

Chairperson and Committee Members
AUDIT AND RISK COMMITTEE

30 MAY 2019

Meeting Status: **Public Excluded**

Purpose of Report: For Information

**UPDATE ON STATUTORY COMPLIANCE ISSUES,
 INVESTIGATIONS AND THE STATUS OF COUNCIL BYLAWS
 FOR 1 JANUARY 2019 TO 31 MARCH 2019**

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. 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 third quarter 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 D**.

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

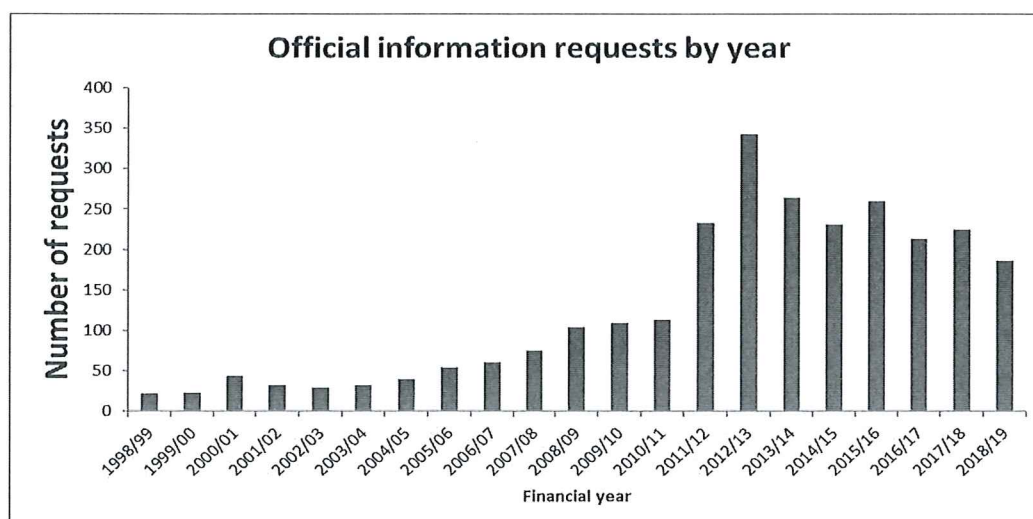
- 5 There were no issues of statutory non-compliance declared to have occurred in relation to the 'key' acts identified by the council's external auditors during the third quarter of 2018/19.
- 6 Under the National Policy Statement on Urban Development Capacity 2016, medium growth councils are required to complete an assessment of development capacity by 31 December 2018. Kāpiti Coast District Council is working with other Wellington medium growth councils to develop a joint assessment of development capacity across the Wellington area. Technical issues in developing a shared council model has meant that the assessment was not able to be completed by the 31 December 2018. MBIE have been kept updated throughout the process, including delays experienced and have expressed their comfort with the on-going progress being made. A final assessment is expected in June 2019.

Ombudsman and Privacy Commissioner Investigations

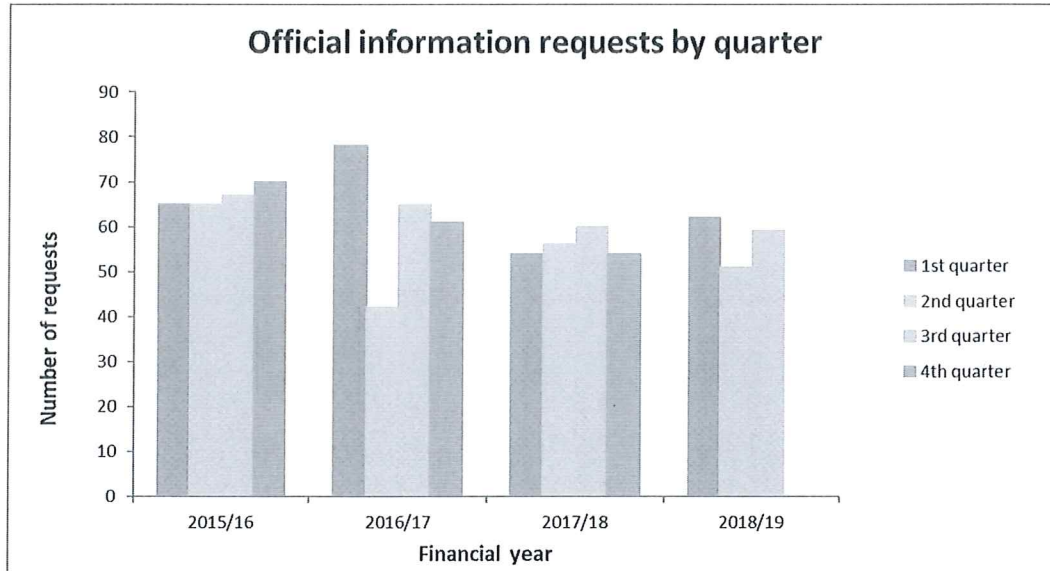
- 7 Since the previous report there has been contact from the Office of the Ombudsman's office in regards to two matters regarding one complainant. One of these has been closed with no formal investigation. The other matter is still under investigation.
- 8 At the time of writing this report there are no Privacy Commissioner investigations that are open and there have been no new investigations in the third quarter of 2018/19.

Official Information Requests

- 9 The below graph tracks the number of official information requests by year up until 1 May 2019.



- 10 The Council received 59 requests within the third quarter of 2018/19 in comparison with 60 in the first quarter of 2017/18.
- 11 This graph depicts the number of requests by quarter compared to the last three financial years.



- 12 The highest number of requests made by an individual this year is 17. This remains unchanged from the last report. One particular journalist has made 10 requests this year. Another particular individual has made 8 requests. We have received a further four requests from the NZ Taxpayers' Union which brings the year to date total to 13.

Additional Investigations/Mediations or Other Compliance Matters

- 13 Information in relation to the current status of litigation is contained in Appendix B.

Bylaw monitoring

- 14 The current time frame for reviewing bylaws was approved by Council on 24 January 2019 as part of the Policy Work Programme. At this meeting legal counsel advised that the two-year grace period after the review date should not be relied upon for general work programming purposes.
- 15 The Food Safety Bylaw expired 1 March 2019 as clarified in a report to Council in March 2016 (RS-16-1822)
- 16 Information in relation to the current status of the bylaws is contained in Appendix C including updates to the Dog Control, Keeping of Animals, Bees and Poultry, Solid 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 B.

TĀNGATA WHENUA CONSIDERATIONS

- 21 There are no tāngata whenua considerations arising from this report.

SIGNIFICANCE AND ENGAGEMENT

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

RECOMMENDATIONS

- 23 That the Audit and Risk Committee:
- i. **note** that there was no statutory non-compliance with the 'key' acts identified in the third quarter of the 2018/19 year;
 - ii. **note** the current status of Ombudsman and Privacy Commissioner investigations, official information requests, bylaws and litigation;
 - iii. **agree** that this report, appendices (C) and (D) and resolutions only be released from public excluded business; and
 - iv. **agree** that appendices (A) and (B) be **excluded** from public release.

Report prepared by

Approved for submission

Approved for submission

**Sarah Lloyd
Senior Advisor,
Corporate Planning
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**Ewen Church
Acting Group Manager
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ATTACHMENTS

- Appendix A Ombudsman and Privacy Commissioner investigations
Appendix B Litigation report
Appendix C Bylaw status
Appendix D Background to the report

Appendix C - 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 public interest and will be impacted by the GWRC Proposed Natural Resources Plan.	Review commenced.
Cemeteries Bylaw 2016	Place and Space	29 Sept 2016	29 Sept 2026	–	–	–	Not currently under review.
Control of Alcohol in Public Places Bylaw 2018	Corporate Services	6 December 2018	6 December 2028	–	–	–	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
Dog Control Bylaw 2019	Regulatory Services	14 March 2019	14 March 2029	-	-	Consider amalgamating with Keeping of Animals, Bees and Poultry Bylaw during next review. This will require a three year period for Bylaw preparation.	Not currently under review. An error in schedule 2 relating to Waikanae Scientific Reserve has been identified. A paper notifying Council of this is due to go to Council 13 June 2019. Legal has confirmed no further action will be required after the notification.
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.

Name of bylaw	Owner	Date bylaw 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	-	March 2020 – March 2021	<i>Programmed review date is past the 10 year legislative review date. The bylaw will automatically be revoked 3 June 2022 if new Bylaw is not adopted.</i>	Not currently under review.
Public Places Bylaw 2017	Place and Space	29 June 2017	29 June 2027	-	-	-	Not currently under review.
Solid Waste Bylaw 2010	Infrastructure Services	22 April 2010	22 April 2020	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. Councillors were briefed at 16 May 2019 meeting.	Work commenced mid-2018 and will progress through to completion in 2019.	Due to the need to gain regional agreement delays are possible.	Draft prepared.

Name of bylaw	Owner	Date bylaw approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
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	-	-	-	Not currently under review.
Traffic Bylaw 2010	Infrastructure Services	24 June 2010	24 June 2020	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.	January 2019 – June 2020	-	<i>Internal reviews have commenced.</i>
Water Supply Bylaw 2013	Infrastructure Services	29 August 2013	29 August 2023	-	-	-	Not currently under review.

Appendix D

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 12 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.