

Decision to exclude the public from a council meeting agenda item about water issues

Legislation	Ombudsmen Act 1975; Local Government Official Information and Meetings Act 1987 s 48(1)(a)(i)
Agency	Napier City Council
Complainant	The Dominion Post
Ombudsman	Leo Donnelly
Case number(s)	468180
Date	June 2018

Summary

The Dominion Post complained to the Ombudsman about a decision by the Napier City Council (the Council) to exclude the public from a part of a meeting of the Audit and Risk Committee on 7 December 2017. The Council excluded the public in relation to its discussion of an agenda item relating to water quality and water restriction issues. The Council accepted the Ombudsman's provisional opinion that, in taking this decision, insufficient weight was given to the public interest in the subject matter of the agenda item.

Background

1. The Council made the decision to exclude the public from part of the Audit and Risk Committee's meeting under section 48(1)(a)(i) of the Local Government Official Information and Meetings Act 1987 (LGOIMA), relying on section 7(2)(f)(ii) of the LGOIMA (to maintain the effective conduct of public affairs through the protection of such members, officers, employees and persons from improper pressure or harassment). The relevant agenda item related to water quality and restriction issues.
2. The complainant raised concerns that the Council's decision was unreasonable given the significant public interest in the issues to be discussed.

Investigation

3. Section 48 of the LGOIMA enables local authorities to exclude the public from the whole or any part of the proceedings of any meeting. The Council relied on section 48(1)(a)(i) of the LGOIMA to exclude the public from its discussion of the relevant agenda item on grounds that this was necessary to protect Council staff and Councillors from improper pressure and harassment (section 7(2)(f)(ii) LGOIMA).
4. The Council explained that the water issues were a source of high public emotion at the time of the meeting, and there had been a threat on social media to burn down the Mayor's house. The Council also noted earlier events, including anger during a public protest and a threat against another member of the Council on Facebook, to demonstrate the level of tension in the community.
5. In responding to the Ombudsman's notification of this complaint, the Council explained that it had taken the decision at the time out of concern for the safety and wellbeing of its employees but that, on reflection, it accepted that insufficient weight had been given to the public interest in the issues for discussion.
6. The Ombudsman agreed. *'Improper pressure or harassment'* is something more than ill-considered or irritating criticism, or unwanted publicity. It is a course of conduct that has such an effect on the person against whom it is directed that he or she is unable to perform his or her duties effectively and hence the conduct of public affairs is at risk.
7. The Ombudsman was of the provisional opinion that the fact that water quality and restriction issues were of high public emotion within the community was insufficient to raise concerns that the members of the Audit and Risk Committee would not be able to exercise their duties in the course of the meeting if it were open to the public. The Ombudsman noted that Councillors are elected to discuss and make decisions about issues which are sometimes contentious, and which may be criticised by members of the public.
8. The Ombudsman accepted it was appropriate that the Council take the threats seriously and to act to ensure protection of its staff. However, the Ombudsman considered the Council may have been conservative in its decision-making at the time, and appreciated that, with the benefit of hindsight, the Council accepted that greater weight should have been placed on the public interest in the water issues in all the circumstances.

Outcome

9. As the Council acknowledged that the balancing exercise should have afforded greater importance to the substantial public interest in the water issues in taking its decision whether to exclude the public, and had taken the step of revising its internal procedures, no recommendation was necessary in this case.