

**Chairperson and Committee Members**  
AUDIT AND RISK COMMITTEE

8 FEBRUARY 2018

Meeting Status: **Public Excluded**

Purpose of Report: For Decision

**UPDATE ON STATUTORY COMPLIANCE ISSUES,  
INVESTIGATIONS AND STATUS OF COUNCIL BYLAWS FOR  
1 OCTOBER 2017 TO 31 DECEMBER 2017**

**PUBLIC EXCLUDED SESSION**

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

<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Grounds under Section 48(1) for the passing of this resolution</b>
To update the committee on statutory compliance issues reported to Audit, current Ombudsman and/or Privacy Commissioner investigations and any other external investigations or mediations.	Section 7(2)(f)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to members or officers or employees of any local authority, or any persons to whom section 2(5) of this Act applies, in the course of their duty.  Section 7(2)(g) – maintain legal professional privilege.	Section 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 provides the Audit and Risk Committee with:

- a) an update on issues associated with legislative compliance declarations made to external auditors Ernst and Young for legislation selected by the auditors as 'key' acts;
- b) an overview of the progress of current investigations by the Office of the Ombudsman and the Office of the Privacy Commissioner;
- c) an update on official information statistics for the second quarter of 2017/18;
- d) a litigation status report;
- e) an update on weathertight claims, and
- f) a bylaw monitoring report.

## DELEGATION

- 3 The Audit and Risk Committee has authority under the following delegation in the Governance Structure, Section B.3:

*This Committee will monitor the Council's financial management and reporting mechanisms and framework and review the audit and risk function, ensuring the existence of sound internal systems.*

## BACKGROUND

### Legislative Compliance Declarations – Statutory Compliance Issues

- 4 Each quarter group managers complete a legislative compliance declaration setting out the significant legislative requirements and declaring 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
  - 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 Operations and Finance 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 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 1993 (Privacy Act). 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.

### Official Information Requests

- 10 Council monitors official information requests to ensure pertinent and timely responses are supplied. Staff provide a regular update on the number of official information requests received by Council and provide an indication of the impact of multiple requesters.

### Bylaw Monitoring

- 11 In 2015, work was undertaken to strengthen the processes supporting the Council's management of its bylaws. This included a legal review undertaken to confirm the status of each bylaw, and the introduction of updated processes to ensure effective bylaw management across Council.
- 12 Council currently has 13 bylaws. Council monitors the status of these bylaws, and regularly reports on them to the committee.

### Additional Investigations/Mediations or Other Compliance Matters

- 13 Staff will also report on any additional investigations or mediations carried out by other external agencies as well as informing the committee of any other relevant compliance matters including an update on the current litigation status.

## **CURRENT STATUS**

### Legislative Compliance Declarations

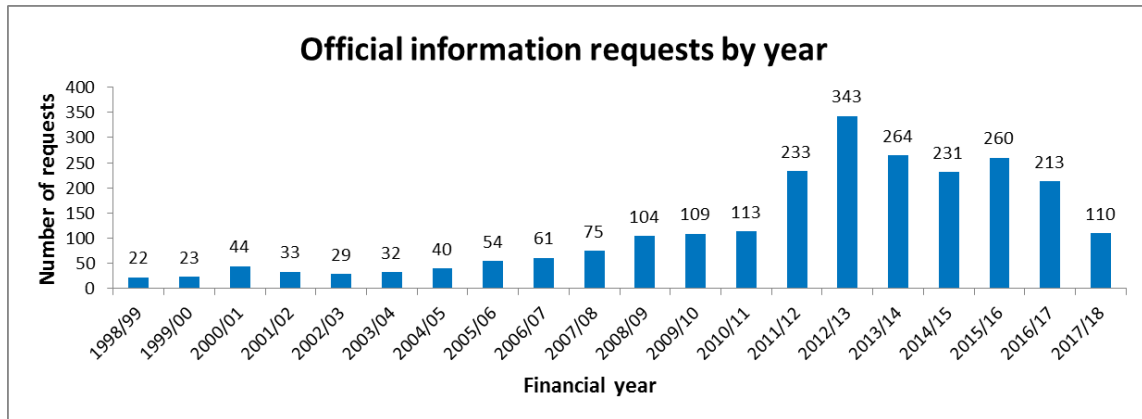
- 14 There were no issues of statutory non-compliance declared to have occurred in relation to the 'key' acts identified by the council's external auditors during the second quarter of 2017/18.

### Ombudsman and Privacy Commissioner Investigations

- 15 At the time of writing this report there are two investigations being carried out by the Office of the Ombudsman and one investigation that has recently been closed.
- 16 At the time of writing this report there are no investigations that are being carried out by the Privacy Commissioner.
- 17 An overview of the Ombudsman complaints is attached as Appendix A to this report.

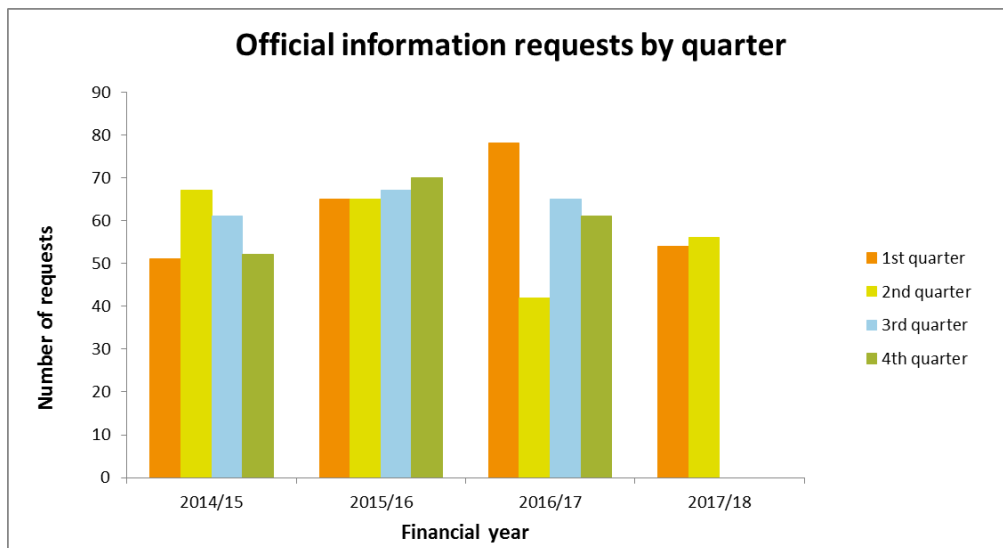
Official Information Requests

18 The below graph tracks the number of official information requests by year.

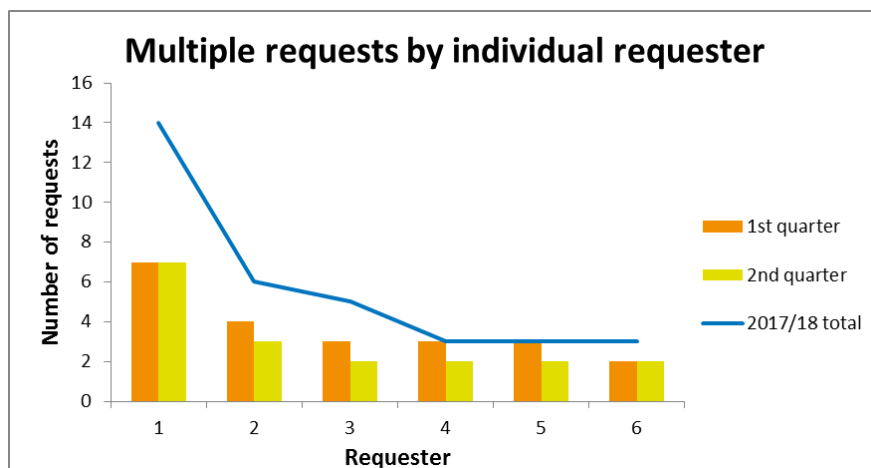


19 The Council received 56 requests within the second quarter of 2017/18 in comparison with 42 in the first quarter of 2016/17.

20 The below graph depicts the number of requests by quarter compared to the last three financial years.



21 The following graph shows the top 6 requesters for the first two quarters of 2017/18.



Additional Investigations/Mediations or Other Compliance Matters

- 22 Information in relation to the current status of litigation is contained in Appendix B.
- 23 Information in relation to the current status of weathertight claims is contained in Appendix C.

Bylaw monitoring

- 24 Information in relation to the current status of the bylaws is contained in Appendix D.

**CONSIDERATIONS**

Policy considerations

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

Financial considerations

- 28 There are no financial considerations in relation to the information outlined in this report outside of any litigation liabilities stipulated in Appendix B.

**SIGNIFICANCE AND ENGAGEMENT**

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

## RECOMMENDATIONS

30 That the Audit and Risk Committee:

- i. **note** that there were no statutory compliance issues associated with the 'key' acts identified in the second quarter of the 2017/18 year;
- ii. **note** the current status of Ombudsman and Privacy Commissioner investigations, official information requests, bylaws and litigation;
- iii. **agree** that this report, appendix (D) and resolutions only be released from public excluded business; and
- iv. **agree** that appendices (A), (B) and (C) be excluded from public release.

**Report prepared by**

**Approved for submission**

**Approved for submission**

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Sarah Stevenson

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## ATTACHMENTS

- Appendix A Ombudsman and Privacy Commissioner investigations  
 Appendix B Litigation report  
 Appendix C Weathertight claims update  
 Appendix D Bylaw status

## Appendix A - Ombudsman and Privacy Commissioner Investigations - 30 January 2018

Reference	Date received	Type of complaint	Subject of complaint	Actions taken by council to date	Final opinion from Ombudsman/Privacy Commissioner
1213-232	22 February 2013	Office of the Ombudsman - LGOIMA complaint	Complaint about Council's refusal to provide all information requested in February 2012 regarding the Chief Executive's contract.	Provisional opinion received from Office of the Ombudsman proposing that Chief Executive's employment contract, performance agreement (including self-assessment) and minutes from CEPEC meetings be released (with limited exceptions). Legal Counsel and Chief Executive have met with Ombudsman. Mayor has written to LGNZ. Legal Counsel and Chief Executive of LGNZ have met with Ombudsman. Ombudsman has recommended that employment contract (including redundancy provisions) be released along with summary of KPIs. CEPEC meeting minutes can be withheld. Council has now provided Mr Goerig a summary of high level KPIs from the 2012/13 Performance Agreement. Council has released 2012/13 Employment Agreement of CE to Mr Goerig following final recommendation of Ombudsman.	Ombudsman has reached final view on release of employments agreement and associated material.
1718-092	5 December 2017	Office of the Ombudsman - LGOIMA complaint	Complaint regarding council's insurance cover where the information was declined under section 7(2)(b)(ii)-prejudice commercial position.	Report sent to the Office of the Ombudsman.	
1718-128	26 January 2018	Office of the Ombudsman - Public Records Act 2005	Investigation into Public Records Act 2005 compliance, arising from Council meeting with Standard and Pools.	Report being prepared for the Office of the Ombudsman.	

## Appendix B – Kāpiti Coast District Council Litigation Status – 30 January 2018

Proceedings	Description	Status	Contingent Liability (excluding costs associated with Council involvement)
22 Cottonwood Place (C&M Bermingham v KCDC)	Building and planning issues with property located at 22 Cottonwood Place.	No settlement at mediation. Property subsequently sold. Parties seeking to negotiate settlement.	\$10,000. Claim covered by Riskpool (this figure is excess).
CRU v KCDC	Application to Environment Court for two declarations in relation to the withdrawal of Proposed District Plan Coastal Hazards provisions.	Decision issued. CRU not successful on first declaration but partially successful on second declaration where CRU argued that the Council should have withdrawn coastal hazard provisions by way of variation. CRU has filed an appeal to the High Court covering both declaration 1 and 2. Appeal was heard on 13 November. Decision released. CRU unsuccessful.	CRU have applied for legal costs of approximately \$7,000 from Environment Court. Environment Court yet to make a decision on costs. Council awarded \$13,000 costs arising from High Court Appeal.
Kiwirail – Paraparaumu Escarpment	Kiwirail's cost of remedial work to clear the track following the slip in May 2015.	LOGIMA request made and information provided. KiwiRail have lodged claim for \$500,000. Matter referred to RiskPool. Matter likely to proceed to mediation. Rice and Co have been instructed. Initial report prepared. KiwiRail have dropped business interruption claim. Rice and Co have instructed experts to prepare report.	Kiwirail have claimed \$500,000. Council liable for \$5,000 excess.



Proceedings	Description	Status	Contingent Liability (excluding costs associated with Council involvement)
Ministry of Education v Carter Holt Harvey	CHH have attempted to join approximately 55 local authorities to proceedings that have been issued by the MoE in relation to a building product produced by CHH in the construction of schools throughout the country.	LGNZ is co-ordinating a response. A Council Litigation Team with representatives of in-house lawyers from local authorities throughout the country has been established. External advice is being sought on behalf of participating local authorities. Application for strike out has been heard. No decision yet.	Yet to be determined. It is unlikely we have insurance cover. Governance Group established to manage Council response to this proceeding and the Naeff proceedings due to potential financial risk to Council.
Naeff v Carter Holt Harvey 155 Field Way	Carter Holt Harvey has joined Council to a claim brought by the owners against Carter Holt Harvey (relates to Shadow Clad).	Council has instructed Simpson Grierson. Council has been briefed. Council currently obtaining expert evidence. Council in settlement negotiations.	Naeffs claiming approximately \$425,000 from CHH. CHH are seeking a contribution from Council to any such costs.
Marine and Coastal Areas (Takutai Moana) Act 2001 claims	Claims file under MACI 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 Kapiti District have been received. Crown Law Office taking the lead. LGNZ co-ordinating response of local authorities. Buddle Findlay have briefed Council.	No cost implications for Council.
Oakley Moran	As part of agreement with Ngahina Trust in relation to acquisition of Western Link Road properties, Council agreed to meet the Trusts legal costs. Oakley Moran have submitted their invoice on 6 June 2017, some 5 years after the transaction settled.	Oakley Moran have been asked for a detailed invoice setting out the matters for which they claim the Council is required to pay them. No response from Oakley Moran.	\$83,000
143 Weggery Drive, Waikanae	Weathertight Homes Resolution Service has found claim eligible. Territorial Authority named as a contributing party.	Claim not yet lodged with Weathertight Homes Tribunal.	\$240,000

Proceedings	Description	Status	Contingent Liability (excluding costs associated with Council involvement)
Osbornes V Gurunathan	The Osbornes have threatened defamation proceedings against the Mayor in relation to comments made in various media.	The Council has an insurance policy that responds to defamation proceedings Heaney and Co have been instructed and have responded to the Osbornes' Lawyer. Osbornes have filed a statement of claim. Council meeting with Heaney's to discuss defence.	\$10,000 (insurance excess)

Restricted

### Appendix C – Weathertight claims update

There is one active weathertight claim being funded via the Financial Assistance Package (FAP). The FAP scheme is managed by the Ministry of Business of Innovation and Employment (MBIE) and both MBIE and the Council contribute 25% towards the approved repair plan. This scheme finished at the end of July 2016 and no new claims can now join.

The remaining provision in the budget for weathertight claims against the Council is currently \$14,000 (30 June 2016: \$46,000). This amount has changed since the last report due to payments made under FAP for the one claim still being finalised. There is only the final milestone to be paid for this FAP claim.

### Other building claims update

We have four additional building claims not included in historic provisioning. Two are technically product claims which the product manufacturer, Carter Holt Harvey, has joined us to the claims (Ministry of Education and a residential property at 155 Field Way, Waikanae). Applications for strike out are still undecided.

Updates are provided below:

- The Ministry of Education claim (Shadowclad product) is expected to run over a long time frame. Although there is no decision as yet on our application for strike out. The demolition of Block Q at Waikanae School took place in December. A building surveyor collected evidence as the building was demolished to preserve our position for defense in case we are not removed from the claim.
- Property claim at 155 Field Way, Waikanae: Carter Holt Harvey has sought from the high court to join the Council in this claim (Shadowclad product). This is being managed by Simpson Grierson. Council has issued a building consent to re-clad and add on to the dwelling. An attempt to settle the claim has been initiated. The legal costs are expected to amount to some \$250,000 to defend the claim, plus our expert fees with only around \$60,000 recoverable if we were successful. Council is therefore taking a pragmatic approach to settling out of court.
- Property claim at 143 Weggery Drive: The claim assessment has been completed and deemed eligible by the Weathertight Homes Resolution Services (WHRS). The applicant now has the choice of making a claim in the Weathertight Homes Tribunal (WHT) but has not yet done so. Council has obtained the WHRS assessment report under an OIA request. The quantum for repair only is estimated as \$239,346. Other costs are also able to be awarded through the WHT.
- Property at 22 Cottonwood Close: This is a building defect claim (foundation settlement) that has been accepted by Council's insurance provider. Council has paid the \$10,000 excess for this claim. The running of the claim continues with Council officers providing input.

The table below details the estimated non-weathertight building claim settlement costs for 2017/18 as budgeted.

Property Address	\$
143 Weggery Drive, Waikanae	\$350,000
155 Field Way, Waikanae	\$350,000

The chances of the 143 Weggery Drive claim being lodged and adjudicated in the Weathertight Homes Tribunal this financial year is becoming less likely.

The costs for 155 Field Way will be reduced only if settlement prior to court can be achieved.

Restricted

## Appendix D Bylaw Status Update

Name of bylaw	Owner	Date bylaw approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
<b>Beach Bylaw 2009</b>	Community Services	28 May 2009	28 May 2019 (final date for review 28/05/21)	An amendment was approved on 28 September 2017 to align the Bylaw with the Fire and Emergency New Zealand Act 2017. Initial work on the review is not expected to start until July 2018.	July 2018 – December 2019		Review commences mid 2018
<b>Cemeteries Bylaw 2016</b>	Community Services	29 Sept 2016	29 Sept 2026 (final date for review 29/09/28)				Not currently under review
<b>Control of Alcohol in Public Places Bylaw 2013</b>	Strategy and Planning	18 Jul 2013	18 Dec 2018 (final date for review 18/12/18) Review required five years from 18 December 2013 due to section 11 of the Local Government (Alcohol Reform) Amendment Act 2012.	The project team has been established and a project plan developed. We have requested the crime and health data needed for this work, and are meeting with local stakeholders (e.g. police and regional public health). Once the data has been received, a report will be finalised and brought to Council. Public consultation will occur in the first quarter of the next financial year in order to finalise the review by the 18/12/18 deadline.	October 2017 – December 2018	Currently none identified by staff	On track

Name of bylaw	Owner	Date bylaw approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
<b>Dog Control Bylaw 2008</b>	Regulatory Services	11 Dec 2008	11 Dec 2018 (final date for review 11/12/20) NB: Dog policy review must be undertaken alongside the bylaw review	Project plan completed for Policy and Bylaw and a presentation was made to elected members 26 October 2017. Informal consultation began early December 2017 and is expected to finish early February 2018. Proposed draft Bylaw expected by June/July 2018. Formal consultation runs June/July 2018.	June 2017 – December 2018	Controversial topic with strong opposing viewpoints could impact consultation process.	On track
<b>Food Safety Bylaw 2006</b>	Regulatory Services	Amendment to the Food Safety Bylaw approved by Council 17 March 2016.	Approved by legal that a full review no longer required as Bylaw required to be revoked in 2019			No risk as Bylaw superseded by Food Act 2014	Will be revoked in 2019 at the end of transition period of the Food Act 2014
<b>General Bylaw 2010</b>	Strategy and Planning	29 Jan 2010	28 January 2020 (final date for review 28/01/22)	All future bylaw drafts are to be written independently without referencing the General Bylaw.			Not likely to be reviewed
<b>Keeping of Animals, Bees and Poultry Bylaw 2010</b>	Regulatory Services	3 June 2010	3 June 2020 (final date for review 03/06/22)		June 2019 – June 2020		Not currently under review
<b>Public Places Bylaw 2017</b>	Community Services	29 June 2017	29 June 2027 (final date for review 29/06/29)				Not currently under review

Name of bylaw	Owner	Date bylaw approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
<b>Solid Waste Bylaw 2010</b>	Infrastructure Services	22 April 2010	22 April 2020 (final date for review 22/04/22)	Solid Waste Bylaw is to be reviewed early in line with the rest of the region as part of the Regional Waste Plan actions.	Work on this review is likely to commence in mid-2018 and progress through to completion in 2019	Currently none identified by staff	Not currently under review
<b>Speed Limit Bylaw 2015</b>	Infrastructure Services	15 Oct 2015	Review as required				Likely only to be triggered by change in legislation or amendment to the General Bylaw
<b>Trade Waste Bylaw 2007</b>	Infrastructure Services	14 Nov 2007	14 Nov 2017 (final date for review 14/11/19)	Section 148 of LGA02 has special requirements for trade waste bylaws. Programme of work now to be completed by end October 2018 to take into account the impact on resourcing during the LTP process and to allow for further informal consultation. Draft changes to the bylaw are complete. Planning for the required special consultative is underway and is planned for August/September 2018. The existing trade waste fees are being restructured during the LTP process to align better with the existing bylaw. A complete review of cost recovery and fees to be considered in the bylaw review later in the year.	April 2016 – December 2018	Any new fees identified during the bylaw review process will likely come under scrutiny by businesses that generate trade waste during the review process.	On track

<b>Name of bylaw</b>	<b>Owner</b>	<b>Date bylaw approved by council</b>	<b>Review required to be completed by</b>	<b>Progress</b>	<b>Expected review timeframe</b>	<b>Risk</b>	<b>Status</b>
<b>Traffic Bylaw 2010</b>	Infrastructure Services	24 June 2010	24 June 2020 (final date for review 24/06/22)				Not currently under review
<b>Water Supply Bylaw 2013</b>	Infrastructure Services	29 Aug 2013	29 August 2023 (final date for review 29/08/25)				Not currently under review