

Chairperson and Committee Members
AUDIT AND RISK COMMITTEE

16 FEBRUARY 2017

Meeting Status: **Public Excluded**

Purpose of Report: For Information

**UPDATE ON STATUTORY COMPLIANCE ISSUES,
INVESTIGATIONS AND THE STATUS OF COUNCIL BYLAWS
FOR 1 JULY 2016 TO 31 DECEMBER 2016**

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.	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.	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 2016/17;
- d) a bylaw monitoring report;
- e) a litigation status report; and
- f) an update on weathertight claims

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. Those 'key' acts are the Local Government Act 2002 (LGA 2002), the Local Authorities (Members Interest) Act 1968, the Local Government (Rating) Act 2002 and the Local Government Official Information and Meetings Act 1987 (LGOIMA).
- 5 Group managers may also declare issues that have occurred under additional pieces of legislation in instances where they believe that particular issues should be documented in this manner.

Ombudsman and Privacy Commissioner Investigations

- 6 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.
- 7 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.
- 8 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

- 9 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

- 10 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.
- 11 Council currently has 14 bylaws. The Corporate Planning and Reporting team monitors the status of these bylaws, and regularly reports on them to the committee.

Additional Investigations/Mediations or Other Compliance Matters

- 12 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 updates on the current litigation status and weathertight claims.

CURRENT STATUS

Legislative Compliance Declarations

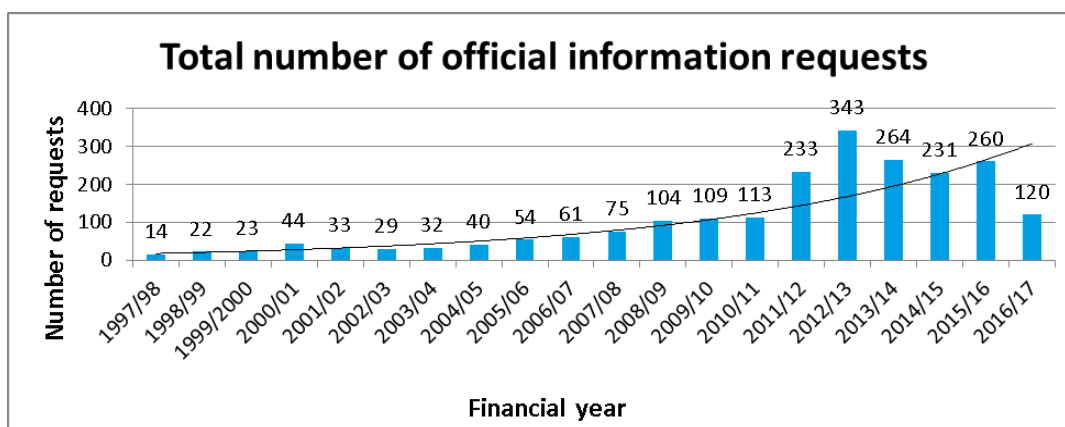
- 13 There was one issue of statutory non-compliance declared to have occurred in relation to the 'key' acts identified by the council's external auditors during the first quarter of 2016/17. This matter was originally identified during the fourth quarter of 2015/16 and is with regards to the Local Government (Rating) Act 2002. Advice was received that the rates assessment for Section 16 (targeted rate – specifically the fixed charge for water) and for Section 19 (targeted rate for water supply - relating to the volumetric charge) is not consistent with Sections 45 (contents of rates assessment) and 46 (rates invoice) of the Act. The advice recommends the Council introduce changes for the 2017/18 year.
- 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 2016/17. However, there was one instance of a public notice requirement under the Reserves Act 1977 being breached, in relation to a lease.

Ombudsman and Privacy Commissioner Investigations

- 15 At the time of writing this report there is one formal investigation being carried out by the Office of the Ombudsman.
- 16 An overview of Ombudsman and Privacy Commissioner complaints is attached as Appendix A to this report.

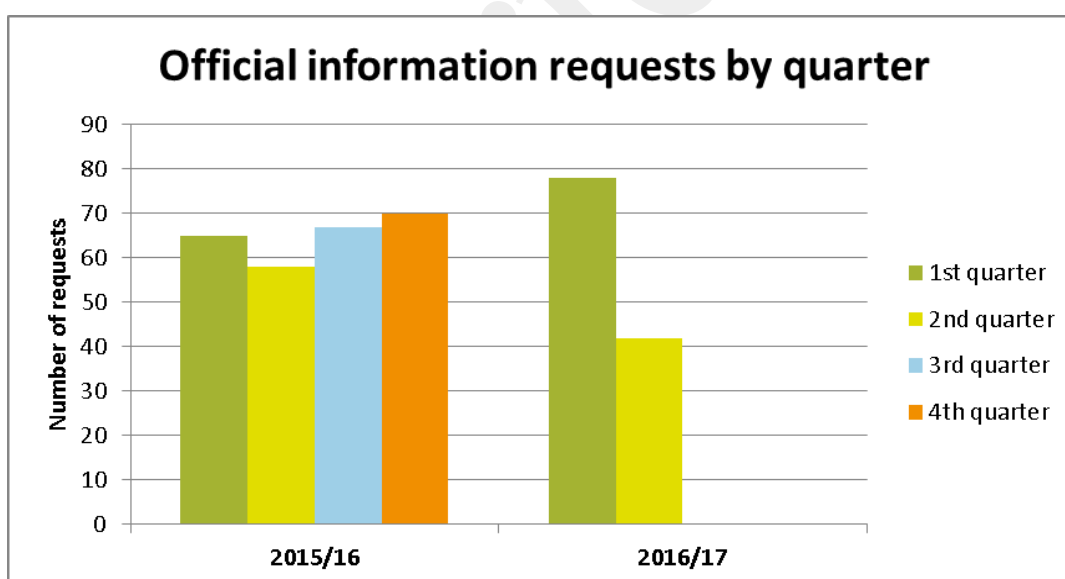
Official Information Request Year-to-date Performance

- 17 The Council received a total of 260 official information requests during 2015/16. Council has received 120 requests in the first two quarters of 2016/17 and is tracking on par with last years' total request figures.



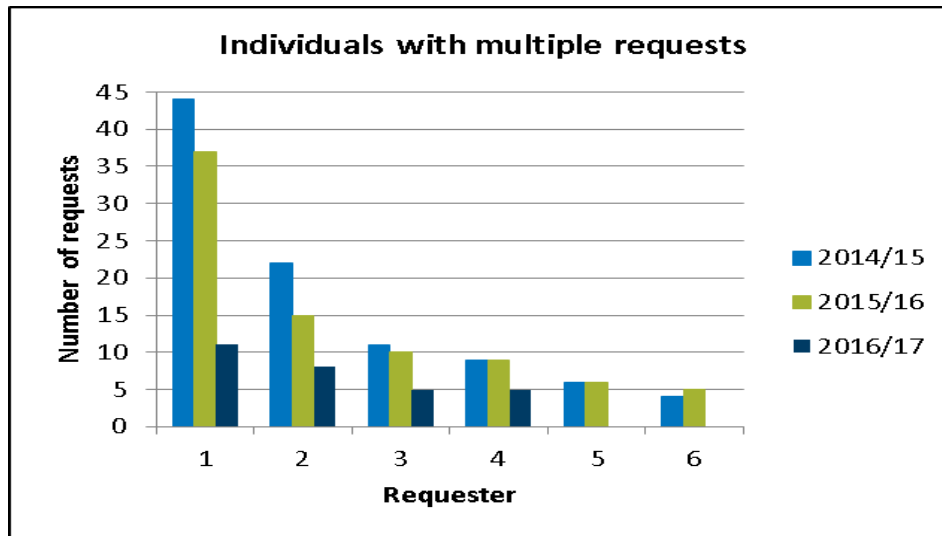
Official Information Request First and Second Quarter Updates

- 18 The Council received 78 requests within the first quarter and 42 in the second quarter of 2016/17 in comparison with 65 and 58 received in the first two quarters of 2015/16. 2016/17 first quarter figures were likely impacted by the 2016 Election.



- 19 The number of multiple requests received from specific individuals has decreased during the 2016/17 year to date. During the first two quarters of 2016/17 four individuals made five or more requests. One individual has made 11 requests which is less than a third of the total amount of requests (37) received by the same individual during 2015/16.

- 20 The same two requesters have remained at the top of the list in 2014/15, 2015/16 and the first two quarters of 2016/17.



Bylaw monitoring

- 21 Information in relation to the current status of the bylaws is contained in Appendix B.

Additional Investigations/Mediations or Other Compliance Matters

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

CONSIDERATIONS

Policy considerations

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

Financial considerations

- 27 There are no financial considerations in relation to the information outlined in this report.

SIGNIFICANCE AND ENGAGEMENT

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

RECOMMENDATIONS

29 That the Audit and Risk Committee:

- i. **note** that there was one statutory compliance issue associated with the 'key' acts identified in the first two quarters of the 2016/17 year and one breach of the Reserves Act 1997 identified in the second quarter of the 2016/17.
- ii. **note** the current status of Ombudsman and Privacy Commissioner investigations, official information requests, bylaws, litigation and weathertight claims;
- iii. **agree** that this report, appendix (B) and resolutions only be released from public excluded business; and
- iv. **agree** that appendices (A), (C) and (D) be excluded from public release.

Report prepared by	Approved for submission	Approved for submission
Sarah Lloyd	Sarah Stevenson	Wayne Maxwell
Senior Advisor, Corporate Planning and Reporting	Group Manager Strategy and Planning	Group Manager Corporate Services

ATTACHMENTS

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

Appendix B - Bylaw Status Update

Name of bylaw	Owner	Date bylaw was approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
Beach Bylaw 2009	Community Services	28-May-09	28 May 2019 (final date for review 28/05/21)		May 2017 – December 2018		Not currently under review
Cemeteries Bylaw 2016	Community Services	29 Sept 2016	29 Sept 2026 (final date for review 29/09/28)				Not currently under review
Control of Alcohol in Public Places Bylaw 2013	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.	In the early planning stages for the bylaw, considering the connection with the possible development of the Local Alcohol Policy. These two projects are not reliant on each other and will be uncoupled if required.	January 2017 – March 2018	Currently none identified by staff	On track
Dog Control Bylaw 2008	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.	Initial work towards future work programmes underway. Project plan expected by mid-2017.	April 2016 – December 2020	Currently none identified by staff	On track
Fire Prevention Bylaw 2010	Regulatory Services	30 Sept 2010	30 Sept 2015 (final date for review 30/09/17)	Report went to 9 September RMC meeting proposing deferral pending clarification of recently introduced legislation. Legislation to be reviewed March 2017.	October 2015 – March 2016	Government introduced FENZ Bill to Parliament that may replace or affect the council's role	Report to council in March 2017 advising whether a requirement for bylaw remains
Food Safety Bylaw 2006	Regulatory Services	Did not go to Council. (Adopted by Environment and Regulatory Committee on 1 Feb 2007) Approved by Council 15/10/15	Food Act 2014 requires legal review to be completed once the food regulations have been promulgated to ensure there are no inconsistencies between the act and the bylaw. No special consultative procedure will be required. Full review required by 1 Feb 2017. (final date for review 01/02/19)	In-house legal team undertook review March 2016. Amendment to the Food Safety Bylaw approved by Council 17 March 2016.		*There is a two-year gap between the full review Feb 2017 date and the revoking of the bylaw in 2019	Approved by legal that a full review no longer required as Bylaw will have to be revoked in 2019
General Bylaw 2010	Strategy and Planning	29 Jan 2010	28 January 2020 (final date for review 28/01/22)	In July 2015 SLT were provided with an update on the status of bylaws which asked for advice about the General Bylaw as indications were that it was not likely to be reviewed. The draft 2016 Fire Prevention Bylaw was written to stand alone without reference to the General Bylaw.			It is recommended that all future bylaw drafts are also written independently without referencing the General Bylaw

Name of bylaw	Owner	Date bylaw was approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
Keeping of Animals, Bees and Poultry Bylaw 2010	Regulatory Services	3 June 2010	3 June 2020 (final date for review 03/06/22)				Not currently under review
Public Places Bylaw 2010	Community Services	15 Jul 2010	15 Jul 2015 (final date for review 15/07/17)	Draft bylaw and policy completed. Discussed at the 2 February Strategy and Policy meeting.	Amended timeframe July 2016 – July 2017	Tight deadline for review	On track
Solid Waste Bylaw 2010	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. Depends on regional resource.	Likely 2017-2018	Currently none identified by staff	Not currently under review
Speed Limit Bylaw 2015	Infrastructure Services	15 Oct 2015	No legislative requirement to review				Review as required. Likely only to be triggered by change in legislation or amendment to the General Bylaw
Trade Waste Bylaw 2007	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. Scoping report completed mid June 2016. Programme of work to be completed by end June/Early July 2017.	April 2016 – December 2018	Currently none identified by staff	On track
Traffic Bylaw 2010	Infrastructure Services	24 June 2010	24 June 2020 (final date for review 24/06/22)			Currently none identified by staff	Not currently under review
Water Supply Bylaw 2013	Infrastructure Services	29 Aug 2013	29 August 2023 (final date for review 29/08/25)				Not currently under review