



APPENDICES MINUTES

**Audit and Risk Sub-committee
Meeting**

Thursday, 25 February 2021

Table of Contents

11.1	Update On Litigation Status, Statutory Compliance Issues, Investigations	
	Appendix 1	Update on litigation status, statutory compliance issues, investigations..... 4

**PUBLIC EXCLUDED AUDIT AND RISK SUB-COMMITTEE MEETING
AGENDA**

25 FEBRUARY 2021

**11.1 UPDATE ON LITIGATION STATUS, STATUTORY COMPLIANCE ISSUES,
INVESTIGATIONS**

Author: Tim Power, Senior Legal Counsel

Authoriser: Janice McDougall, Group Manager People and Partnerships

Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in Section 48(1)(a)(i) of the <i>Local Government Act 2002</i> .
Sub-clause and Reason:	Section 7(2)(a), Section 7(2)(b)(ii), Section 7(2)(g) and Section 7(2)(h) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons, the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information, the withholding of the information is necessary to maintain legal professional privilege and the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities.

PURPOSE OF REPORT

- 1 This report provides the Audit and Risk Subcommittee with:
 - a) an update on issues associated with legislative compliance declarations made to external auditors Ernst and Young for legislation selected by the auditors as 'key' acts;
 - b) an overview of the progress of any current investigations by the Office of the Ombudsman and the Office of the Privacy Commissioner; and
 - c) a litigation status report.

BACKGROUND

Legislative Compliance Declarations – Statutory Compliance Issues

- 2 Each quarter, Group Managers complete a legislative compliance declaration setting out the significant legislative requirements and declare whether or not, to the best of their knowledge, they are aware of any compliance issues or breaches of legislation during the previous three-month period in respect of the acts determined as 'key' by the Council's external auditors.
- 3 Those 'key acts' are:
 - Local Government Act 2002;
 - Local Authorities (Members' Interests) Act 1968;
 - Local Government (Rating) Act 2002;
 - Local Government (Financial Reporting and Prudence) Regulations 2014;
 - Building Act 2004; and
 - Resource Management Act 1991.
- 4 The declaration does not include instances when Council has exceeded statutory time frames for processing resource and building consent applications as reported to the Council's Strategy and Operations Committee in regular quarterly reports.

**PUBLIC EXCLUDED AUDIT AND RISK SUB-COMMITTEE MEETING
AGENDA****25 FEBRUARY 2021****Ombudsman, Privacy Commissioner Investigations and the Privacy Act 2020**

- 5 Council staff also track the receipt and management of investigations being carried out by the Ombudsman or Privacy Commissioner in relation to any complaints received about the actions of the Council.
- 6 Under the Ombudsmen Act 1975, the Ombudsman can investigate complaints about the administrative acts and decisions of central and local government agencies. Under the Official Information Act 1982 and the Local Government and Official Information and Meetings Act 1987 (LGOIMA), the Ombudsman can also handle complaints and investigate the administrative conduct of these agencies in relation to official information requests. Official information requests received by the Council fall under LGOIMA.
- 7 The Privacy Commissioner administers the Privacy Act 2020 (Privacy Act) which has recently replaced the Privacy Act 1993. The Privacy Act governs how individuals, organisations and businesses collect, use, disclose, store and give access to personal information. The Privacy Commissioner can investigate complaints about actions that may breach the provisions of the Privacy Act. The Privacy Act has also provided a process, very similar to that in the LGOIMA, that councils must follow when responding to requests made by individuals wanting access to their own personal information.

Additional Investigations/Mediations or Other Compliance Matters

- 8 Council staff will also report on any additional investigations or mediations carried out by other external agencies as well as inform the Subcommittee of any other relevant compliance matters, including a status update of current litigation against the Council.

DISCUSSION**Legislative Compliance Declarations**

- 9 There have been two small events of non-compliance of the Resource Management Act 1991 relating to WGN970255(05)-KCDC Paraparaumu WWTP; consisting of discharge to Mazengarb Drain (condition 18 – suspended solids). The Greater Wellington Regional Council have been advised of the breach.
- 10 In our previous report to the committee we advised that at the end of first quarter there were 76 swimming pools that were overdue for an inspection. We are now up to date with swimming pool inspections and there is no backlog.

Ombudsman and Privacy Commissioner Investigations

- 11 At the time of writing this report, there are no current investigations being carried out by either the Ombudsman or the Privacy Commissioner. During the quarter one Ombudsman investigation was resolved. Details of that investigation are set out in Appendix [A]. The Office of the Ombudsman has recently issued his six monthly report on current and completed investigations into LGOIMA complaints. The report shows that there were 3 complaints logged in relation to Kapiti Coast District Council. All those complaints have been resolved during the investigation stage. A copy of these reports will be emailed out to members.

Current Litigation

- 12 A summary of current litigation involving the Council is attached as Appendix [B].

CONSIDERATIONS**Policy considerations**

- 13 There are no policy considerations in relation to the information provided in this report.
- 14 Council interaction with the Office of the Ombudsman and the Office of the Privacy Commissioner is managed through Council's in-house legal team.

**PUBLIC EXCLUDED AUDIT AND RISK SUB-COMMITTEE MEETING
AGENDA**

25 FEBRUARY 2021

- 15 The legal requirements of LGOIMA, LGA 2002 and the Privacy Act are well established in the Council's processes.

Financial considerations

- 16 There are no financial considerations in relation to the information outlined in this report outside of any litigation liabilities stipulated in Appendix [B] of this report.

Tāngata whenua considerations

- 17 There are no direct tāngata whenua considerations in relation to the information in this report.

SIGNIFICANCE AND ENGAGEMENT

Significance policy

- 18 This report is for the purpose of providing information only and does not trigger the Council's Significance and Engagement policy.

RECOMMENDATIONS

- 19 That the Audit and Risk Subcommittee:
- 19.1 **note** that there were minor compliance issues associated with discharge into the Mazengarb Stream. The Greater Wellington Regional Council was advised of the breaches;
 - 19.2 **note** the current status of Ombudsman and Privacy Commissioner investigations and litigation;
 - 19.3 **agree** that this report and resolutions only be released from public excluded business; and
 - 19.4 **agree** that Appendices [A] and [B] of this report, be excluded from public release.

APPENDICES

- 1. Appendix A - Ombudsman and Privacy Status
- 2. Appendix B - Litigation Status