



APPENDICES MINUTES

**Risk and Assurance Committee
Meeting**

Thursday, 23 May 2024

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Litigation and External Investigations Report

Appendix 1 Litigation and External Investigations Report 23 May 2024 (For Public
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Statement to Risk and Audit Assurance meeting Morning of 23rd May 2024 - John Andrews

Thank you for the opportunity to speak at the last hour.

I am not going to go through the detail of the Audit misstatements, and issues highlighted and brought to the Public's attention that is your choice as to whether you read it or not. Your choice as to whether you act on it or not, but based on experience KCDC is an authoritarian Council and will only do what its executive decrees and only gives lip service to publicly aired concerns.

I am astonished at the statements made by Ernst and Young, your Auditors, the misstatements, omissions, and lack of ability to check the evidence of your financial misrepresentation.

The fact remains that I have brought the Financial inequities and unfairness of how you strike the rating levies to yourself Mayor Holborow, and the three previous Mayors before you going back to 2005.

This time the wind has changed and I have chosen a different tack – but I will come back to that in a moment.

I refer to the statement on page 11 of the 2023-2024 Audit plan – “there is specific legislation which must be adhered to for the rates set to be lawful..” - one of the few true statements, thank you.

The Local Government Act 2002 refers to “Water Services” over 800 times, the LG Rating Act 2002 74 times. But neither of those two pieces of legislation refer to “**Equity**” or “**Fairness**” or “**Reasonableness**” so..... back to the mark.

My strategy has been to refer this to Ernst and Young's employer the Auditor General. Because of the inequity, unfair and misrepresented lies on the LTP I am requesting an opinion from the AG John Ryan and the Attorney General Judith Collins to establish the basis on which KCDC can charge ratepayers for water services that they do not and cannot provide to them.

“...is it Lawful for KCDC to charge Rural Ratepayers for Water Services that KCDC cannot and will not provide for them ...”

In conclusion

I strongly recommend you to set the rates at an absolute, FIXED rate per rating unit at a 12 % increase, not 50%, nor 24% not based on misrepresented “averages” or fabricated “medians” which have been misrepresented by you and EY from the LTP, but an absolute 12 %

For example if the KCDC rates are \$3000 last year then for the 2024 -2025 year the rates struck will be \$3360. I sincerely trust this is clear to you? so based on an absolute 12% to be true to the word that you have put out to the Kapiti Community and not the 17 - 50 % you are attempting to complicate Ernst and Young to cover up your mistakes.

Thank you

Thank you for taking the time to meet with me today. I will direct my discussion to the Legislative Compliance Report covering January 1 to March 31, 2024.

Two years ago, on 2nd June 2022, I addressed this committee concerning Jacobs' Reports Volume 1 and 2 - The Coastal Hazard Susceptibility and Vulnerability Assessment.

I clarified to the audit and risk committee that the Council lacked documentation, including the terms of reference or contract for these two volumes. I also emphasised that CRU had raised these concerns with the office of the Ombudsman, providing their reference number as 561464.

The Council admitted that it did not hold any records, so the Office of the Ombudsman's investigation was elevated to the Senior Investigation Team.

In April 2022, I informed the Council in writing that ratepayers had paid for a report that the Council neither commissioned nor contracted. I subsequently informed the audit and risk committee of that same fact on 2 June.

At that meeting at 44:43 minutes, there is a question from a committee member:

44:43 [question from a member of the committee]

"what I heard the person [Salima Padamsey] say was the Jacobs' had carried out work that wasn't commissioned but was paid for by Council. I'd like you to be quite explicit that was correct or wasn't it

At 45:07 there is a response from the then Acting CEO

"that was incorrect"

The implication is that as Chair of CRU, I had made false statements. In other words, the inference is that I had lied to the audit and risk committee meeting – on the record.

I draw your attention to your Legislative Compliance Report - Table Reference "Part B" – Previously Reported Matters states Ref B-2, Breach Type Takutai Kapiti:

This clearly states:

“Historical procurement breach relating to Takutai Kāpiti - three instances identified where no contracts or procurement paperwork are in place for two suppliers.”

And notes that this issue has been addressed and is “complete”.

I would like to know and undoubtedly the elected members would like to know in clear and straightforward language without using typical bureaucratic jargon:

What are the three instances that were identified?

Who are the two suppliers involved?

When were the findings shared with the various teams?

What actions were taken to resolve the matter and allow the current status to be labelled complete?

If indeed this is the same procurement issue I raised with the Committee in June 2022, I am here to inform the Committee that it has not been resolved and that the Ombudsman’s Office’s investigation remains open. Reference number 561464 has not been closed.

It is evident that the concerns I raised two years ago were indeed valid, and the Council must acknowledge this.

If these refer to the Jacobs reports Volume 1 and 2, as I explained to this Committee in June 2022, I would request that the Council issue a formal apology to me, as the Chair of CRU, and to my members for having stated in the meeting that I was incorrect.

It is utterly shameful but entirely predictable that when members of the public take the time to bring serious concerns to this Council’s attention, they are unjustly branded as liars and purveyors of misinformation instead of engaging constructively. This Council appears to have a fundamental organisational issue in believing and working with its ratepayers.

The organisational culture has remained the same over the last 12 years—insulting, combative, and distrusting of the public. This in itself is a risk to the Council and should be acknowledged as such.

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.

PUBLIC EXCLUDED RISK AND ASSURANCE COMMITTEE MEETING
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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	• 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	• 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	• 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	• 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.	⁷ (2)(g)	No direct cost implications to Council.