



APPENDICES MINUTES

**Risk and Assurance Committee
Meeting**

Thursday, 23 May 2024

Lastly, I thoroughly reviewed the Legislative Compliance Report but found no reference to the Ombudsman's current investigation of this Council, reference 008701. I would appreciate your guidance on where to locate this information in the report.

Thank you.

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12.1 LITIGATION AND EXTERNAL INVESTIGATIONS REPORT

Kaituhi | Author: **Sarah Wattie, Governance & Legal Services Manager**

Kaiwhakamana | Authoriser: **Mark de Haast, Group Manager Corporate Services**

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)(c)(i) 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 which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied and the withholding of the information is necessary to maintain legal professional privilege.

TE PŪTAKE | PURPOSE

- 1 The purpose of this report is to notify the committee of current litigation and external investigations involving Council.

HE WHAKARĀPOPOTO | EXECUTIVE SUMMARY

- 2 An executive summary is not required.

TE TUKU HAEPAPA | DELEGATION

- 3 The Risk and Assurance Committee has the delegated authority to consider this report under section C 3 of the Governance Structure and Delegations document for the 2022-2025 triennium. These delegations include:
 - 3.1 Assisting elected members in the discharge of their responsibilities by ensuring compliance procedures are in place for all statutory requirements relating to their role
 - 3.2 Considering regular reports on the status of investigations by the Office of the Ombudsman, Privacy Commission, Office of the Auditor General and other external oversight bodies into decisions and actions by the Council.

TAUNAKITANGA | RECOMMENDATIONS

- A. That the Risk and Assurance Committee:
 - A.1 note the status of litigation and external investigations for quarter 3 of the 2023-24 financial year.
 - A.2 Note the approach to the proactive release of information in this report in keeping with guidance from the Office of the Ombudsman New Zealand.
 - A.3 agree that Attachment 1 and Attachment 2 of this report be excluded from public release to protect the privacy of natural persons, the obligation of confidence and legal professional privilege (Section 7(2)(a), Section 7(2)(c)(i) and Section 7(2)(g) of the Local Government Official Information and Meetings Act 1987).

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A.4 agree that only this report and Attachment 3 of this report be released from public excluded business.

A.5 agree that the resolutions be released from public excluded business.

TŪĀPAPA | BACKGROUND

- 4 Council's legal function is responsible for managing litigation and external investigations from oversight bodies such as the Ombudsman, Privacy Commission and Office of the Auditor-General.
- 5 Legal risks levels have been assigned to litigation and external investigations in this report. Legal risk is measured by a combination of significance, impact and the likelihood of legal risks occurring. Significance is determined by strategic alignment and importance to organisational objectives.
- 6 The risk levels are set out below:

Level Risk Levels	
Extreme	<ul style="list-style-type: none"> • Material impact to impact to financial, legal, commercial, operational outcomes or reputation at an organisational level. Exposure to be resolved at Group Manager or Governance level with input from Legal.
High	<ul style="list-style-type: none"> • Moderate or material impact to financial, legal, commercial, operational outcomes at activity or group level. Likely reputational impact. Exposure to be resolved at Group Manager level with input from Legal.
Moderate	<ul style="list-style-type: none"> • Moderate impact to financial, legal, commercial, operational outcomes at an activity or functional level. Possible reputational impact. Exposure likely to be resolved at Tier 3 Manager level with input from Legal.
Low	<ul style="list-style-type: none"> • No or minimal impact to financial, legal, commercial, operational outcomes at an activity or functional level. No reputation impact. Exposure likely to be resolved at Manager or Tier 3 level with input from Legal where required.

HE KŌRERORERO | DISCUSSION

Litigation update

7 A summary of current litigation involving the Council is set out in Attachment 1 to this report.

External investigation update

8 A detailed summary of external investigations is set out in Attachment 2 to this report.

9 A summary of current investigations relating to Council with the Ombudsman and Privacy Commissioner, for proactive release with this report, is as follows:

Issue	Type	External agency	Number
LGOIMA complaint – decision to withhold	Investigation	Ombudsman	2 open; 1 withdrawn in quarter
Ombudsman Act complaint – Council decisions/actions	Investigation	Ombudsman	3 open; 1 new in quarter
Ombudsman Act complaint – Council decisions/actions	Preliminary enquiry	Ombudsman	3 open; 2 new in quarter

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Issue	Type	External agency	Number
Privacy Act complaint – potential breach	Preliminary Enquiry	Privacy Commissioner	1 closed (new in quarter)

Approach to proactive disclosure

- 10 Council officers have assessed what information can be proactively released from this public excluded report. As part of this, officers have sought advice from the Office of the Ombudsman relating to the proactive release of ongoing external investigations.
- 11 The Ombudsman’s office publishes data on Ombudsman and LGOIMA complaints on a six-monthly basis, which contains a bare description of the Ombudsman case ID and ground ID, the nature of the complaint made, and whether the complaint is from an individual or otherwise. Where information Council proposes to release relates to an investigation that data has already been published by the Ombudsman, the Ombudsman has no concerns about release.
- 12 The Office of the Ombudsman referring to their secrecy and confidentiality obligations has advised that they would expect to be consulted prior to the information in Attachment 2 being proactively released. The Ombudsman’s office also requested that details on the status of each investigation not be released in line with their confidentiality and secrecy obligations. Consultation would need to take place after the report is published to ensure the currency of information in the report and based on prior consultation relating to Attachment 2, not much more than what is set out in the high-level summary at paragraph 9 could be released.
- 13 Based on this advice and administrative considerations for staff, officers have adopted the following approach:
 - 13.1 release a summary of litigation with redactions where required.
 - 13.2 provide a high-level summary of external investigations with the Office of the Ombudsman in the body of this report, which aligns to information the Ombudsman has indicated we are able to release (as set out in paragraph 9).

He take | Issues

- 14 There are no issues for this report.

Ngā kōwhiringa | Options

- 15 There are no options required for this report.

Mana whenua

- 16 Council has a partnership with local iwi and hapū on the Kāpiti Coast District represented by Te Rūnanga O Toa Rangātira, Ngā Hapū o Ōtaki and Āti Awa ki Whakarongotai Charitable Trust.
- 17 Council’s accountability to the community extends to its partnership with iwi and commitments made to reflect the obligations under Te Tiriti o Waitangi, as well as other obligations to Māori, mana whenua and tangata whenua under the Local Government Act 2002, Resource Management Act 1987 and other legislation.

Panonitanga āhuarangi | Climate change

- 18 There are no climate change implications arising directly from this report.

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Ahumoni me ngā rawa | Financial and resourcing

19 There are no financial implications arising directly from this report.

Tūraru ā-Ture me te Whakahaere | Legal and Organisational Risk

20 Except for the issues noted in this report, there are no other legal or risk implications.

Ngā pānga ki ngā kaupapa here | Policy impact

21 There are no policy implications arising directly from this report.

TE WHAKAWHITI KŌRERO ME TE TŪHONO | COMMUNICATIONS & ENGAGEMENT

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

Te mahere tūhono | Engagement planning

23 There is no requirement for engagement planning arising directly from this report.

Whakatairanga | Publicity

24 There are no additional publicity considerations arising directly from this report.

NGĀ ĀPITI HANGA | ATTACHMENTS

1. Attachment 1 - Litigation status quarter 3
2. Attachment 2 - External investigations status quarter 3
3. Attachment 3 - Litigation status quarter 3 redacted

Attachment 3 – Litigation status quarter 3 redacted

Key for LGOIMA declination	
7(2)(g)	Legal Professional Privilege - the withholding of the information is necessary to maintain legal professional privilege.

Litigation	Description	Status	Legal Risk Level	Legal Implications
Marine and Coastal Areas (Takutai Moana) Act 2001 (MCA) claims	Claims filed under MCA Legislation (replacement for foreshore and Seabed Legislation) by various Iwi claiming protected customary rights and customary marine title in foreshore areas.	4-5 applications covering the Kāpiti Coast District have been received. Crown Law Office taking the lead. Buddle Findlay acting for Council. Council has filed affidavit and submissions as an interested party. Hearing to commence in May 2024 with Grice J allocated to the hearing.	7(2)(g)	No cost implications for the Council.
Waikanae Land Company v KCDC	Waikanae Land Company appeal against Plan Change 2. Environment Court held that Council acted ultra vires in re-zoning the area comprising the Karewarewa Urupa as a 'qualifying matter' (waahi tapu) when notifying Plan Change 2 as an Intensification Planning Instrument (IPI) under the RMA. Council has appealed this decision.	Council has appealed Environment Court decision to the High Court. Hearing in February 2024. Johnston J reserved his decision expected by August/September at earliest.	7(2)(g)	No financial implications for Council (apart from legal costs associated with defending the proceedings). High level of interest among local authorities as to court ruling on Council's approach.
Green v KCDC	Appeal against abatement notice and application for stay of the notice regarding relocatable house on property without required consents.	Parties preparing evidence. Hearing set down for late May 2024.	7(2)(g)	No direct cost implications to Council.

Litigation	Description	Status	Legal Risk Level	Legal Implications
Rex Hamilton v KCDC	Appeal by owner against MBIE decision relating to KCDC decision to issue notice to fix.	Procedural matter. Hearing set down for 21 May 2024.	(2)(g)	No direct cost implications to Council.