**Proposal to amend long-term plan requirements for specified councils**

We are consulting on a proposed temporary change to the Local Government Act 2002 (LGA) allowing specified councils to decide on making voluntary buyouts to owners of properties that have been severely impacted by weather events in 2023, without having to amend their long-term plans (LTPs) as required by the LGA.

The change will also clarify that the exemption provided to specified councils by clause 8 of the Severe Weather Emergency Recovery (Local Government) Order 2023 applies to decisions about FOSAL buyouts and a LTP amendment is not required.

We are preparing an Order in Council (Order), under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), to clarify that Auckland Council, Central Hawke’s Bay District Council, Gisborne District Council, Hastings District Council, Thames-Coromandel District Council, Wairoa District Council, Hawke’s Bay Regional Council (the specified councils) are not required to amend their LTP to accommodate buyouts. Section 97 of the LGA prevents a council from starting a new significant activity or significantly changing existing service levels if these were not included in the council’s LTP. Given their scale and costs, land purchases could be a new significant activity for the specified councils above or would significantly impact some of the council’s existing services.

Public consultation on this proposal and the draft Order will be open on 24-31 August 2023.

**Why is this change necessary?**

The proposed Order is needed to enable the specified local authorities to act quickly on making buyout offers to property owners severely impacted by recent weather events. It would provide certainty for these specified homeowners and communities, many of whom have been unable to occupy their properties for several months. It would also ensure that the process to resolve the future of damaged and at-risk land progresses without additional delays.

Temporarily suspending the requirement to amend the LTP for the buyout process provides regulatory relief to the specified councils. There is also limited benefit in requiring the specified councils to complete the LTP amendment process with the information currently available.

**Background to the issues requiring an Order in Council**

Under section 97 of the LGA, councils may not commence a new significant activity or significantly change service levels of an existing activity if these were not provided for in the council’s LTP. This would require councils to go through a LTP amendment process before undertaking any new activities or changing service levels.

As part of its cyclone recovery efforts, Auckland Council intends to start making buyout offers to the owners of Category 3 properties under the Future of Severely Affected Land (FOSAL) programme before the end of 2023. However, there are concerns that FOSAL purchases would trigger section 97 of the LGA. The Department of Internal Affairs (DIA) considers that this is likely, due to estimates of the costs involved and the number of properties affected. DIA would also like to clarify that the existing exemption for the specified councils outside of Auckland continues to apply.

Having to amend the LTP requires consultation using the special consultative procedure and an audit review of both the consultation document for the amendment and the final amendment itself. Satisfying these requirements would take a considerable amount of time, effectively delaying the work on FOSAL purchases. Proceeding without complying with these requirements would expose the effected local authorities to the risk of its decision being challenged in the Courts for not being consistent with section 97.

DIA investigated different options to support the specified councils in providing certainty to impacted property owners as soon as possible. Of these options, the proposed Order will enable the effected councils to act sooner on its buyout decisions without exposing themselves to unnecessary legal risks.

**What would the proposed Order include?**

The proposed Order would exempt the specified councils from section 97 of the LGA until 30 June 2024. The purpose of this amendment is to enable the specified councils to make decisions on whether to make voluntary buyouts to property owners for properties that have been severely impacted by severe weather events in 2023, without having to go through the prescribed process for amending its LTP.

The specified councils would not be exempted from all consultation requirements in the LGA. The specified councils would still be required to consult in a way that complies with the LGA. The proposed Order would not require a particular consultation procedure to be followed. It is for each Council to determine what form of consultation is appropriate in the circumstances.