

Chairperson and Committee Members
AUDIT AND RISK COMMITTEE

28 FEBRUARY 2019

Meeting Status: **Public Excluded**

Purpose of Report: For Information

**UPDATE ON STATUTORY COMPLIANCE ISSUES,
 INVESTIGATIONS AND STATUS OF COUNCIL BYLAWS 1 JULY
 2018 TO 31 DECEMBER 2018**

PUBLIC EXCLUDED SESSION

1 The reason for this report 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
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.	<p>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.</p> <p>Section 7(2)(g) – maintain legal professional privilege.</p>	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 first two quarters of 2018/19;
 - d) a litigation status report; and
 - e) a bylaw monitoring report.
- 3 The purpose of each component of this report is now included as **Appendix C**.

DELEGATION

- 4 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.*

CURRENT STATUS

Legislative Compliance Declarations

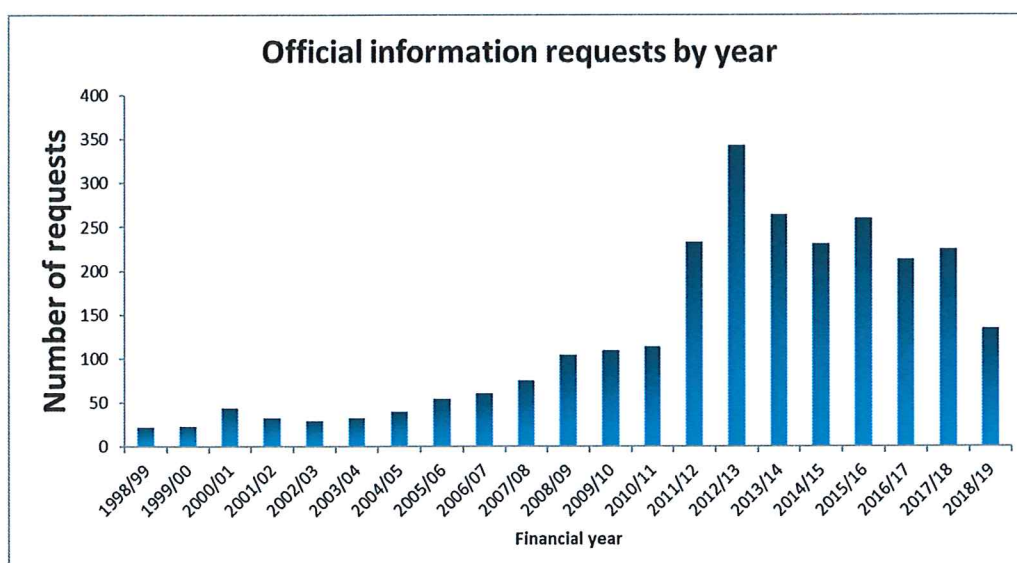
- 5 There was one issue of statutory non-compliance declared to have occurred in relation to the 'key' acts identified by the council's external auditors during the first quarter of 2018/19.
- 6 As confirmed by Simpson Grierson, the Council complies with the current Rating Act to the fullest extent possible. All Councils that levy volumetric water charges cannot fully comply with the current Rating Act. Until such time as the Rating Act is amended, the Council will report this non-compliance once per rating year.
- 7 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 2018/19.

Ombudsman and Privacy Commissioner Investigations

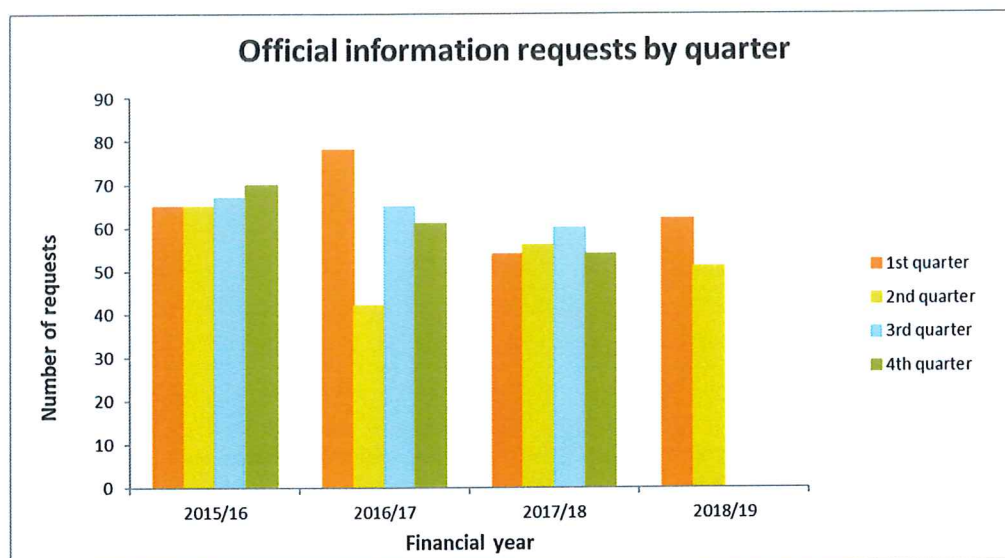
- 8 At the time of writing this report there are no Office of the Ombudsman investigations that are open and there have been no new investigations in the first two quarters of 2018/19.
- 9 At the time of writing this report there are no Privacy Commissioner investigations that are open and there have been no new investigations in the first two quarters of 2018/19.

Official Information Requests

- 10 The below graph tracks the number of official information requests by year up until 11 February 2019.



- 11 The Council received 62 requests within the first quarter of 2018/19 in comparison with 54 in the first quarter of 2017/18.
- 12 The Council received 51 requests within the second quarter of 2018/19 in comparison with 56 in the second of 2017/18.
- 13 This graph depicts the number of requests by quarter compared to the last three financial years.



- 14 In the first two quarters only two requesters have sent more than two official information requests. One individual has made 17 requests in the first two quarters. We also continue to receive multiple requests from the NZ Taxpayers' Union with nine in the first two quarters.

Additional Investigations/Mediations or Other Compliance Matters

- 15 Information in relation to the current status of litigation is contained in Appendix A.

Bylaw monitoring

- 16 Information in relation to the current status of the bylaws is contained in Appendix B including updates to the Beach, Control of Alcohol in Public Places, Dog Control, General, Keeping of Animals, Bees and Poultry, Solid Waste and Trade Waste and Traffic Bylaws. All other Bylaws required no further status updates.

CONSIDERATIONS

POLICY CONSIDERATIONS

- 17 There are no policy considerations in relation to the information provided in this report.

LEGAL CONSIDERATIONS

- 18 Council interaction with the Office of the Ombudsman and the Office of the Privacy Commissioner is managed through Council's in-house legal team.
- 19 The legal requirements of LGOIMA, LGA 2002 and the Privacy Act are well established in the Council's processes.

FINANCIAL CONSIDERATIONS

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

SIGNIFICANCE AND ENGAGEMENT

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

RECOMMENDATIONS

- 22 That the Audit and Risk Committee:
- i. **note** that there was one statutory non-compliance with the 'key' acts identified in the first quarter of the 2018/19 year, as outlined in paragraph 5 and 6 of this report;
 - ii. **note** that there were no statutory compliance issues associated with the 'key' acts identified in the second quarter of the 2018/19 year;
 - iii. **note** the current status of Ombudsman and Privacy Commissioner investigations, official information requests, bylaws and litigation;
 - iv. **agree** that this report, appendices (B) and (C) and resolutions only be released from public excluded business; and
 - v. **agree** that appendix (A) be excluded from public release.

Report prepared by

Approved for submission

Approved for
submission

Sarah Lloyd

Mark de Haast

Tim Power

**Senior Advisor,
Corporate Planning
and Reporting**

**Group Manager
Corporate Services**

Senior Legal Counsel

ATTACHMENTS

Appendix A Litigation report
Appendix B Bylaw status
Appendix C Background to the report

Appendix B - Bylaw Status – updates in *bold italics*

Name of bylaw	Owner	Date bylaw approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
Beach Bylaw 2009	Regulatory Services	28 May 2009	28 May 2019	Initial work on the review started in January 2019. The Beach Bylaw will be reviewed alongside the Traffic Bylaw so that considerations can be given to incorporate information on vehicles on beaches into the Traffic Bylaw, where vehicles could then be managed via the Land Transport Act 1998.	Jan/ Feb 2019 – June 2020	Bylaw will expire 28/05/21 if review not completed. The bylaw is likely to attract <i>public interest</i> and will be impacted by the GWRC Proposed Natural Resources Plan.	Review commenced.
Cemeteries Bylaw 2016	<i>Place and Space</i>	29 Sept 2016	29 Sept 2026	–	–	–	Not currently under review.
Control of Alcohol in Public Places Bylaw 2018	<i>Corporate Services</i>	<i>6 December 2018</i>	6 December 2028	–	–	–	<i>Not currently under review.</i>

Name of bylaw	Owner	Date bylaw approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
Dog Control Bylaw 2008	Regulatory Services	11 December 2008	11 December 2018	The Dog Bylaw is scheduled to go to Council on 14 March 2019 for adoption.	June 2017 – December 2018	Final date for review 11/12/20.	Scheduled for Council approval.
Food Safety Bylaw 2006	Regulatory Services	Amendment to the Food Safety Bylaw approved by Council 17 March 2016.	Confirmed by the Council 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.	Report to Council in March 2016 (RS-16-1822) regarding bylaw to expire as of 1 March 2019.
General Bylaw 2010	Corporate Services	29 Jan 2010	28 January 2020	All future bylaw drafts are to be written independently without referencing the General Bylaw.	–	General Bylaw due to expire 28/01/22.	Not likely to be reviewed but will be considered in November 2020.
Keeping of Animals, Bees and Poultry Bylaw 2010	Regulatory Services	3 June 2010	3 June 2020	–	March 2020 – March 2021	–	Not currently under review.
Public Places Bylaw 2017	Place and Space	29 June 2017	29 June 2027	–	–	–	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
Solid Waste Bylaw 2010	Infrastructure Services	22 April 2010	22 April 2020	<i>The Regional Waste Management and Minimisation Plan (RWMMP) adopted by Council in 2017 included the development of a Regional Solid Waste Bylaw. A draft regional bylaw has been developed under the RWMMP Governance Group with distribution and briefing to Councilors yet to be scheduled but likely to be in March/April this year.</i>	Work commenced <i>mid 2018</i> and will progress through to completion in 2019	<i>Due to the need gain regional agreement delays are possible.</i>	<i>Draft prepared.</i>
Speed Limit Bylaw 2015	Infrastructure Services	15 October 2015	Likely only to be triggered by change in legislation or amendment to the General Bylaw.	–	–	–	Review as required.
Trade Waste Bylaw 2019	Infrastructure Services	24 January 2019	24 January 2029	–	–	–	<i>Not currently under review.</i>

Name of bylaw	Owner	Date bylaw approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
Traffic Bylaw 2010	Infrastructure Services	24 June 2010	24 June 2020	<i>The Traffic Bylaw will be reviewed alongside the Beach Bylaw so that considerations can be given to incorporate information on vehicles on beaches into the Traffic Bylaw, where vehicles could then be managed via the Land Transport Act 1998.</i>	January 2019 – June 2020	–	Not currently under review.
Water Supply Bylaw 2013	Infrastructure Services	29 August 2013	29 August 2023	–	–	–	Not currently under review.

Appendix C

BACKGROUND TO THE REPORT

Legislative Compliance Declarations – Statutory Compliance Issues

- 1 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.
- 2 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
- 3 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

- 4 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.
- 5 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.
- 6 The Privacy Commissioner administers the Privacy Act 1993. 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

- 7 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

- 8 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.
- 9 Council currently has 13 (12 as of 1 March 2019) bylaws. Council monitors the status of these bylaws, and regularly reports on them to the committee.

Additional Investigations/Mediations or Other Compliance Matters

- 10 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.