



APPENDICES MINUTES

**Risk and Assurance Committee
Meeting**

Tuesday, 11 March 2025

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Appendix 1 Litigation and External Investigations Report for public release4

PUBLIC EXCLUDED RISK AND ASSURANCE COMMITTEE MEETING
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12.1 LITIGATION AND EXTERNAL INVESTIGATIONS REPORTKaituhi | Author: **Sarah Wattie, General Counsel**Kaiwhakamana | Authoriser: **Sheryl Gavin, Acting 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 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 at 14 February 2025.
 - 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.
 - A.4 agree that the resolutions be released from public excluded business.

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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	
Extreme	<ul style="list-style-type: none"> 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.
High	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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, as at 14 February 2025.

External investigation update

- 8 A detailed summary of external investigations is set out in Attachment 2 to this report, as at 14 February 2025.
- 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 Inquiry	Ombudsman	0 open (1 closed in quarter)
LGOIMA complaint – decision to withhold	Investigation	Ombudsman	2 open
Ombudsman Act complaint – Council decisions/actions	Investigation	Ombudsman	6 open (1 new; 1 closed in quarter)
Ombudsman Act complaint – Council decisions/actions	Preliminary Inquiry	Ombudsman	2 open (1 new)
External investigation regarding procurement and unauthorised expenditure	Investigation	Serious Fraud Office	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 update
2. Attachment 2 - External investigation status update
3. Attachment 3 - Litigation status update redacted for release

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Key for LGOIMA declination
 7(2)(g) Legal/Professional Privilege = the withholding of the information is necessary to maintain legal professional privilege.

Attachment 1: Litigation updates







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"> 4-5 applications covering the Kāpiti Coast District have been received. Crown Law Office taking the lead. Buddie Findlay acting for Council. Council has filed affidavit and submissions as an interested party. 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. The Kāpiti-Manawatu hearings are being dealt with in two stages. Part 1 hearings have commenced to deal with Customary Marine Title (CMT) and Protected Customary Rights (PCR) applications. Part 2 hearings which will commence in July 2025 will consider applications for wāhi tapu protection orders. Government has introduced a Bill to overturn Court of Appeal decision <i>Re Edwards</i> relating to the test for Customary Marine Title. Kāpiti-Manawatu hearings impacted and where findings made under existing Act, the matters will need to be reheard. Ability to continue with hearings 	7(2)(g) Legal Professional Privilege	No cost implications for the Council.	Active


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Ref	Litigation	Matter	Updates	Legal Risk Level	Legal Implications	Status
			under Amendment Act. - Parties have filed submissions on <i>Edwards</i> decision. Awaiting Court's decision and next steps to be confirmed.	7(2)(g) Legal Professional Privilege		
A-2	Green v KCDC	Appeal against abatement notice and application for stay of the notice regarding relocatable house on property without required consents.	- Hearing took place in June 2024. - 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. - Closing submissions have now been filed for both parties - Awaiting decision.		- No direct cost implications to Council.	Active 
A-3	Rex Hamilton v KCDC	Appeal by owner against MBIE decision relating to KCDC decision to issue notice to fix.	- Procedural matter. - Fixture date proposed for late March 2025.		- No direct cost implications to Council.	Active 
A-4	Jade Teki-Stewart v KCDC	Appeal against abatement notice and application for stay of the notice in relation to shipping container in stream corridor.	- Evidence timetable prepared and date for hearing set down for 30 October. - Environment Court decision has come in favour of Council and the abatement notice appeal has been disallowed. - The stay will be lifted on 14 February 2025 (i.e. the abatement notice will be in force from that date onwards).		- No direct cost implications to Council.	Closed 
A-5	Wakefield Group Holdings v KCDC	Judicial review by Wakefield Group Holdings relating to Council agenda item 11.2 on 28 November 2024. This regards Council's consideration of a decision under section 111 of the Reserves Act 1977 to dedicate a local purpose (road) reserve as legal road to provide access to the adjoining subdivision by Wakefield Holdings.	- On 12 December 2024, Council was notified of a judicial review by developer, Wakefield Group Holdings Limited, in relation to Council's consideration of Item 11.2 of the Council agenda on 28 November 2024 on whether to dedicate Lot 72 DP 400543 as legal road. Buddle Findlay instructed and Council has filed the statement of defence.		- No direct cost implications to Council (other than cost of defending matter and costs award if unsuccessful).	Active 

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Ref	Litigation	Matter	Updates	Legal Risk Level	Legal implications	Status
A-6	Crosbie & Page v KCDC	Appeal to the Environment Court by Julie Crosbie & Adrian Page against decision by Council not to cancel abatement notice (AN0279) regarding ongoing earthworks and removal of soil/fill at 127 Anlaby Road, Nikau Valley.	<ul style="list-style-type: none"> - Appeal against abatement notice filed on 17 December 2024 - Council has filed a memo with the Court providing reasons for Council's decision not to cancel the abatement notice. - Currently waiting on fixture date. 	7(2)(g) Legal Professional Privilege	- No direct cost implications to Council.	Active 
A-7	Coastal Ratepayer Incorporated v KCDC	Judicial review by Coastal Ratepayers United Incorporated (CRU) in relation to Council decision on land information memorandum (LIM) wording relating to coastal hazards and inclusion of the Jacobs and De Lange reports.	<ul style="list-style-type: none"> - On 10 February 2024 Council were notified of judicial review by CRU in relation to Council's current LIM wording relating to coastal hazards and information relating to Jacobs and the De Lange report commissioned by CRU. - Council considering next steps. 		- No direct cost implications to Council (other than cost of defending matter and costs award if unsuccessful).	Active 