6. PROPOSED PROTOCOL - NOTIFICATION OF INFORMATION ADDED TO LIMS

Officer responsible	**Author**
General Manager Regulation and Democracy Services	Jane Donaldson, Environmental Services Manager, DDI 941-8651

The purpose of this report is to enable the Committee to consider whether or not individual landowners ought to be advised whenever new information is added to their property records, and if so, under what circumstances.

BACKGROUND

The Committee will be aware of complaints received from time to time from property owners who have discovered new information has been added to their property record. This becomes apparent when they are in the process of selling their property and the new or amended information appears on the Land Information Memorandum (LIM).

This issue has come to the fore more recently during the Council's consideration of former landfill sites. On 20 November 2003, the Council resolved (inter alia);

- That the Council develop a protocol as to the circumstances under which it will advise individual landowners of information which is added to their property files, and that this protocol be reported back to the Council by the Regulatory and Consents Committee.

- The Committee consider and make a recommendation about the matter of the Council writing to potentially affected landowners concerning possible contamination issues affecting their properties.

This report addresses both of the above Council resolutions.

STATUTORY FRAMEWORK

Land Information Memoranda (LIMs)

Section 44A of the Local Government Official Information and Meetings Act 1987 requires territorial authorities to provide LIMs upon request. A LIM contains information on a property such as hazards, outstanding requisitions, planning and building approvals and annual rates. In short, each territorial authority is required to include in LIMs all of the information known to it, with the exception of information contained in its District Plan. A territorial authority may also provide other information concerning the land if it considers it to be relevant.

Project Information Memoranda (PIMs)

Sections 30 and 31 of the Building Act 1991 require territorial authorities to provide PIMs for any building work for which a building consent is required. The PIM contains information likely to be relevant to the proposed building work.

Building Act 1991

Section 27 of the Building Act requires territorial authorities to keep reasonably available information which is relevant to the administration of the Act, to enable the public to be informed of their obligations and to participate effectively under the Act.

Health Act 1956

The Council has a number of obligations under the Health Act. Of particular relevance to this issue is section 23, which places an obligation on territorial authorities to promote public health in their districts and to cause inspections to be carried out. It also requires the Council to ensure that proper steps are taken to secure the abatement of a nuisance, or the removal of a condition which is likely to be injurious to health or offensive.

Council officers have had discussions with Riskpool and Simpson Grierson regarding the Council's public law obligations under the Health Act. Those discussions have confirmed that:

(a) If there are issues under the Health Act, then the Council has an obligation to advise the landowners of any information the Council holds to enable them to make a choice as to what steps they may wish to take. (This is also the advice that Dr Brieseman gave at the Council seminar on former landfill sites held on 16 October 2003.)

(b) If there are not any Health Act issues involved, then the Council has a discretion as to whether or not the information it acquires is provided to landowners, and when it is provided to landowners.

THE LIM PROCESS

Christchurch City has approximately 150,000 properties and 171,000 land parcels (some properties, such as the University of Canterbury, comprise more than one land parcel, hence the higher number of land parcels than properties).

The Council's electronic Geographic Information System contains 50 data layers with 44,697 records. Overall the system contains 731,299 land characteristic comments that appear on LIMs and PIMs. Approximately 2,500 to 3,000 new land parcels are created each year, and 10,000 to 15,000 land characteristic comments are added to those new land parcels. Another 10,000 to 20,000 amendments are made to existing land characteristic comments each year.

Land characteristic information is grouped into 50 different categories ranging from City Plan details (zoning, waterways, airport noise contours etc) to bearing assessments, contamination, cost sharing schemes, snow loading and sea spray zones, erosion and flooding. Approximately half of all new land characteristic information comes from regulatory processes, especially building consents and subdivisions. A fair portion of the other half is administrative detail such as rubbish day, ward and location of property files. The remainder is collated as a result of complaints and inquiries. Complaints about flooding after heavy rain, for example, are added to property records.

On average, approximately 122,000 land characteristic comments appear on 7,500 PIMs and 15,000 LIMs per year. The number of complaints about the information contained in LIMs ranges from 10 to 20 per year.

THE PIM PROCESS

Although PIMs and LIMs contain essentially the same data, the difference is that LIMs focus on the property and PIMs focus on the proposed building project. For example, a LIM may state that a property is in an area known to have soft ground. The PIM would state the same thing, but would go on to say that a soil test will be required to establish the safe bearing pressure for the proposed building.

VIEWS OF OTHER COUNCILS AND RISKPOOL

Prior to writing this report, other Councils were canvassed to determine what their respective practices are in this regard. Most do not advise property owners when information is added to their property records, although two Councils advised that they do if the site is subject (or likely to be subject) to a constraint but there is no hard evidence of that fact. This includes land that is contaminated, or potentially contaminated. Generally, the Councils that responded do not advise property owners when information is added which records undisputed and documented events, such as a slip, flood or building subsidence.

Comments received from other Councils include the following:

- Councils' primary duties are to LGOIMA and future owners rather than current owners.
- There is no legal requirement for Councils to proactively advise owners when information is added to their property records (with the exception of Health Act issues, as discussed above).

- If a Council adopted a protocol of advising owners of new or amended information, it could expose itself to potential claims through inadvertent failures to notify. Any resulting litigation is likely to outweigh the current disadvantage of criticism about failure to notify. Further, given the Council's excess of $10,000 on its professional indemnity policy, the Council will need to meet the cost of such inadvertent failures.

The Council's insurer, Riskpool, does not support the concept of advising landowners whenever information is added to their property records unless the Council is fulfilling its obligations under the Health Act. Riskpool believes such a practice would leave the Council open to claims.

OPTIONS

Option 1

The Council could continue with the status quo. That is, not notify property owners when new or amended information is added to their property records.

- **Advantages**
    - This follows legal advice generally in that it reduces the Council's exposure to claims (although it may leave the Council open to claims that it has breached its obligations under the Health Act).
    - There would be no additional costs to the Council.
    - This option does not set a precedent in terms of deciding when property owners ought to be advised of new information.
    - This option is supported by Riskpool.
- **Disadvantages**
    - Property owners may not be aware of information held on their property file until such time as a LIM is obtained by a prospective purchaser.
    - Possible claims that the Council has breached its obligations under the Health Act by not advising property owners of a condition which is likely to be injurious to health.

Option 2

The Council could notify owners every time new information is added to their property record.

- **Advantages**
    - Property owners would be made aware of all the information held on their property file and a LIM would present no surprises.
- **Disadvantages**
    - The Council would be exposed to liability issues if it inadvertently omitted to notify a property owner of new information.
    - The cost of administering this option is very high. Based on the figures outlined in the section earlier in this report on the LIM process, it is estimated that at least 20,000 to 35,000 letters would be sent annually. Sometimes this number would be considerably higher. For example, the recent introduction of the Halswell Sewer Cost Sharing Area, which covers roughly three-quarters of the city, would have necessitated 100,000 letters. It is estimated that two additional FTE's would be needed to write the letters and deal with the telephone inquiries that would inevitably follow. Salaries and overheads would total approximately $140,000 per annum.
    - There may be more cost effective ways of advising owners of certain types of new or amended information, such as the newspapers, City Scene or inserts in rates demands.
    - New or amended information relating to land development is usually made known to applicants through the PIM process before they embark on a building project. Such information typically includes soil conditions, any known hazards, geotechnical reports and the like. A letter advising owners that this information was being added to their property record would be telling them the same thing twice.
    - Advising owners every time information is added to their property record may over time lead to a general reluctance by the public to complain or report problems to the Council, for fear of adversely affecting their property record.
    - This option is not supported by Riskpool.

Option 3

The Council could notify landowners when new or amended information is added to their property records which has, or may have, implications under the Health Act. An obvious example is former landfill sites, or former horticultural sites.

This option was explored by Ms Karilyn Shutt in a report on former landfills and other filled sites to the Strategy and Finance Committee meeting on 10 November 2003.

- **Advantages**

    - It is following most of the legal advice (but not all).
    - It is likely to involve less cost to ratepayers than option two (but more cost than option one).
    - It recognises that the health issues are manageable by giving people good advice.
    - It may be seen as being fairer to landowners than option one, as it lets people know in advance of changes to the LIM information (as opposed to the landowners only finding out when they go to sell their property).
    - It may reduce the potential impact of Environment Canterbury's proposal to write to all landowners identified on Environment Canterbury's contaminated sites register.

- **Disadvantages**

    - This option could accelerate claims that might not otherwise arise until some future date (if at all), or which may have become statute barred.
    - It could increase the likelihood of a class action given that this issue is likely to be considered by a larger number of landowners at one time (rather than on a case by case basis as LIMs are issued).
    - It is likely to generate a significant number of telephone inquiries and requests for meetings, which would require additional staff. At present, there are insufficient staff with expertise in this area to be able to deal with such inquiries. It is estimated that one additional FTE would be required for one year. The cost, including overheads, would be approximately $90,000. Once the former landfill sites had been dealt with, future additions of information with possible implications under the Health act could be managed with existing resources.
    - It may be very difficult to manage from a public relations perspective in that owners of properties on former landfill sites will not want this information appearing on LIMs, and they may expect the Council to remediate their land.

SUMMARY

On balance, option three is considered to be the most viable. Option one (status quo) may not fulfil the Council's obligations under the Health Act and fails to give property owners an opportunity to make informed choices about the use of their land. Whilst option three is likely to be difficult to manage from a public relations perspective and may accelerate claims, at least property owners will be informed and, to some extent, will be able to choose what they wish to do about it.

Option two has a number of significant disadvantages and is not considered to be a viable option, particularly when the number of complaints received about the information contained in LIMs is so small. The most serious complaints would in any case be mostly covered by the adoption of option three.

If option three is adopted, it is proposed that property owners on former landfill sites be advised in batches as the desktop study moves across the city.

Staff Recommendation:

1. That as of 1 March 2004 the Council advise individual property owners when new or amended information is added to their property records which in the opinion of the Team Leader Environmental Effects or the Knowledge Integration Team Leader has, or may have, implications under the Health Act.

2. That the Council write to the owners of properties on former landfill sites advising of possible contamination issues.

3. That Environment Canterbury be advised of the Council's decision.

Chairman's Recommendation: That the recommendation above be adopted.