

OIR: 2425/1184

3 December 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Tēnā koe [REDACTED],

**Request for Information under the Local Government Official Information and Meetings Act 1987 (the Act) (the LGOIMA)**

Thank you for your email of **6 November 2024** requesting the following information:

***Please provide:***

**1. *The liabilities the Council has in its role as a BCA?***

The Council is not aware of any potential or current liabilities in its role as a BCA.

When a council's BCA grants a building consent or issues a code compliance certificate the BCA confirms it is satisfied on "reasonable grounds" proposed work will meet New Zealand Building Regulations (the Building Code) requirements and the work complies with the approved building consent.

Potential liability may arise at any part through the process if it is shown consented work will not meet code requirements or work has not been built in accordance with the approved consent and does not meet "code requirements".

Under the existing New Zealand joint and several liability rules there is the ability for a building owner to join a BCA to legal proceedings if it is shown the BCA was negligent while undertaking its functions.

**2. *The total financial exposure the Council faces in its role as a BCA?***

As noted, the Council is not aware of any potential or current liabilities in its role as a BCA.

***Please note that any information provided in response to your request may be published on the Council website, with your personal details removed.***

As a general comment, to determine the extent of any liability, there is a need to understand the extent of any loss or damage involving a building consent involving actions by a BCA. The value of remedying the damage will be quantified along with any other damages such as diminution in value, general damages, legal costs etc.

A court will then determine if any or all the parties joined or involved in a building negligence claim has any liability (full or partial) for the alleged defects.

Joint and several liability then must be factored in, where it is possible for a BCA to contribute most, towards a financial penalty because other more liable parties have insufficient resources to cover the value of the penalty. This is despite a BCA being found to have been a minor party to the claim.

**3. *The insurance coverage, or any other form of liability cover such as insurance bonds, if any, the Council maintains for BCA-related liabilities.***

The Council maintains annual professional indemnity insurance cover which will respond to a BCA liability, in certain circumstances.

**4. *The annual cost to ratepayers to maintain BCA related liability cover***

The annual insurance premium cost for professional indemnity cover is \$169,234 for the current year.

**5. *The portion of rates allocated to cover potential BCA liabilities.***

The Council does not budget for potential BCA liabilities but does fund annual insurance premiums, including professional indemnity cover, through rates.

**6. *The reserves maintained specifically for BCA related claims.***

The Council does not maintain a separate reserve to cover BCA related claims.

**7. *The details of any excess or similar that is required to be covered by the Council before any insurance or other liability cover is paid out.***

The excess for professional indemnity insurance cover is \$50,000.

**8. *The amount the Council has spent on BCA liability related claims in the past 3 financial years, including but not limited to, legal fees, settlements, negligence costs, etc.***

The information requested was provided to the Council under an obligation of confidence arising from an agreement between the parties. Disclosure of that information would be likely otherwise to damage the public interest. Therefore, this information is withheld under section 7(2)(c)(ii). I am satisfied that the withholding of this information is not outweighed by public interest considerations in section 7(1) favouring release.

You have the right to request the Ombudsman to review this decision. Complaints can be sent by email to [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz), or by post to The Ombudsman, PO Box 10152, Wellington 6143.

Ngā mihi,



**Mark de Haast**  
Group Manager Corporate Services  
Te Kaihautū Ratonga Tōpū