand, the LIM is typically sought by the purchaser of the property and in some cases the real estate agent on behalf of the vendor. The liability of providing incorrect information or not disclosing information is worn by the council providing the LIM report, although the real estate agent and seller may also be held liable for damages for the information they fail to disclose. However, the ability to prove this in court may be difficult as the threshold of proof is high.
12.0 CHALLENGES OF THE LIM SYSTEM

There have been a number of challenges identified by this report for providing information in a LIM. The challenges include:

Property prices

People do not want natural hazards information listed on their LIMs as there is a perception that having the hazard listed on the LIM would have an impact on the value of the property. There is little evidence available to support any long term effect on property prices.

Council liability / litigation

Ensuring the validity of the information is of a robust enough level to withstand challenges. Legally, the fewer words the better, as there is less risk of litigation. However, this approach does not provide a lot of information for people to make informed decisions.

Duty of care

The LIM is required by the LGOIM Act to be prepared within 10 working days, and to provide the recipient with all the information that is reasonably known about the property. Councils owe a duty of care to the recipient to ensure that the LIM is both factually and accurately correct, and that it informs the recipient about any special feature of the land.

Access to information

There are currently barriers to sharing information and science with councils, whether contractually obligated to or not. Councils need to be involved early in the development of research that will impact on their jurisdictions, to ensure it can be used in an appropriate way. Councils, real estate agents and property lawyers are often unaware of the scientific information publically available; and if they are, may have problems interpreting it.

Time and cost to process the LIM

The cost and 10 working day timeframe to deliver a LIM report is seen as a hindrance to applying for one, especially in a heated property market where purchasers might not have the time to wait for a sale to go conditional based on a LIM. The costs become especially prohibitive if a purchaser has to get a LIM and builders report for every property they are interested in.

Real estate agent liability

The real estate agents that participated in the study focus groups were concerned with protecting their own liability when providing natural hazard information, or when interpreting the LIM to potential purchasers of a property.
Timeframe from receiving information to it being included in LIM

Once information is received by a council, it needs to be reviewed, communicated within council and often externally, and interpreted for Council needs. This can take time, and this process needs to occur so that correct information can be included in the LIM. So what time frame is appropriate between a Council receiving information and placing it on a LIM? One solution may be to flag in a LIM (under section 44A(3)) that research is underway on a certain topic, which may affect the property; results will be made available within a defined number of days of the report being received by council.
13.0 SUMMARY OF FINDINGS

The LIM is a valuable tool for disseminating natural hazards information about land to the public. The information in the LIM is able to be undated more easily than the district plan, and can therefore include the most up to date information relevant to the property. This can be valuable to convey important information to the public about a hazard, and the potential risks associated with a property.

The LIM provision was added to the Local Government Official Information and Meetings Act in 1992, and has been inconsistently implemented ever since it was enacted. Councils have struggled to develop a consistent process that is able to effectively produce the LIM report within the statutory timeframes, and to balance the requirements of providing information. The type and level of information included varies considerably, and natural hazards information has been used inconsistently within the Wellington Region. No regional consistency on what information is included in the LIM is apparent. For example, the tsunami modelling that has been undertaken for the Wellington Region was included in the Hutt City Council LIM for 1 Bay Street, Petone, but the Wellington LIM did not identify tsunami risk at the Island Bay address even though the property was within tsunami inundation zone. It can be presumed that if this is an issue in Wellington there are other areas around the country that are experiencing the same problems.

The councils that partook in the research are concerned with their liability in providing information and subsequently a number of legal opinions have been gathered to ensure the information they provide is correct, but more importantly that they are not exposed to any liability from the information they provide. The LIM is considered to be council's biggest exposure to liability.

Real estate agents play an important role in interpreting the information in the LIM to both the vendor and the purchaser. They are required to disclose all known information about the land to the purchaser, and are therefore liable for the information they provide. Real estate agents are increasingly requiring vendors to provide a LIM as part of the marketing package for a property. This is to speed up the sale, and reduce the LIM being used as a condition of sale.

Many challenges exist within the LIM system, as outlined in the previous sections of this report. In the following section recommendations are made which seek to not only address the challenges identified, but to move forward to a more consistent, informative, and transparent process.
14.0 RECOMMENDATIONS FOR IMPROVING THE DISSEMINATION OF PROPERTY SPECIFIC NATURAL HAZARD INFORMATION

Recommendations have been made about the LIM process at both a national and regional level, and also for science and information providers, to assist in providing guidance on how the natural hazards information is included.

14.1 NATIONAL LEVEL

- A full review of the current LIM system is needed to update the intended purpose of the LIM. Section 44A has only had minor changes made to it since 1992, and with a greater reliance being placed on the LIM by property purchasers the LIM system needs to be updated to reflect the changing demands on the document. Questions to be considered in a national review include:
  - What is the purpose of a LIM?
  - Who is the LIM servicing?
  - What is the information to be used for?
  - Is the LIM a ‘one stop shop’ for information, or just a summary of information that is available with further investigation?
  - What format should the LIM be in?
  - How can liability issues – for Councils and holders of LIMs where they have not purchased the LIM - be addressed?
  - What are the implications of banks processing mortgages and offering insurance?

- A central repository of legal opinions needs to be made available to councils to avoid the duplication of opinions being sought on natural hazards matters.

- Tasking official national agencies in New Zealand to provide official natural hazard information. There could be benefits in adopting a Natural Hazard Disclosure system similar to the Californian system, where agencies such as GNS Science, NIWA, SCION and/or LINZ are tasked and funded to provide fit-for-purpose LIM specific maps and information across the entire country.

- A template should be produced for LIM reports to ensure the information contained within the document is consistent across the country. This would also cut down the time it takes to read and understand the information contained within the LIM.

- Standard wording should be used to provide guidance on what for natural hazards information means, and how that might apply to the property.

- An online standard for LIM applications and PDF documents should be developed.

- Further investigations into the role and understanding of property lawyers in interpreting information within LIMs.

- Create links between the professional bodies to distribute up to date information on the hot topics such as methamphetamine contamination and liquefaction to ensure a consistent approach and advice is given nationwide.

- Develop criteria around when information is to be included in a LIM for site specific or district wide analysis. This would require thresholds to be developed which set the standard for where information could be included generally or targeted more specifically.
14.2 REGIONAL/DISTRICT LEVEL

- A working group established within the region to create consistency for what natural hazards information is included in the LIMs for the region.
- Standardise at the regional level what hazard information goes in the LIMs, especially if there has been modelling or research that shows the entire region has the potential to be affected by a natural hazard.
- The express and standard LIM services need to be consistent with each other. The information they contain needs to offer the same advice, and in the same format.
- Include real estate agents and property lawyers in any dissemination of information. This could include a seminar to present new information specifically for real estate agents and property lawyers.
- List on the LIM any remedial works done to mitigate hazards such as flooding. This could be used in places where a property is in a flood hazard zone, but there have been upgrades to the flood protection to mitigate the problem.

14.3 SCIENCE AND INFORMATION PROVIDERS

- Council’s need to specify in their contracts with information providers that a summary of the report also needs to be provided that can be used in the LIM.
- Information providers, such as scientists, consultants, and universities, need to consider how information can be represented in a LIM – if the council have the information, it needs to be assessed and a decision made to include it or not.
15.0 ACKNOWLEDGEMENTS

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16.0 REFERENCES


Weir v Kapiti Coast District Council [2013] NZHC 3522.

Weir v Kapiti Coast District Council [2015] NZHC 43.

APPENDICES
A1.0 METHODS

A low risk ethics approval was gained through the GNS Science ethical procedures to undertake this research. The project was considered low risk because the research involves the participation of professionals working with LIMs and interpreting the information. Information sheets and questionnaires were provided to the interviewees before the interview which detailed the nature and scope of the research. During the interviews, the interviewees were informed of how the information was going to be used, and their rights having participated in the research.

A1.1 CASE STUDY

The case study method was selected as it allows the research to investigate complex problems by framing them within a real world scenario. This will allow the project to investigate in detail the LIM process, the information provided in the LIM, and their relevance to those who are purchasing or selling property in depth, while getting to the core of what the issues are and how they may be resolved.

Three LIMs were purchased from across the Wellington Region for residential properties that are located within different hazard zones. This was done in order to identify what hazard information is included in the LIM and how that information differs across the region. Each of the LIM reports obtained from the councils has been described and analysed for the content they contain, and their respective councils interviewed to get their perspectives on the information they included and their internal process of creating the report. It also allowed for a comparison of natural hazard information, particular regional hazard information, to see if regional information was consistently included within LIMs across three districts (Wellington, Hutt City, Kapiti Coast).

A1.2 INTERVIEWS

Interviews were undertaken with LIM staff at Kapiti District Council and Hutt City Council (the Wellington LIM officer was unavailable for an interview). These key informant interviews were in a semi-structured format that supported the case study by providing professional insights into the LIM preparation process, and the practical implications of the information contained in the reports. Prompting questions were pre-circulated for participants to consider and prepare for. Key informant interviews allow for first-hand accounts of the LIM preparation process, how that information is used and understood, but also on how the information in the LIM is translated to property purchasers.

The value of key informant interviews is they are able to provide an in depth insight from different perspectives in order to get to the core issues of the LIM reporting process. Open ended questions were used to prompt the respondents into answering, but also to allow them to freely answer the question without steering them toward an answer preferable to the interviewers. The informants were selected for the role they play in either preparing the LIM report, or in conveying the information in the LIM to potential purchasers of property. The findings from the interviews are presented in Sections 4 and 5.
A1.3 **EXPERT OPINION**

A legal opinion was obtained which considers the liability that council faces regarding the level and type of information that is included in a LIM report. The advice was specifically concerned with how information was presented under section 44A of LGOIMA, and the implications for councils if they get it wrong. The implications of this legal opinion are outlined in Section 3.

A1.4 **FOCUS GROUPS**

Focus groups were held with real estate agents from each of the districts where the LIMs were purchased. A series of questions were pre-circulated to the participants for them to consider before the focus groups were held. The focus group allowed the interviewers to study people in a more natural conversation pattern than what typically occurs in a one-to-one interview. The informal nature of the focus group allows both the participants and the researchers to learn off of each other, as information and stories about LIMs are transmitted in either direction.
A2.0 SECTION 44 LGOIMA

Local Government Official Information and Meetings Act 1987

44A. Land information memorandum

(1) A person may apply to a territorial authority for the issue, within 10 working days, of a land information memorandum in relation to matters affecting any land in the district of the authority.

(2) The matters which shall be included in that memorandum are—

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

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

(b) information on private and public stormwater and sewerage drains as shown in the territorial authority's records:

(ba) any information that has been notified to the territorial authority by a drinking-water supplier under section 69ZH of the Health Act 1956:

(bb) information on—

(i) whether the land is supplied with drinking water and if so, whether the supplier is the owner of the land or a networked supplier:

(ii) if the land is supplied with drinking water by a networked supplier, any conditions that are applicable to that supply:

(iii) if the land is supplied with water by the owner of the land, any information the territorial authority has about the supply:

(c) information relating to any rates owing in relation to the land:

(d) information concerning any consent, certificate, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority (whether under the Building Act 1991, the Building Act 2004, or any other Act):

(da) the information required to be provided to a territorial authority under section 362T(2) of the Building Act 2004:

(e) information concerning any certificate issued by a building certifier pursuant to the Building Act 1991 or the Building Act 2004:
(ea) information notified to the territorial authority under section 124 of the Weathertight Homes Resolution Services Act 2006:

(f) information relating to the use to which that land may be put and conditions attached to that use:

(g) information which, in terms of any other Act, has been notified to the territorial authority by any statutory organisation having the power to classify land or buildings for any purpose:

(h) any information which has been notified to the territorial authority by any network utility operator pursuant to the Building Act 1991 or the Building Act 2004.

(3) In addition to the information provided for under subsection (2), a territorial authority may provide in the memorandum such other information concerning the land as the authority considers, at its discretion, to be relevant.

(4) An application for a land information memorandum shall be in writing and shall be accompanied by any charge fixed by the territorial authority in relation thereto.

(5) In the absence of proof to the contrary, a land information memorandum shall be sufficient evidence of the correctness, as at the date of its issue, of any information included in it pursuant to subsection (2).

(6) Notwithstanding anything to the contrary in this Act, there shall be no grounds for the territorial authority to withhold information specified in terms of subsection (2) or to refuse to provide a land information memorandum where this has been requested.
A3.0 LEGAL OPINION
Liability and related risks for Councils – in relation to the issue of LIMs containing natural hazard information

1. This advice considers the liability risk for councils in relation to the issue of land information memoranda (LIMs) under the Local Government Official Information and Meetings Act 1987 (LGOIMA) containing natural hazard information. Of necessity, our advice deals with natural hazard information in general terms given that we have not been asked to comment upon any specific examples.

2. The following key matters are addressed in this advice:
   (a) How should section 44A(2) of the LGOIMA be interpreted in so far as it relates to natural hazards information?
   (b) What level of information can or should be provided by a Council?
   (c) What is the Council’s legal liability in relation to including or failing to include natural hazard information in LIMS issued by the Council?

3. This advice does not consider whether Councils might separately face any liability where the Council is an owner of land or buildings subject to natural hazards, or any responsibilities arising out of that ownership (which would generally be the same liability that any property owner might face), or where Councils provide natural hazard information or fail to provide such information outside the statutory LIM process under section 44A of the LGOIMA.

4. We also do not address any possible criminal liability of Councils, arising from people being injured or killed by a hazard event, through any failure to provide natural hazard information on LIMs.

EXECUTIVE SUMMARY

5. General
   (a) It is not the function of a section 44A(2)(a) LIM disclosure to be advisory in the sense of suggesting that the recipient take a particular course of action. It is also not necessary or wise to state that the Council is satisfied as to a particular matter.
The purpose of a LIM is not to warrant that the land is good or safe, but rather to put the recipient on notice of particular facts that might affect the physical state and potentially the value of the land.

Special feature or characteristic

Consideration as to whether the potential for the existence of a natural hazard is a special feature or characteristic of the land will inevitably involve a judgement call by the territorial authority, and its officers.

Natural hazard information can fall within section 44A(2)(a) even though it may be open to challenge in terms of reliability or the science involved.

Information relating to future events must be provided on a LIM if there is a possibility (rather than likelihood) objectively determined that such events may occur in the future. The test is not "probable" or "inevitable".

Information can involve a special feature or characteristic of land without a site-by-site analysis being undertaken.

Known to the Council

"Known" simply means that the Council needs to know about the information and it does not need to believe that the predictions contained in the information are accurate or even probably accurate.

Information does not need to be included on a LIM if it is apparent from an operative district plan. It follows that until a proposed district plan is operative, the relevant information must still be included on a LIM.

A Council is only required to provide natural hazard information known to it whether or not it is actually in the possession of the Council. It is not required to search out or otherwise make enquiries as to whether such information may exist.

There is no obligation to disclose a view held by an employee that has not been adopted by the Council.

How should information be presented?

It will be important to have a systematic approach to compiling information internally within a territorial authority.

The Council has a broad discretion as to how it represents voluminous information on a LIM but the summary must be accurate, state the position fairly, and must not mislead the recipient.

It is important to include important conditions and assumptions and share, where relevant, statements that the information is subject to scientific challenge and/or is yet to be fully tested.

The obligations of accuracy and fairness will be heightened when the information will have a significant financial impact on the owners of properties affected.

Obligation of fairness
There may be a public law obligation of fairness owed to the existing owner of the land. The Council is expected and may be obliged in some instances to consult with such an owner.

**Legal liability**

Claims against a Council are most likely to involve allegations of negligence or breach of statutory duty. A Council's actions in placing information on a LIM may also give rise to judicial review proceedings.

Councils owe a duty of reasonable care to ensure that a LIM factually and accurately informs the recipient particularly about any special feature of the land as required by Section 44A(2)(a).

In order to successfully claim damages, it is necessary to establish not only actual reliance, but also that the reliance on the LIM was reasonable.

Examples as to where reliance may not be reasonable include where the recipient of the LIM did not in fact read it, or had reliable information in his or her possession that contradicted what was said on the LIM, or put that person on notice that it might be wrong.

A claim for breach of statutory duty will rarely add much to a claim in negligence.

Whether or not judicial review proceedings in relation to natural hazard information that informs a LIM decision will be successful, will largely depend on the particular factual circumstances surrounding that decision. However, the greater the care taken in assembling and summarising the information for a LIM, the less chance there will be that the Council's decision could be successfully challenged.

**LIMs – INTRODUCTION**

6. Both regional and territorial authorities have obligations under the LGOMA in relation to information they hold about hazards in these regions or districts. The LGOIMA has two different parts which are relevant in terms of record keeping: information which may need to be included in a LIM requirement under section 44A (relevant to territorial authorities only), and the rest of the Act, which concerns the holding, and release of, official information (applicable to both regional and territorial authorities). This advice focuses solely on the provision of information on LIMs issued under section 44A by territorial authorities.

**Section 44A LGOIMA**

7. Section 44A provides for the release of information in a LIM and relevantly states that:

1. A person may apply to a territorial authority for the issue, within 10 working days, of a land information memorandum in relation to matters affecting any land in the district of the authority.

2. The matters which shall be included in that memorandum are:

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

(i) is known to the territorial authority; but

(ii) is not apparent from the district scheme under the Town and Country Planning Act 1977 or a district plan under the Resource Management Act 1991

(3) In addition to the information provided for under subsection (2) of this section, a territorial authority may provide in the memorandum such other information concerning the land as the authority considers, at its discretion, to be relevant.

HOW SHOULD SECTION 44A(2)(a) BE INTERPRETED AS FAR AS IT RELATES TO NATURAL HAZARDS?

8. Section 44A(2) specifies the matters which shall be included on LIM. Under section 44A(2)(a), they include information identifying each (if any) special feature or characteristic of the land concerned. There is no clear guidance as to what is a "specific feature or characteristic", but the words that follow expressly refer to a number of types of natural hazards. Under section 44A(3), a territorial authority may include in a LIM such other information concerning the land that it considers relevant.

9. Section 44A(2)(a) was considered in some detail by the High Court in Weir v Kapiti Coast District Council. This case concerned coastal erosion information included on LIMs issued by the Council. The information included was derived from specialist reports prepared by a coastal engineer (Shand Reports).

10. 50 year and 100 year lines were calculated on an intentionally precautionary basis, and they included an allowance for sea level rise. The information was intended to be included in a district plan review, and this in fact occurred before the High Court hearing. The Court commented generally on section 44A(2)(a) in the following passages in the decision:

[33] Paragraph (a) is altogether different. There are a number of components in this paragraph to which I will return below, but for now it is sufficient to note that whether the potential for erosion (amongst other things) is a special feature of the land in question is inevitably going to require a judgement call on the part of some official. The necessity for judgement in applying the words of paragraph (a) to the application in question, very much distinguishes paragraph (a) from the other paragraphs. Latitude is plainly required in that respect, in light of the administrative and non-discretionary format of the section; the volume of applications that must be addressed by

1 The natural hazards listed are, with the exception of alluvion, the same as those listed in Section 71(3) of the Building Act. It seems clear however that seismic information (such as fault zone information) can be independently characterised as a feature or characteristic of the land for the purposes of section 44A(2)(a).

2 [2013] NZHC 3522 (Williams J).

3 At [7].

4 At [5].

5 At [8]. Provisions based on this information were subsequently removed from the District Plan review.
Council on an annual basis, and the mandatory and short timeframe available to process LIM applications.

[35] I note also that, if there is an obligation to include the Shand lines on the LIM, that obligation lasts only so long as they have not been transposed onto the Operative District Plan as a result of the statutory district plan review process. That is the process in which Dr Shand’s science and the reliability of his 50 and 100 year lines will be put to the test by the affected community. I must be careful not to usurp the role of the review under cover of a purported exercise in statutory interpretation.

[36] But I must still in the end be satisfied that the information referred to in the LIM fits the description in paragraph (a) in light of the text and purpose of s 44A and the practical context within which it applies in this case. I derive no particular assistance from considering broader abstract contentions about the intensity of review beyond the obvious and constantly useful markers to which I have just made reference.

11. The key points from the passages above can be summarised as follows:

(a) The consideration of whether the potential for a natural hazard is a special feature or characteristic of the land will inevitably be a judgement call on the part of the territorial authority (acting through its officers), and some latitude is required.

(b) It is important to distinguish between the role of the territorial authority in putting natural hazard information on a LIM and the “testing” of that information through a district plan review or other process.

(c) Ultimately the territorial authority (and the Courts if there is a challenge) needs to be satisfied that natural hazard information falls within section 44A(2)(a), and no assistance is to be derived from “broader abstract contentions about the intensity of review”.

12. The Court went on to assess the applicability of section 44A(2)(a) by asking three key questions:

[42] I have found it more useful to assess the applicability of the subsection by asking three key questions:

(a) Does the information in the Shand Reports (including the 50 and 100 year prediction lines) relate to potential erosion?

(b) Does that information relate to a feature or characteristic of the applicants’ land (or indeed any other individual title)?

(c) Is it information that is “known” to KCDC?

These questions I hope address each of Mr Smith’s elements, but in a way that is less fragmentary. I simply assume the Shand Reports are information, I cannot see how they can be anything else.
13. We now deal with each of these questions. We will also comment on the expression "not apparent from ... a district plan".

How should "potential" be interpreted?

14. The Court in the Weir case focused on potential coastal erosion, but the Court's analysis is relevant to other natural hazards or a land falling within section 44A(2)(a). The Court distinguished between the expression "potential" and "likely" in section 44A(2)(a):

[49] The Shand Reports do contain information in relation to potential erosion. The term erosion is to be construed widely in accordance with the purpose of s 44A which is to inform the market of special features or characteristics of the land that may affect value, suitability or saleability. Incursion from the sea is erosion. "Potential" is to be distinguished from "likely" as the two terms are used in paragraph (2). Information in relation to hazardous contaminants must show that they are "likely" to be present in the land before the duty to include that information in a LIM is triggered. "Likely" is the standard because it relates to a present fact or probability — discernible to a certainty if necessary by testing. Presumably that is why subsection (5) which declares the information in the LIM to be sufficient evidence of its "correctness", is subject to the important rider that the sufficiency presumption applies only "[i]n the absence of proof to the contrary".

[50] The point is that "likely" unquestionably refers to probability — specifically a state of facts that is more probable than not.

[51] The future possibility items are different. Erosion, avulsion, falling debris, subsidence, slippage, alluvion, or inundation all refer to physical effects on the land that have not yet occurred and, it is accepted, may never occur. I consider that the drafter carefully selected the term "potential" as opposed to "likely" when referring to these possible future events. That is because it is not feasible to attach probabilities to them. Instead, there is an obligation to refer in the LIM to information held by the Council and relating to such future events only if there is a possibility that they may occur in the future. By possibility, I mean a reasonable possibility objectively determined.

[52] In my view, the assessment by Shand does raise such reasonable possibilities objectively determined. He admits that his lines are a very worst case scenario, partly because he has removed certain mitigating factors from the calculation on the basis that science has not yet worked out how to reliably include them. But a worst case scenario objectively identified and evidentially based, must, by definition, be a reasonable possibility — albeit the worst one. Indeed, the worst case is the boundary line between reasonable possibility and mere speculation.

[53] I am satisfied that Mr Shand's science is sufficiently robust to satisfy that relatively low threshold requirement. Of course I say nothing at all about whether the Shand Report and the Shand lines should survive a more rigorous merit-based review through the District Plan Review process under the Resource Management Act 1991. That is not my arena.

15. In summary, information relating to future events must be provided on a LIM if there is a possibility objectively determined that such events may occur in the future. This is a
relatively low threshold requirement and one which must be distinguished as "likely" future event.

Does the feature relate to the land concerned?

16. The Court then considered whether the information in the Shand Reports related to specific land and therefore related to a "special idea, feature or characteristic of the land concerned". The Court concluded at [58] – [59]:

[58] I agree that the information is sufficiently site-specific to be caught by paragraph (a). Information can relate to a special feature or characteristic of the land without a site-by-site analysis being undertaken. The special feature or characteristic of all land the subject of the Shand lines is that it is situated on the coast at a time of gradual sea level rise. The Shand analysis is an assessment of the potential erosion effect of that general trend. His conclusions in that regard may be right or they may be wrong – that is to be assessed in a separate process. The analysis may or may not be sufficiently "granular" to withstand attack in that other process. But, it is unquestionably about potential erosion as a special feature or characteristic of all coastal land along the Kapiti Coast, and therefore of every individual property fitting that description. Here, the Council is trying to warn the market about the potential local effects of a global phenomenon. It would be inconsistent with the purpose of s 44A if that could not be done because a far more expensive site-by-site analysis is required but unaffordable.

[59] The sound approach, in my view, is to leave challenge to the site-by-site analysis to the plan review process and in the meantime, to think far more carefully about how the Shand information is actually recorded on the LIM.

17. Two comments can be made about these passages from the Weir case.

18. Firstly, the test from the Weir case at [58] above is whether the information is sufficiently site specific to be caught by section 44A(2)(a). That information can relate to a special feature or characteristic without a site-by-site analysis being undertaken. It was sufficient in the Weir case that potential erosion was a feature of "all coastal land along the Kapiti Coast, and therefore every individual property fitting that description". It is always going to be a matter of analysis in each situation whether the test is met, rather than trying to characterise the actual source of the information.

19. Secondly, the Weir case dealt with a situation where a district plan review was in progress and that process would provide an opportunity for the site-by-site analysis to be tested. This will often not however be the case, in which the issues discussed at paragraphs 21 to 25 below will be relevant.

Is the information "known to" the Council?

20. The Court then dealt with this issue. It had been argued that the information in the Shand Reports were not "known" to the Council, because neither the author of the reports nor the Council knew how probable the posed outcomes over 50 and 100 years were. The Court rejected this argument and stated at [64]:

6 Reference can also be made to Westland District Council v York [2014] NZCA 59, where the proprietor of a motel alleged that a LIM was negligently prepared as it omitted information about the Alpine Fault and other related material. The case turned upon whether the proceedings were statute barred and the Courts did not need to decide whether the LIM was in fact negligently prepared.

7 At [60] to [62].
I agree that the Shand Report and its implications are "known to" Council as required by paragraph (a). The Council needs to know about the report but it does not need to believe that the predictions in them are accurate or even probably accurate. The subsection (5) deeming provision does not change matters. It does not mean that only probabilistic predictions can be placed on a LIM. "Correctness" in subsection (5) must mean correct according to its own terms and within its stated limitations. Subsection (5) must be read alongside the express predicting wording in paragraph (a). That paragraph relates to potential erosion (amongst other potential physical effects), not probable erosion and certainly not inevitable erosion. It is illogical therefore to read the "known to" requirement as if it cancelled the meaning of "potential" out or narrowed it so as to have the same meaning as 'likely' as used in relation to contaminants.

Not apparent from the District Plan

21. Under section 44A(2)(a), information identifying each special feature or characteristic of the land concerned, does not need to be included in a LIM if it is apparent from the operative district plan. However this provision does raise some issues that have not to our knowledge been determined by the Court.

22. Firstly, is there any "adequacy" threshold for information identifying a natural hazard feature or characteristic for the purposes of section 44A(2)(a)(ii)? In some circumstances, the adequacy of information included in a proposed district plan may well be tested and rectified through the submission, hearing, and appeal processes under the Resource Management Act 1991 (RMA). If this does not occur however, is there any obligation on the territorial authority to provide further information to fairly and accurately inform the recipient about relevant natural hazards apparent from an operative plan?

23. The second issue that could potentially arise is where information included in an operative district plan becomes outdated and more information becomes known to the Council. Does this place the territorial authority under any obligation to provide, on a LIM, the further information?

24. There is an argument available that in the event of either of the situations above, if the natural hazard characteristic or feature (such as a coastal erosion line) is apparent even in basic terms in an operative district plan, there is no obligation on the Council to provide any further information in its possession if a LIM is requested.

25. However, we consider that there would be potential liability risks for a territorial authority if it took such an approach, where the information did not meet the adequacy of information tests that we later discuss. It is beyond the scope of this advice to deal with this issue in any further detail but it would in any event be good practice to provide supplementary information if there is an issue with the scope or accuracy of information in an operative district plan.

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8 This is confirmed by the Weir case at [35]. For the purpose of section 44A(2)(a), it would appear that "district plan" means the Operative District Plan having regard to the definition in section 2 of the RMA.

9 We discuss below the level of information that generally needs to be provided on a LIM.

10 That is the information must be accurate, state the position fairly, and must not mislead.
Other RMA information

26. If information on hazards is only found in the regional plan, then that information may still, in our view, have to be included in the LIM, as it is likely to be considered information that is (or should be) known to the territorial authority.”

27. Hazard information which the Council becomes aware of from other sources, such as other resource consent hearings, may also potentially be planning information that it should include in a LIM (where the information is relevant to the particular land in question). Such information does raise some difficult issues for a Council, especially if there was conflicting evidence (expert or otherwise) at a resource consent hearing. More generally, the need to collate and record such information does require rigorous information systems.

What level of information should be provided by a Council?

28. The starting point is that a Council is only required to provide natural hazard information known to it whether or not it is actually in the physical possession of the Council. It is not required to search out or otherwise make enquiries from third parties as to whether such information may exist. The question often arises however, as to how much detail about the known information must be provided on a LIM.

29. Sometimes the amount of information known may be limited and may readily be able to be provided in full. In other situations, the Council may hold a significant amount of material in specialist reports that would make it impractical or excessively costly to provide in full. This issue was also considered by the High Court in the Weir case. The Court concluded as follows:

[67] But that is not an end to the matter. There is still the question of how that information should be rendered on the actual LIM. That information is required to be included in the LIM by the introductory words of subsection (2), but this can only be by way of reference and summary. Obviously LIMs cannot and do not include both of the reports in their entirety. Rather, they contain, as I have said, brief summaries of those reports and conclusions together with the coastal erosion hazard prediction lines.

[68] Council has a broad discretion as to how it represents the Shand information on its LIM. The information on the LIM must of course be accurate, state the position fairly, and it must not mislead.

[69] It must in my view be relevant in considering how to summarise the Shand material, that the reports and, particularly the lines, have the potential to seriously affect the value and marketability of coastal properties in the district. That consideration ought at least to sharpen the obligations of accuracy and fairness. After all, across 1800 properties there must be many millions of dollars at stake. It would be a callous Council indeed that was unmindful of that potential impact.

[70] In light of that, I am struck, as I noted earlier, by the stark simplicity of the prediction lines. None of the many and important conditions and assumptions contained in the Shand Reports are obvious in the graphic. To

11 Note that if a Council is a unitary authority, then the Allmarloch case (discussed below) is relevant in relation to resource consent information on a LIM. In that case, it was held that the Marlborough District Council was required to have water permit information on its LIM, even though, if the Council had not been a unitary authority, the permit would have been issued by the regional council and so the information would not be held by or known to it and so would not be mandatory information to be included on a LIM.
understand what they really mean one must go through the five pages of relatively densely written material. With respect to the Council, those five pages are hardly an exemplar of clear communication of the big points that a potential purchaser must know in order to properly understand the meaning of the lines.

30. Whilst the Council was dealing with a specific situation where coastal erosion information existed in two significant reports, a number of general principles can be extracted from the Weir case:

(a) The Council has a broad discretion as to how it represents voluminous information on a LIM but the summary must be accurate, state the position fairly and must not mislead the recipient.12

(b) The obligations of accuracy and fairness will be heightened when the information will have a significant financial impact on the owners of properties affected.13

(c) It is important to include important conditions and assumptions and share where relevant statements that the information is subject to scientific challenge and/or is yet to be fully tested.14

31. An earlier High Court case in Resource Planning and Management Ltd v Marlborough District Council (Resource Planning)15 had also dealt with the question as to what level of information was required to be disclosed on a LIM. Ellen France J stated at [166] to [168]:

[166] Obviously, the obligation in s 44A is to be interpreted in light of the purposes of the Act with its focus on improving and promoting accountability (see the Long Title and s 4 of LGOIMA). However, on its face, the disclosure is a limited one in the sense that the authority is not required to provide all of the information on its files. The width in terms of s 44A(2)(a) comes from the fact that the information must not be apparent from the district scheme. This means some level of inquiry is to be undertaken. However, where the requirement is not simply one of disclosing all information on the files, there has to be some cut off point. Is what was included here sufficient or did the other matters raised by the plaintiffs have to be disclosed?

[167] The process of preparation of the LIM is relevant here. In that respect, Mr Oliver gave evidence that the LIM was prepared in the Resource Management and Registry Department. Christine Ford, who signed the LIM on behalf of Mr Oliver, would assemble the LIM. The usual process would be for the LIM to go to each department within the Council depending on what information was required. For example, information about rates would be sought from the Finance Department. Essentially, the exercise undertaken was one of compiling the information from that on the Council file.

[168] That process seems appropriate. In this case, the important factor is that the plaintiffs would have been properly and fairly informed about the

12 Weir at [68].
13 At [69].
14 At [70] to [71].
relevant features or characteristics of the land and its uses from the disclosure they received.

32. The Court went on to conclude that there was no obligation on the part of the Council to disclose a view held by an employee that had not been adopted by the Council.16

33. More recently in Trustees of the THP Trust v Auckland Council (Trustees of the THP Trust),17 the High Court endorsed the approach to sufficiency of information adopted in the Weir and the Resource Planning cases, in the following terms:

[90] I respectfully agree with the thrust of both these decisions. In short, the information required to be disclosed by s 44A(2)(a) must identify the relevant special feature or characteristic of the land and must, within the parameters of what is actually known by the Council, be accurate and not misleading. Provided the disclosure meets the basic standards just mentioned, the Council need not include all the information about the subject property that is in the Council's possession and it has a wide discretion as to how the information is disclosed.

[91] To these comments I would add that it does not seem to me that it is the function of s 44A(2)(a) disclosure to be advisory, in the sense of suggesting that potential purchasers take a particular course of action, such as obtaining further advice, or not to purchase. Nor does it seem necessary (or wise) to state that the Council is satisfied as to any particular matter (and presumably in most cases the relevant resource consent, building consent or code compliance certificate would speak separately for themselves in that respect).

[92] Rather, s 44A(2)(a) is centrally concerned with putting the recipient of a LIM on notice of particular facts that are within the Council's knowledge (the existence of any special characteristic of the land concerned) and which might affect the physical state, and potentially the value, of the land. The purpose is not to warrant that the land is good or safe, but simply to provide information on the basis of which the recipient can decide for him or herself whether to make further inquiries, obtain expert advice, negotiate on price or simply walk away. To the extent the Council has detailed information about a special feature on its file, it is not required to record all of it on the LIM. But reference to its existence and availability should also, no doubt, be made.

[93] Lastly, although no (potentially competing) duty is owed by the Council to the existing landowner when preparing a LIM, there remains I think a public law obligation to fairness to such persons. Accordingly, in terms of the exercise of the Council's discretion as to how relevant information was to be disclosed in the present case, I consider that it was entitled (and possibly required) to consult with Ms McCracken and to take her interests into account, provided that in doing so it did not breach the legal obligations owed to those in the position of the plaintiffs.

34. A number of the Court's observations in the Resource Planning and the Trustees of the THP Trust cases, largely mirror what was said in the Weir case about the extent of information that needs to be disclosed and the obligations of fairness and accuracy, but

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16 At [171].
a number of other findings are evident from those cases. These can be summarised as below:

(a) It will be important to have a systematic approach to compiling information internally within a territorial authority.\(^6\)

(b) There is no obligation to disclose a view held by an employee that has not been adopted by the Council.\(^8\)

(c) It is not the function of a section 44A(2)(a) disclosure to be advisory in the sense of suggesting that potential purchasers take a particular course of action. It is also not necessary or wise to state that the Council is satisfied as to a particular matter.

(d) The purpose of a LIM is not to warrant that the land is good or safe but rather to put the recipient on notice of particular facts that might affect the physical state and potentially the value of the land.

(e) There may be a public law obligation of fairness owed to the existing owner of the land. The Council is expected and may be obliged in some instances to consult with such an owner.\(^9\)

THE COUNCIL’S LEGAL LIABILITY

35. As a starting point, it should be noted that section 41(1) of the LGOIMA gives an authority protection from civil and criminal proceedings for providing official information, or for any consequences in providing the information, where that information is made available in good faith under Parts 2-4 of the Act. However section 41(1) does not apply where information is provided on a LIM and so liability will be determined by usual common law principles that we discuss below.

36. The majority of damages claims relevant to natural hazard information on LIMs are likely to arise in relation to people who have purchased a property or have incurred some other type of legal commitment based on LIM information provided by a council. Alternatively, it is possible that the existing owner of a property might bring a judicial review claim regarding the Council’s decision to include such information on a LIM and to seek its removal. We will also briefly comment the potential for damages claims by such an owner in respect of the issue of LIMs.

Legal principles applying to the types of claims that might be made against Councils

37. In relation to the situations identified above, there are three types of claim that are most likely to arise. These are damages claims in negligence and breach of statutory duty in addition to judicial review proceedings. We briefly discuss the relevant principles required to establish such claims.

Negligence

38. In the context of a damages claim for negligence in relation to the issue of a LIM, the High Court in *Trustees of the THP Trust*\(^10\) identified a number of issues that needed to be decided.

\(^6\) The High Court in *Monticello Holdings Ltd v Selwyn District Council* [2015] NZHC 1674 held that in the context of a PIM there was an obligation to include information even in archives or other historic records.

\(^8\) Such information may of course be information which can be subject to an information request made under the LGOIMA.

\(^9\) We discuss this further below in the context of the potential liability of a territorial authority to the existing owner of a property in respect of which a LIM is requested.
In my view the following issues arise for determination:

(a) Did the Council owe a duty of care to the plaintiffs in relation to the advice/information contained on the LIM?

(b) What standard of care was required of the Council (what information in all the circumstances should a normally competent Council have included on the 114A LIM)?

(c) Did the notation included on the 114A LIM meet the standard required?

(d) Did the plaintiffs rely on the information contained in the LIM?

(e) Was that reliance reasonable?

(f) Have the plaintiffs established (on the balance of probabilities) that they would have acted in a way that would have avoided the loss, had the LIM not been negligent?

(g) Did the losses suffered by the plaintiffs fall within the scope of the duty owed to them by the Council?

(h) Were there any material intervening causes of the plaintiffs' losses?

(i) How should the plaintiffs' losses be quantified?

39. A number of these issues are quite fact specific, but we will deal with each of them in turn to the extent that it is possible to extract matters of more general relevance. Items (f) to (i) are beyond the scope of this present advice.

Does a Council owe a duty of care to a purchaser?

40. This issue was authoritatively determined by the Supreme Court in Marlborough District Council v Altimaroch Joint Venture Ltd,22 when the Council had issued a LIM which included incorrect information in relation to water permits attached to a property. The correct information was in fact available on the Council's files.

41. The Supreme Court held that the Council owed a duty of care to the entity which had obtained a LIM and subsequently purchased the property. The Court looked at both proximity of the relationship and a number of policy considerations, all of which favoured the existence of a duty of care. Tipping J said at [85] to [88]:

Section 44A is in Part 6 of the Act. I agree with the Court of Appeal, for the reasons it gave, that the water rights in issue, being consents affecting the land, come within para (d) of s 44A(2). A person requesting a LIM from a territorial authority is clearly in a position of proximity to the authority.

21 Above at footnote 17
It was common ground that the duty of care issue should be considered against the conventional indicators of proximity and policy.

[86] The relationship between the parties is closely analogous to a contractual one. A fee is paid for the preparation and supply of the LIM. Mr Goddard QC suggested there was no proximity because the Council could not know with any certainty, unless told in the request, for what purpose the information in the LIM was being requested. But that point affects the second issue of policy rather than that of proximity.

[87] Turning to the policy aspect, it is plain form subs (5) of s 44A that Parliament recognised, indeed was emphasising, that those obtaining LIMs from territorial authorities were entitled to rely on the accuracy of at least the subs (2) contents of the LIM. The use of the word "evidence" in the subsection may suggest a forensic context but it is unlikely that it was intended to limit the scope and effect of the subsection to court proceedings. The subsection is apt to encourage general reliance on the accuracy of information required to be supplied in LIMs. That is a significant indicator, within the section itself, that as a matter of policy those relying on LIMs should not be denied the duty of care that proximity considerations suggest should exist.

[88] Reasonable and foreseeable reliance on a written statement made in a business context is a conventional indicator of both proximity between the maker and the recipient and, subject to any countervailing considerations, that as a matter of policy a duty of care should be imposed on the maker. In the case of the supply of a service for a fee under the provisions of a statute, questions of policy are likely to be of greater import than the proximity that must thereby necessarily exist.

42. Tipping J went on to indicate that there was nothing in the statutory regime that would suggest that a Council's liability was limited to safety or other limited issues, and concluded at [98]:

[98] For these various reasons I am of the view that both proximity and policy considerations support the imposition of a duty of care on territorial authorities so that if they negligently give erroneous information in a LIM and the recipient relies on that information to its detriment, they will be liable for the loss their negligence has caused, save possibly when the information is given under subs (3). I would therefore uphold the conclusion of the Supreme Court on this aspect of the case.

43. The Supreme Court was divided on the complex issues of causation and contribution and these issues are beyond the scope of this advice. We can however separately comment on those matters if required.

44. In Trustees of the THP Trust v Auckland Council, Ellis J noted that the distinction drawn in the Altmanfoch case between the duty arising under section 44A(2), and that which may (or may not) arise under section 44A(3), was possibly important, as relevance must include what is relevant to a potential purchaser, and this would include buildings on the land. Ellis J went on to say:

23 At [90].
24 Above.
As a matter of purposive interpretation, it is not difficult to see why the word "land" in s 44A(3) should include buildings upon the land. But the need for such an inclusive interpretation is less obvious in relation to the word as it appears in s 44A(2)(a) and, for myself, I would not regard the above dictum from Sunset Terraces as necessarily mandating that. More particularly, the "special features" listed in s 44A(2)(a) all appear to me to relate directly to the condition of the land itself; they are not readily transposable into a "building" context.

The relevance of this distinction is that a considerable portion of the information contained on the 114A LIM related to the building rather than to the land itself. It seems to me to be at least arguable that that information is properly to be regarded as having been provided pursuant to s 44A(3). If that is so, the existence or not of a relevant duty of care (in relation to the provision of that information) appears to have been left open by the Supreme Court.

That said, however, Mr Heaney did not seek to mount the Council’s defence on that basis and, of course, even if some of the information was disclosed under s 44A(3), a question would remain about whether the Council had met its (mandatory) s 44A(2)(a) obligation. Nonetheless, the distinction between information required to be provided under s 44A(2)(a) and information that may be provided under s 44A(3) assumes some importance later in this judgment.

The distinction between section 44A(2) and 44A(3) in terms of whether land includes buildings on the land and whether section 44A(3) gives rise to a duty of care may well be important in a number of contexts relating to natural hazard information put on LIMs. We return to this issue below.

What information would a normally competent council have included on LIM in all the circumstances?

This enquiry will ultimately depend on the particular circumstances of the case, but the High Court’s decision in Trustees of the THP Trust provides useful guidance in relation to natural hazards information. The Judge stated at [96] to [98]:

The starting point in terms of the standard of care appears to me to be simply that the Council was required to take reasonable care to ensure that the LIM fairly and accurately informed potential purchasers about any "special feature" of the 114A land as required by s 44A(2)(a). In the present case, the relevant "special feature" was, indisputably, its general potential for slippage. It is the potential for slippage that is the (geological) snail in the bottle if which the Council was required to give notice on the LIM.

A statement in these general terms would, I think, suffice adequately to inform potential purchasers of the general risk arising from similar land on either side of 114A. It is self-evident that geology is no respecter of legal boundaries and, accordingly, that (provided it is clear that all the land on the top of the cliff top shares the same special feature) such a risk exists.

Once such a "special feature" has been identified, however, there is a subsequent question about the extent of what further disclosure (if any) a reasonable Council would make in light of all the information about that feature possessed by the Council. In my view, what was required in the
present case was disclosure of sufficient information to put potential purchasers on notice of:

(a) any more specific, identifiable, risk posed to the subject land by slippage that was known to the Council; and

(b) the existence of further relevant information about the risk contained on the Council files that might be of interest to a purchaser and how it could be accessed.

47. The requirements outlined above for “further disclosure” over and above the general risk about hazards which involve putting the person requesting the LIM on notice of any specific identifiable risk about the land, and how the person could access that information, assumes in the first place that a Council holds such site specific information about the extent and nature of a natural hazard.

48. Often the information held will be general in nature and relate to a wider area, and as previously mentioned, there is no obligation to provide information over and above what is actually known to the Council. In this situation however, it will be of particular importance to refer to the precise source of information actually known to the Council, and how it may be accessed.

**Does the information provided on LIM fall below the standard required?**

49. This requires a situation specific analysis guided by the considerations outlined above. Once again however the High Court’s decision in Trustees of the THP Trust provides some assistance. The Court first looked at the information provided as a whole and concluded that the statements could not be held to be incorrect.\(^{25}\) The Court also rejected any suggestion that the LIM was deficient because it only referred to two of the available geotechnical reports,\(^ {26}\) or that the report could be interpreted as only relevant to specific risks, or that advice only needs to be obtained in specific circumstances.\(^ {27}\)

50. The Court went on to say:

\[106\] Mr Luxford also said that the focus in the LIM on potential damage to the structure on the site rather than on the existence of the geotechnical reports about the land was, in his opinion, unusual. That opinion is consistent with my view that:

(a) s 44(2)(a) is centrally concerned with the condition of the land itself rather than the buildings on it; and

(b) most of the information contained on the 114A LIM appears to be of a kind contemplated by s 44A(3) rather than s 44A(2).

\[107\] Although the answer does not appear to me to be clear-cut, I have concluded, on balance, that the Council failed in its duty here. I say that principally because the LIM does not clearly and directly refer to (and, indeed, somewhat obfuscates) the relevant special feature or

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25 At [102].
26 At [103].
27 At [104].
characteristic of all the land along the Clovelly Rd cliff top, namely its tendency to slip.

[109] So although, as I have said, the notation was not in itself inaccurate, it was, in my view, materially incomplete and poorly focussed (or, rather, overly focussed on the specific risk of slippage on the lower slopes). I consider that the use in s 44A(2) of the word "identifies", together with a purposive reading of the section as a whole requires something altogether clearer and less oblique.

Did the person requiring a LIM rely on the information in the LIM?

51. This is a question of fact to be determined in all the circumstances of each case. However, assuming that actual reliance can be established, it is still necessary to prove reliance on the LIM was reasonable. Ellis J in Trustees of the THP Trust said on this point:

[116] I largely accept Mr Thain's submission that the starting point is, necessarily, that the very existence of a duty of care in relation to the advice contained on a LIM is predicated on the assumption that potential purchasers are likely to rely on its contents and (accordingly) that any such reliance would, ordinarily, be reasonable. But equally, there must be circumstances when that is not the case. Obvious examples include where the recipient of a LIM:

(a) did not in fact read it; or

(b) knew or had reliable information in his possession that contradicted what was said on the LIM or put him on notice that it might be wrong.

[117] Reliance, and the reasonableness of it, is not, therefore, wholly a given.

[118] It also seems important to note at the outset that the nature, or focus, of the relevant reliance needs to be defined. As a matter of logic, the relevant reliance must be linked to the purpose and scope of the relevant duty and its breach. Thus, in the present case, the plaintiffs must establish that they relied on the LIM as assuring them that there was no risk of slippage (or that the only such risk was the negligible risk of slippage on the slopes below).

52. We do not intend to review in any detail the specific factors considered in that case as to reasonableness of reliance, but it is noteworthy that the Court concluded that the Trustees did not reasonably rely on the LIM as an assurance that there was no risk of slippage or that the only such risk was the negligible risk of slippage on the slopes below, having regard to the extent of information in their possession at the time when they purchased the property.

53. We now propose to comment briefly upon the potential for damages claims to be brought by the current owner of a property who may suffer some financial loss as a
result of an incorrect LIM being issued as a third party. We are not aware of any court decisions in New Zealand which deal with this precise situation, although the Weir case concerned judicial review proceedings brought by an aggrieved current owner.

54. We would expect that damages claims by current owners will be rare because the inaccurate or inadequate information will often be able to be corrected before actionable loss occurs (whether as a result of judicial review proceedings or informally). In other circumstances, it may be difficult to quantify any loss or establish that the territorial authority's negligence (if found to exist) was causative of a particular loss.

55. In our view, it is far from clear whether a duty of care is owed by a territorial authority to the current owner in the first instance. In Monticello Holdings Ltd v Selwyn District Council, the High Court held that the Council did owe a duty of care to a person requesting a Project Information Memorandum (PIM), but not a purchaser of that land.

56. While no LIM was requested in the Monticello case, the Court nevertheless made some observations about the scope of a Council's duty of care in respect of the issue of a LIM:

[93] The SDC does not owe a duty of care, to the world at large, to maintain complete records to ensure that any potential LIMs ever issued are correct in the sense they contain all the Council's detailed information about features of a site in question. Nor do I consider that a local authority owes a duty to the world at large to simply keep comprehensive records (such as under the Public Records Act, the Local Government Official Information and Meetings Act, and the like). That duty, if it exists, must be founded on a sufficiently proximate relationship. And as the authorities suggest, in interactions with local authorities, such proximity will ordinarily be established by a fee-paying relationship (though this is not exclusively the case). In this case, Monticello neither paid for a LIM nor sought one at all.

[94] Thus, I find that there is not sufficient proximity here to found a relationship based upon a LIM. The fact that the information would not have been supplied, even if requested, does not, in my view, alter the position. Monticello's suggested duty is effectively inviting this Court to hold that any general failure by a local authority (if made out) is actionable by everyone within that local authority's jurisdiction. This, in my judgement, is unsupportable. As I have stated, negligence is relational. With respect to that aspect of this case, relating to the issue of a LIM, there was no relationship whatsoever.

[95] I therefore reject the notion that, absent a specific paid request to obtain a LIM, there is a general duty of care (seemingly owed to everyone within a relevant district or region) to record contamination in all LIMs and designations. Thus, the SDC owed Monticello no duty of care in relation to any LIM.

57. The court in the Monticello case was not directing its attention to the specific situation where it is the current owner claiming a loss arising out of the issue of a LIM, but some reliance was placed in the decision on the existence of a fee-paying relationship as founding the necessary relationship of proximity. However the payment of a fee is not always necessary to establish a duty of care and we do not consider that the existence

30 Monticello Holdings Ltd v Selwyn District Council [2015] NZHC 1674
31 At [97] to [105]
of a duty of care can be totally discounted in such a situation. The issue remains to be authoritatively determined by the Courts.

**Breach of statutory duty**

58. To succeed in an action for damages for breach of a statutory duty, a plaintiff would need to establish the following:

(a) a breach of a statutory duty;
(b) that the breach of the duty caused damage to the plaintiff; and
(c) a legislative intention that breach of that obligation:
   (i) should give rise to civil liability in relation to a class of persons to which the plaintiff belongs; and
   (ii) allows damages of a kind for which the law awards damages and against which the statute was designed to give protection.

59. A case setting out these principles and in which a breach of statutory duty was found is *Smaill v Buller District Council*. In *Smaill*, Panckhurst J concluded that a breach of section 641 of the Local Government Act 1974 conferred on an affected permit holder "a right to seek damages." This section is now repealed but it did impose a duty on local authorities to refuse building permits where certain circumstances existed.

60. His Honour held that the statutory duty was obligatory and well defined, and plaintiffs who are granted building permits comprised an easily ascertainable class of persons. His Honour also held that the statute did not provide "any form of remedy in favour of persons affected by a breach." In *Smaill*, the Council’s grant of the building permit caused damage to the plaintiffs in terms of diminution in property values as a result of the instability of a nearby cliff face.

61. A breach of statutory duty was also found to exist by the High Court in the *Altimaroch Joint Ventures Ltd* case (above), where it found that there was a clear statutory duty in relation to information which was mandatory to provide under section 44A(2)(d).

62. However a different and (in our view) more definitive view was taken by the High Court in the *Trustees of THP Trust* case in reliance on a passage in the judgement of William Young P in the Court of Appeal in the *Altimaroch* case. Ellis J said in *Trustees of the THP Trust* case:

> [72] There is an alternative claim for breach of statutory duty but, in my view, it adds nothing to the claim in negligence and I do not propose to consider it further.

In *Vining Realty Group Ltd v Moorhouse* (also a negligence case where a breach of s 44A was pleaded as a separate cause of action) William Young P said:

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33 At [212].
34 At [212] lines 20-22.
36 *Vining Realty Group Ltd v Moorhouse* [2010] NZCA 104 at [70]. This became known as the *Altimaroch* case when it reached the Supreme Court.
...The second cause of action (breach of statutory duty) is problematic. There is nothing in the statutory context to suggest an absolute and indefeasible duty to provide information. Such a duty is seldom imposed except where personal safety is involved. Further, if such a duty had been intended, we would have expected its metes and bounds to have been clearly defined along with a detailed specification of the consequences. Indeed at trial, counsel for AJVL maintained that the statutory duty relied on was merely "a statutory duty to take care". On this basis, the second cause of action is simply the first cause of action with its fingers crossed. It does not warrant separate consideration.

Judicial review

63. It has been stated that "judicial review is a judicial invention to ensure that a decision by the executive or a public body was made according to law, even if the decision does not otherwise involve an actionable wrong" (see the Laws of New Zealand, Administrative Law, Chapter 2, paragraph 3).

64. The bringing of an action for judicial review of a decision made by a Council (to grant or not grant a consent, or to provide hazard information) could be made on almost any of the grounds on which a judicial review action can be based:

(a) that the decision is unreasonable;

(b) it failed to take into account relevant considerations or took into account irrelevant considerations;

(c) the Council made an error of law;

(d) or possibly a mistake of fact, or has acted outside of its powers or in abuse of its powers, or acted unfairly/breached natural justice in arriving at the decision.

65. The basis for judicial review actions in relation to decisions involving hazard information are most likely to be that the Council has used incorrect or insufficient information. Mistake of fact has occasionally been treated as a separate ground of judicial review, but there is some judicial resistance to this: see Lewis v Wilson & Horton Ltd.37 However, other judicial review grounds may also be relevant when the standard of the information is in question. A lack of an evidential basis for findings of fact in a decision may be reviewable on the ground of breach of natural justice or error of law, or a clearly unsupportable finding of fact may also amount to unreasonableness.38

66. Whether or not a judicial review proceedings in relation natural hazard information that informs a LIM decision will be successful, will largely depend on the particular factual circumstances surrounding that decision. However, the greater the care taken in assembling and summarising the information for a LIM, the less chance there will be that the Council's decision could be challenged successfully.

37 [2000] 3 NZLR 546
38 In the Weir case, the arguments centered around the interpretation of section 44A(2) and whether the Shand reports fall within the scope of that provision.
Conclusions

67. The issues raised by this advice are complex, and whether liability arises in any particular case must always be assessed against the facts specific to the situation. There is now considerable guidance provided by Council decisions on liability in respect of LIMs relied on by intending purchasers of properties. There is much more uncertainty about whether existing owners who may be impacted by LIM information are able to bring damage claims. Clearly however, judicial review proceedings can be brought to challenge a Council's decision to include inaccurate or incomplete information on LIMs.

Yours faithfully

SIMPSON GRIERSON

Duncan Laing
Partner
A4.0 SALE AND PURCHASE AGREEMENT: LIM AS CONDITION OF SALE

This section provides the standard sales and purchase agreement for residential properties in New Zealand. Section 9 outlines the conditions and requirements to be fulfilled by both the seller and purchaser of property, including having a LIM as a condition of sale.

9.0 Conditions and mortgage terms

9.1, if the particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.

9.2, (1) If the purchaser has indicated on the front page of this agreement that LIM is required:

   a) That LIM is to obtained by the purchaser at the purchasers cost

   b) The purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and

   c) This agreement is conditional upon the purchaser approving that LIM provided that such approval must not be unreasonably or arbitrarily withheld

   (2), If on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ('the purchasers notice') on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchasers notice the purchaser shall be deemed to have approved the LIM. if through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 9.8(5) shall apply.

   (3), the vendor shall give notice to the purchaser ('the vendors notice') on or before the fifth working day after the receipt of the purchasers notice advising whether or not the vendor is willing to comply with the purchasers notice by the settlement date.

   (4), if the vendor does not give a vendors notice, or the vendors notice advises that the vendor is unable or unwilling to comply with the purchasers notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchasers notice is given, give notice to the vendor that the purchaser waves the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 9.8(5) shall apply.

   (5), If the vendor gives a vendors notice advising that the vendor is able or willing to comply with the purchasers notice, this condition is deemed to have been fulfilled, and it shall be a requirement that the purchasers notice shall be compiled with, and also, if the vendor must carry out work on the property, the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
A5.0 COMPARISON OF QV PROPERTY REPORT WITH LIM INFORMATION

The QV website provides a description on how their natural hazards information in the hazards report is determined. The information is sourced and updated from GNS Science, using CoreLogic which uses data on the following natural hazards:

- Earthquake
- Landslide
- Flooding
- Coastal hazards (Sea spray Manakau City only)
- Volcanic and geothermal (Rotorua only)
- Aircraft noise (Manakau City only)

To determine a hazard rating for each property, three main factors are considered:

- The susceptibility of an area to a specific hazard
- The likely strength or intensity of an event when it occurs, i.e. what is the potential for damage
- The likelihood or chance of the event occurring.

In many instances there is insufficient information available on the likely intensity of an event or on the likelihood of it occurring so an assessment of the susceptibility of a property to a hazard is all that is possible.

A QV natural hazards report was purchased for each of the case study sites, and has been analysed and compared to the natural hazards information contained within the respective LIM.

A5.1 QV REPORT FOR 1 BAY STREET, PETONE

A general property overview is provided at the beginning of the report along with an aerial and street view photo. The natural hazards information includes coastal, earthquake, flood, and landslides. The natural hazard information is provided as a brief one-page summary about the hazard and its ‘rating’. A link to additional natural hazards information has been included which provides further details on earthquakes (i.e. what is an earthquake, likelihoods, ground shaking, liquefaction, fault rupture, landslides, flooding, coastal hazards (including tsunami), geothermal hazard. In addition to natural hazards, and explanation of aircraft noise hazard is also included.

An assessment of each of the hazard types provided for 1 Bay Street, Petone, is provided below. No hazard or risk maps are provided within the QV hazard report.

A5.1.1 Coastal Hazard

The QV report gives a ‘possible’ rating for coastal hazards, which is specific to tsunami inundation. The description states that:

*The centre of this property is approximately 100 m from the nearest coast, estuary or tidal river and at an elevation of about 3 m, and as a result it is unlikely to be affected by a tsunami.*
The rating provided for tsunami is ‘possible’, while the wording within the description uses ‘unlikely’, both of which are ambiguous and contradictory. There is no guidance as to what this ‘unlikely’ means, e.g. within a person’s lifetime, or 100 years – particularly when the rating is ‘possible’. This could be improved by providing a table similar to that earthquake likelihood table for main centres in the further information. Being opposite the coast, and within the WREMO orange tsunami evacuation zone, it could be assumed that the property is likely to experience a tsunami. No explanation of the WREMO tsunami evacuation zones is provided.

Notwithstanding tsunami, no information on other possible coastal hazards has been provided (i.e. sea spray, coastal erosion, sea level rise, and storm surge).

A5.1.2 Earthquake Hazard

Earthquake hazard was described under five subheadings: Frequency, response in a strong distant earthquake, response in a strong close by earthquake, susceptibility to liquefaction and susceptibility to fault rupture. Each of these is discussed further below.

The earthquake frequency is rated ‘high’ as the property is in an area of has a high level of earthquake activity by the New Zealand standards. A description of ground shaking and the recurrence it is likely to be experienced is provided.

The likely response in a strong distant earthquake is "large increase in shaking". The property is in an area where the ground is classified as having very soft soil. This could cause a large increase in ground shaking in strong distant earthquake.

The likely response in a strong close by earthquake is moderate decrease in shaking (houses), moderate increase in shaking (high-rise buildings). Although this is technically correct, the explanation could be potentially confusing to those reading it. It also gives the wrong impression that shaking in a big nearby earthquake would be less than during a large distant earthquake.

The liquefaction susceptibility is rated ‘high’, with an explanation that includes reference to liquefaction occurring when ground shaking reaches MM8, which on average is expected to occur every 120 years. There is no description of the possible consequences.

The property is not susceptible to fault rupture, with no identified active faults known near the property. The Wellington Fault is approximately 1.2 km away from the property.

There is no mention made earthquake tectonic land-level changes.

A5.1.3 Flood Hazard

The flooding information is described under two subheadings:

The report states that the property is not within a 1 in 100-year flood zone, as modelled by Greater Wellington Regional Council. However, it does offer a disclaimer that:

*The property is an area where no modelling has been undertaken and it is therefore possible that a flood hazard might exist for part or all of the property.*

The property is not in an area where the soils that indicate it will be susceptible to flooding. Although the soil data sets do not indicate the property is not part of a riverbed, natural floodplain, or tidal marsh. It may still be part of an alluvial fan or minor floodplain landform.
A5.1.4 Landslide Hazard

The property has a *very low* rating for landslide susceptibility, which is appropriate considering the property is located on a flat piece of the valley floor away from the hills.

A5.1.5 Information not Included

No information was provided on the impacts of sea level rise/climate change or subsidence.

A5.2 QV REPORT FOR 3 SCHOOL ROAD, TE HORO

A general property overview is provided at the beginning of the report along with two aerial photos showing the location and dimensions of the property. The natural hazards information includes coastal, earthquake, flood, and landslides. The natural hazard information is provided as a brief one-page summary about the hazard and its ‘rating’. The hazards included in this report include; coastal, earthquake, flood and landslides. A link to additional natural hazards information has been included which provides further details on earthquakes (i.e. what is an earthquake, likelihoods, ground shaking, liquefaction, fault rupture, landslides, flooding, coastal hazards (including tsunami), geothermal hazard. In addition to natural hazards, and explanation of aircraft noise hazard is also included.

An assessment of each of the hazard types provided for 3 School Road, Te Horo, is provided below. No hazard or risk maps are provided within the QV hazard report.

A5.2.1 Coastal Hazard

The rating for tsunami inundation is ‘unlikely’, the description explains that given the properties distance from the coast it is very ‘unlikely’ to be affected by a tsunami with a 1 in 100 or a 1 in 500 year return period. There are no other coastal hazards mentioned.

A5.2.2 Earthquake Hazard

Earthquake hazard was described under five subheadings: Frequency, response in a strong distant earthquake, response in a strong close by earthquake, susceptibility to liquefaction and susceptibility to fault rupture. Each of these is discussed further below.

*The earthquake frequency is rated as ‘moderate’, the property is in an area of has a moderate level of earthquake activity by the New Zealand standards*. A description of ground shaking and the recurrence it is likely to be experienced is provided.

*Likely response in a strong distant earthquake, the property is in an area where the ground is classified as very soft soil. In a strong distant earthquake these materials are likely to cause a large increase in shaking*.

*The likely response in a strong distant earthquake is “moderate increase in shaking’. The property is in an area where the ground is classified as having deep or soft soil. This could result in a moderate increase in ground shaking in strong distant earthquake’.

Although these two statements are technically correct, the explanation could be potentially confusing to those reading it. It also gives the wrong impression that shaking in a big nearby earthquake would be less than during a large distant earthquake.
The liquefaction susceptibility is rated as ‘negligible’. The description states that the property is unlikely to experience liquefaction when ground shaking reaches MM10, which is expected to occur once every 7190 years.

‘The property has ‘high’ susceptibility to fault rupture. The property is near an accurately mapped active fault and is within the zone in which rupture or associated ground deformation is likely to occur in the future’. The description states that the local authorities have specific rules for managing development in these zones, and the purchaser should contact the council for further information.

There is no mention made earthquake tectonic land-level changes.

A5.2.3 Flood Hazard

The flooding information is described under two subheadings:

The report states that ‘the property is within a 1 in 100-year flood zone of the Otaki and Waikanae Rivers, as modelled by Greater Wellington Regional Council’.

‘The property is not in an area where the soils indicate it will be susceptible to flooding. Although the soil data sets do not indicate the property is not part of a riverbed, natural floodplain, or tidal marsh. It may still be part of an alluvial fan or minor natural floodplain landform’.

The information given here is completely contradictory, given the first statement says the property is within a 1 in 100-year flood zone then the second states that the property in not in an area that indicates it is susceptible to flooding.

A5.2.4 Landslide Hazard

The property has a ‘very low’ rating for landslide susceptibility, which is appropriate considering the property is located on a flat piece of the valley floor away from the hills.

A5.2.5 Information not Included

No information was provided on the impacts on climate change or sea level rise, and how these will impact coastal hazards.

A5.3 QV REPORT FOR 20 TRENT STREET, ISLAND BAY, WELLINGTON

A general property overview is provided at the beginning of the report along with an aerial and street view photo. The natural hazards information includes coastal, earthquake, flood, and landslides. The natural hazard information is provided as a brief one-page summary about the hazard and its ‘rating’. The hazards included in this report include; coastal, earthquake, flood and landslides. A link to additional natural hazards information has been included which provides further details on earthquakes (i.e. what is an earthquake, likelihoods, ground shaking, liquefaction, fault rupture, landslides, flooding, coastal hazards (including tsunami), geothermal hazard. In addition to natural hazards, and explanation of aircraft noise hazard is also included.

An assessment of each of the hazard types provided for 20 Trent Street, Island Bay, is provided below. No hazard or risk maps are provided within the QV hazard report.
A5.3.1 Coastal Hazard

The QV report provides a ‘possible’ rating for coastal hazards in relation to the site. The information is specifically related to tsunami inundation. The description states:

A preliminary tsunami inundation model suggests part or all of this property is within the area that could be affected by a 1 in 500-year tsunami. The centre of this property is approximately 200 m from the nearest coast, estuary or tidal river and is at an elevation of about 9 m. Modelling for this area used detailed topographic data obtained from the Local Authority. Modelling suggests the height of a tsunami on the Wellington coast with a return period of 100 years could be up to 3.3 m and one with a 500 year return period could be up to 8.6 m high. It is likely that a tsunami on the Wellington coast will have a local source.

The rating for tsunami inundation for the site is 'possible', the description explains that the properties distance from the coast line is in an area that could be affected by a 1 in 500-year tsunami.

A5.3.2 Earthquake Hazard

Earthquake hazard was described under five subheadings: Frequency, response in a strong distant earthquake, response in a strong close by earthquake, susceptibility to liquefaction and susceptibility to fault rupture. Each of these is discussed further below.

‘The earthquake frequency is rated as 'high, the property is in an area of has a high level of earthquake activity by the New Zealand standards. A description of ground shaking and the recurrence it is likely to be experienced is provided’.

‘The likely response in a strong distant earthquake is ‘moderate increase in shaking’. The property is in an area where the ground is classified as having weak or weathered rock, shallow soil or deep or soft soil. In a strong distant earthquake these materials will behave differently, and may result in little or no increase in shaking, or a moderate increase in shaking’.

‘The likely response in a strong close by earthquake is ‘moderate increase in shaking’. The property is in an area where the ground is classified as having weak or weathered rock, shallow soil or deep or soft soil. In a strong close by earthquake these materials will behave differently, and may result in little or no increase in shaking, or a moderate increase in shaking’.

‘The liquefaction susceptibility is rated as ‘moderate’, but is likely to range from moderate (during an MM9 earthquake) to negligible (during an MM10 earthquake). It is not possible to assign a single value due to the proximity of the property to boundaries of geological data’.

Although this is technically correct, the explanation could be potentially confusing to those reading it. It also gives the wrong impression that shaking in a big nearby earthquake would be less than during a large distant earthquake.

The property has ‘low’ susceptibility to fault rupture, as no active faults are known near the property.
A5.3.3 Flood Hazard

The soils data indicates the property is not part of a riverbed, natural floodplain or tidal marsh, but it is possible the property may be part of an old alluvial landform and the inferred historic return interval would be less frequent than 1 in 100 years.

A5.3.4 Landslide Hazard

The property has a ‘moderate’ susceptibility to landslides. The susceptibility to slope instability has been assessed against the slope and rock/soil types.

A5.3.5 Information not Included

There was no information provided on climate change and sea level rise and the possibility for an increase in storm surge, inundation, or flooding in the area.
CALIFORNIA NATURAL HAZARD DISCLOSURE STATEMENT

This is a disclosure statement for the following property: ____________________________

The transferor and his or her agent(s) or a third-party consultant disclose the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase the subject property. Transferor hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

The following are representations made by the transferor and his or her agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the transferee and transferor.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency:
Yes _____ No _____ Do not know and information not available from local jurisdiction _______

AN AREA OF POTENTIAL FLOODING shown on a flood inundation map pursuant to Section 9859.5 of the Government Code.
Yes _____ No _____ Do not know and information not available from local jurisdiction _______

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.
Yes _____ No _____

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4294 of the Public Resources Code. Additionally, it is not the owner's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.
Yes _____ No _____

AN EARTHQUAKE FAULT ZONE pursuant to Section 2822 of the Public Resources Code.
Yes _____ No _____

A SUBSIDENCE HAZARD ZONE pursuant to Section 326 of the Public Resources Code.
Yes (Landslide Zone) ______ No ______ Map not yet released by state _______
Yes (Liquefaction Zone) ______ No ______ Map not yet released by state _______

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THESE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Signature of Transferor(s) ____________________________ Date ____________________________

Agent(s) ____________________________ Date ____________________________

Agent(s) ____________________________ Date ____________________________

Check only one of the following:

____ Transferor(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).

____ Transferor(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party consultant as required in Civil Code Section 11037, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party consultant as a substituted disclosure pursuant to Civil Code Section 11034. Neither transferor(s) nor their agent(s) (1) has independently verified the information contained in this statement and report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the party below.

Third-Party Consultant Provider(s) ____________________________ Date ____________________________

Transfers represents that he or she has read and understands this document.

Pursuant to Civil Code Section 11038, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the transferor's or agent's disclosure obligations in this transaction.

Signature of Transferor(s) ____________________________ Date ____________________________

Signature of Transferor(s) ____________________________ Date ____________________________

This disclosure sheet comprises a small part of the disclosure itself. The reports that accompany this document are generally quite lengthy, and provide the technical context on which the disclosure statement is made. The disclosure statement sheet has been included to highlight other methods for communicating natural hazards information during the sale and purchase of property.
Principal Location
1 Fairway Drive
Avalon
PO Box 30368
Lower Hutt
New Zealand
T +64-4-570 1444
F +64-4-570 4600

Other Locations
Dunedin Research Centre
764 Cumberland Street
Private Bag 1930
Dunedin
New Zealand
T +64-3-477 4050
F +64-3-477 5232

Wairakei Research Centre
114 Karetoto Road
Wairakei
Private Bag 2000, Taupo
New Zealand
T +64-7-374 8211
F +64-7-374 8199

National Isotope Centre
30 Gracefield Road
PO Box 31312
Lower Hutt
New Zealand
T +64-4-570 1444
F +64-4-570 4657

www.gns.cri.nz