

Chairperson and Committee Members
AUDIT AND RISK SUBCOMMITTEE

29 SEPTEMBER 2015

Meeting Status: **Public Excluded**

Purpose of Report: For Information

WEATHERTIGHT CLAIMS : UPDATE AS AT 30 AUGUST 2015

PUBLIC EXCLUDED SESSION

1 The reason why this report is being considered in Public Excluded is:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Grounds under Section 48(1) for the passing of this resolution
Update on Weathertight Claims	Section 7(2)(i)-to enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations	48(1)(a): That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist

PURPOSE OF REPORT

2 This report updates the Audit and Risk Committee on the current status of weathertight claims that Kāpiti Coast District Council has received and are yet to be resolved.

DELEGATION

3 The Audit and Risk Subcommittee may make a decision under the following delegation in the Governance Structure, Section C.3

Without limiting the generality of this delegation the Subcommittee has the following functions, duties and powers:...

Risk Management

7.9 *Ensure that Council has in place a current and comprehensive risk management framework and associated procedures for effective identification and management of Council's significant risks.*

BACKGROUND

4 This is the second report to the Audit and Risk Sub-committee and updates the committee on the Council's current weathertight claims and how these are being managed. The Council has not received a large number of weathertight claims.

The claims it has had are predominantly for single-residential homes built in the last 10-15 years. It currently has 10 properties with outstanding claims, six of which have signed up to the Financial Assistance Package (FAP). We also have one claim under the FAP process for a building that was originally issued and signed off by a building certifier. Details of the claims are outlined in Appendix One.

Options available to owners of leaky homes

- 5 The three main routes to compensation taken by owners of leaky homes are dispute resolution through the Weathertight Homes Tribunal (WHT), the Financial Assistance Package (FAP) and claims through the higher courts. Other available options include private negotiation, mediation or arbitration, or the Disputes Tribunal (if the claim is for an amount less than \$15,000 or less than \$20,000 if everyone involved agrees to participate).
- 6 Currently 60% of claims are being managed using the Financial Assistance Package. The exception is one recent claimant choosing to make a claim directly to Council and proposing legal action to resolve the issue. We are currently working through the issues in regard to this situation and hope that formal legal action may not be necessary.
- 7 The FAP is a partnership between the government and councils. It is focused on repairing homes on a 'no blame' basis. The government and council each pay 25 per cent of the repair cost and the homeowner pays the remaining 50 per cent.

CONSIDERATIONS

Residential Properties

- 8 Council's overall liability through the FAP scheme is uncertain until a settlement is reached on the size of the repair claim between the Ministry of Business, Innovation and Employment and the property owner. However, Council's contribution is fixed at 25% and all of this goes towards funding repairs, as opposed to litigation or other administrative costs.
- 9 Weathertight claims are currently managed by the Building Control Manager. After taking legal advice the Manager is given the appropriate financial delegation, on a case by case basis, in order to negotiate a settlement.

Commercial Properties

- 10 As mentioned in the paper to this committee in June 2014(CS -14-1107), there has been a Supreme Court decision that has changed the previous case law regarding Council's duty of care to commercial property owners. To date Kapiti Coast District Council has not received any claims from commercial property owners.

Legal Considerations

- 11 The management of weathertight claims is undertaken with appropriate legal advice from our legal advisors.

Financial Considerations

- 12 Since late 2009 Council, like all territorial authorities, has been unable to obtain insurance to cover its future liability in respect of new weathertight claims. This means that Council has been required to meet all further claims lodged since this time. This has most often been by way of the FAP process which, as discussed earlier, is an effective process of ensuring the necessary remedial work is undertaken. There is often some delay while the owner organises their share of the costs and decides if they wish to undertake any other work in conjunction with the repairs.
- 13 Currently there is approximately \$391,000 in the provision for this year for weathertight claims and this is likely to be sufficient for the lodged claims of which Council is currently aware. The magnitude of claims range between \$9000 and \$127,000.

Tāngata Whenua Considerations

- 14 There are no considerations for iwi or Treaty of Waitangi in the settlement of weathertight claims.

Publicity Considerations

- 15 There are no publicity considerations.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

- 16 This matter has a low level of significance under Council policy.

RECOMMENDATIONS

- 17 That the Audit and Risk Subcommittee note that most weathertight claims arising from leaky homes were settled via the Financial Assistance Package in the last 12 months and that weathertight claims are being managed appropriately to minimise the risk to Council.
- 18 That this resolution and report RS-15-1554 (excluding Appendix 1) are released from Public Excluded business.

Report prepared by	Approved for submission	Approved for submission
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Building Control Manager	Group Manager Corporate Services	Group Manager Regulatory Services

ATTACHMENT

- 1 Appendix One: Weathertight Claims Notified to Kāpiti Coast District Council