

Meeting and workshop practices at

Rotorua Lakes Council

Ombudsman

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October 2023



Final opinion of the Chief Ombudsman
Meeting and workshop practices at Rotorua Lakes Council

Te Kaitiaki Mana Tangata Aotearoa | The Ombudsman New Zealand

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Terminology

- Rotorua Lakes 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'.
- In the current triennium, Rotorua Lakes Council has adopted the term 'forums' where it previously used the term 'workshops'. For clarity, I will use the Council's current terminology—'forums'—in this report.
- 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.

Rotorua Lakes Council (the Council) is 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 some good Council practices. It is evident that the Council has good practices around revisiting and considering for release material held in public excluded parts of meetings, and livestreaming and publishing recordings of meetings.

My opinion is that the Council acted unreasonably through its approach to closing forums by default, thereby allowing negative perceptions to develop among some of its staff and some of the public around the openness and transparency with which it conducts its business. I recommend that the Council identify the steps to be taken to address these perceptions and submit these to me for comment within one month. I expect the agency to act to implement these steps with regular reporting back to me.

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.

It is also my opinion the Council's practice of excluding the public from all forums, rather than considering whether closure is necessary in the individual circumstance of each forum, was unreasonable. I recommend that the Council cease its practice of closing forums by default, and instead ensure forums are presumptively open to the public, unless it is reasonable to close a forum on a case by case basis. Where a decision is made to exclude the public from a forum, the reasons for the decision should be published on the Council's website along with the details of the content and date of the forum.

I have identified other issues of concerns and opportunities for improvement in the Council's practices, resulting in 11 action points. The Council has accepted both recommendations and most action points. The Council informed me that the Chief Executive's existing work-streams for the 2023-2024 year includes reviewing and revising governance practices and support structure to ensure best practice, alignment with legislative requirements, and reliable and responsive support to Council. I look forward to further productive engagement with the Council in the months to come as it works through my recommendations and suggested action points.

Peter Boshier
Chief Ombudsman

June 2023

Summary

Leadership and culture

The perceptions expressed by Council staff and members of the public during the course of my investigation leave me deeply concerned about the Council's commitment to conducting its business with openness and transparency. Staff perceptions of the Council's commitment to openness and public participation are low when compared to most of the other councils currently under investigation, and there was a strong public perception amongst those who responded to my survey that the Council's use of forums reduced, rather than enhanced, their ability to participate in democratic processes.

The Council's leaders⁴ are ultimately responsible for its culture. They play a key role in the perceptions that staff and the public form about whether the Council conducts its business with transparency, accountability, and public engagement in mind. Council leaders must take responsibility for building a culture of openness and transparency and establishing practices that promote transparency and accountability. This must be a priority for the Council.

It is my opinion that the Council has acted unreasonably in its approach to closing forums by default, thereby allowing negative perceptions to develop among some of its staff and some of the public around the openness and transparency with which it conducts its business. I recommend that the Council identify the steps to be taken to address these perceptions.

The Council should also ensure that its website contains full and easily accessible information about meetings and forums, and that it sends clear, regular messages to the public and to staff about its commitment to openness and transparency.

Workshops (forums)

My investigation commenced in the 2019-2022 triennium and has continued through local body elections at which a new Mayor was elected. The Council's practice of closing all workshops (or forums) by default, has contributed to a perception that they are being used to keep information from the public. In the current triennium, the Council made a concession to greater openness by advertising the occurrence of forums, but they were still held out of the view of the public. I am not convinced by arguments that forums should be closed in order that elected members can feel more free to ask naïve questions – they are elected, and must be expected, to deal with appropriate levels of scrutiny. This is key to ensuring they remain accountable to the public.

It is my opinion that the Council's practice of excluding the public from all forums, rather than considering whether closure is necessary in the individual circumstance of each forum, was unreasonable. I recommend that the Council cease its practice of closing forums by default, and instead ensure forums are presumptively open to the public, unless it is reasonable to close a forum on a case by case basis. Where a decision is made to close a forum to the public,

⁴ Including senior managers and elected members.

the reasons for the decision should be published on the Council's website along with the details of the content and date of the forum. The Council has accepted my recommendations. Guidance and training on forums, including examples of when it may be reasonable to exclude the public, should be updated to reflect amendments in the Council's practice.

The Council should improve its practices around record keeping in forums, in order to comply with the requirements of the PRA, and to facilitate greater openness and public participation. The fact that decisions are not to be made in forums is no reason not to take records of the discussion that occurs. Forums are a key part of the decision making process and, as such, it is a matter of prudent business practice and a requirement of the PRA⁵ to keep a full and accurate record of their content. The existence of records allows for their request under the LGOIMA which facilitates accountability and transparency. I encourage the Council to consult with Archives New Zealand to ensure its guidance and practices around record keeping of forums align with legal requirements, and to proactively release records of forums where possible.

Local authority meetings

The Council does not currently have a written process for making decisions to exclude the public from Council meetings. However, the Council's decision making process, as described by the agency, appears to be fairly robust. I was also pleased to see that the Council's decision making process around public excluded items includes consideration of when information can be publicly released once the reason for withholding information no longer applies.

While the Council's resolutions on public excluded meetings are generally consistent with the requirements of the LGOIMA, my review of the Council's Schedule 2A forms have shown that the Council does not include sufficient detail about its reasons for hearing items in a public excluded part of a meeting. In addition, the records of Council meetings provided by the Council did not include any references to the Council applying the public interest test. I suggest that the Council amend its practices to ensure that the Council's resolutions on public excluded meetings outline the agency's reasons for its decisions in sufficient detail, including public interest considerations where applicable under the LGOIMA. The Council should update its guidance to reflect its updated practices.

The Council does not keep records of the decision making process behind the Council's decisions to exclude the public from meetings or parts of meetings. To help ensure compliance with section 17 of the Public Records Act 2005 and promote transparency and openness, the Council should keep full and accurate records of decision making processes on public excluded meetings, including the advice given by the Council to elected members to inform their final decision on whether the meeting should be closed. Records pertaining to the decision making process should be stored in a manner that makes them accessible for future reference.

I encourage the Council to update its internal guidance and training material to include clear instructions for staff to record the Council's advice and decision making processes around

⁵ See section 17 of the PRA

public excluded meetings. The update of guidance material should be accompanied by training and messaging to staff about the importance of comprehensive record keeping for ensuring compliance with legislation, and promoting the transparency of the Council's practices and the agency's accountability to the public.

The Council's guidance and training on meetings held under Part 7 of the LGOIMA should include taking minutes of Council meetings. My review of a sample of the Council's minutes showed that there was very little detail included of any discussion, debate or questioning that may have taken place. The Council also does not typically keep minutes of which councillors voted 'for' and 'against' resolutions; doing so is good practice which would facilitate accountability.

The Council's training on Part 7 of the LGOIMA and/or conducting forums appears to be delivered to staff on a one-on-one, ad hoc basis, and largely revolves around the use of the Council's report template. Based on the results of my staff survey, less than half of respondents in roles related to the administration of Council meetings have ever received training on meetings held under the LGOIMA. I suggest that the Council implement clear and comprehensive guidance for staff outlining the Council's decision making processes along with the factors to be taken into account when making decisions. Developing written guidance should be supported by formal training delivered regularly to elected members and Council staff involved in the administration and conducting of Council meetings. This should include refresher training at regular intervals for all elected members on their responsibilities under the LGOIMA in relation to Council meetings, as well as the Council's policy and practices around the conduct of forums.

Accessibility

A public survey respondent raised concerns about the accessibility of the Council chambers, describing issues such as limited access to disabled parking and the lift inside the Council building not working during the Council meetings the respondent attended. My staff's observations of the Council buildings reinforce the above concerns about its accessibility.

To ensure appropriate accessibility and public participation, I suggest that the Council undertake an accessibility audit by a suitable provider to identify any barriers to inclusion of disabled people. Upon completion of the audit, a schedule of work should be put in place to remedy access and remove any identified barriers. In response to my provisional opinion the Council advised that it had no objection to undertaking an audit, noting that implementing any recommendation may need to be considered by elected members.

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 principle, 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.

The Council's culture of openness and the public's perception

I am deeply concerned that the Council is lacking a strong commitment to openness and transparency, and by the comparatively low public perception of the Council's openness and the integrity of its decision making. I have formed my view through online surveys of staff, elected members, and the public; discussions with staff, the Chief Executive, the former and current Mayors, and some elected members.

In my survey of Council staff, I asked about their perceptions of leaders' commitment to promoting openness and transparency in the Council's activities. Those results are summarised in the table below.⁶

Staff perceptions of leaders' commitment to promoting openness and transparency in the Council's activities

Leadership level	Strongly or moderately supportive	Strongly or moderately negative	'They are silent on the issue' or 'I don't know'
Chief Executive	65%	13%	22%
Senior Leadership	74%	12%	15%
Mayor	60%	12%	28%
Elected members	56%	7%	37%

⁶ Figures are rounded to the nearest percent and may not total 100%.

Sixty five percent of respondents considered the Chief Executive was moderately or strongly supportive of promoting openness in the Council's activities. While this is two-thirds of staff survey respondents, the average across seven other local authorities under investigation in relation to meeting and workshop practices, is approximately 80 percent. Senior leaders, and the Chief Executive in particular, must be seen to be open and transparent, in order to foster a culture of openness within the agency, as well as a public perception of openness.

My investigation straddled the 2022 local body elections, in which a new Mayor was elected. It is therefore necessary to distinguish between the previous and current Mayorality and the Council practices under each. Recently there has been a greater appetite for transparency in the way the Council runs workshops (termed 'forums' by the Council)⁷ and it has already implemented some, albeit minor, improvements. For example, the Council's forums are now advertised on the agency's website, which is a positive step. I note, however, that forums remained closed to the public in the current triennium. This was a continuation of the same practices that occurred under the previous Mayor, and appears to have been ingrained in the Council's culture. I will discuss the Council's use of forums in greater depth under [Forums](#).

I am of the view that the Council's exclusion of the public from all forums has contributed to a perception by some members of the public that forums are being used to keep vital information from the public, and even to a perception that forums were used to unlawfully form decisions on issues of high public interest. The Council affirmed in its response to my provisional opinion, its view that '*de facto decision making*' was not occurring in forums. A key theme in feedback from my survey of the public was the lack of trust in the openness of the Council's decision making process:⁸

Our views are completely ignored as the decision has been made prior in private meets also. There clear back hand deals going on [sic]...

Not enough debate [in public meetings]. It all seems to have been decided beforehand.

...Issues seem to have pre determined [sic] outcomes before public consultation...

...many residents don't trust the mayor or council as the perception is everything they do is in secret and ratepayers are treated like their view is irrelevant.

Too many decisions seem to be made behind closed doors with open meetings just a sham...

There is a general feeling amongst a large number of the public that there is an undercurrent of deviousness in these workshops...

Public feedback is a tick the box affair

⁷ In the current triennium, Rotorua Lakes Council has adopted the term 'forums' where it previously used the term 'workshops'. For clarity, I will use the Council's current terminology—'forums'—in this report.

⁸ I conducted my public survey in August 2022. Survey responses therefore relate only to Council conduct and practice prior to the 2022 local body elections.

...So many decisions are obviously predetermined before public consultation, this is why we don't engage with council.

One of the specific issues raised by members of the public during the course of my investigation was a perception that forums were used in the 2019-2022 triennium to make a decision on proposed changes to the Council's electoral representation arrangements.⁹ Although the final decision on electoral representation arrangements was overturned by a resolution of full council in the current triennium, it remains a strong example of how councils' use of closed workshops can lead to a perception that decisions are being made behind closed doors. I will speak further about this issue in a case study under [Workshops \(forums\)](#).

In addition to their perceptions around the secrecy of forums, many public survey respondents commented on their views of the Council's transparency and openness more generally. There were a number of comments about limited opportunities for the public to speak at meetings chaired by the former Mayor,¹⁰ and about members of the public being interrupted or feeling belittled by the former Mayor and some councillors when they did have the opportunity to speak:

From what I have seen public input or questioning is shut down quickly. I feel this is a major deterrent for the community to try and speak up. It's not a good situation how the council is operating, very undemocratic and not representing ratepayers' voice/opinion.

The mayor and some councillors were very disrespectful to the councillors who did not agree with them during the meetings I attended or watched online. They belittled the councillors and also the residents of Rotorua.

Our council frequently bars the public from meeting. When public is allowed they will object to any comments that have views opposite the current mayor's view. They do not allow the meetings to flow freely.

Public can attend public meetings but cannot speak.

If the council members do not like hearing the public's opposition to their direction they close future meetings off to the public to push through what they want.

Public do not get to speak at public council meetings. A Public Forum should be a part of every council meeting to hear direct from the public.

Participation does not go as far as permitting residents and ratepayers to speak of course. At recent hearings (Sale of Reserves issue) Councillors appeared too ready to disrupt speakers and ruin their train of thought.

The mayor and a couple of the councillors are very rude and condescending. They interrupt and talk down to people that disagree with them-those people from the

⁹ The proposed changes related to a local initiative, rather than the representation model that was set by the Local Government Commission.

¹⁰ I acknowledge there may need to be a structured opportunity for the public to speak at meetings.

public that submit to them and other councillors. It's shocking how disrespectful they are.

They don't seem to like public input in ANYTHING even when it concerns us.

Public participation is not allowed in the Council meetings.

In response to my provisional opinion, the Council noted that *'(i)n a diverse Council with a mixture of experienced and inexperienced councillors from a range of backgrounds, it is inevitable that some councillors will speak more than others. Part of the role of a chairperson is to ensure that all participants have a fair opportunity to be heard. Sometimes, a speaker will perceive this as being 'shut down.'*" I understand that interactions will be interpreted subjectively, but I consider it is important to gather the views of the public and pass these on to the Council. I urge the Council not to dismiss them.

Almost 80 percent¹¹ of respondents in the public survey thought that the Council did not publish sufficient information about the meetings held by the Council. In addition, 52 percent of public survey respondents said it was somewhat or very difficult to navigate the Council's website to find information about meetings.¹² The Council agreed it could more clearly express the Council's commitment to openness, transparency and public participation on the website.

It is worth noting that there were only 88 respondents to my public survey, a very small (and self-selected) percentage of the population of the Rotorua Lakes District. However, although the pool of respondents was small, the feedback from the respondents in the public survey for the Council was overwhelmingly negative.

It is clear that the Council is aware of the negative public perception that has developed. In a meeting with me, the Chief Executive said that the Council had changed its terminology around what had, in previous triennia, been called 'workshops'. The Council began instead referring to them as 'forums', a change that was made due to the perceptions of secrecy that developed around workshops. However, the change in terminology has not been accompanied by much change in the way forums are conducted – although the occurrence of forums are now advertised, they remain closed to the public by default. I suggest that, if the Council wishes to improve the public's perception of its transparency it should amend its practices around forums, as well as changing the terminology. It is vital that the Council take steps to safeguard public trust in the transparency of its decision making and accountability of decision makers.

It is my opinion that the Council has acted unreasonably through its approach to closing forums by default, thereby allowing negative perceptions to develop among some of its staff and some of the public around the openness and transparency with which it conducts its business. I recommend that the Council identify the steps to be taken to address these perceptions and

¹¹ Eleven percent thought that the Council published sufficient information on its website about the meetings held by the Council; 3 percent indicated 'I don't know'; 6 percent – 'other'.

¹² Sixteen percent of respondents indicated 'somewhat easy' or 'very easy', 27 percent – 'neither easy nor difficult', 5 percent – 'I don't know'.

submit these to me for comment within one month. I expect the agency to act to implement these steps with regular reporting back to me.

I consider that the strongest message the Council can deliver to the public to express its commitment to transparency and accountability and effective public participation in the actions and decisions of Council, is through amending its practices around forums. I acknowledge that the Council has accepted my recommendation in relation to presumptively opening forums, which I will discuss in greater detail below, under [Workshops \(forums\)](#). The Council may also wish to review its practices around public participation in meetings held under Part 7 of the LGOIMA to ensure there is sufficient opportunity for, and encouragement of, public participation. This might include introducing opportunities for public input into Council meetings and expanding time limits imposed on public participation in Council meetings.

In addition, the Council should increase its messaging aimed at external stakeholders to clearly express its commitment to openness, transparency and public participation. This might be achieved through high-level statements published on the Council's website, and by publishing more information about Council meetings and forums. I suggest that the agency implement the following:

- ensure that the Council's 'Meetings' webpage includes clear statements expressing the Council's commitment to the transparency of its decision making, being accountable to the public and promoting public participation in the Council's activities;
- consider proactively and regularly publishing records of forums, such as PowerPoint presentations and notes of discussions held during forums (this is discussed in more detail in [Keeping records of forums](#));
- ensure that minutes of Council's public excluded meetings include sufficiently detailed explanations of the Council's reasons to exclude the public from meetings (I discuss this in [Schedule 2A form](#)).

Council's senior leaders can also impact their agency's culture by delivering regular and clear messages to staff, signalling the Council's commitment to conducting Council business in a manner that is open, transparent, and facilitates accountability and public participation. Senior leaders can actively promote a culture of openness in their regular communications, for example, via statements published on the agency's intranet pages, as standing items in internal meetings, or high-level statements included in the Council's written guidance.

Recommendation

The Council should identify steps to be taken to address negative perceptions that have developed among the public and staff about the openness and transparency with which it conducts its business. I expect the Council to submit these steps to me for comment within one month, and then act to implement them with regular reporting back to me.

Workshops (forums)

My expectations

The LGOIMA does not define or regulate workshops (or other informal meetings),¹³ 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'.¹⁴ 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.

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 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...*'¹⁵

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.

¹³ 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 section 45(1) of the LGOIMA.

¹⁴ Link to [The guide to LGNZ standing orders](#)

¹⁵ See section 14 LGA 2002

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).¹⁶ 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.¹⁷ 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/forums and ensure this is embedded in its guidance on record keeping for workshops.

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.¹⁸ 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.

The Council's practice around 'forums'

The Council advised my Office that it regularly conducts forums for its elected members, as '*...a meaningful way to navigate complex issues, gain an understanding of issues and give guidance*

¹⁶ See s 17(1) PRA 2005

¹⁷ 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.

¹⁸ This refers to Council staff, not a decision of full Council.

to staff in a safe and neutral environment'. The forums are regulated by the Council's Standing Orders¹⁹ and an internal document titled 'Guidelines for Councillor Forums'.

As I discussed earlier in [The Council's culture of openness and the public's perception](#), the Council has begun publishing information about forums on its website, though they have been in practice closed to the public by default. Advertising the occurrence of forums to the public is, nonetheless, an important step forward in terms of openness. When the public is aware that a forum is scheduled, and of its topic and purpose, it enables them to request information about that forum under the LGOIMA.

The Council's Standing Orders state that '*...[p]ublic notice of a workshop is not required and workshops can be either open to the public or public excluded*'. The statement that '*workshops can be...open to the public*' is legally accurate, but does not reflect what the Council's actual practices have been around forums, as well as the Council's Governance Statement 2020²⁰ which states that '*[Forums] are not open to the public or the media*'.

It appears to have been an ingrained aspect of the Council's culture that forums should be closed to the public. At the suggestion that forums could be open to the public to help manage public perceptions of the Council's openness, the former Mayor's response, in a meeting with my investigators, was '*absolutely no way*.' This indicates a history of opposition to opening forums to the public and—based on the practices employed so far in the current triennium—that culture continued to prevail.

In a meeting with me, the Council's Chief Executive explained why he considered that forums should be closed to the public:

...as soon as you bring the public gaze onto our councillors, all of a sudden, they feel 'oh gosh... I'm not going to ask questions about things that I just don't know about or don't understand'...

...the reason why you want it private... if I'm a councillor, I don't want to show everyone I don't understand stuff...

I do not consider this, in itself, to be a reason to exclude the public from forums. As I said when I initiated this investigation,²¹ elected members are elected to provide a voice for the communities they serve. As elected representatives of the community, they are expected and were selected to express their opinions. In the interests of accountability, elected members should have no timidity about expressing their views or asking questions publicly, or declaring that they don't have sufficient understanding or information yet to form a view.

While elected members should not have to endure unreasonable or harassing behaviour, the views of the community and media scrutiny and challenge are appropriate pressures on an elected member; they should be resilient enough to withstand public scrutiny. It is the job they

¹⁹ Link to the Council's [Standing Orders](#)

²⁰ Link to the Council's [Governance Statement 2020](#)

²¹ Link to [the Ombudsman's media release](#)

are elected to do. Presumptively closing all workshops avoids accountability and transparency, which is directly counter to the purposes of the LGOIMA and indeed the stated purpose of local government itself under the LGA²² *'...to enable democratic local decision-making and action by, and on behalf of, communities...'*

The Chief Executive also said that closed forums were necessary to train elected members on complex issues in order to prepare them to make robust decisions. I fully support education of elected members and I agree this is a good reason to have workshops, but I don't agree that it is necessary they be closed. On the contrary, I would encourage the Council to consider that where there are technically complex issues that elected members need additional training to understand, it is equally likely members of the public would also benefit from a greater understanding. Where complex matters are explained in an open forum, the public can be educated along with elected members. This will help them to better understand the rationale behind the Council's final decision when it is made in a meeting.

The Chief Executive stated during our meeting that the Council wants to strike the right balance *'between transparency and good decision making'*. I would suggest, with respect, that the Council appears to not yet have that balance right in its approach to forums. I have seen examples of other councils successfully holding open workshops, and managing the perceived challenges without resort to a default practice of closure. Further, as I detailed earlier, under [*The Council's culture of openness and the public's perception*](#), the results of my public survey suggests very strongly that the Council does not have the trust of some of the public. Its past practice of closing all forums appears to be a key contributor. Significantly, the Council's blanket rule of closing all forums to the public was inconsistent with one of the key principles relating to local authorities in the Local Government Act 2002, being that *'...a local authority should conduct its business in an open, transparent and democratically accountable manner...'*

It is my opinion that the Council's practice of excluding the public from all forums, rather than considering whether closure is necessary in the individual circumstance of each forum, was unreasonable. I recommend that the Council cease its practice of closing forums by default, and instead ensure forums are presumptively open to the public, unless it is reasonable to close a forum on a case by case basis. Where a decision is made to exclude the public from a forum, the reasons for the decision should be published on the Council's website along with the details of the content and date of the forum. Guidance and training on forums, including examples of when it may be reasonable to exclude the public, should be updated to reflect amendments in the Council's practice.

While I understand that opening forums to the public will require a significant cultural shift in the Council, I consider it will gain great benefit from doing so, for several reasons:

- Accountability – Holding discussions and deliberation in an open forum ensures that the public can hold elected members accountable as it enables the public to see the considerations which are taking place and whether they are in the best interests of the community. The public has a legitimate interest in being able to witness their elected

²² Link to [Local Government Act 2002](#)

representatives' participation in forum discussions, and these experiences will allow the public to make informed decisions during the next local elections.

- **Trust** – To help restore and maintain public trust, the Council must go beyond simply assuring the public that no decisions are made behind closed doors, and allow the public to see that for themselves. The public may not always agree with the Council's decisions, but it is more likely to accept them, if the processes and practices that precede these decisions (i.e. forums) are open and transparent. Even where the public does not attend forums, the fact of their being open is likely to reduce public speculation that they are being used for making decisions behind closed doors.
- **Participation** – Observing the Council's operations during forums can enhance the public's technical knowledge and understanding of the Council's functions and operations, enabling them to participate more fully in democratic processes.
- **Efficiency** – There is less need for the Council to spend time justifying its decisions, as the public can already see the background and considerations involved leading into how and why the decision was made.

Recommendations

- Cease the practice of closing forums by default, and instead ensure forums are presumptively open to the public, unless it is reasonable to close a forum on a case by case basis.
- Where the public is excluded from a forum, the Council should document and publish the rationale for this decision. The Council should also ensure its current guidance (including Standing Orders) and training reflects updated forum practices.

The Council's response:

In response to my provision opinion the Council stated:

We accept the recommendation that forums be presumptively open and that reasons be given for a decision to exclude the public from a forum.

My comment:

I am pleased that the Council has accepted my recommendation and look forward to further productive engagement with the agency in the months to come as it works through my recommendations and suggested action points.

Keeping records of forums

In addition to Council forums having been closed to the public, I also have concerns about the Council's record keeping practices around forums. The Council's *Guidelines for Councillor Forums* state that:

No minutes will be taken as forums are to facilitate broad discussion on a topic/issue and no formal decisions can be made.

The fact that decisions are not to be made in forums is no reason not to take records of the discussion that occurs. Forums are a key part of the decision making process and, as such, it is a matter of prudent business practice and a requirement of the PRA to keep a full and accurate record of their content. The existence of records allows for their request under the LGOIMA which facilitates accountability and transparency.

The Council's Standing Orders²³ outline only the following, limited requirements for taking records of forums/workshops:

A written record of the workshop should be kept and include:

- *Time, date, location and duration of workshop;*
- *Persons present; and*
- *General subject matter covered.*

When I asked the Council for all material from a sample of five forums conducted in the 2019-2022 triennium, the PowerPoint presentations given to elected members by staff, were provided to me.²⁴ No notes or other written records were included in the response. The Council has also since provided information to show that it has kept attendance records of forums since September 2020. I am pleased to see that, in the current triennium, the Council not only keeps the records outlined in its Standing Orders, but publishes these on its website.²⁵

In my survey of staff, and in meetings with my investigators, some Council staff were of the view that agendas and minutes of Council meetings serve as a sufficient record of what had taken place in Council forums, because:

Much of the information shared or discussed in forums becomes public, unless it is commercially sensitive or for some other valid reason, as part of any proposal or recommendation that subsequently comes before elected members for debate and decision-making.

I do not share their view that this is sufficient. I encourage the Council to take into account the timeliness with which information generated from forums is available to the public. Waiting until the day the final decision is made to make this information available to the public may lessen their ability to fully engage in consultative opportunities offered by the Council. Further, although some information from forums may eventually become available through meeting reports and minutes, it may not fully reflect the discussion and deliberations that took place within the forum. Without accurate and timely information about the work of local government, the public cannot participate in democratic processes in a meaningful way. I

²³ Link to the Council's [Standing Orders](#)

²⁴ It is encouraging that, in the current triennium, the Council has begun to publish some information about forums on its website. In addition to date, venue and subject matter of the forum, this information currently includes the list of attendees.

²⁵ Link to the Council's [list of forums held and upcoming between February 2023 and May 2023, as at 20 April 2023](#).

consider that the Council's approach runs directly counter to several of the core purposes detailed in section 4 the LGOIMA, being:

- to increase progressively the availability to the public of official information held by local authorities;
- to enable more effective participation by the public in the actions and decisions of local authorities;
- to promote accountability of local authority members and officials; and
- thereby to enhance respect for the law and to promote good local government in New Zealand.

Other staff, as well as some elected members, said that they were concerned that the Council's record keeping practices have a negative impact on the public perception of the Council, and that it should improve its record keeping to help ensure transparency of the decision making processes. Some staff and elected members stated during meetings with my investigators that if the public is adequately informed about all options considered by the elected members during forums, it is more likely to trust the Council's decisions made during formal Council meetings. I agree.

The failure to keep adequate records of matters of substance, such as content, conversation, questions and answers, and narrowing of options undertaken in forums not only potentially undermines the purposes of the LGOIMA, it may also constitute a breach of the requirement of section 17 of the PRA. This section requires the Council to create and maintain a full and accurate record of its affairs in accordance with normal, prudent business practice; and to maintain records in an accessible form to enable use for subsequent reference. I consider there may be a disconnect between the requirements of record keeping as described in the Council's Standing Orders, and the requirements as prescribed by the PRA. I suggest the Council review its Standing Orders, and as part of that review I encourage the Council to seek advice from Archives New Zealand, the regulatory stewards of the PRA, to ensure the Council's practices (including its Standing Orders) are compliant with section 17 of the PRA.

In response to my provisional opinion the Council stated that it did not agree that '*a record of deliberations/discussions should be kept for all forums*' because '*forums are not decision-making meetings*' and because of the additional resources it considers would be required. However, the Council also stated that it is happy to discuss its practices with Archives New Zealand, as well as '*broaden the scope of material that is released following a forum.*' The Council noted that it is already proactively releasing records of forums after the forum takes place and it is adding the date of each briefing/forum and key points from each to its website. These are positive steps.

I wish to clarify that councils are not expected to keep *full minutes* of Council forums, in the same way minutes are required to be taken of meetings held under the LGOIMA. However, forums are still a key part of the decision making process and, as such, it is a matter of prudent business practice and a requirement of the PRA to keep a full and accurate record of their

content. I also note that, as information from forums can be requested under the LGOIMA, it is good practice to document it.

To help promote accountability and transparency, and to align with legislation and best practice, I encourage the Council to adopt a standard approach to recording information generated in forums. Where possible, these records should be proactively released. Not only would this be a good demonstration of openness from the Council, it would also help align the Council's practices with one of the purposes of the LGOIMA: '*...to increase progressively the availability to the public of official information held by local authorities...*'²⁶ I suggest that the Council consider taking notes or recording Council forums, as well as documenting any verbal conversations held in relation to the Council's forums. These, and other relevant records (such as emails), must be maintained in a way that ensures they are accessible for future reference.

Keeping records of forums will not only help ensure consistency of the Council's practices with section 17 of the PRA; it also has the following potential benefits for the Council:

- it will help demonstrate and ensure transparency of the Council's decision making by providing a complete and clear record of discussions held within the Council that preceded and informed the formal decision making during Council meetings;
- it will provide a reference for the Council in the event of an Ombudsman investigation or a complaint from another party (while the Ombudsman cannot investigate decisions made by full council,²⁷ they can investigate the reasonableness of advice provided by Council staff on which the decision was based, and the reasonableness of a decision to close a workshop);
- it will provide a reference for the Council in the event of any issues around decision making processes that may arise internally; and
- it will provide helpful evidence if there is later a dispute about whether a decision was made during a forum and/or whether a forum was in fact a meeting.

Action points

1. Review Standing Orders to ensure compliance with the PRA for forums, and as part of the review, seek advice from Archives New Zealand about whether the Council's practices (including its Standing Orders) are compliant with section 17 of the PRA.
2. Amend practices to ensure that full and accurate records of forums are kept and maintained by the agency in an accessible form.
3. Proactively release full and accurate records of forums, where possible.

²⁶ See s 4(a) of the LGOIMA

²⁷ See s 13(1) Ombudsmen Act 1975

Case study:

Electoral Representation Bill

The LGOIMA makes it clear that workshops (referred to as ‘forums’ by the Council) cannot be used to make decisions. Decisions must be made in a meeting as defined in Part 7 of the LGOIMA. However, the discussion and deliberation that takes place in a forum can carry elected members down a path toward a decision. Where council staff present a range of policy options to elected members in a forum, and those options are narrowed down significantly—and, in particular, where those forums 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.

The Council’s conduct in relation to the forums and the public meeting related to proposed changes to electoral representation arrangements, exemplifies this risk. In May 2021, the Council voted in favour of establishing a Māori ward for the 2022-25 triennium. Between June and August 2021, the Council held four forums for elected members to discuss possible electoral representation models. By the end of this process, a possible eight electoral representation models proposed to elected members by Council staff had been narrowed down to only one. In accordance with the Council’s typical approach to forums, none of the four workshops were open to the public. I gave the Council the opportunity to explain whether there was a particular reason or reasons to keep these forums closed. The Council responded:

(t)hese forums were closed to the public in line with our policy on forums as set out in our governance statement... Forums are set up to give councillors information, test ideas, have free and frank conversation, and to gain guidance from councillors on what line of strategy to pursue and bring back to council for a decision to be made within a council/committee meeting. No decisions are made in the forum. The representation review requires the council to take out for consultation a proposal on a representation model that the council then seeks a community response on. Given the complicated nature of a representation review, there needs to be a considerable amount of time with the council to discuss the rules of a representation review and to learn about what can and can’t be proposed. These sessions were for the benefit of the councillors to ensure they are well informed in the lead up to developing a representation model for consultation.’

In its response to my provisional opinion, the Council said that ‘(t)here was comprehensive public consultation on the initial proposal, including a public hearing of submissions.’ It also noted that ‘three options were considered and were shared with the community in the pre-engagement phase and comments from the community were fed into what became the initial proposal for consultation.’

However, because the forums were closed, elected members' deliberations on each of the options were out of the view of the public. In particular, the public was unable to see or hear how each councillor valued the different proposals; what electoral arrangements they thought would and would not be effective and why; how they expressed their arguments and views to their peers; and how they represented the views of the people who elected them.

The Council also wished to highlight that it was required to adopt an initial proposal on its governance arrangements within a tight timeframe. It is my view, however, that this is not a robust reason for the Council to disregard the requirements under the LGA to conduct its business in a clear, transparent and democratically accountable way. It is also not clear to me how holding these forums in view of the public would have impacted timeliness.

Following the series of forums, only one option was put to a public meeting for the full council to vote on. By narrowing eight options to only one, it can easily be inferred that the decision is a *fait accompli* – a deal that is already done, with the public meeting only making official what has already been decided behind closed doors. Even if this is not the case, the perception of such could be damaging to a council, as secrecy breeds suspicion.

Transparent decision making processes in local government supports accountability, encourages high performance and increases public confidence in councils and their processes. Individuals may not always agree with decisions of council, but a transparent process allows them to understand the Council's reasoning and can mitigate any suspicions of impropriety in the decision making process. Adopting a more transparent process may help to reverse the view held by some members of the public and expressed by one respondent to my public survey:

'They are not representing the ratepayers...Despite immense opposition they just push on with their agenda. We are not listened to.'

While it may be reasonable to exclude the public from forums in particular circumstances, it does not appear that any consideration had been given to whether or not the workshops should be closed in this case, and if so on what basis. The Council must be mindful of the public perception created by a practice of routinely closing forums and keeping its decision making processes opaque to the public.

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.²⁸

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:

- 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;²⁹
- agendas and reports are publicly available at least two days in advance;³⁰
- meetings are open to the public, unless there is good reason for excluding them;³¹ and
- minutes of a meeting must be made accessible to members of the public.³²

Workshops are not regulated by Part 7 of the LGOIMA, but there are other principles which govern their administration (see [Workshops](#) 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 best 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.³³ 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

²⁸ See s 4(a) LGOIMA

²⁹ See s 46 LGOIMA

³⁰ See s 46A LGOIMA

³¹ See s 48 LGOIMA

³² See s 51 LGOIMA

³³ See sections 47 and 48 of the LGOIMA

(committee of the whole).³⁴ 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 reasons exist under sections 6 or 7 of the LGOIMA, though it specifically excludes section 7(2)(f)(i).³⁵ 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’.³⁶ 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.³⁷ 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:³⁸

- 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 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

³⁴ See section 13(1) of the Ombudsmen Act 1975.

³⁵ Section 7(2)(f)(i) of the LGOIMA 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.

³⁶ Link to the Office of the Ombudsman’s [Public interest](#) guide

³⁷ See s 48(4) of the LGOIMA.

³⁸ See s 48(3) of the LGOIMA.

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 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.³⁹

Excluding the public from meetings

In its response to my agency questionnaire, the Council advised:

At this point in time [Rotorua Lakes Council] does not have a written procedural process/guidance on how to determine an item should be addressed in [public excluded]. However we do have a robust process for selecting the appropriate clauses for [public excluded] and a number of sign off points/approvals as part of that process.

Although the Council has not documented its process, it described the decision making process as follows:

- Reports are generated from a 'report to committee' template, which includes permissible reasons under the LGOIMA for excluding the public from meetings. The report writer selects the appropriate clause(s) if they consider the report should be heard in a public excluded meeting.
- The report is then sent to a reviewer, generally the Deputy Chief Executive of the relevant business unit, who makes a decision to accept or reject the clause(s) put forward.
- The report is sent to the Governance and Democracy team, which also checks whether the correct clause is put forward, and circulates reports to the Executive team for approval.

³⁹ The Council has advised it is operating with limited resources but is reviewing how these can be employed most effectively.

- The Executive team holds a ‘report approval meeting’ on a weekly basis, and discusses the reason/justification for why a report is put forward as ‘public excluded’. Once approved, reports are compiled into the meeting agenda.
- Elected members make the final decision by resolution on whether or not the item(s) should be heard in a public excluded part of a meeting.

This appears to me to be a fairly robust process, with a number of ‘checkpoints’ to ensure provisions to exclude the public are used correctly, though I note the effectiveness of these checkpoints depends on the level of LGOIMA training given to staff – including senior staff – and elected members. As I will discuss further below, under [Resources and training](#), staff reported receiving limited training on meeting practices under the LGOIMA, and I have some concerns about the decision making process as discussed below under Schedule 2A form. However, it is positive that most staff who attended meetings with my investigators stated that they could not recall being in a situation where they thought that an item heard in a public excluded part of a meeting should have been heard at a time the meeting was open to the public. Further, many staff said that if they found themselves in such situation, they felt that their concerns would be heard and taken into consideration by the Council’s Executive team, which is positive.

I was also pleased to see that part of the Council’s decision making process around public excluded items includes consideration of when information can be publicly released once the reason for withholding information no longer applies, and this is included in the Council’s resolution to exclude the public. For example, the following is an excerpt from the Council’s confidential minutes of the Operations & Monitoring Committee meeting held on 4 August 2022:

Further resolved: ...

... 8. That items (1), (2), and (5) of the minutes be made publicly available on 1st September and that items (3), (4) and (6) remain confidential until final accounts are agreed for these contracts.

The Council outlined its current approach to releasing ‘confidential’ information in its response to my agency questionnaire:

[Rotorua Lakes Council] has a process to check when the appropriate time for public release is. This process includes the minutes/information being checked each month by the Governance and Democracy team and if appropriate are released as part of a formal decision made by the Council at a council meeting. For the minutes/information to be released, the Governance and Democracy team seek assurance that the works to which the item was in [public excluded] has been completed, the decision has been implemented or through joint agreement with third parties the decision or parts of the decision may have already been communicated.

I commend the Council for its practice in this area.

Schedule 2A form

Based on my review of Schedule 2A forms from recent public excluded meetings, I consider the Council does not include sufficient detail 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 recited the wording of the relevant sub-section, and did not include a plain English explanation of the specific harm that the Council deemed necessary to prevent by excluding the public. The following excerpt from the Council Meeting Agenda of 15 December 2022 shows that the wording of Section 7(2)(i) of the LGOIMA is used as a reason for the Council's decision:

Reason for passing this resolution in relation to each matter: –

Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

While the Council's resolutions on public excluded meetings are generally consistent with the requirements of Schedule 2A of the LGOIMA, I encourage the Council to ensure that its resolutions also include detailed, plain English reasons for the Council's decisions, such as explaining why the Council thought it was necessary to exclude the public, and the specific harm the Council was trying to prevent by doing so.

The Council may wish to refer to guidance developed by Local Government New Zealand which outlines some principles of sound decision making:⁴⁰

...giving of reasons is one of the fundamentals of good administration by acting as a check on arbitrary or erroneous decision-making. Doing so assures affected parties that their evidence and arguments have been assessed in accordance with the law...

...the level of detail should be sufficient so that any 'reasonably informed' reader of the minutes would have no difficulty identifying and understanding the reasons for the recommendations.

The records of Council meetings provided by the Council did not include any references to the Council applying the public interest test. When my investigators asked about the public interest considerations during meetings with the Council's staff, many meeting attendees referred to a broader notion of 'public interest' as the Council's duty to act in the best interests of the public, but not the public interest test involving considerations in favour of releasing information, which is required to be performed under section 7(1) of the LGOIMA. Those public interest considerations include, but are not limited to, accountability of elected members and enabling effective participation in the actions and decisions of local government – the very purposes of the LGOIMA. It is therefore not evident to me that the Council is receiving adequate advice about the need to weigh the harm to be protected in excluding the public against the competing considerations in favour of opening the meeting to the public, before making its decision.

⁴⁰ Link to the LGNZ's [The guide to LGNZ standing orders: He aratohu i te anga tikanga whakahaere hui a LGNZ](#)

In light of the above, I suggest that the Council implement measures to ensure that its resolutions on public excluded meetings outline the Council's reasons for its decisions in sufficient detail. For example, for section 7(2) of the LGOIMA⁴¹ this should include explaining why the Council thought it was necessary to exclude the public to prevent harm to the interests recognised by this section, the outline of the specific harm that the agency was trying to prevent, and the consideration of competing public interest considerations in favour of opening the meeting to the public.

I also encourage the Council to update its current guidance to include clear instructions for staff to advise on and record the Council's reasoning when making decisions on public excluded meetings. The guidance should outline the requirement to apply the public interest test,⁴² and should include the following:

- that the public interest test must be considered by the Council when it considers relying on section 7(2) of the LGOIMA to hear an item in a public excluded meeting; and
- the factors that can affect the weight of the public interest in favour of opening the meeting, including (but not limited to) those set out in the purposes of the LGOIMA:
 - the policy or decision-making process involved and the stage it has reached;
 - the ability of the public to be informed, influence that process or decision and/or hold the officials involved to account;
 - the level of public interest or debate;
 - the level of any disquiet, speculation or controversy;
 - the extent of information in the public domain;
 - the significance of the issue to the public or the operations of the council; 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*'.⁴³

Action points

4. Ensure resolutions on public excluded meetings outline the Council's reasons for its decisions in sufficient detail, including public interest considerations where applicable under the LGOIMA.
5. The Council should update its guidance to reflect its updated practices around recording decision making on public excluded meetings.

⁴¹ 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).

⁴² Link to the Ombudsman's [guidance on the public interest test](#).

⁴³ Link to the Ombudsman's [guidance on the public interest test](#).

Recording the decision making process around public excluded meetings

Council staff advised my investigators that the Council does not keep records of the decision making process on public excluded meetings, including its internal deliberations and reasoning behind the Council's decisions to exclude the public from meetings or parts of meetings. No notes are taken in the Council's agenda setting or report approval meetings (discussed in [Excluding the public from meetings](#)). Any verbal discussions held within the organisation in relation to decisions on public excluded meetings are not recorded.

The Council should keep full and accurate records of its advice and decision making processes on public excluded meetings in order to maintain a full audit trail for the consideration of issues that contributes to the agency's decisions on public excluded meetings. This should include taking notes of relevant internal meetings (such as the agenda setting or report approval meetings), and documenting any spoken or email conversations held in relation to the Council's advice on decisions to exclude the public from meetings or parts of meetings. Records pertaining to the decision making process should be stored in a manner that makes them accessible for future reference.

The Council's guidance and training on meetings under Part 7 should also include taking minutes of Council meetings. My review of a sample of the Council's minutes showed that there was very little detail included of any discussion, debate or questioning that may have taken place. I do not expect that a verbatim transcript is taken, rather, as outlined above in [My expectations](#), 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. The Council also does not typically keep minutes of which councillors voted 'for' and 'against' resolutions. While this is not a legal requirement, I consider it is a matter of good practice to do so in the interest of accountability.

It is important that the Council keeps adequate records of processes that precede and inform its decisions on public excluded meetings (including any consideration of weighing the public interest against the withholding grounds, where appropriate). Doing so will help align the Council's practices with sections 17(1) and (2) of the Public Records Act 2005 which, respectively, require 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.

In addition to ensuring compliance with the relevant legislation, maintaining sound record keeping disciplines will also benefit the Council by promoting transparency and openness and improving its business practices in general. Keeping records of the decision making processes will:

- help ensure transparency of the Council's decision making by providing a complete and clear record of the Council's reasoning;
- provide a reference for the Council in the event of issues around decision making processes that may arise internally;
- make it easier to respond to the Ombudsman in the event of an investigation of a complaint; and
- provide an opportunity to create a repository of knowledge about how the agency makes decisions on public excluded meetings, thereby developing a consistent approach.

I encourage the Council to update its internal guidance and training material to include clear instructions for staff to record the Council's advice and decision making processes around public excluded meetings. This includes taking notes of relevant internal meetings and documenting any verbal conversations held in relation to the Council's decisions on public excluded meetings. These, and other relevant records (such as emails), must be documented and easily accessible.

The update of guidance material should also be accompanied by training and messaging to staff about the importance of comprehensive record keeping for ensuring compliance with legislation, and promoting the transparency of the Council's practices and the agency's accountability to the public.

Action points

6. Update internal guidance and training material to include instructions for staff to record the Council's advice and decision making processes around public excluded meetings; the guidance should include instructions to ensure these records are easily accessible.
7. Implement written guidance for staff to ensure that minutes of Council meetings represent a full and accurate record of substantive matters such as the content of discussion and debate, and the way councillors vote on resolutions.
8. Ensure record keeping training is delivered to staff involved in the Council's advice and decision making processes on public excluded meetings, emphasising the importance of strong record keeping disciplines for the transparency of the Council's processes.

The Council's response:

In response to my provisional opinion the Council accepted my action points but stated that *'[a]ttempting to paraphrase or summarise what is said in a meeting risks the minute-taker being perceived as political. We understand that experts on best practice minute keeping in local government suggest that if there is to be a record of discussion, it should be based on the theme being discussed and bullet points on the key issues covered. This could be an improvement included into the governance work programme, however there is still limited resourcing available to service this'*

In relation to recording advice and decisions to exclude the public from meetings the Council advised:

We disagree that it is necessary to document...spoken conversations

My comment:

The Council stated in its response to my provisional opinion that '(t)he purpose of minutes is to record what was decided **and why**' [emphasis added]. The detail of why decisions are made is in the deliberation and debate preceding the decision. It is exactly this that I am suggesting the Council capture. I note that the Council livestreams meetings and publishes those recordings. These could be referred back to if any allegation should arise that a minute-taker had deliberately or mistakenly skewed the meaning of a councillor's words.

In terms of documenting spoken conversations, again, I reiterate that the Council should keep full and accurate records of its advice and decision making processes on public excluded meetings in order to maintain a full audit trail for the consideration of issues that contributes to the agency's decisions on public excluded meetings. This should include taking notes of relevant internal meetings and documenting any spoken conversations held in relation to the Council's advice on decisions to exclude the public from meetings or parts of meetings. To help align the Council's practice with the requirements of the Public Records Act, records pertaining to the decision making process should be stored in a manner that makes them accessible for future reference.

In relation to both issues above, the Council may wish to consult with Archives New Zealand when finalising its practice.

Resources and training

In my agency questionnaire, the Council was asked to provide details of training offered to Council staff on Part 7 of the LGOIMA and/or conducting forums, and to specify the nature of this training e.g. external, induction, training for decision makers and staff involved in administering Council meetings. In its response to my questionnaire the Council described the current training as follows:

[Rotorua Lakes Council] provides one on one training around meetings/forums as and when required. This done by the [Deputy Chief Executive] District Leadership and Democracy.

The results of my staff survey in relation to training were not encouraging, showing that approximately 44 percent of respondents in roles related to the administration of Council meetings have never received training on meetings under the LGOIMA.

During meetings with Council staff, attendees were asked to describe the training delivered to them by the agency on Council meetings and forums. Most staff responded that there was no formal training, that training was delivered on an 'as needed' basis and largely revolved around the use of the Council's report template. The Council indicated in its response to my questionnaire that, other than the report template, it does not currently have a written process or guidelines on how to determine whether an item should be held in a public excluded part of a meeting.

To maintain the robustness of the Council's decisions on public excluded meetings, the Council should implement clear and comprehensive guidance for staff outlining the Council's decision making processes along with the factors to be taken into account when making decisions. This measure is particularly important for the Council considering that significant areas of vulnerability were identified in the Council's reasoning behind some of its decisions on public excluded meetings (I discuss these in [Schedule 2A form](#)).

Developing written guidance should be supported by formal training delivered regularly to elected members and Council staff involved in the administration and conducting of Council meetings.

The Council should consider refresher training at regular intervals for all elected members on their responsibilities under the LGOIMA in relation to Council meetings. Refresher training should also reference the council's policy and practices around the conduct of forums. Elected member attendance at regular training sessions would send a clear message they are committed to the principles and purposes of the LGOIMA, and of openness and transparency more generally.

The benefits of regular training include:

- helping ensure compliance with the LGOIMA and best practices around Council meetings;
- sending a clear message that the Council and its leaders are committed to the principles and purposes of LGOIMA, and of openness and transparency more generally;
- improving staff's and elected members' understanding and knowledge to ensure awareness of any changes to legislation and guidance, as well as prevent poor practices from embedding themselves into the Council's formal processes; and
- promoting efficiencies and consistencies in decision making.

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

Action points

9. Implement written guidance outlining the Council's advice and decision making process on public excluded meetings, including factors to be considered by the Council when making decisions to exclude the public from meetings.
10. Ensure regular training is delivered to staff and to elected members on making decisions to exclude the public from meetings.

Accessibility of meetings

My expectations

The United Nations Convention on the Rights of Persons with Disabilities (Disability Convention)⁴⁴ is an international human rights agreement that New Zealand signed up to in 2007. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. As Chief Ombudsman, I have a role as an Independent Monitoring Mechanism partner under the United Nations Convention on the Rights of Persons with Disabilities.

Councils should take all practicable steps to remove barriers to full participation in their processes. Public meetings and workshops should be made as accessible as possible to the public, keeping in mind those people with disabilities as well those with other challenges to attending meetings. This might include living a long distance from where meetings take place, or being unable to attend because of the time the meeting is held.

Ideally, all councils would livestream and audio visually record their meetings, and publish the recording after the meeting. Keeping a record in this way benefits the community by enhancing the accessibility of meetings for those who are not able to attend in-person. Another benefit of livestreaming is that it ensures an accurate record of the public portion of the meeting is immediately available.

Accessibility practices

A public survey respondent raised concerns about the accessibility of the Council chambers:

Attending meetings physically is difficult, as access to parking is limited. I have an elderly [relative], who has a disabled park pass. Disabled parks are often filled by contractors (... when [the relative] spoke to reception staff, they said their contractor wouldn't take too long to move on). Parking far away is too taxing on my [relative]. The lift inside RLC hasn't worked at any meetings we've attended. Walking up the stairs is challenging for my [relative]. The surface of the flooring in the building is also slippery, causing my [relative] to fear for [their] safety in case [they fall]. Particularly if [they slip] using the stairs...

My staff also made observations that reinforce the above concerns about the accessibility of Council buildings, notably the navigability and accessibility of the public bathrooms adjacent to the Council chamber.

The Council has commented that it *'takes its responsibilities to its staff and all users of public facilities seriously and wants to ensure that people with disabilities do not face additional barriers to participation. Council has a disability access committee which considers accessibility*

⁴⁴ Link to the [United Nations Convention on the Rights of Persons with Disabilities \(Disability Convention\)](#).

across all Council facilities'. The Council notes it has 10 accessible car parks and it will consider their use. The Council also acknowledges there were issues with the lifts in October 2022.

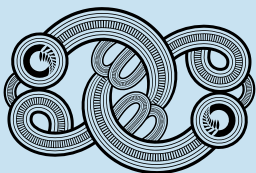
Disabled people have the right to take part in all aspects of community life, on an equal basis with others. Public meetings and all public spaces (including public toilets, meeting spaces, foyers and reception areas) need to be accessible. To ensure appropriate accessibility and public participation, I suggest that the Council undertake an accessibility audit by a suitable provider to identify any barriers to inclusion of disabled people. Upon completion of the audit, a schedule of work should be put in place to remedy access and remove any identified barriers. The Council confirmed in its response to my provisional opinion that it would do so, noting that the implementation of any suggested actions resulting from an audit by require the approval of elected members, which I acknowledge.

The Council should ensure accessible parking spaces are only used by disabled people, and never by those simply using the spaces for convenience. When meetings are being held that may require the use of more accessible car parking spaces to accommodate participants, these should be marked appropriately to ensure disabled people can use these on the day, ensuring that they are close to the venue as having to walk distances can be a barrier to many due to mobility or health issues.

It is positive that the Council livestreams its meetings, and has a YouTube channel where older meeting recordings are accessible.

Action point

11. The Council should undertake an accessibility audit by a suitable provider to identify any barriers to inclusion of disabled people. Upon completion of the audit, a schedule of work should be put in place to remedy access and remove any identified barriers.



Ombudsman

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