

6. LEGISLATIVE COMPLIANCE PROJECT

General Manager responsible:	General Manager Corporate Services, DDI 941-8528
Officer responsible:	Legal Services Manager
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PURPOSE OF REPORT

1. That the Audit and Risk Management Subcommittee recommend that the Council approve the implementation of a Legislative Compliance Programme aligned with and forming part of the existing Council Risk Management Policy and Framework.

EXECUTIVE SUMMARY

2. Legislative Compliance Programme - The development of a Legislative Compliance Programme that will be aligned with and form part of the existing Council Risk Management Policy and Framework.
3. Identification of Key Legal Risks - The identification of the Key Legal Risks facing the Council as an organisation.
4. Develop an understanding of differing perspectives on Legal Risk - For the purpose of enhancing the Council Risk Management Policy and Framework consider the impact on the Key Legal Risks of the differing capacities of the Council ie Council as policy developer; Council as enforcement agency; Council as regulator; Council as consent holder; Council as corporate citizen; Council as employer; Council as asset manager; Council as a governance entity; Council in its capacity as stakeholder of other entities e.g. CCHL.
5. Delegations Register - The linking of the Officers' Delegation Register to the Legislative Compliance Framework to enable identification of relevant statutory provisions to particular delegated powers. These will then be aligned with and form part of the Council Risk Management Policy and Framework.

FINANCIAL IMPLICATIONS

6. There is no specific budget approved for this project. Funding will have to be identified and secured from existing budgets. The initial review is estimated to require 0.5 FTE for six months. A solicitor in Legal Services can be assigned to this work. The scope design overview and monitoring of the project can be contracted to an external contractor who has already completed similar assignments for other territorial authorities. The estimated cost is \$30,000.00.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

7. Not applicable.

LEGAL CONSIDERATIONS

8. From 1 July 2009, Council Legal Compliance actions will be reported on by Audit New Zealand. The Council has responsibilities principally in the Local Government Acts 1974 and 2002. However, in addition there are some 36 other significant legislative enactments that the Council must comply with ranging from the Biosecurity Act 2002 to the Transport Act 1962 (list **attached**). In addition to the 36 core statutes there are many other statutes that impose responsibilities on the Council. Being able to monitor and ensure compliance with these statutory obligations is essential to demonstrate good governance. There are a number of Public Standards and Policies relating to legal risk management that the Council's operators will be measured against. At present the Council does not in any formal manner measure and report against these standards. It is probable that Audit will use these standards as the benchmark.

Have you considered the legal implications of the issue under consideration?

9. Yes, discussed above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

10. Not applicable.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

11. Not applicable.

ALIGNMENT WITH STRATEGIES

12. Not applicable.

Do the recommendations align with the Council's strategies?

13. Not applicable.

CONSULTATION FULFILMENT

14. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Audit and Risk Management Subcommittee recommend that staff prepare a report to the Council on legal compliance by 1 July 2009. The report shall provide options and costings for a comprehensive Legal Compliance Programme and shall include:

- (i) Examination of existing systems and processes and their efficacy.
- (ii) Review of existing systems and processes against National Standards.
- (iii) Review the linkage of the Officer Delegations to a Legislative Compliance Programme.
- (iv) Identification of key legal risks such as monitoring compliance with various consents held by the Council and other potential risks such as contracts or responsibility as property owner.

BACKGROUND

15. As a new initiative, an assessment could be undertaken of the following:
- (a) The work previously undertaken to develop a legislative compliance programme for the Council with a view to determining the extent to which it can be incorporated either whole or as to part into this project.
 - (b) What systems/processes are already in place in various business units in Council to ascertain:
 - (i) the extent to which they identify key legal risks relevant to that particular area of operations;
 - (ii) to ascertain the effectiveness of the existing systems and processes in identifying and mitigating against key legal risks (eg insurance, risk assessment, sharing risk).

Preference should be given to those areas of higher risk eg resource consents; building consents; OSH; HSNO; LOGIMA; LIMs; prosecutions/enforcement; governance; built assets.
- The analysis would be undertaken against a template reflecting best practice.
- (c) Delegations Register – Review and link the Officers’ Delegations to a Legislative Compliance Framework to enable identification to linkage of relevant statutory provisions to particular delegated powers. These will then be aligned with and form part of the existing Council Risk Management Policy and Framework.
 - (d) Identification of Key Legal Risks - The identification of the Key Legal Risks facing Council as an organisation.
 - (e) Develop an understanding of differing perspectives on Legal Risk - For the purpose of enhancing the Council Risk Management Policy and Framework consider the impact on the Key Legal Risks of the differing capacities of the Council ie the Council as policy developer; Council as enforcement agency; Council as regulator; Council as consent holder; Council as corporate citizen; Council as employer; Council as asset manager; Council as a governance entity; Council in its capacity as stakeholder of other entities eg CCHL.

DESIGN OF A LEGISLATIVE COMPLIANCE POLICY FRAMEWORK

16. Policy Framework - A legislative compliance policy framework should be designed as part of a wider strategy to identify and mitigate against key legal risks. Such a policy framework will be adopted by the CEO and the Executive Team.
17. The Legislative Compliance Policy Framework should have regard to the following:
- (a) Council Risk Management Policy and Framework;
 - (b) The Key Legal Risks facing the Council;
 - (c) AS/NZS 4360 2004 Risk Management Standard;
 - (d) SNZ 4360:2000 Risk Management for Local Government;
 - (e) NZS/AS 3806:2006 Legal Compliance;
 - (f) SOLGM Legal Compliance Programme;
 - (g) ISO 31000 proposed standards.
18. Key Legislative Provisions - The key pieces of legislation affecting Council operations should be identified. Once identified it should then be determined how they interact with the Key Legal Risks facing the Council.

19. Relevant Council business units - Review and assess the Key Legal Risks for the Council to ensure that these are aligned with the relevant business units and the relevant legislative provisions to determine ownership of compliance.
20. Other components - the Legislative Compliance Policy Framework should include the following:
 - (a) Allocation of roles and responsibilities for the programme should be:
 - (i) Executive Team – to endorse and actively support the legal compliance responsibilities within the Council at large and their divisions in particular in the creation of a culture of compliance;
 - (ii) Groups – to identify and record specific compliance requirements and allocate responsibilities accordingly;
 - (iii) All Staff - should recognise the importance of legal compliance in their daily work and to collectively and individually contribute to a culture of compliance. Job descriptions should include a reference to compliance responsibilities where appropriate;
 - (iv) Finance and Audit – to support the programme and identify and report non-compliance;
 - (v) Legal Services Unit – to support the programme, to be a central point of coordination and to report to the Chief Executive and the Executive Team;
 - (vi) Legal Service Providers - will provide advice and assistance.
 - (b) Training and Development – the Legislative Compliance Policy Framework requires all relevant staff to be trained as required to ensure they have the requisite knowledge;
 - (c) Continuous Improvement – the Legislative Compliance Policy Framework provides that where examples of non-compliance or incomplete compliance are identified, systems should be modified and/or training undertaken as appropriate and as part of divisional/departmental business improvement programmes;
 - (d) Complaints Handling – the Legislative Compliance Policy Framework requires procedures to be in place to record and respond to complaints from staff, ratepayers and customers;
 - (e) Monitoring and regular reporting of compliance is to be provided through:-
 - (i) Exceptions based reporting by Council officers;
 - (ii) Team meetings;
 - (iii) Project Team meetings and reports;
 - (iv) Divisional reports;
 - (v) Bi-annual Risk and Assurance Reports to the Executive Team;
 - (vi) Audit reports to the Risk and Audit Committee;
 - (vii) External Audit Management Review and Report.

Link to Delegation Register

21. Delegations Register- the Legislative Compliance Framework shall be linked to the Officers' Delegation Register by the identification of relevant statutory provisions to particular delegated powers. These will then be aligned with and form part of the existing Council Risk Management Policy and Framework.
22. Policy Framework - A policy should be developed to ensure the Officers' Delegation Register is kept up to date in relation to statutory amendments and developments. The linkage should be "live" online and closely managed and controlled by nominated persons.

Project Plan and Project Resources

23. Project Plan – a detailed project plan for the development, adoption and implementation of the Legal Compliance Framework programme should be developed. That project plan should provide for the following:
 - (i) Identification of the outputs of the project;
 - (ii) Timeline for completion of the project;
 - (iii) Definition of each stage of the project;

- (iv) Identification of required resources for the project including roles ie Project Sponsor, Project Manager etc;
 - (v) Allocation of internal/external resources to the project;
 - (vi) Development of a project budget;
 - (vii) Development of a consultation plan for consultation within Council;
 - (viii) Development of a reporting and review framework for the project.
24. Allocation of resources - It is proposed to design and implement the project based on significant use of Council internal resources supplemented by an external provider. Those external resources would be utilised in the following manner:
- (a) Overall design of the project;
 - (b) Input into the detail of the Project Plan;
 - (c) Assistance with the development of the Legislative Compliance Policy Framework including the identification of relevant legislation;
 - (d) Project Management and reporting.

NZS/AS 3806:2006

25. Of particular interest is a new New Zealand Standard NZS/AS 3806:2006 "The Australian Standard Compliance Programmes". This has just been adopted by Standards New Zealand. The new standard provides principles and guidance for designing, developing, implementing and improving a flexible, responsive effective and measurable compliance programme within an organisation. The standard records the following principles:

Commitment

Principle 1: Commitment by the governing body and top management to effective compliance that permeates the whole organisation.

Principle 2: The compliance policy is aligned to the organisation's strategy and business objectives, and is endorsed by the governing body.

Principle 3: Appropriate resources are allocated to develop, implement, maintain and improve the compliance programme.

Principle 4: The objectives and strategy of the compliance programme are endorsed by the governing body and top management.

Principle 5: Compliance obligations are identified and assessed.

Implementation

Principle 6: Responsibility for compliant outcomes is clearly articulated and assigned.

Principle 7: Competence and training needs are identified and addressed to enable employees to fulfil their compliance obligations.

Principle 8: Behaviours that create and support compliance are encouraged and behaviours that compromise compliance are not tolerated.

Principle 9: Controls are in place to manage the identified compliance obligations and achieve desired behaviours.

Monitoring and Measuring

Principle 10: Performance of the compliance programme is monitored, measured and reported.

Principle 11: The organisation is able to demonstrate its compliance programme through both documentation and practice.

Continual Improvement

Principle 12: The compliance programme is regularly reviewed and continually improved.