



# **APPENDICES MINUTES**

**Risk and Assurance Committee  
Meeting**

**Thursday, 15 August 2024**



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**12.1 LITIGATION AND EXTERNAL INVESTIGATIONS REPORT**

Kaituhi | Author: **Sarah Wattie, General Counsel**

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

<b>Section under the Act</b>	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> .
<b>Sub-clause and Reason:</b>	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 the 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 4 of the 2023-24 financial year.
  - A.2 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).
  - A.3 agree that only this report and Attachment 3 of this report be released from public excluded business.

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A.4 agree that the resolutions be released from public excluded business.

**TŪĀPAPA | BACKGROUND**

- 4 The 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	
<b>Extreme</b>	<ul style="list-style-type: none"> <li>Material 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.</li> </ul>
<b>High</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Moderate</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Low</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>

**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 the Council with the Ombudsman and other external agencies is as follows:

Issue	Type	External agency	Number
LGOIMA complaint – decision	Preliminary Enquiry	Ombudsman	1 open (new in quarter 4)
LGOIMA complaint – decision to withhold	Investigation	Ombudsman	1 open; 1 concluded
Ombudsman Act complaint – Council decisions/actions	Investigation	Ombudsman	3 open
Ombudsman Act complaint – Council decisions/actions	Preliminary enquiry	Ombudsman	3 open
Confidential external agency	Preliminary investigation	Confidential	1 open

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**He take | Issues**

10 There are no issues for this report.

**Ngā kōwhiringa | Options**

11 There are no options required for this report.

**Mana whenua**

12 The 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.

13 The 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 me te Taiao | Climate change and Environment**

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

**Ahumoni me ngā rawa | Financial and resourcing**

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

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

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

**Ngā pānga ki ngā kaupapa here | Policy impact**

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

**TE WHAKAWHITI KŌRERO ME TE TŪHONO | COMMUNICATIONS & ENGAGEMENT**

18 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**

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

**Whakatairanga | Publicity**

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

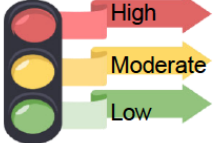
**NGĀ ĀPITI HANGA | ATTACHMENTS**

1. Attachment 1 - Litigation status quarter 4
2. Attachment 2 - External investigation status quarter 4
3. Attachment 3 - Litigation status quarter 4 redacted

Key for <a href="#">LGOIMA declination</a>		
7(2)(g)	Legal Professional Privilege	- the withholding of the information is necessary to maintain legal professional privilege.

**Attachment 1: Litigation updates**

**Risk level**





**Status**

✔ Closed

Active

**Note:** updates are in yellow

Ref	Litigation	Matter	Updates	Legal Risk Level	Legal implications	Status
A-1	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.	<ul style="list-style-type: none"> <li>4-5 applications covering the Kāpiti Coast District have been received. Crown Law Office taking the lead. Buddle Findlay acting for Council.</li> <li>Council has filed affidavit and submissions as an interested party.</li> <li>Hearings commenced in May 2024 for the Kāpiti-Manawatu region and will continue into 2025. Hearings briefly adjourned due to funding issues for the applicants, which are now resolved.</li> <li>Government is proposing legislation to overturn Court of Appeal decision <i>Re Edwards</i> relating to the test for Customary Marine Title.</li> </ul>	7(2)(g)	<ul style="list-style-type: none"> <li>No cost implications for the Council.</li> </ul>	Active <span style="color: green;">●</span>
A-2	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.	<ul style="list-style-type: none"> <li>Council has appealed Environment Court decision to the High Court.</li> <li>Hearing in February 2024.</li> <li>Johnston J issued decision on 21 June decision dismissing Council's appeal and quashing the wāhi tapu listing.</li> </ul>	7(2)(g)	<ul style="list-style-type: none"> <li>Scale costs payable to Waikanae Land Company Limited.</li> <li>High level of interest among local authorities as to court ruling on Council's approach.</li> </ul>	Active <span style="color: green;">●</span>

Ref	Litigation	Matter	Updates	Legal Risk Level	Legal implications	Status
A-3	Green v KCDC	Appeal against abatement notice and application for stay of the notice regarding relocatable house on property without required consents.	<ul style="list-style-type: none"> <li>- Hearing took place in June 2024.</li> <li>- Court granted a stay of the abatement notice for 3 months to provide the applicant a further opportunity to lodge a resource consent for relocatable dwelling to be prepared by a suitably qualified planning consultant.</li> </ul>	7(2)(g)	- No direct cost implications to Council.	Active 
A-4	Rex Hamilton v KCDC	Appeal by owner against MBIE decision relating to KCDC decision to issue notice to fix.	<ul style="list-style-type: none"> <li>- Procedural matter.</li> <li>- Amended timetable for evidence with hearing set down for late 2024.</li> </ul>		- No direct cost implications to Council.	Active 
A-5	Jade Teki-Stewa v KCDC	Appeal against abatement notice and application for stay of the notice in relation to shipping container in stream corridor.	<ul style="list-style-type: none"> <li>- Evidence timetable prepared and date for hearing set down for 30 October.</li> </ul>		- No direct cost implications to Council.	Active 