



APPENDICES MINUTES

**Audit and Risk Sub-committee
Meeting**

Thursday, 3 March 2022

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Comments to KCDC's Audit and Risk Committee
3 March 2022

Paul Dunmore

This is a personal comment, not on behalf of any organisation. I am a retired accounting professor with a long-standing interest in audit, risk and internal control issues.

General comment

First, I congratulate the Council and its staff on the progress that has been made in the approach to risk management over the last few years. This is a continuing journey, not something that will be finished and can be set aside. My comments may be more useful for future iterations of the risk management document, rather than proposing changes for the current year.

I was particularly pleased to see that risk is correctly described¹ as “the effect of uncertainty on expected results”, which is consistent with the international standard on risk management. Council’s RMA work (including on climate change) is being hampered by adherence to an unsatisfactory old definition “consequences multiplied by likelihood”, which cannot be made to fit many important cases.

The framework appears to reflect a serious effort to identify risks and to make realistic guesses about the uncertainty of each and the effect that it would have on KCDC’s expected results. No doubt all of this will improve with experience of working with the framework.

SR 1 in the Risk Management Framework

The one item that seems to be causing difficulty is SR 1 “Natural hazards exacerbated due to global warming, sea level rise, climate change, and earthquakes.”² This is actually two different items with different time scales. Storms, earthquakes (and probably tsunamis) could happen this month, but almost certainly will not. The effects of climate change will happen over the coming decades and are roughly predictable even now, and will become more accurately predictable as time passes. The risks are different and need to be thought about separately.

Storms have always occurred, occur today, and will occur in the future. Council is responsible for building and maintaining infrastructure which can cope. That is business as usual: very broadly, the risk is that infrastructure will not cope, and that must be addressed by Council’s design, maintenance and replacement policies. Private property owners are responsible for their own assets; that is not a core responsibility of Council, except so far as Council’s own buildings are concerned.

Climate change will gradually alter the range and frequency of these events. Over time, the nature of Council’s infrastructure will gradually have to be modified to cope. Places with more storm-prone climates already have such infrastructure. That is also business as usual: the risk is that infrastructure will not cope, and that must be addressed by Council’s design, maintenance and replacement policies over the coming decades. Private property owners are responsible for their own assets.

1 8.4 Risk Management, para 6.

2 8.4 Risk Management Appendix 2, p. 45.

Sea-level rise is a new risk, which threatens both infrastructure and private property. My present guess is that my house will become uninhabitable in 70-100 years from now. The cost of that is part of the cost of living where I do; I think that my share of that cost is reasonable, given the benefits that I receive from where I live. The cost will be shared out between successive owners of the house, as each new purchaser decides how much she values the location and how much longer the property will be useable, and therefore decides what price she is willing to pay. If the house is allowed to run to the end of its useful life, allowing for sea-level rise, there is no particular loss to any of the homeowners, including the last one. This is no different from a car, which passes through successive owners until it must be thrown away. There is no loss at the end of the car's life, and no cause to compensate the last owner.

What Council can usefully do to assist the successive owners is to provide good information about the effects of sea-level rise on the property and on the infrastructure that it depends on. It would be quite wrong for Council to put its thumb on either side of the scale when a property is being sold; all that this could achieve is to make either the buyer or the seller better off at the expense of the other. There is no social benefit to this, and it does nothing to affect the costs of climate change.

Similarly, there will be no "massive disruption" as a result of sea-level rise, because it is predictable long before it happens. Provided Council and property owners make sensible "business-as-usual" decisions, any losses will be small and manageable. This is quite different from storms and earthquakes, which do cause massive disruption because they are unpredictable.

To summarise: the risks of sea-level rise are all about people not having the right information or not making the right decisions; these risks are much less ("Possible" and "Moderate" rather than "Likely" and "Catastrophic", one would hope), and can be mitigated by a systematic programme of developing improved information, disseminating it widely, and taking account of it in Council's own investment decisions.

So SR 1 bundles different kinds of risk, which need different kinds of mitigation. In future editions of the risk framework, I encourage Council to separate SR 1 accordingly.

Self-insurance

Both the Insurance Overview and the Risk Management Framework refer to self-insurance. It is important that councillors understand that self-insurance is not insurance at all. It actually means that the risk falls on the Council, and that if an insured event occurs then the Council has to find the money. This is quite different from real insurance, where Council gets the money from an unrelated insurance company.

If Council actually held cash in a self-insurance fund, then after a major disaster Council could draw on that cash as an alternative to having to borrow more to make uninsured repairs. That is a very marginal benefit, since there is no reason to suppose that the credit markets would suddenly freeze up. But in fact, it appears that there is no cash fund. The 2020-21 financial statements make no mention of an insurance reserve, and note 13 (5) is explicit that "Council does not ... administer or hold a restricted self-insurance fund." According to the staff report³ "The Council has a self-insurance reserve on its balance sheet, which as at 30 June 2021 stood at \$312,000." What this appears to mean is that the Accumulated Funds of \$596 million, which overwhelmingly represents Council's investment in property plant and equipment, has an unpublished breakdown which includes a line of \$0.3 million called Self-Insurance Reserve. There is no self-insurance money to be spent in the event of a major loss.

³ 8.1 Insurance Overview, para 19.

The staff recommend that Council investigate ways of formalising the self-insurance model by setting up a captive or protected cell entity to provide some of the Council's insurance. I suggest that Councillors view such proposals with extreme caution, even if they are recommended by professional advisers. There is passing reference⁴ to "a specialised regulatory environment – a domicile", which implies that Council will be asked to set up some sort of offshore subsidiary. The typical commercial reasons for doing that are to dodge taxes or to evade regulations intended to protect policyholders. Either of these can genuinely reduce the cost of insurance, but neither is something that I would want my Council to engage in.

KCDC has an unhappy record of investing in loss-making commercial projects, where the usual story turned out to be that Council was providing risky capital but accepting a risk-free (or worse) return. Costs and risks do not magically vanish: Councillors should not approve any proposal unless they understand exactly who is absorbing the costs or risks that Council thinks it is passing on, and what these other parties get out of it. If there is no other party, then Council is not reducing its costs or risks at all, merely hiding them in some way.

⁴ 8.1 Insurance Overview, para 24.

PUBLIC EXCLUDED AUDIT AND RISK SUB-COMMITTEE MEETING
AGENDA

3 MARCH 2022

11.1 UPDATE ON LITIGATION STATUS, STATUTORY COMPLIANCE ISSUES AND INVESTIGATIONSKaituhi | Author: **Sarah Wattie, Governance & Legal Services Manager**Kaiwhakamana | 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 Official Information and Meetings Act 1987</i> .
Sub-clause and Reason:	Section 7(2)(a), Section 7(2)(b)(ii) and Section 7(2)(g) - 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 and the withholding of the information is necessary to maintain legal professional privilege.

TE PŪTAKE | PURPOSE

- 1 This report provides the Audit and Risk Subcommittee with:
 - a) an update on statutory compliance declarations across key legislation relevant to local government;
 - 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.

HE WHAKARĀPOPOTO | EXECUTIVE SUMMARY

- 2 There is no Executive Summary.

TE TUKU HAEPAPA | DELEGATION

- 3 The Audit and Risk Subcommittee has delegated authority to consider this report under the following delegations in the Governance Structure, Section C.1.
 - considering regular reports on the status of investigations by the Office of the Ombudsman into decisions by the Council
 - ensuring that Council has in place a current and comprehensive risk management framework and making recommendations to the Council on risk mitigation
 - assisting elected members in the discharge of their responsibilities by ensuring compliance procedures are in place for all statutory requirements relating to their role.

TAUNAKITANGA | RECOMMENDATIONS

- A. That the Audit and Risk Subcommittee:
 - A.1 **note** the information on the Council's legislative compliance declarations;
 - A.2 **note** the current status of Ombudsman and Privacy Commissioner investigations, other compliance matters and litigation;
 - A.3 **agree** that this report and resolutions only be released from public excluded business; and
 - A.4 **agree** that Appendix A and B of this report, be excluded from public release.

**PUBLIC EXCLUDED AUDIT AND RISK SUB-COMMITTEE MEETING
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The purpose of local government under clause 10(1) of the Local Government Act 2002 is to enable democratic local decision-making and action by, and on behalf of, communities; and to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future; legislative compliance with central Government's legislative and regulatory programme supports Council to do this in a fair and efficient manner.

Legislative Compliance Declarations – Statutory Compliance Issues

- 4 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.
- 5 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.
- 6 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.

Ombudsman and Privacy Commissioner Investigations

- 7 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.
- 8 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.
- 9 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

- 10 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.

**PUBLIC EXCLUDED AUDIT AND RISK SUB-COMMITTEE MEETING
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- 11 There have been no compliance issues or breaches identified during the second quarter of 2021/22 in relation to the Council's compliance with the Local Government Act 2002, Local Authorities (Members' Interests) Act 1968, Local Government (Financial Reporting and Prudence) Regulations 2014 and the Resource Management Act 1991.
- 12 In relation to the Local Government (Rating) Act 2002, it is noted that:
 - 12.1 Given we have volumetric water charges, we do not fully comply with the Local Government (Rating) Act 2002 that requires the Council to fully assess each property's total rates for the rating year.
- 13 In relation to the Building Act 2004, it is noted that:
 - 13.1 Takiri North was without a Code of Compliance Certificate for a brief period and 17 Amohia St (new building purchased) had a non-compliant Building Warrant of Witness Certificate due to non-operational Fire Exit door. Both of these were remedied as soon as practical.
- 14 In relation to the Local Government Official Information and Meeting Act 1987, it is noted that:
 - 14.1 there was one instance of non-compliance with the statutory timeframes; the request was received through another email channel and not sent on to the LGOIMA team until after the deadline.
- 15 In relation to the Privacy Act 2020, it is noted that:
 - 15.1 there was an unauthorised disclosure that constituted a significant breach of the Act due to actions taken by an employee in breach of Council's Privacy Policy. This was disclosed to the Privacy Commissioner as required under the Act.

Ombudsman and Privacy Commissioner InvestigationsOmbudsman Investigations

- 16 During the reporting period, we have received two new investigation notifications from the Office of the Ombudsman. We have a total of one open Privacy complaint and four open LGOIMA complaints.
- 17 Additional information on the Ombudsman and Privacy Commissioner investigations can be found in Appendix A.

Additional Investigations/Mediations or Other Compliance Matters

- 18 During the previous reporting period, we drew the Committee's attention to two matters that were being considered by the Office of the Auditor-General.
 - 18.1 The first matter related to a disclosure under the Protected Disclosures Act 2000. The OAG declined to investigate that matter.
 - 18.2 The second matter related to the decision-making process by which Council resolved to enter into a loan facility with Air Chathams. After reviewing information provided by Council the OAG advised that they were satisfied with the decision-making process.

Current Litigation

- 19 A summary of current litigation involving the Council is attached in Appendix B.

He take | Issues

- 20 No issues are considered in this report.

**PUBLIC EXCLUDED AUDIT AND RISK SUB-COMMITTEE MEETING
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- 21 No options are provided in this report.

Tangata whenua

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

Panonitanga āhuarangi | Climate change

- 23 There are no climate change considerations triggered by this report.

Ahumoni me ngā rawa | Financial and resourcing

- 24 Other than what is set out in the Appendices, there are no further financial and resourcing considerations arising from this report.

Ture me ngā Tūraru | Legal and risk

- 25 There are no further legal considerations arising from this report.

Ngā pānga ki ngā kaupapa here | Policy impact

- 26 There are no policy considerations in relation to the information provided in this report.
- 27 Council interaction with the Office of the Ombudsman and the Office of the Privacy Commissioner is managed through Council's Governance and Legal Services team.
- 28 The legal requirements of LGOIMA, LGA 2002 and the Privacy Act are well established in Council's processes.

TE WHAKAWHITI KŌRERO ME TE TŪHONO | COMMUNICATIONS & ENGAGEMENT**Te mahere tūhono | Engagement planning**

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

Whakatairanga | Publicity

- 30 There are no publicity considerations.

NGĀ ĀPITI HANGA | ATTACHMENTS

1. Appendix A – Ombudsman and Privacy Commissioner Investigations
2. Appendix B – Litigation Status