

Meeting and workshop practices at

Palmerston North City Council

 **Ombudsman**

Tuia kia ōrite • Fairness for all

October 2023



Final opinion of the Chief Ombudsman

Meeting and workshop practices at Palmerston North City Council

Te Kaitiaki Mana Tangata Aotearoa | The Ombudsman New Zealand

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Terminology

- Te Kaunihera o Papaioea Palmerston North City Council (the Council)—when I use the term ‘the Council’ this primarily relates to the operational arm of the organisation, unless the context suggests otherwise. When I am referring to the governance function, I use the term ‘elected members’.
- A key aspect of information gathering involved seeking information from the Council via a questionnaire. I refer to this throughout my report as ‘my questionnaire’.
- Surveys of staff, elected members and the public were undertaken, these are referred to as my ‘staff survey’, ‘elected member survey’ or ‘public survey’.
- Staff and elected member meetings were a part of information gathering. I refer to the people attending these meetings as ‘staff meeting attendees’ or ‘elected member meeting attendees’.

Legislation referred to in this report

- [Local Government Act 2002](#) (LGA)
- [Local Government Official Information and Meetings Act 1987](#) (LGOIMA)
- [Ombudsmen Act 1975](#) (OA)
- [Public Records Act 2005](#) (PRA)

My opinion

As Chief Ombudsman, I have been tasked by Parliament to monitor agencies' Official Information and meeting practices, resources and systems. I have jurisdiction to investigate *'any decision or recommendation made or any act done or omitted'*¹ by a local authority.² One way I do this is by undertaking targeted investigations and publishing reports of my findings.

LGOIMA is an important tool for fostering transparency and accountability in local government. It allows people to request information held by local authorities, it provides a right to complain to the Ombudsman in certain circumstances, and it has provisions governing the administration of local authority meetings. This investigation was focused on Councils' compliance with the meetings provisions in the LGOIMA, and their practices around meetings and workshops. Without timely access to the information discussed in workshops and meetings, the ability of New Zealanders to participate in the democratic process is reduced.

I announced this investigation in August to test concerns raised in the media, and by the public, about councils using workshops to discuss issues and make decisions behind closed doors. In addition, the investigation looked at the councils' general approach to notifying and organising meetings, and their use of reasons in the LGOIMA to exclude the public from meetings. I was also concerned about the quality of record-keeping during informal workshops.

Palmerston North City Council (the Council) was one of eight councils that was selected for this investigation. The councils represent a cross section of different types of local authorities. This report sets out my opinion on how the Council is meeting its obligations under part 7 of the LGOIMA, particularly in relation to council meetings. It also considers the Council's obligations to adhere to the purposes and principles of the LGA and the LGOIMA in relation to workshops, briefings and informal meetings.³

I have identified a number of practices that are going well, in particular around improvements to the Council's culture. I encourage the Council to continue to make improvements in this area, which should ultimately lead to a more open and well-functioning council.

¹ Pursuant to section 13(1) and 13(3) of the Ombudsmen Act 1975.

² 'Local Authority' in the context of this investigation refers to all City, District and Regional Councils referred to in Part 3 of Schedule 1 of the Ombudsmen Act 1975.

³ Any organised or scheduled meeting attended by Council staff and elected members which fall outside the definition of 'meeting' in section 45(1) of the LGOIMA.

My investigation has also identified some areas for improvement which resulted in 16 suggested action points. The Council has accepted my action points and has made significant progress in implementing many of them, which are set out below.



Peter Boshier
Chief Ombudsman
28 June 2023

Summary

Leadership and culture

The Council has recently undergone a positive shift in its culture and practice; and overall, has been responsive to external and internal demands for change. Staff and elected member meeting attendees said the Council's practices around meetings and workshops have improved. For instance, the Council holds fewer meetings where the public is excluded, opens its workshops and briefings to the public and has a clearer separation between governance and operations.

I encourage the Council to continue to make improvements to its culture, which should ultimately lead to a more open and well-functioning council. The Chief Executive and other senior leaders should ensure ongoing messaging to staff about their commitment to the principles and purposes of the LGOIMA, and transparency more generally. This can include communicating regular and clear messages to all staff, delivered through a variety of internal and external communications.

Local authority meetings

Generally, the Council appears to use public exclusion grounds appropriately. However, it does not appear to have a clear, formal internal procedure document outlining its decision making process when excluding the public from council meetings. Staff meeting attendees were generally positive about practices around public excluded meetings and thought the decision making process was robust.

A sample review of the reasons used to exclude the public from meetings showed that while the public exclusion grounds were used appropriately, I have some concerns about the lack of plain English information on the reason(s) and ground(s) for excluding the public. Further, advice to elected members from staff about public excluded items should include information about balancing the public interest in opening the meeting. I am concerned that the reviewed meeting records did not include any reference to consideration of the public interest test. I suggest the Council ensure the public interest in opening a meeting to the public is considered when applying section 7 and an adequate record is kept. I also suggest the Council expand its current guidance to include clear instructions for staff to comprehensively record its reasoning when giving advice on public excluded meetings. I am pleased the Council has advised it is taking steps to address these issues, and I look forward to receiving an update on the implementation of the initiatives in due course.

I commend the Council for having a practice of revisiting material from public excluded meetings to consider it for release at a later date. The Council releases this information on its website and has internal procedure documents to ensure this information is considered for release on a regular basis.

The LGOIMA states that *'every resolution excluding the public from any meeting shall be in the form set out in Schedule 2A'*. A number of public survey respondents commented on the lack of

detail in the reasons for excluding the public. My investigators reviewed a number of agendas and minutes to gain an understanding of the Council's use of the Schedule 2A form. While the record of resolutions on public excluded meetings, were generally consistent with the requirements of Schedule 2A of the LGOIMA, they should include a plain English explanation of the specific harm that the Council deemed necessary to prevent by excluding the public. I suggest the Council ensure resolutions to exclude the public from meetings specify the plain English reason for decisions in sufficient detail as required by the form set out in Schedule 2A, including public interest considerations favouring release under the LGOIMA.

The sample review of meeting agendas and minutes revealed two items, which had been heard in previous public excluded sessions, which did not include a reason or ground for the exclusion. I acknowledge that the Council said the omissions were administrative errors, but I suggest the Council implements further quality assurance processes, to ensure consistent adherence to the LGOIMA.

It is important councils keep comprehensive records of advice to elected members on decisions to exclude the public, including keeping a record of weighing the public interest in disclosing information against the need to withhold it. I also suggest expanding internal guidance to include the recording of the decision making process where advice is given on public excluded meetings and deliver record keeping training to staff involved in public excluded meetings, emphasising the importance of strong record keeping disciplines.

I am pleased the Council records in its minutes which councillors voted 'for' and 'against' resolutions. The Council said that although the practice of recording divisions for all votes is not widespread throughout the sector, it has been an established practice at the Council since September 2012. I am also pleased in October 2020, the Council started the practice of releasing divisions for matters decided in closed sessions. I commend that Council for these practices and encourage other councils to follow suit.

Internal written guidance on excluding the public from local authority meetings was requested from the Council. Some guidance was provided, but I encourage the Council to expand internal guidance incorporating my suggestions, including consideration of the public interest test. The Council should ensure regular training is delivered to staff and elected members on reasons to exclude the public under Part 7 of the LGOIMA, as well as the proper application of the public interest test.

Workshops and briefings

The Council regularly conducts workshops and briefings for its elected members. Briefings are to provide information to elected members; and workshops are to gather feedback or guidance from elected members on complex issues. Most staff and elected member meeting attendees said they were confident that decisions are not made during workshops. However, there is a risk that the way directives are given to staff (such as a show of hands or 'straw poll') can be perceived as decision making to some. If a discussion in a workshop veers toward an actual and effective decision being made, all attendees should be empowered to speak up.

However, it is the Chief Executive who is ultimately responsible for ensuring a decision, which should be made at a formal council meeting, is not made in a workshop.

I am pleased the Council has already taken some steps to prevent the perception of actual and effective decision making in workshops, including opening its workshops and briefings to the public and advertising them on the website. There are some areas of practice, however, that require further development. For example, a number of staff and elected member meeting attendees said it can be unclear whether a workshop is closed to the public, and the reason behind closing the workshop to the public. I am pleased the Council is taking steps to ensure workshop attendees and the public are informed when a workshop is closed. I also suggest it keeps a full and accurate record of closed workshops (such as the date of the workshop, the topic(s) it covers and the reason(s) as to why the briefing or workshop is closed).

The Council's guidance document should be expanded to reflect that all workshops and briefings are open to the public by default and only closed if that is reasonable. The guidance should also specify how workshops and briefings will be advertised to the public and I note that the Council is addressing this. The webpage, where workshops and briefings are advertised to the public, should be updated to include more information on briefings, and the link to the webpage itself should be placed in a more prominent place. The Council already lists 'workshops' directly on the website and has added an extra link button to Committee Meeting information to guide the public back to workshops and it will explicitly change the page title to Workshops and briefings.

I am pleased the Council now publishes some workshop material on its website. However, there are some workshops for which no material is included and it appears that presentations are the only records published. I encourage the Council adopt a standard approach to comprehensively recording information, such as a summary of discussions that occur in workshops and briefings. The Council should review its practices (including guidance) to ensure compliance with the Public Records Act (PRA) for workshops and briefings, and as part of the review, seek advice from Archives New Zealand about whether practices (and guidance) are compliant with section 17 of the PRA.

Practices should be amended to ensure that full and accurate records of workshops and briefings are kept and maintained in an accessible form. For instance, verbal conversations regarding workshops should be documented, and held (along with other relevant records, such as emails) in one discrete, easily accessible place.

It would be beneficial for the Council to consider either live streaming and/or audio video recording workshops and briefings. Finally, I suggest the Council proactively release the records of workshops and briefings, or publish a detailed list of the materials available, so the public know what they can request.

Leadership and culture

My expectations

Achieving the purposes of the LGOIMA depends significantly on the culture of a council, and the attitudes and actions of its leaders. Elected members, chief executives and senior managers should take the lead in developing an environment that promotes openness and transparency. This environment should champion positive engagement with those who want to know and understand what work the Council is doing. It should also enable compliance with the principles, purposes and provisions of the LGOIMA and the LGA.

Councils' senior leaders must role model open and transparent behaviour by ensuring that Council practices and processes around conducting meetings and workshops are transparent, and promote accountability. They should also demonstrate clear knowledge and support of the requirements of the LGOIMA. It is my expectation that council Chief Executives make clear, regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations. Consistent, clear messaging and behaviours communicate a real expectation that the Council is committed to openness and transparency.

An internal culture shift

As part of my investigation, I conducted a survey of staff about leaders' attitudes to promoting openness in meetings and workshops.⁴ Of those who responded, 83 percent said the Council was strongly or moderately committed to openness and public participation.⁵

Seventy percent of respondents considered the former Acting Chief Executive⁶ to be moderately or strongly supportive of promoting openness at the Council,⁷ which is below the average of 80 percent across the seven other local authorities under investigation. The Council has recently undergone significant changes to its leadership, including a new Chief Executive who commenced in November 2022, which was after the staff survey was conducted. I was pleased that many staff survey respondents identified a positive shift in culture around meetings and workshops. An example of some comments include:

I think with change in leadership our practice has also changed. At this point I would say we are more transparent than needed to err on the side of caution. I would say this has been the case for a few months now. The democracy and governance team

⁴ I received 105 responses to this survey. As per the Council's [Annual Report 2020-2021](#), the Council has approximately 583 full-time equivalent staff.

⁵ Eight percent indicated that the Council was silent or did not know. Numbers have been rounded to the nearest percentage.

⁶ The previous Chief Executive resigned in February 2022, the former Acting Chief Executive was in the role between March 2022 and November 2022. See link to the Council's [website](#) for details.

⁷ Thirty percent thought that the Chief Executive was silent on the issue or indicated 'I don't know'.

are also very aware of requirements and are always encouraging that we err on the side of transparency when in doubt...

Over recent years I believe our Council has progressively moved to holding fewer and fewer formal meetings as public excluded...

I think our Council has fewer public excluded meetings than it used to, and the overall approach to openness has improved.

We haven't always had this practice [of publishing records of workshops] but have recently worked harder to ensure that all presentation and information is made publicly available.

In addition, a number of staff meeting attendees said the Council's transparency practices are improving, with fewer public excluded meetings. One meeting attendee said this was due to the 'bolstering of the Governance and Democracy team' and 'a lot more legal oversight'.

A number of transparency improvements have been implemented since the outcome of a complaint to my Office in relation to information presented at a workshop.⁸ As a result of the investigation, I expressed concern that the Council's underlying motive seemed to be to keep internal workshops as private forums that were not open to public scrutiny. I am pleased that the Council has since opened its workshops to the public (discussed further below in [Open workshops and briefings](#)). A number of survey respondents were positive about opening workshops, one elected member said in their survey comment:

There has been an elevated awareness of the way workshops have been used over the past year, and I am pleased to report that workshops are now usually open to the public and it is generally stated that they are not for decision making purposes.

Other improvements to culture have occurred since the completion of a report from a state sector advisor in 2022. The report was requested by elected members to ensure a safe and supportive working environment.⁹ The Council has implemented a number of improvement measures from the report, including updating the councillors' code of conduct. It also developed guidance for report writers titled 'Report Writing Guide' as part of a suite of work to improve advice going to elected members for decision making.

Issues between elected members and staff were identified by a number of staff meeting attendees and staff survey respondents. However, some staff also noted that the culture has been improving. For instance, a staff survey respondent said there is now a 'strong culture of separating governance from operations'. One way this is happening is by limiting staff contact with elected members and ensuring the Chief Executive has visibility over correspondence between staff and elected members. A respectful relationship between elected members and council staff may aid good decision making and help with the smooth running of the Council.

⁸ Link to Ombudsman [case note](#) titled 'Council not entitled to withhold internal workshop presentation'.

⁹ While the report has not been published, the media reported on the consultant's findings – see link to [Stuff article](#).

Another way to encourage transparency and adherence to the LGOIMA is by senior leaders' communicating regular and clear messages to all staff, which signal a commitment to the principles and purposes of the LGOIMA. These messages can be delivered through a variety of internal and external communications. It is important that the positive changes to culture be led by senior leaders who model open and transparent behaviour.

Overall, I am pleased with the recent positive changes in the culture and practice and commend the Council for its responsiveness to external and internal demands for change. I encourage the Council to continue to make improvements to its culture, which should ultimately lead to a more open and well-functioning council.

Action point

1. Ensure ongoing messaging from the Chief Executive and other senior leaders to staff about their commitment to the principles and purposes of the LGOIMA and transparency more generally.

The Council's response

In response to my provisional opinion, the Council said its legal team will brief the Executive Leadership Team on the principles and purposes of the LGOIMA and update the internal intranet with this information. It also advised:

We will include a message specific to LGOIMA and/or the principles of transparency at least quarterly to all staff in the Chief Executive's weekly update. We will look to provide a reminder to staff of this on an ongoing basis.

My comment

I am pleased the Council is taking these steps to address my action point and look forward to an update in due course.

Local authority meetings

My expectations

One of the purposes of the LGOIMA is to 'promote the open and public transaction of business at meetings of local authorities' in order to enable effective public participation in decision making and promote accountability.¹⁰

Part 7 of the LGOIMA regulates council meetings where decisions or resolutions are made. Council's Standing Orders and the Local Government Act 2002 (LGA) also regulate aspects of some meetings. The key requirements of Part 7 are:

¹⁰ See s 4(a) LGOIMA

- every local authority must publicly notify all ‘meetings’ that are scheduled to take place each month, but failing to do so does not invalidate any meeting;¹¹
- agendas and reports are publicly available at least two days in advance;¹²
- meetings are open to the public, unless there is good reason for excluding them;¹³ and
- minutes of a meeting must be made accessible to members of the public.¹⁴

Workshops are not regulated by Part 7 of the LGOIMA, but there are other principles which govern their administration (see [Workshops and briefings](#) for further details).

Meeting minutes should represent a full and accurate record of the content of local authority meetings. It is my expectation that minutes should record not just the final decision taken by elected members, but details of any debate or discussion preceding and informing the decision. In addition to aligning with principles of openness and accountability, recording the content of discussion and debate is a safeguard against any perception that decisions have been taken prior to the meeting, and are merely being ‘rubber stamped’ in the meeting setting. Though it is not a legislative requirement, I consider it is a matter of good practice, in the interest of accountability, to record the names of elected members who voted ‘for’ and ‘against’ a resolution.

Where good reason exists to exclude the public from a meeting, this must be effected by way of a resolution.¹⁵ This may apply to the whole or a relevant part of a meeting. A resolution to exclude the public is a decision made by full council (elected members), with their decision typically being informed by advice given by council staff. In considering how the Council administers meetings, I do not have jurisdiction to consider decisions taken by full council (committee of the whole).¹⁶ However, in relation to decisions by full council, I can review the reasonableness of any advice provided by officials or employees (on which the decision was based).

Section 48 of the LGOIMA states that a local authority may exclude the public from meetings where good reason exists under sections 6 or 7 of the LGOIMA,¹⁷ though it specifically excludes

¹¹ See s 46 LGOIMA

¹² See s 46A LGOIMA

¹³ See s 48 LGOIMA

¹⁴ See s 51 LGOIMA

¹⁵ See ss 47 and 48 LGOIMA

¹⁶ See s 13(1) Ombudsmen Act 1975

¹⁷ ‘Good reason’ to withhold information pursuant to section 7 of LGOIMA exists only where it is necessary to protect an interest as per section 7(2) of the LGOIMA and the need to withhold is not outweighed in the public interest (section 7(1) of the LGOIMA refers).

section 7(2)(f)(i).¹⁸ That is, a council cannot close a meeting to the public to have a ‘free and frank’ discussion.

Councils considering the application of the grounds in section 7(2) of the LGOIMA to exclude the public from a meeting, must also consider the extent of any public interest in the release of the information (the matters to be discussed). For example, there could be a public interest in release (and therefore in the public attending) to promote accountability, transparency and public participation. If there is a public interest in release which outweighs the need to withhold the information, then the ground(s) in section 7(2) of the LGOIMA cannot be relied on as good reason to exclude the public. This weighing of competing interests is known as ‘the public interest test’.¹⁹ It is my expectation that councils weigh the public interest in their decision making on public excluded meetings, and record their considerations. The public interest considerations can be recorded by the Council in the Schedule 2A form discussed below, and I consider it would be beneficial to adopt this practice.

A resolution to exclude the public must be put forward at a time when the meeting is open to the public.²⁰ In other words, elected members must make the decision to go into a public excluded part of a meeting in front of the public. The meeting is then closed in accordance with Standing Orders. The resolution to exclude the public must be made in the form set out in Schedule 2A of the LGOIMA, and must include:²¹

- the general subject of any matters to be considered while the public is excluded;
- the reasons for passing a resolution (with reference to particular prejudice relied on); and
- the actual ground in section 48(1) relied on.

The general subject of matters to be considered should be detailed enough give the public a clear sense of the matter being discussed, in the interest of being as open as possible about the work the Council is conducting. I also expect that the reason for passing a resolution should contain specific details about the harm the agency is trying to avoid, rather than simply reciting the clause from section 6 or section 7(2) as it is written in the LGOIMA. Councils can allow for specified people to remain while the public is excluded if they have knowledge that would assist. In that case, the resolution must state the particular knowledge they possess, and how it is relevant to the matter under consideration.

The public can request information heard in the public excluded part of a meeting under the LGOIMA. It is my expectation that Council guidance makes clear that if a LGOIMA request is made for information heard in a public excluded meeting, such a request must be considered on its individual merits and based on the circumstances at the time of the request; it may not

¹⁸ Section 7(2)(f)(i) allows for information to be withheld where it is necessary 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.

¹⁹ Link to the Office of the Ombudsman’s [Public interest](#) guide

²⁰ See s 48(4) of the LGOIMA

²¹ See s 48(3) of the LGOIMA

be refused under the LGOIMA on the basis the information was earlier heard in a public excluded meeting.

I also consider it is a matter of good practice to ensure there is a process for re-visiting public excluded parts of meetings to determine if any of the information heard in a public excluded part of a meeting can subsequently be released, when the reasons for withholding the information no longer apply.

Finally, it is my expectation that councils will organise their structure and resources to ensure they are able to meet their legal obligations under Part 7 of the LGOIMA, and good administrative practice generally, in a way that is fit for purpose considering their particular size and responsibilities.

Excluding the public from meetings

The decision to exclude the public from whole or part of a meeting ultimately rests with the elected members, not with council staff. Section 48 of the LGOIMA states that '*a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting...*'.

The Council completed an agency questionnaire as part of my investigation where guidance on public excluded decisions was requested. It was apparent from the Council's response that it does not have a clear, formal internal procedure document outlining the decision making process to exclude the public from council meetings. However, a number of staff meeting attendees thought that the Council's decision making process around public excluded meetings was robust as it included multiple levels of review, including oversight by the Council's governance and democracy team and legal team.

In addition, a number of meeting attendees said they could not recall situations, in recent years, where they thought a public excluded item should have been heard in public. Similarly, none of the meeting attendees could recall instances where advice was given to exclude the public from meetings because doing so would enable free and frank discussions (this is not permitted under the LGOIMA).

Many respondents to my staff survey gave positive descriptions of the Council's practices around public excluded meetings:

Reasons for excluding the public are clearly stated in reports and meeting agendas, which quote the relevant section(s) of the LGOIMA.

The legal and governance team are very strict on ensuring that things where they can be made public in all my interactions with that business unit.

General [culture] at PNCC is to include the public in meetings. Exclusions are few and far between...

I believe our practice around what goes to public excluded has had good rigour and gets challenged by the administrators to ensure there is good reasoning.

To gain an understanding of the reasons used to exclude the public from meetings, my investigators reviewed examples provided by the Council. The sample review demonstrated appropriate use of the public exclusion grounds. However, I have some concerns regarding the lack of plain English information about the reason and ground(s) for excluding the public, which I discuss below under [Schedule 2A form](#).

Another requirement of the LGOIMA is to consider the extent of any public interest in the release of the information through public attendance, known as ‘the public interest test’.²² Ultimately, the public interest balancing question should be assessed by the body conducting the meeting (essentially, the elected members). However, it is reasonable to expect that advice to elected members from staff regarding public excluded items cover countervailing public interests in release, as this will have to be assessed by the ultimate decision makers.

I am concerned that the reviewed meeting records did not include any reference to consideration of the public interest test. When my investigators asked about public interest considerations during meetings with staff, some meeting attendees advised that the public interest test is considered. However, I did not see any evidence of this being recorded on a regular basis. Staff meeting attendees said consideration of the public interest test (where required under the LGOIMA) is not recorded or reflected in formal guidance or templates.

I suggest the Council expand its current guidance to include clear instructions for staff to comprehensively record its reasoning when giving advice on public excluded meetings. I discuss this further below under [Recording the decision making process](#). An example of an improvement could be a prompt included in guidance to staff, to consider the public interest test (where appropriate under the LGOIMA) and include (among others) the following issues:

- that the public interest test must be considered whenever applying section 7 of the LGOIMA;
- factors that can affect the weight of the public interest, including (but not limited to) the following:
 - the level of public interest or debate;
 - the level of disquiet, speculation or controversy;
 - the extent of information in the public domain; and
 - the amount of public money involved.

When updating guidance, the Council may wish to refer to my guide titled ‘*Public interest: a guide to the public interest test*’.²³

Finally, I am pleased the Council has a practice of revisiting material (including a summary of the item, memorandums or reports) from public excluded meetings to consider them for

²² Link to the Office of the Ombudsman’s [Public interest](#) guide.

²³ Link to the [Ombudsman’s guidance on the public interest test](#).

release at a later date. The items released to the public are available on the Council's website.²⁴

The Council also has an internal procedure document to ensure this information is considered for release to the public on a regular basis. The procedure document titled '*Releasing Confidential Decisions Procedure*' states:

Council has requested that confidential decisions be released to the public as soon as practicable once they are no longer private.

...This involves releasing the resolution, division, report and appendix (when appropriate).

...Once a month, Governance will review the confidential decisions listed in the Part II decisions spreadsheet and decide whether they can be released or not.

In addition to the above procedure for public release, the Council's *Report Writing Guide* contains the following instruction for staff:

A confidential report must include... a recommendation for release (either the entire report and all attachments) or in part...

I commend the Council for having a formal process to revisit material heard in the public excluded portion of meetings. The guidance document encourages staff to turn their mind to the release of material at some point, even if it is not able to be public at that particular point in time. This is good practice as it greatly aids transparency.

Action point

2. Ensure the public interest in opening a meeting to the public is considered when applying section 7 and an adequate record is kept.

The Council's response

In response to my provisional opinion, the Council said:

We will incorporate the Ombudsman's general public interest test guidance for information release to public exclusion from meetings.

The Council advised it will develop an internal procedure document for report writers to consider the public interest test based on the Office's Public Interest step-by-step worksheet and balancing diagrams. A guidance note on how to use the worksheet and where to save the record of the assessment will be included in the Council's Report Writing Guide. Reference to the flowchart assessment tool will be included when revising the report template with the Council's software provider (InfoCouncil). It will also discuss with the software provider, whether it is possible to include reference to the public interest test '*at the top of the paper itself*', when relying on section 7(2) of the LGOIMA to exclude the public from meetings.

²⁴ Link to the Council's webpage '[Release of confidential committee decisions](#)'.

My comment

I am very pleased with the steps the Council is taking to address this action point and look forward to receiving an update on the implementation of these initiatives.

Schedule 2A form

The LGOIMA states that ‘every resolution excluding the public from any meeting shall be in the form set out in Schedule 2A’.²⁵ The Council meeting agendas include a table that is similar to the Schedule 2A form set out in LGOIMA, which outlines the matters to be considered in the public excluded portion of the meeting. While the LGOIMA states that the Schedule 2A form should be used, I consider that the content of the form is more important than the layout. Therefore, councils may use a template form of their own design, providing that it contains the same prompts to enter information as detailed in the Schedule 2A form.

A number of public survey respondents commented on the lack of detail in the reasons for excluding the public. A sample of public survey comments include:

The reasons [for excluding the public from Council meetings] are always unclear - they use words that hide what is being debated...

Commercial sensitivity is always stated but this is very vague and I do not feel always the appropriate reason... It...feels like a lot of the council time is public excluded.

My investigators reviewed a number of agendas and minutes to gain an understanding of the Council’s use of the Schedule 2A form and found some opportunities for improvement. An example of the Council’s template (from the meeting agenda of Committee of Council dated 15 June 2022), states:²⁶

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
Award of Contract - New Animal Shelter Building	Negotiations	s7(2)(i)

Although the section reference is included, I consider the Council does not include sufficient information to clearly explain to the public about its reasons for excluding the public. When outlining the reasons for hearing items in a public excluded part of a meeting pursuant to section 6 or section 7(2) of the LGOIMA, the resolutions simply recite the wording from the relevant sub-section, and do not include a plain English explanation of the specific harm that the Council deemed necessary to prevent by excluding the public.

²⁵ See s 48(3) of the LGOIMA.

²⁶ Link to the [Meeting Agenda of Committee of Council dated 15 June 2022](#) (see page 4).

While the record of resolutions on public excluded meetings is generally consistent with the requirements of Schedule 2A of the LGOIMA, I encourage the inclusion of a detailed, plain English reason for decisions. For instance, the record should explain why it was necessary to exclude the public, and the specific harm they were trying to prevent by doing so. The record should also outline consideration of competing public interest factors in favour of opening the meeting to the public (for section 7(2) of the LGOIMA).²⁷

To achieve this, I suggest the table content be amended to include a plain English reason for excluding the public. For instance, the text under the ‘*reason for passing this resolution...*’ column could be moved to the ‘*ground(s) under section 48(1) for passing the resolution*’ column, so it would read, for example ‘*s7(2)(i) negotiations*’. The ‘*reason for passing the resolution...*’ column should instead contain a longer form, plain English explanation for excluding the public.

Finally, I am somewhat concerned that my investigators found in the sample review two items, which had been heard in previous public excluded sessions that did not include a reason or ground for the exclusion.²⁸ The Council provided an explanation, stating:

This was an administrative error. We assess the impact of the mistake to be relatively minor. This is because we note that when the original report, from which the recommendation arose, was considered by the Committee on 25 May 2022, the reasons for confidentiality were given both in the published agenda (available to all members and the public) and at the time of moving into confidential session (while still in public session). ... The same reasons still held when the Council agenda was published on 27 May 2022, and again on 1 June 2022 when the Council meeting considered the item.

I acknowledge that the Council has said the omissions were administrative errors, and the matters had been considered at earlier meetings where the reasons for closing were disclosed. However, I am concerned that there may be an inconsistency issue. When unchecked errors occur they can potentially embed into practice. In response to my provisional opinion, the Council said it does have a strong culture of peer review within the agenda publishing team and also written expectations of the committee administrator and committee advisor roles. However, to ensure this type of administrative error does not occur again, I suggest the Council implement further measures to make sure its obligations under the LGOIMA are consistently adhered to. For instance, the Council should develop quality assurance processes to be completed by staff when keeping a record of a decision to exclude the public from a council meeting.

²⁷ Under section 7(2) of the LGOIMA, it must be necessary to exclude public from a Council meeting to prevent harm to the interests recognised by sections 7(2)(a) to 7(2)(j), except section 7(2)(f)(i).

²⁸ Links to the [Council meeting agenda of 1 June 2022](#) (page 5) and the [Council meeting agenda of 29 June 2022](#) (page 5).

Action points

3. Ensure resolutions to exclude the public from meetings specify the plain English reason for decisions in sufficient detail as required by the form set out in Schedule 2A, including public interest considerations favouring release where applicable under the LGOIMA.
4. Implement measures, such as quality assurance processes, to help ensure consistent adherence to obligations under the LGOIMA.

The Council's response

In response to action point three, the Council said '*PNCC supports the use of plain English to enhance participation in public processes*'. The Council said it will revise its Report Writing Guide and the Committee Administrator desk file accordingly, and advise report writers and elected members of the change.

In response to action point four, the Council advised it will update the Committee Administrator desk file to include a pre-meeting checklist for what to look for when checking the agenda before publishing.

My comment

I look forward to receiving an update from the Council on the implementation of the proposed actions.

Recording the decision making process

It is important the Council keeps comprehensive records of its advice to elected members on decisions to exclude the public, including keeping a record of weighing the public interest in disclosing information against the need to withhold it. I consider the advice from staff to elected members to form part of the 'decision making process', as distinct from a 'decision' which is made by elected members at a council meeting. It is important the Council keeps records of the decision making process where it gives advice to ensure practices are consistent with sections 17(1) and 17(2) of the Public Records Act 2005 (PRA). The PRA requires the Council to:

- create and maintain a full and accurate record of its affairs in accordance with normal, prudent business practice; and
- maintain records in an accessible form to enable use for subsequent reference.

My investigators requested records of the Council's decision making process on public excluded items. From the Council's response to these requests, it is evident that the agency does not have such records at hand. Therefore, it appears that the Council does not currently keep easily accessible records of the decision making processes on public excluded items. A staff meeting attendee also indicated that the internal consultations and deliberations that take place during the decision making process typically take form of verbal conversations that are not recorded.

I consider measures should be implemented to ensure comprehensive records of decision making processes on public excluded meetings are kept. Ombudsmen have consistently supported maintaining a full audit trail for advice that contributes to decisions made by an agency. In addition to ensuring compliance with the PRA, maintaining sound record keeping disciplines promotes transparency and openness. It also improves business practices in general. Keeping records of the decision making process will:

- help ensure transparency of decision making by providing a complete and clear record of the reasoning behind advice to elected members;
- provide a reference in case issues around the decision making process arise internally;
- make it easier to respond to the Ombudsman in the event of an investigation or complaint; and
- provides an opportunity to create a repository of knowledge about advice on decisions regarding public excluded parts of Council meetings, thereby developing a consistent approach.

I encourage the Council to expand its current guidance to include clear instructions for staff to record reasoning behind advice to elected members on public excluded matters. This includes taking notes of relevant internal meetings and documenting any verbal conversations held in relation to advice on public excluded meetings. These, and other relevant records (such as emails), must be documented in one discrete, easily accessible place. The Council's internal guidance should also outline the requirement to apply and record the public interest test.

Finally, updating formal guidance should be accompanied by delivering regular training to relevant staff to reinforce the importance of comprehensive record keeping.

Action points

5. Implement measures to ensure that the reasoning behind advice on public excluded decisions is recorded, including any consideration of the public interest test.
6. Expand internal guidance to include the recording of the decision making process where advice is given on public excluded meetings, incorporating my suggestions.
7. Deliver record keeping training to staff involved in public excluded meetings, emphasising the importance of strong record keeping disciplines.

The Council's response

In response to action point six above, the Council said it will remind staff to note conversations between staff and advisors. It will also include a slide in the Report Writer's Training session, emphasising record keeping practices.

My comment

I look forward to receiving updates on the Council's progress on these action points in due course.

Resources and training

Internal written guidance on excluding the public from local authority meetings was requested from the Council in my questionnaire (over and above what might be contained in Standing Orders). This included guidance on the decision making process to exclude the public, as well as providing advice for making the resolution. It appears from the response to my agency questionnaire that the Council has some internal guidance on local authority meetings for both staff and elected members, including:

- a report writing guide;
- guidance document titled '*Relevant Content of Statutes*' (this four page document contains a brief outline of statutes, include the LGOIMA);
- a procedure on releasing confidential decisions; and
- an elected members handbook.

In addition, the Council's Standing Orders²⁹ provide guidance on meeting procedures, including the outline of grounds to exclude the public under the LGOIMA.

I encourage the Council to improve the guidance on meetings under Part 7 of the LGOIMA by including more information on the decision making process on public excluded meetings, along with factors to consider when providing advice to exclude the public from meetings, including consideration of the public interest test. In addition, I suggest guidance provides instructions for staff to keep records of the reasoning behind advice on public excluded meetings.

The Council's guidance and training on meetings under Part 7 should also include full details on taking minutes of council meetings. The Council's Standing Orders (part 2.23.2 *Keeping of minutes*) give some guidance on what the minutes must record. However, the Standing Orders and my review of a sample of minutes suggests there is little detail included in the minutes of discussion, debate or questioning. In response to my provisional opinion, the Council said its minutes are in line with its Standing Orders and consistent with advice received from Simpson Grierson in 2021. In addition, meetings are live streamed and remain on the Council's website after the meeting, which '*means that the debate is always available*'.

I am pleased the Council records in its minutes which councillors voted 'for' and 'against' resolutions. The Council said that although the practice of recording divisions for all votes is not widespread throughout the sector, it has been an established practice at the Council since September 2012. I am also pleased in October 2020, the Council started the practice of releasing divisions for matters decided in closed sessions. I commend that Council for these practices and encourage other councils to follow suit.

The Council provided details of the training it offers to staff on Part 7 of the LGOIMA. The Council said that staff from the Democracy and Governance team and Legal Services team attend external training '*on LGOIMA practice*', such as webinars conducted by Taituarā and Simpson Grierson. New report writers undertake one-on-one induction training delivered by

²⁹ Link to Council's [Standing Orders](#).

the Council's Democracy and Governance Manager, which the Council states covers Part 7 of the LGOIMA.

Staff meeting attendees said there was no formal training on meetings and workshops and some 'as needed' training was conducted on the use of the Council's report template. The latter is contained in 'InfoCouncil', a specialised software programme used by the Council to produce its agendas, the reports that go with each agenda item, and the minutes for all Council and committee meetings. A staff survey respondent commented on the Council's over-reliance on templates as follows:

...We tend to rely on legislative compliance through templates, rather than teaching people to read legislation and understand the reasons why we should have open government in the first instance.

Several staff survey respondents further commented on the lack of training, stating:

...Officers (outside of legal & governance) understanding of the legislation can be limited or incorrectly interpreted...

...there is a general lack of training for report writers on how to meet the legal obligations of LGOIMA, with an assumption that people will learn from others or work it out themselves. ...

I suggest the Council ensure that regular formal training is delivered to elected members and select staff, as it would provide the following benefits:

- demonstrating leadership from the top;
- ensuring officials' understanding and knowledge;
- promoting efficiencies and consistencies in decision making; and
- demonstrating commitment to support and grow the professional development of staff.

My Office is available to deliver tailored LGOIMA training, and can review training materials developed by the Council.

The public can request information heard in the public excluded part of a meeting under the LGOIMA. The Council does not currently have any written guidance or policies on responding to LGOIMA requests from members of the public seeking information about public excluded meetings. Instead, the Council states it refers staff to the guidance provided on my website. However, I encourage the Council to implement internal guidance on processing LGOIMA requests that would be individually tailored to suit the agency's needs and circumstances in this area of its practice. The guidance should state that the public can request information heard in the public excluded part of a meeting under the LGOIMA. If a LGOIMA request is made for public excluded information, I would expect each request to be considered on a case by case basis.

Action points

8. Expand internal guidance incorporating my suggestions, including consideration of the public interest test.
9. Ensure regular training is delivered to staff and elected members on reasons to exclude the public under Part 7 of the LGOIMA, as well as the proper application of the public interest test.

The Council's response

In response to my provisional opinion, the Council advised that since February 2023, several regular training initiatives have been put in place, including:

- Training new staff responsible for report writing, including discussion on confidential reports and attachments, offered every six weeks.
- A peer 'lunch and learn' session between report writers to share practice improvements.
- Additional resource to the Legal Services team, who will develop internal procedure documents and training for the Council.

In addition, the Council said it will add slides to the current training pack for report writers to include information on the public interest test; and also add a '*session topic*' on the public interest test. It will update the Elected Member Induction Guide to include information about what elected member members should consider before deciding to move into a public excluded session.

My comment

I am pleased with the Council's response to my action points, and look forward to receiving an update in due course.

Workshops and briefings

My expectations

The LGOIMA does not define or regulate workshops (or other informal meetings)³⁰, but Ko Tātou LGNZ's *The guide to LGNZ Standing Orders* states that workshops are best described as '*informal briefing sessions where elected members get the chance to discuss issues outside of the formalities of kaunihera meeting*'.³¹ It is common for councils to conduct workshops about complex or technical issues on which elected members will later be required to debate and make decisions.

³⁰ For the purpose of this investigation, 'workshops, briefings and informal meetings' mean any organised or scheduled meeting attended by Council Staff and Elected Members which fall outside the definition of 'meeting' in s 45(1) of LGOIMA.

³¹ Link to [The guide to LGNZ standing orders](#)

The purpose of workshops should be to prepare Councillors with the appropriate background and knowledge to make robust decisions for their communities, and to allow discussion and deliberation among and between elected members and council staff. Workshops are part of the educative and deliberative phases of councils' decision making process; however, final decisions and resolutions cannot lawfully be made outside the context of a properly notified and constituted meeting.

Because workshops cannot lawfully be used to make actual and effective decisions and are not conducted under the LGOIMA, the legal requirements in the LGOIMA that relate to council meetings—such as requirements to notify the public, to take minutes, and to exclude the public only under certain defined circumstances – do not apply to council workshops. Nonetheless, councils have a general discretion to advertise and undertake meetings that fall outside of Part 7 of LGOIMA in public. While it may be reasonable to close a workshop in a particular case, I consider that a general policy of not advertising workshops or having all workshops closed to the public, is likely to be unreasonable. It is my expectation and a requirement of the LGA 2002, that *'...a local authority should conduct its business in an open, transparent and democratically accountable manner...'*³²

As a matter of good practice, workshops should be closed only where that is reasonable. What might be considered reasonable is a truly open category depending on each individual case, and may include situations where the reasons for withholding information under sections 6 and 7(2) of the LGOIMA might apply, as well as other situations. What is reasonable in a particular case will vary, however the decision to close a workshop should be made on the individual merits of each workshop, rather than being based on a blanket rule.

Even where it is reasonable to close a workshop, I encourage councils to be mindful of the public perception of secrecy this may create, and mitigate this risk through ensuring the public has access to sufficient and timely information about the purpose and content of workshops. The legislative history of the LGOIMA makes it clear that there is an expectation that full and accurate records of workshops are kept, and this is also a requirement of the Public Records Act (PRA).³³ Keeping full and accurate records of workshops is the safeguard against the perception that decisions are being made outside a local authority meeting; and, being able to request access to such information allows members of the public to meaningfully engage with the work of the Council. Information arising from workshops can be requested under the LGOIMA although, ideally, councils would proactively release information generated in workshops.³⁴ Creating records of workshops is a matter of good administrative practice, and it promotes a council's accountability and transparency. Councils should adopt a standard approach to recording information about workshops and ensure this is embedded in its guidance on record keeping for workshops.

³² See s 14 LGA

³³ See s 17(1) PRA 2005

³⁴ Even if no record is made at the time, information held in an official's memory as to what transpired at a workshop can also be requested under the LGOIMA, and it is preferable to have a contemporaneous account of what happened.

All workshop attendees should be aware that workshops cannot be used for making an actual and effective ‘decision.’ The discussion and deliberation that takes place in a workshop can carry elected members down a path toward a decision. For example, where council staff present a range of options to elected members in a workshop, and those options are narrowed down significantly—and, in particular, where those deliberative workshops are closed to the public—it can give the appearance of a decision being made in all but name, with the public meeting merely ‘rubber stamping’ that decision. Using a closed workshop to do ‘everything but’ make a decision could be seen as undermining the principles of the LGOIMA and the LGA, which I may view as unreasonable.

I can review the reasonableness of any act or omission by a local authority under the Ombudsmen Act. This includes the reasonableness of a council advising or deciding to not notify or close workshops, or using closed workshops to do ‘everything but’ make a final decision.³⁵ I expect councils to make it clear to the public that they can complain to me about workshops.

Some councils draw a distinction between ‘workshops’ and ‘briefings’ with the former being open to the public and the latter; closed. Other councils may refer to the same type of informal briefing session between elected members and staff using different terminology entirely, such as a ‘forum’ or ‘hui’. Irrespective of the title(s) a council chooses to give informal briefing sessions, the same requirements to conduct business in a transparent and accountable manner, and to keep full and accurate records apply to all.

Workshops and briefings at the Council

The Council advised that it regularly conducts workshops and briefings for its elected members. The Council’s ‘*Elected Member Induction Handbook*’ provides the following definitions:

Workshops are used as informal sessions to gather elected member feedback or guidance on a complex issue. No decisions are made in workshops. These are approved by the Mayor and scheduled, usually one quarter ahead... Most workshops are open to the public. Briefings may also be used to share information with members.

The distinction between workshops and briefings is explained in the Council’s internal document titled ‘*Guidelines for Workshops and Briefings*’:

The purpose of a workshop is to engage in discussion or activity on a particular issue or topic...

The purpose of briefings is to impart information on a particular matter. The reasons for holding a briefing include bringing elected members up-to-date on an issue or explaining a complex matter that will come before the Council.

³⁵ This refers to Council staff, not a decision of full Council.

Most staff and elected member meeting attendees appeared to clearly understand the difference between workshops and briefings. For example, one meeting attendee said that briefings are conducted as short presentations delivered by staff as a one-way flow of information to elected members. Workshops, on the other hand, are intended to facilitate two-way discussions between staff and elected members.

A number of staff and elected members survey respondents commented on the purpose of workshops:

...The workshops are, in my view, opportunities for EMs [elected members] to provide thoughts and feedback that may help shape officer's advice and provide an opportunity to gauge thinking prior to reporting.

...[Workshops] can be used as a gauge for staff to structure formal advice to Councillors for decision-making at the Committee phase. Workshops are critical.

Councillors over a period of months or years will have a myriad of matters that require at the very least a working knowledge of the issue under consideration. ...workshops serve a meaningful part of the process where Councillors can better understand the issues and this will lead to stronger debate and better decisions.

As outlined in [My expectations](#), workshops cannot be lawfully used to make actual and effective decisions. Most staff and elected member meeting attendees said they were confident that decisions are not made during workshops. Some examples of comments made by staff and elected member survey respondents include:

While the intent of workshops is for information sharing, during questions there can be some back and forward discussion that could be considered a debate. However, care is taken to ensure that there is no actual decision making.

Workshops ...have always been used as a means to brief Councillors on particular topics. In my view they are not used as a means of withholding information from the public or subverting democracy. Whilst views are shared in the workshops there is no formal debate and no decision-making... I have never witnessed any predetermination that has arisen from a workshop.

One staff meeting attendee said that while directions are given by elected members to staff during workshops, they are viewed as 'guidance' which council officers may or may not consider when preparing their reports for local authority meetings. However, a small number of elected members expressed concern with the way some workshops were conducted. For example, the following comments were made by elected member survey respondents:

There have been multiple instances this term in closed workshops where (either through sharing views, straw polls, or similar means) the sense of where a formal vote would land was clearly gathered in a workshop. While of course it isn't a formal vote, it does set the tone and I'd have to say it doesn't sit well with me.

The language of Workshop is that they're to give direction, but this feels like decision making by a different name. The Mayor will often seek an informal vote or straw poll to identify views to inform next steps.

While the Council assures me decisions are not made in workshops, there is a risk that the way directives are given to staff by elected members may be perceived as decision making to some, including the public. A show of hands or any type of straw poll conducted during a workshop may lead the public to perceive a 'decision' is being made in a workshop, when it should be made in a meeting.

If discussion in a workshop veers toward an actual and effective decision being made, all attendees should be empowered to speak up. However, the Chief Executive is ultimately responsible for ensuring that a decision that should be made at a formal Council meeting is not made in a workshop.

I am pleased the Council has already taken some steps to prevent the perception of actual and effective decision making in workshops, such as opening workshops and briefings to the public to support transparency and accountability (discussed below in [Open workshops and briefings](#)), and publishing some workshop material (discussed further below in [Keeping records of workshops](#)). However, I have some suggestions to further strengthen the Council's practice in this area (such as keeping full records, livestreaming or audio visual recording workshops, and proactively releasing workshop information to the public) which I discuss further below.

Open workshops and briefings

I am pleased the Council started opening its workshops and briefings to the public and media in May 2022. Workshops are advertised on the Council's website, including the time and venue, and associated reports are listed.³⁶

However, I note that a number of staff survey respondents and staff meeting attendees expressed concerns about holding workshops and briefings in an open forum. Some of the perceived disadvantages include:

- Concern that issues may be politicised due to public attendance. One staff survey respondent said *'politicians seem to play to the audience now'*.
- A view that political processes require a degree of closed-door proceedings and *'ability for people to call-out colleagues without shaming them publicly'*.
- Elected members might be less likely to have open, free and frank discussion and ask questions if *'they think [this] might be viewed as silly'*.

While I appreciate the concern that elected members may be more guarded with their comments in open workshops, elected members are there to provide a voice for the communities they serve. They should feel free to express their opinions and ask questions publicly. While elected members should not have to endure unreasonable or harassing

³⁶ Link to the Council's [Workshops](#) webpage.

behaviour, the views of the community are important and elected members should have enough resilience to withstand public scrutiny. It is the job they are elected to do.

Further benefits of open workshops and briefings include:

- The public can see the basis of the lead up to formal decisions being made, enhancing understanding of whether decisions are in the best interests of the community. Such openness allows the public to have visibility of options that were considered during workshops but were not included in formal meeting agendas because they were deemed unfeasible. This helps ensure accountability to the public.
- Maintaining public trust in decisions should go beyond assuring the public that no decisions are made behind closed doors. The public may not always agree with the decision, but it is more likely to accept it if the processes and practices that precede these decisions (e.g. discussions held during workshops) are open and transparent. Even where the public does not attend the Council's workshops and briefings, the fact that they are open will likely reduce speculation that they are being used as decision making forums.
- Observing council operations during workshops and briefings can enhance the public's technical knowledge and understanding of its functions and operations, enabling participation in the actions and decisions of local authorities.
- Transparency around elected representatives' participation in workshop discussions allows the public to make informed decisions during the next local elections.

The Council said that since October 2022, 16 workshops and briefings have been open to the public and only one workshop has been closed. The Council said that when a venue is not listed on the website (i.e. the workshop is closed), a plain English reason is listed, setting out why the workshop is not open to the public. In addition, a record of the reasons is kept confidentially in the Document Records System and elected member diaries note when the workshop is closed. However, a number of staff and elected member meeting attendees said it can be unclear whether a workshop is open or closed to the public. Further, they said if they are closed, the reason for closing the workshop is not always clear. The Council's *'Guidelines for Workshops and Briefings'* state:

Debating of the issue occurs in public in a transparent and open manner (unless it meets the public exclusion clause under LGOIMA).

As outlined in [My expectations](#), workshops should be closed only where that is reasonable. What might be considered reasonable depends on each individual case, and may include situations where the reasons for withholding information under sections 6 and 7(2) of the LGOIMA might apply, as well as other situations. However, the Council should take additional steps to ensure the reasons to close a workshop are made clear to those in attendance and publicly, and a full and accurate record made.

While I am pleased the Council has said it does clearly give the reasons for closure, there may still be some confusion for staff and elected members, as I note above. In response to my

provisional opinion, the Council advised that it would update the Elected Member Induction Guide to include details on informing elected members when a workshop is closed to the public. The Council said it will also explain in writing to all elected members that workshops and briefings state in their diaries when they are closed to the public.

I encourage the Council to update its guidance document to ensure this information is captured when closing workshops. See [Keeping records of workshops and briefings](#) below for further information.

Another opportunity for improvement is around advertising workshops and briefings to the public. A staff survey respondent commented as follows:

The change to public workshops is only a recent one. There is certainly not a culture or practice of actively encouraging attendance by community stakeholders on a particular topic.

The Council's *Guidelines for Workshops and Briefings* do not specify how workshops and briefings will be advertised to the public. However, they do include an instruction for staff to circulate 'workshop/briefing titles and purpose with the Friday Compendium (media)'. A respondent to my elected member survey said there had been a number of positive changes taking place in this area, the comment states:

During this term a definite change took place. Historically workshop were informal and weren't promoted so in effect were public excluded. Now all workshop are advertised online. Media have attended particularly for proposed large infrastructure works.

It appears that while the general principle is that workshops and briefings are open, and there are some details of workshops on the website as well as notice to the media, I did not see evidence of the Council regularly inviting special interest groups and local community groups. The Council should consider the ways it not only notifies workshops and briefings, but actively advertises and promotes them, especially to particular groups and the public on topics that are relevant to them.

In its response to my provisional opinion, the Council advised that its usual practice is to identify special interest groups in pre-engagement activities, often led by staff. The response said that while the intended participants for workshops are elected members, some community groups 'may find observing early elected member interaction on the topic of value'; and some have attended to date. The Council said it will include reference to workshops in a 'weekly Facebook post' and add a line to the list of 'officer responsibilities' which notes officers may wish to invite stakeholders to the workshop or briefing. I support the proposed steps suggested by the Council to ensure special interest groups are aware that workshops are taking place.

While workshops and briefings are listed on the website, the link is provided at the bottom of the 'Upcoming meetings and agendas' webpage.³⁷ I suggest the Council consider placing the

³⁷ Link to the Council's ['Upcoming meetings and agendas'](#) webpage.

link to the workshops and briefings webpage in a more prominent place. In addition, I note that the 'Workshops' webpage does not include any reference to briefings. This is despite the Council stating that both workshops and briefings are notified to the public via the website. I suggest the Council's 'Workshops' webpage be amended to include the word 'briefings'. The definition and purpose of workshops and briefings should also be included on the webpage.

These measures should help promote public awareness and encourage public attendance.

Action points

10. Ensure workshop attendees and the public are informed when a workshop is closed and keep a full and accurate record of the workshop (such as the date of the workshop, the topic(s) it covers and the reason(s) as to why the briefing or workshop is closed).
11. Ensure the guidance on closing workshops and briefings to the public is expanded to incorporate my suggestions and applied consistently; this should include reflecting that all workshops and briefings are open to the public by default and only closed if that is reasonable.
12. Update the 'Workshops' webpage incorporating my suggestions.

The Council's response

In response to action point 11, the Council said it currently does list on its intranet page that workshops are open. However, it will '*add a line to the Definitions and Purpose section in the formal workshop guidelines which also notes public by default*'.

Regarding action point 12, the Council said it will change the webpage title to '*workshops and briefings*'.

My comment

I am encouraged that the Council has said they are taking actions to address the points I have raised. I look forward to an update when these actions have been implemented.

Keeping records of workshops and briefings

I was pleased to note that the Council now publishes workshop material on the agency's website.³⁸ However, there appear to be some workshops for which no material has been released. The Council said it '*pre-circulate[s] any presentation to elected members prior to the workshop or briefing*' and these are the only records of the workshop or briefing.

To help promote accountability and transparency, align with good practice, and, importantly, ensure compliance with section 17 of the Public Records Act (PRA), the Council should adopt a standard approach to comprehensively recording information such as a summary of discussions that occur in workshops and briefings. I also expect, that if the Council considers it is reasonable to close a workshop, the Council records those reasons.

³⁸ Link to the Council's '[Workshops](#)' webpage.

I note that in addition to workshop material circulated to elected members, the Council's *'Guidelines on Workshops and Briefings'* instruct staff to *'...include a short synopsis of what the Workshop covered in the report to committee or Council where the subsequent decision is debated'*. A number of staff meeting attendees said the synopses typically consist of only one paragraph and do not record the discussion held during a workshop. However, the sample meeting records reviewed did not appear to include any examples of these synopses. I encourage the Council to ensure that when preparing reports of workshops or briefings, staff consistently adhere to the instruction to prepare a synopsis that includes a detailed account of any discussions and questions.

Verbal conversations regarding workshops should also be documented. These, and other relevant records (such as emails), should be held in one discrete, easily accessible place. In addition, it would be beneficial for the Council to consider either live streaming and/or audio video recording workshops and briefings. Some councils choose to audio and/or visual record their workshops, both for record keeping purposes and as an additional transparency measure. The Council said notes and recording and/or live streaming of workshops and briefings is not occurring *'at this stage'*. I encourage the Council to consider whether this transparency measure would be an appropriate development.

I also encourage the Council to seek advice from Archives New Zealand, the regulatory stewards of the PRA, to ensure its practices (including its internal guidance) about recording workshops and briefings are compliant with section 17 of the PRA. The Council must ensure that adequate records of workshops and briefings are kept.

The Council should make all records, including any audio visual recordings, available to the public. I suggest the Council either proactively release the records of workshops and briefings, or publish a detailed list of the materials available, so the public know what they can request. Proactively publishing a full record of workshops and briefings may protect the Council from any public perception of decision making, and gives the public a greater understanding of the rationale behind decisions made at formal meetings.

Action points

13. Review practices (including guidance) to ensure compliance with the Public Records Act (PRA) for workshops and briefings, and as part of the review, seek advice from Archives New Zealand about whether practices (and guidance) are compliant with section 17 of the PRA.
14. Amend practices to ensure that full and accurate records of workshops and briefings are kept and maintained in an accessible form.
15. Consider livestreaming and audio visual recording workshops and briefings.
16. Proactively release full and accurate records of workshops and briefings, where possible.

The Council's response

In response to action points 13 and 14, the Council said it considers keeping notes of workshops is *'likely to require an increase to our current resourcing'*. However, the Chief Executive will:

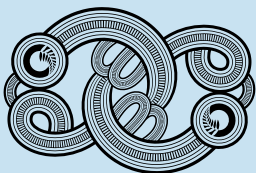
Seek record keeping advice from Archives New Zealand. If there is a need to take additional notes, we will need to factor in how this will be serviced.

Regarding action point 15, the Council said live streaming of workshops would require an *'investment in technology in informal meeting rooms, and that elected members will discuss'* whether they wish to livestream or record workshops. If elected members would like this to happen, the Chief Executive will investigate how this would be serviced.

In response to action point 16, the Council said it currently lists all slides from workshops on the website and if *'notes or recordings are taken in future these could also be archived to the same page.'*

My comment

I strongly encourage the Council to seek advice from Archives New Zealand and provide me with an update on the implementation of the action points above in due course.



Ombudsman

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