

Meeting and workshop practices at

Taranaki Regional Council

 **Ombudsman**

Tuia kia ōrite • Fairness for all

October 2023



Final opinion of the Chief Ombudsman

Meeting and workshop practices at Taranaki Regional Council

Te Kaitiaki Mana Tangata Aotearoa | The Ombudsman New Zealand

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Terminology

- Taranaki Regional 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'.
- Chair – While similar to a Mayor, a regional council has a Chair who is elected by the councillors. Councillors can also choose to remove the Chair from this position. It is generally expected that the Chair will chair council meetings and provide leadership.
- [Diligent](#) - An automated local government meeting workflow system used by the Council to manage its processes for agendas and minutes.
- 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.

Taranaki Regional 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 a number of practices that are going well for the Council. Staff and elected members appear to have an effective working relationship. The Council has built strong external networks with councils in its geographical region, as well as with the other regional and unitary authorities. There is an open culture, and the new Governance team staff are building knowledge.

I have also identified a number of opportunities for improvement to address vulnerabilities in the Council's meeting and workshop practices, which have resulted in 21 suggested action points. The Council has accepted the action points, which are detailed below. The Council stated it will be working through a process to actively improve its meeting and workshop

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.

processes by adopting these and provide further training to relevant staff and elected members.

Peter Boshier
Chief Ombudsman

27 June 2023

Summary

Leadership and culture

The Council has an open culture and operates a high trust model between elected members and staff. There also appears to be a positive working relationship between elected members, partly attributed to a *'consensus style'* of politics. I applaud the Council for creating and maintaining this culture, while noting openness is an ongoing journey. For instance, I encourage the Chief Executive and Chair to ensure they are supporting inclusive participation of diverse voices. Overall, respectful relationships between the elected members, and between elected members and council staff, aids good decision making and helps with the smooth running of the Council.

Local authority meetings

Early in the investigation I was concerned to find the Council was incorrectly using *'free and frank expression of opinion'* citing section 7(2)(f)(i) of the LGOIMA as a ground for excluding the public from all or parts of its meetings. Section 48(7)(a)(i) of LGOIMA expressly states that *'free and frank expression of opinion'* cannot be used as good reason to exclude the public from meetings. The Council promptly corrected this error when I pointed it out, as well as updating its agenda template; providing additional education and support to its Governance team to enable them to provide advice and guidance to report writers; and developing a report writing guide for staff. I suggest the Council provide a copy of the report writing guide to me once it is finalised.

The Council releases some information heard in the public excluded portion of local authority meetings at a later date, but the practice is ad hoc. I suggest the Council formalise the practice of revisiting and considering for release material heard in the public excluded part of Council meetings.

The Council uses its own template to record public exclusion resolutions, rather than using the form set out in Schedule 2A of the LGOIMA. The Council is now inserting the table with the prompts from the Schedule 2A form, but I suggest the table content be amended to include a plain English reason for excluding the public for each item. The confirmation of previous public excluded minutes also takes place in the public excluded part of a Council meeting, but the minutes do not restate the actual topic(s) of the item(s) heard in public excluded in the previous meeting. I suggest the Council restate the topic(s) of previous public excluded minutes when confirming them.

The decision making process on items heard in the public excluded part of council meetings is also not being recorded. I suggest the Council record the reasoning behind public excluded advice and decisions, including consideration of the public interest for hearing the item in a public meeting.

In terms of resources and training, staffing arrangements for meeting administration appear to be good, but meeting minutes were lacking in some detail. I suggest the Council develop

guidance for meeting minutes to ensure discussion, debate and questioning is recorded. I am pleased that minutes do record voting divisions, including the names of elected members who voted 'against' resolutions, which is good practice. Additionally, the Council has built strong external networks with councils in its geographical region, as well as with the other regional and unitary authorities.

The Chief Executive and Directors are responsible for providing advice to elected members on public excluded items. However, I suggest the Council consider its organisational resilience arrangements ensuring a number of senior staff are able to provide advice on reasons to exclude the public from meetings. The Council would benefit from ensuring targeted training is delivered to elected members and select staff on the reasons to exclude the public under Part 7 of the LGOIMA, as well as the proper application of the public interest test. Corresponding guidance should be developed around public excluded meetings.

Accessibility of meetings

I am pleased the meeting agendas and minutes which are published in PDF format on the Council's website are searchable. The Council advertises meetings on its website and in local newspapers, but I suggest it considers other ways of making meeting dates and times more visible to the public.

At the moment, the public has to telephone or email the Council for a meeting video conferencing link (to allow them to attend virtually). I encourage the Council to publish video conferencing links for all meetings online. In addition, council meetings are not recorded. I suggest the Council record the meetings and consider livestreaming them.

Workshops

The Council holds few workshops. The Council's Standing Orders state that workshops can be either open or closed to the public. However, there was conflicting evidence regarding whether or not the workshops are open to the public. Despite the Chief Executive stating that *'in most instances, the public would not be excluded from workshops'*, I did not see evidence of the Council advertising or informing the public of workshops. If the public is not aware that a workshop is open, I consider it to be closed by default.

The Council should ensure workshops are presumptively open to the public, unless it is reasonable to close a workshop on a case-by-case basis. Along with opening workshops, I encourage the Council to advertise them, and consider actively promoting workshops to special interest groups or community groups. Further, if a workshop is closed, the public should still be informed about its occurrence (such as the date, topic(s) covered and reason(s) why the workshop is closed to the public). I also suggest the Council ensure its current guidance (including Standing Orders) and training reflects updated workshop practices.

The Council's Standing Orders do not include any information on record keeping for workshops. I suggest the Council review its Standing Orders to ensure compliance with the Public Records Act (PRA), which 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. Part of the review should include seeking advice from Archives New Zealand about whether the Council's practices (including its Standing Orders) are compliant with section 17 of the PRA.

The Council should consider livestreaming and audio visually recording workshops. Where possible, it should also proactively release full and accurate records of workshops. There has been little training on workshops. The Council should provide training to both elected members and staff who are involved in workshops. Written guidance on workshops should also be expanded.

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 of openness

As part of my investigation, I conducted a survey of staff about meetings and workshops.⁴ Though I received few responses, of those who responded, 79 percent said the Council was strongly or moderately committed to openness and public participation. This is comparable to the average of 82 percent across the other seven agencies under investigation:⁵

Staff impressions of the Council's overall commitment to a strong culture of openness and public participation in Meetings and workshops.

Strongly or moderately pro	Don't know	Strongly anti, moderately anti or silent
79%	21%	0%

No respondents said the Council was strongly anti, moderately anti or silent about openness and public participation, but 21 percent said they did not know. There is an opportunity for the Chief Executive and senior leaders to promote the importance of Part 7 of the LGOIMA, and to link this to the broader themes of openness and transparency. One of the purposes of the LGOIMA is to enable the public to more effectively participate in local government decision making. Further promotion of these themes helps to ensure staff are not just 'complying' with Part 7 of the LGOIMA, but understand more fully its broader purposes.

⁴ I received 19 responses to this survey. As per Taranaki Regional Council's [Annual Report 2021/2022](#), the Council has approximately 183 full-time equivalent staff.

⁵ Numbers have been rounded to the nearest percentage.

A number of staff meeting attendees said the Council has been implementing initiatives which reflect a positive culture. One staff meeting attendee gave examples of how the Council is better supporting diversity by opening and closing all meetings with a karakia, and how the headings of the Standing Orders are now bilingual (in both English and te reo Māori). Some staff meeting attendees also mentioned the Council is reviewing its organisational values. A comment from my staff survey stated:

The Council has very open channels of communication that would allow any staff member to feedback improvement on any subject matter to the appropriate staff. This includes meeting and workshop processes.

Elected member survey respondents commented:

...I've been really impressed with the operation of TRC [Taranaki Regional Council] meetings since I was elected a councillor...

[The Council] always appear to be welcoming of [the] public

Some meeting attendees said the respectful working relationship between elected members and staff means elected members can go directly to staff with questions (although Directors are usually the first point of contact). It is also part of the culture for elected members to give staff notice of what they might ask in a meeting, to enable staff to prepare an answer.

In my meeting with the Chief Executive, he described the Council as 'very open'. He said there are few politics, and that staff and elected members are 'focused on getting on with the job'. Two staff meeting attendees said the Chief Executive shares information from Executive Leadership team meetings through (internal) Workplace posts, and one said he has a monthly stand up with staff.

A number of meeting attendees said the culture between elected members is a positive one. One meeting attendee said much of this was driven by council historically having a 'consensus style' of politics. During the 2019 to 2022 triennium, there appeared to be few votes in Council meetings. A number of meeting attendees said one reason for this was because elected members tried to reach consensus before they attended the meeting.

While I acknowledge this is a way to present a united front on a topic, it is critically important for records to be kept to show how consensus is reached (this is discussed further below under [Workshops](#)). The Chair should also ensure inclusive participation and be mindful to ensure that diverse voices are heard. However, I note consensus does not always occur, with an example given about the Port Taranaki Ltd Directors vote being evenly split.⁶ An elected member meeting attendee said councillors try to find compromises.

In response to my provisional opinion, the Chief Executive said that while he agrees that inclusive participation of the public is important, it has to be balanced with being a good employer. He said there is a growing trend of individuals with strong views, and some recent examples (at other councils) of members of the public physically threatening elected members

⁶ Link to Taranaki Regional Council's [Ordinary Meeting Agenda - 28 February 2023](#) (see page 11)

and senior staff. He said the Council has to take *'appropriate steps to protect the health and safety of elected members and staff'* and it is a *'fine line that local government needs to navigate'*. I acknowledge this is a concern for councils, and I encourage them to consider increasing transparency and public participation in ways that are safe to staff and elected members.

I applaud the Council for creating and maintaining a generally positive culture. A healthy relationship between elected members, and between elected members and council staff, aids good decision making and helps with the smooth running of the Council. However, I acknowledge that cultivating organisational culture is an ongoing journey. The Council's culture around openness could be improved by implementing additional transparency measures such as opening workshops (discussed further below under [Workshops](#)).

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.⁷

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;⁸
- agendas and reports are publicly available at least two days in advance;⁹
- meetings are open to the public, unless there is good reason for excluding them;¹⁰ and
- minutes of a meeting must be made accessible to members of the public.¹¹

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

⁷ See s 4(a) LGOIMA

⁸ See s 46 LGOIMA

⁹ See s 46A LGOIMA

¹⁰ See s 48 LGOIMA

¹¹ See s 51 LGOIMA

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.¹² 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).¹³ 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,¹⁴ though it specifically excludes section 7(2)(f)(i).¹⁵ 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 will always 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'.¹⁶ 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.¹⁷ In other words, elected members must make the decision to go into a public

¹² See ss 47 and 48 LGOIMA

¹³ See s 13(1) Ombudsmen Act 1975

¹⁴ '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).

¹⁵ 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.

¹⁶ Link to the Office of the Ombudsman's [Public interest](#) guide

¹⁷ See s 48(4) of the LGOIMA

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:¹⁸

- 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 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...*' [emphasis added].

¹⁸ See s 48(3) of the LGOIMA

It is the role of the Chief Executive to provide advice to elected members (the decision makers) on whether there are any grounds to close the meeting to the public, as well as any countervailing reasons in the public interest to hear the item in a public session.¹⁹ Two staff meeting attendees said for ordinary council meetings, the Chief Executive and the Director-Corporate Services provide advice to elected members regarding excluding the public from meetings. Otherwise, the Chief Executive and the Director responsible for the Committee provide advice to elected members regarding excluding the public from meetings. Elected members will occasionally question the advice on an item in the public excluded portion of a meeting.

To gain an understanding of the Council's use of reasons to exclude the public from meetings, my investigators reviewed a number of examples of resolutions to exclude the public. An early review found that the Council had excluded the public from some meetings citing 's7(2)(f)(i) - *Free and frank expression of opinions*' as the reason. However, section 48(7)(a)(i) of the LGOIMA specifically states that section 7(2)(f)(i) cannot be used as a good reason to exclude the public from meetings. I wrote to the Council early in the investigation to raise my concerns. The Council promptly responded stating the practice has ceased, and it had taken the following actions:

- Additional education and support was given to the Governance team to enable them to provide advice and guidance to agenda report writers.
- The agenda template was updated to state:

Agencies are explicitly prevented from excluding the public from meetings to enable 'free and frank' discussion. Members are elected to provide a voice for their community, in much the same way that members of the national parliament are. You would not expect them to be any less free or frank for the fact that they must voice their opinions in public.

- An agenda report writing guide for staff is being developed and a copy will be provided to my Office on completion.

While I am pleased with these actions, I am concerned that an unchecked error was allowed to occur and potentially embed into the Council's practice. It is unclear whether the error was a result of a lack of specialist knowledge, organisational resilience, guidance, training or a combination of all factors. As discussed in [Resources and training](#) below, it is important that agencies reinforce good practice with training. With regular training and accurate guidance, staff should know enough about the legislation to make correct decisions, and not simply rely on what others have done before them or on incorrect standard templates that have not been reviewed and updated regularly. I acknowledge templates are a useful tool that enable consistency of practice. However, it is important that templates are supported by guidance and training, especially for those who do not have specialist or legal knowledge.

¹⁹ See s 42(2)(b) of the LGA

I consider it to be good practice for councils to revisit material heard in public excluded to assess whether it may be suitable for release at a later date. A staff meeting attendee said the Council sometimes releases public excluded items, but the practice is ad hoc and there are no formal processes to ensure this occurs regularly. I suggest the Council formalise the practice of revisiting public excluded reports to consider them for release, which will greatly aid transparency. One potential improvement to the Council's agenda template could be to include a prompt for report writers to consider whether information discussed in public excluded meetings could be released to the public at a later date.

Action points

1. Provide me with a copy of the Council's report writing guide once finalised.
2. Formalise the process of revisiting and considering for release material heard in the public excluded part of Council meetings.

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'*.²⁰ 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. At the start of the investigation, the Council used its own template which did not contain the necessary detail. I am pleased the Council is now inserting the table with the prompts from the Schedule 2A form, although it is not currently part of the template.

An example is from the agenda of an Ordinary Council Meeting dated 4 April 2023, which states:²¹

²⁰ See s 48(3) of the LGOIMA

²¹ Link to Taranaki Regional Council's Ordinary Meeting Agenda - 4 April 2023 (see page 9)

<i>General subject of each matter to be considered</i>	<i>Reason for passing this resolution in relation to each matter</i>	<i>Ground(s) under section 48(1) for the passing of this resolution</i>
<i>Yarrow Stadium Plus: Project Steering Group Report</i>	<p><i>To enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities.</i></p> <p><i>To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</i></p>	<i>That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 7 (2) (h) and (2) (i) of the Local Government Official Information and Meetings Act 1987.</i>

I suggest the table content be amended to include a plain English reason for excluding the public. For instance, the grounds under the ‘*Reason for passing this resolution in relation to each matter*’ column could be moved to the ‘*Ground(s) under section 48(1) for the passing of this resolution*’ column (so it would read, for example, ‘*section 7(2)(h) – to enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities*’); and the ‘*Reason for passing this resolution in relation to each matter*’ column should instead contain the plain-English reason for excluding the public. I suggest the Council provide information in this section of its template to clearly explain to the public the harm they are trying to avoid by hearing the item in the public excluded part of the meeting (except where explaining the harm itself might create a prejudice to the protected interest), and the reason(s) why it is considered the public interest in release does not outweigh the harm. I discuss balancing the public interest further below under [Recording the decision making process](#). The Council could also consider adding the Schedule 2A table to its template so it will continue to be used regardless of whether other changes to meeting administration occur at the Council.

I note the confirmation of previous public excluded minutes also takes place in the public excluded part of a council meeting. An example of this is from the minutes of the same Ordinary Council Meeting referenced above (dated 4 April 2023).²² The minutes state:

Item 13 – Confirmation of Public Excluded Minutes Executive Audit and Risk Committee 13 February 2023

That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information where the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the

²² Link to Taranaki Regional Council’s Ordinary Meeting Agenda - 4 April 2023 (see page 25)

commercial position of the person who supplied or who is the subject of the information; and/or enable any local authority holding the information to carry out, without prejudice, commercial activities.

The minutes do not restate the actual topic(s) of the item(s) heard in public excluded in the previous Executive Audit and Risk Committee meeting. In order to discover that information, a member of the public would have to check the minutes from the previous meeting. Therefore, I suggest the Council restate the topic(s) heard in previous public excluded meetings when confirming them.

Action points

3. Ensure the plain English reason for excluding the public is included in relation to each matter and is detailed enough to give the public a clear sense of the harm the Council is trying to avoid by hearing the item in a public excluded meeting (except where explaining the harm itself might create a prejudice to the protected interest), and the reason(s) why it is considered the public interest in release does not outweigh the harm.
4. Restate the topic(s) of previous public excluded minutes when confirming them.

Recording the decision making process

Advice from staff to elected members forms part of the ‘decision making process’, as distinct from a ‘decision’ which is made by elected members at a council meeting. The decision making process on items to be heard in the public excluded part of a council meeting is not being recorded, including details of how any countervailing public interest has been weighed.

Ombudsmen have consistently supported maintaining a full audit trail for advice that contributes to decisions made by an agency. Doing so also ensures the Council’s practices are consistent with sections 17(1) and 17(2) of the Public Records Act 2005 (PRA) 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.

Since the Council does not keep a record of the decision making process, there is no written evidence of a weighing of public interest considerations taking place. I have a guide titled ‘[Public interest: a guide to the public interest test](#)’ which may provide some assistance for the Council to add this step to its decision making process.²³

In considering whether the public should be excluded from a meeting under section 7 of the LGOIMA, councils should be balancing the public interest in the information being shared against the need to withhold it. 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

²³ Link to the Office of the Ombudsman’s [Public interest](#) guide

items cover countervailing public interests for hearing the item in a public meeting, as this will have to be assessed by the ultimate decision makers.

In addition to ensuring compliance with the PRA, 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 or 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 discuss incorporating record keeping into public excluded guidance below under [Resources and training](#).

Action point

5. Record the reasoning behind public excluded advice and decisions, including any consideration of the public interest for hearing the item in a public meeting.

Resources and training

The Council uses Diligent, and has a small Governance team (comprising a Governance Administrator and the Executive Assistant to the Chief Executive and Chair) who report to the Director-Corporate Services. The Council states the Governance team staff members are relatively new and still building on their knowledge. The team takes minutes at meetings and provide cover for each other if required. Executive Assistants from other business groups are also available to help with minute taking.

Although the Council has provided external minute taking training in the past, this occurred before the current Governance team staff members were employed. Therefore, the Governance team have mostly received internal one-on-one training on minute taking. I am pleased the staffing arrangements for meeting administration (agendas, minute taking, etc.) appear to be good, and the Council seems to be appropriately resourced in this area.

My investigators reviewed a sample of council meeting minutes and found a lack of detail when capturing the discussion, debate and questioning that takes place. For instance, the minutes from a meeting held on 13 December 2022 state:²⁴

6. Taranaki Triennial Agreement 2022-2025

²⁴ Link to Taranaki Regional Council's [Ordinary Meeting Agenda - 28 February 2023](#)

Chief Executive, Mr S J Ruru, introduced the item and answered questions.

...

7. Wild for Taranaki Committee Membership

Chief Executive, Mr S J Ruru, introduced the item and answered questions.

...

10. Port Taranaki Ltd Councillor Directors

[Staff member name] presented the paper and answered questions on the process proposed for the appointment of Port Taranaki Ltd Directors.

Based on these records, it is impossible to know what questions were asked and what answers were provided. This was reinforced by a number of staff meeting attendees who said minutes capture actions and decisions but not discussion. Several public survey respondents also wanted more detailed minutes. This an excellent opportunity for the Council to develop written guidance for minutes to ensure details of discussion, debate and questions are consistently captured to aid greater openness and transparency.

I am pleased the Council's minutes record voting divisions (the number of elected members who voted 'for' and 'against' resolutions), as well as the names of the elected members who voted 'against'. While it is not a legal requirement to do so, I consider this good administrative practice in the interest of accountability.

The Council is part of Te Uru Kahika - Regional and Unitary Councils Aotearoa and has strong networks with the other councils in the Taranaki region to share good practices, procedures and resources.²⁵ Utilising networks is an excellent way for councils to impart knowledge, improve processes and seek feedback and advice on complex issues.

As outlined above in [Excluding the public from meetings](#), the Chief Executive and the Directors are responsible for providing advice to elected members on public excluded items. They meet in advance of meetings to review agendas. A staff meeting attendee said the Chief Executive makes the final decision on what advice to give.

The Council appears to have one key staff member at the tier two level with expertise on where it is permissible to exclude the public from meetings. I am concerned that having only one subject matter expert at the senior leadership level means there are limited resilience provisions in place. I consider it would be preferable to have several staff able to advise on this topic. If the COVID-19 pandemic has demonstrated anything, it is the importance of prior planning and preparation. Therefore, I suggest the Council consider its organisational resilience arrangements in order to better position itself for the future.

When asked about resilience at my meeting with the Chief Executive, he acknowledged there is risk in this area if he and the key senior staff member were both to be away. The Council is upskilling the Governance team to address this. It is important that there are a number of senior staff able to step into the role if required. In response to my provisional opinion, the

²⁵ Link to [Te Uru Kahika - Regional and Unitary Councils Aotearoa](#)

Chief Executive also noted that the size of the Council puts limitations on the ability to create resilience and *'from time to time, certain matters can only be addressed by one or two key staff'*.

A staff meeting attendee said that although LGOIMA training can be provided to new staff, it generally is not. Another staff meeting attendee said they had received one-on-one, high level LGOIMA training when they started, while others did not receive any. After the October 2022 local government election, councillors received an induction. However, there only appeared to be one sentence each on two slides that related to excluding the public from meetings.

Although LGOIMA training is available on an ad hoc basis, the Council does not appear to have provided any targeted training to most staff or elected members on reasons to exclude the public from meetings. There is also a lack of training on the proper application of the public interest test.

I encourage the Council to develop formalised training on these topics, to be delivered on a regular basis. I appreciate there may be some staff and elected members who are proficient in this area. However, relying on an individual's knowledge and past experience to advise on, or make, the appropriate decision underestimates the benefits of ongoing training and regular refreshers. Regular training should also ensure that staff are kept up to date with any changes in the law or new opinions I issue.

The benefits of providing regular training include:

- 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.

I am pleased a staff meeting attendee said the Council is developing training for report writers which will include reasons to exclude the public from meetings. My staff are available to assist with developing and/or delivering training on request.

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 specifically on responding to LGOIMA requests from members of the public seeking information about public excluded meetings. If a LGOIMA request is made for public excluded information, such a request must be considered on its individual merits and based on the circumstances at the time of request. It may not be refused under the LGOIMA on the basis that the information was earlier heard in a public excluded meeting.

For guidance on public excluded meetings the Council relies on its Standing Orders (particularly *Appendix 1: Grounds to exclude the public / Āpitihanga 1: Ngā take e aukatihia ai te marea* and

Appendix 2: Sample resolution to exclude the public / Āpiti hanga 2: He tauira mō te tatūnga ki te aukati i te marea).²⁶ However this does not include information about:

- elected members having ultimate responsibility for decisions on what is to be heard in the public excluded part of a meeting;
- consideration of the public interest in making information available when deciding what is heard in the public excluded part of a meeting;
- record keeping on reasoning behind public excluded decisions;
- releasing public excluded reports; and
- responding to LGOIMA requests for public excluded meeting material.

I encourage the Council to develop guidance on its processes around public excluded meetings that contains this information.

Further, the Council should update *Appendix 1* of its Standing Orders to ensure the correct legislative grounds in the LGOIMA are being referenced. For example, *Appendix 1* states:

(c) In the case only of an application for a resource consent, or water conservation order, or a requirement for a designation or heritage order, under the Resource Management Act 1991, to avoid serious offence to tikanga Māori, or to avoid the disclosure of the location of waahi tapu;

This should be updated from '(c)' to '(ba)', and is also in line with Ko Tātou LGNZ's Regional Council Standing Orders template.²⁷

Action points

6. Develop guidance for meeting minutes to ensure details of discussion, debate and questions are captured.
7. Consider the Council's organisational resilience arrangements ensuring a number of senior staff are able to provide advice on reasons to exclude the public from meetings.
8. Ensure targeted training is delivered to elected members and select staff on reasons to exclude the public under Part 7 of the LGOIMA, as well as the proper application of the public interest test.
9. Develop guidance on the processes around public excluded meetings, incorporating my suggestions.

²⁶ Link to Taranaki Regional Council's [Standing Orders](#)

²⁷ Link to Ko Tātou LGNZ's [Governance](#) webpage where the Regional Council Standing Orders template can be accessed.

Accessibility of meetings

My expectations

The United Nations Convention on the Rights of Persons with Disabilities (Disability Convention) is an international human rights agreement that New Zealand signed up to in 2007.²⁸ 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

In my meeting with him, the Chief Executive said that meetings are not currently livestreamed. The public can email or call the Council to request a Zoom link, which allows members of the public to attend virtually, but this is not obvious on the Council's website. During the COVID-19 lockdowns, the Council recorded its meetings on Zoom, but then stopped. Therefore, it has this capability, although a staff meeting attendee said there may be issues with the sound quality from the microphones.

I acknowledge that while technology such as Zoom (or another video conferencing platform) may not provide a perfect recording, I consider it to be better than not recording at all. The goal is to provide an additional layer of transparency to the public. I encourage the Council to publish video conferencing links for all meetings online and resume the practice of recording them. I also encourage the Council to consider adopting the practice of livestreaming meetings.

In response to my provisional opinion, the Chief Executive said:

The Council debates this matter from time to time. At the last consideration, the Council decided not to livestream meetings. This matter is due for reconsideration in the near future and we will ask the Council to reconsider its position on this matter.

²⁸ Link to the [United Nations Convention on the Rights of Persons with Disabilities \(Disability Convention\)](#)

I am pleased the Council will reconsider this matter and look forward to receiving an update in due course.

The Council advertises its meetings on its website and in the local newspaper (the Taranaki Daily News). A number of staff meeting attendees thought the Council could be doing more to promote meetings. I suggest the Council consider other ways to make meeting dates and times more visible to the public, such as sharing this information on social media, or making the information more prominent on the website (for example, publishing information about upcoming meetings on the website homepage).

I note the agendas and minutes published in PDF format on the Council's website are in a searchable format, but images do not appear to have alternative text. I suggest the Council ensure all visual elements in PDF documents, including any reports and supporting materials, are tagged with alternative text. Ideally these PDF documents would be accompanied by accessible Microsoft Word versions, and the public advised that they can ask for accessible formats, if required.

Another helpful accessibility feature the Council offers is on the *Contact us* webpage under 'For the hearing-impaired':²⁹

*NZ Relay is a telecommunication service for people who are deaf, hearing-impaired, deafblind, or speech-impaired. You can use NZ Relay to make telephone calls to this Council, as well as to family, businesses and government ministries. Find out more by visiting the NZ Relay website.*³⁰

Further, the Council's chambers are wheelchair accessible, which is important for inclusivity and participation in the democratic process.

Action points

10. Consider livestreaming and audio visual recording Council meetings.

11. Consider additional ways of making meeting dates and times more visible to the public.

Workshops

My expectations

The LGOIMA does not define or regulate workshops (or other informal meetings),³¹ 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

²⁹ Link to Taranaki Regional Council's [Contact us](#) webpage

³⁰ Link to the [NZ Relay](#) website

³¹ For the purpose of this investigation, 'workshops, briefings and informal meetings' means 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.

the formalities of kaunihera meeting'.³² 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 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...*'.³³

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).³⁴ 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

³² Link to [The guide to LGNZ standing orders](#)

³³ See s 14 LGA

³⁴ See s 17(1) PRA 2005

workshops.³⁵ 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.

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.³⁶ 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 at the Council

As per the agency questionnaire, workshops are usually initiated by councillor request or by the Executive Leadership team, but only those listed in *Appendix 8: Workshops / Āpitihanga 8: Awheawhe* of the Council's Standing Orders can call a workshop.³⁷

³⁵ 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.

³⁶ This refers to Council staff, not a decision of full Council.

³⁷ *Appendix 8: Workshops* of the Council's Standing Orders states:

Workshops, briefings and working parties may be called by:

(a) A resolution of the local authority or its committees

(b) The Mayor

(c) A committee Chairperson or

(d) The chief executive.

The Council's Standing Orders provide some framework for workshops. Section 2 of the Standing Orders defines a workshop as:

***Workshop** means in the context of these standing orders, a gathering of elected members for the purpose of considering matters of importance to the local authority at which no decisions are made and to which these standing orders will not apply, unless required by the local authority. Workshops may include non-elected members. Workshops may also be described as briefings.*

Appendix 8: Workshops of the Council's Standing Orders also provides a definition of a workshop. It states:

Workshops, however described, provide opportunities for members to discuss particular matters, receive briefings and provide guidance for officials. Workshops are not meetings and cannot be used to either make decisions or come to agreements that are then confirmed without the opportunity for meaningful debate at a formal meeting.

As stated above in [My expectations](#), the LGOIMA makes it clear that workshops cannot be used to make decisions. Final decisions must be made in a meeting as defined in Part 7 of the LGOIMA. I am pleased that this is reiterated unambiguously in the Council's Standing Orders. When my investigators met with Council staff and elected members, it was evident they understood that, as per the LGOIMA, decisions were to be made in formal council meetings and not in workshops.

Historically, the Council has held workshops very infrequently. Records provided by the Council indicated there are approximately four workshops per year. Meeting attendees suggested several reasons for this, including:

- regional councils being one step removed from the public compared to city or district councils, so there is less interest from ratepayers due to that separation;³⁸
- the Council previously had the longest serving Chief Executive in local government (who held the role for over 30 years), as well as other long serving staff and elected members, who between them had a wealth of experience;
- as mentioned above in [Culture and leadership](#), there is a high trust model between staff and elected members, which means the Council has historically been considered stable, cohesive and uncontroversial; and

³⁸ Link to Te Tari Taiwhenua (Department of Internal Affairs) [Councils' roles and functions](#) webpage:

New Zealand's local government system comprises two complementary sets of local authorities – regional councils and territorial authorities (city and district councils). Regional councils' responsibilities include sustainable regional well-being; managing the effects of using freshwater, land, air and coastal waters, by developing regional policy statements and the issuing of consents; managing rivers, mitigating soil erosion and flood control; regional emergency management and civil defence preparedness; regional land transport planning and contracting passenger services; and harbour navigation and safety, oil spills and other marine pollution.

- lots of information is discussed in committee meetings.

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 a decision that should be made at a formal Council meeting is not made in a workshop. Staff and elected member meeting attendees said there have not been any occasions where they have had to intervene, but they have confidence that the Chief Executive, Chair or Director-Corporate Services would intercede if required.

Closed workshops

There was conflicting evidence regarding whether the Council's workshops are open or closed to the public. My investigators requested information about a sample number of workshops as part of this investigation. The Council said that all but one of the workshops were closed and all of them were not advertised to the public. The majority of meeting attendees also said workshops are closed to the public, but one staff meeting attendee said that the Council does not make an active decision to either open or close workshops. *Appendix 8* of the Council's Standing Orders state, *'...workshops can be either open to the public or public excluded.'* In response to my provisional opinion, the Chief Executive noted that in the *'vast majority of instances, the Council does not make a specific decision to make workshops open or closed to the public'*.

I am concerned that despite the Standing Orders stating workshops can be either open or closed to the public, I have not seen any evidence of the Council making a consistent decision about opening its workshops to the public. While the Chief Executive said that *'in most instances, the public would not be excluded from workshops'*, the Council does not appear to advertise or inform the public of workshops in any way. *Appendix 8* of the Council's Standing Orders state *'public notice of a workshop is not required'*. While I acknowledge it is not a legal requirement to notify workshops, if the public is not aware that a workshop is open, I consider it to be closed by default.

The Council should ensure workshops are presumptively open to the public, unless it is reasonable to close a workshop on a case-by-case basis. I encourage the Council to consider whether closure is necessary based on the individual circumstance of each workshop (as reflected above in [My expectations](#)).

In cases where councils have a blanket rule of closing all workshops to the public, I am likely to form an opinion that the practice is unreasonable. However, in this case, I have not made a finding because the Council holds very few workshops and its Standing Orders state that workshops can be closed or open. In addition, the Chief Executive expressed support for opening workshops on a case-by-case basis.

I encourage the Council to open its workshops (unless it is reasonable not to on a case-by-case basis) and advertise them. This could be done via its website and in the local newspaper the way it does for Council meetings (discussed above in [Accessibility of meetings](#)). Further, I suggest the Council consider the ways it not only advertises, but actively promotes, workshops to particular groups and the public on topics that are relevant to them.

Where a decision is made to close a workshop to the public, the Council should ensure the public is still aware of when the workshop is happening, the topic(s) it covers and the reason(s) as to why it is closed to the public. Guidance and training on workshops, including examples of when it may be reasonable to close a workshop, should be updated to reflect amendments in the Council's practice.

Opening workshops to the public can alleviate any public perception of secrecy. Although there were few respondents to my public survey, some of those who did respond had a perception that information was being kept behind closed doors in workshops.³⁹ This contrasted with staff and elected member meeting attendees who did not appear to be aware there were any negative public perceptions in relation to workshops.

An example provided to my investigators was in relation to a number of Māori wards / constituency options considered at two workshops in May and June 2021. The Chief Executive said a decision was not made either to open or close the workshops. As I note above, I consider them to be effectively closed because they were not advertised to the public. Options from the workshops were narrowed to one 'initial' proposal which was released for public consultation. Following consultation, options were expanded to two proposals for elected members to consider and vote on at a public meeting in September 2021. A final decision was made at an open council meeting, which was the 'initial' proposal from the workshops. Councils should be mindful that narrowing options at closed workshops and presenting one, or even two, options at council meetings could be perceived by the public as decision making behind closed doors. There are a number of actions the Council can take to mitigate this perception, such as opening workshops to the public and keeping good records, which I discuss further below in [Keeping records of workshops](#).

A few staff meeting attendees supported workshops being open to the public, and I was pleased that the Chief Executive said an advantage to opening workshops would be the perception of greater transparency. However, other meeting attendees said there could be some disadvantages to opening workshops to the public, including:

- The public misinterpreting information heard at a workshop.
- Elected members might have more guarded conversations when exploring issues and have to be more '*politically savvy*' with their comments.

While I acknowledge and understand these points, there are a number of ways the Council could alleviate these concerns. For instance, context and explanation could be included around the information heard and released, which would go some way to alleviate the concern that information may be misinterpreted. Further, if the Council introduced the practice of recording workshops and made that footage available to the public, the full details would be accessible to counteract any information taken out of context. Recording workshops is discussed further below under [Keeping records of workshops](#).

³⁹ I received 12 responses to my public survey.

While I appreciate the concern that elected members may be more guarded with their conversations 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 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.

Where there is a technically complex issue that elected members need additional information to understand, it is equally likely members of the public would benefit from greater knowledge. Where complex matters are explained in an open workshop, the public can be educated along with elected members. This will provide the public with better awareness of the rationale behind a final decision made by elected members in a meeting. I also suggest that opening workshops could lead to elected members being more prepared when they attend. If there is an added layer of public accountability, elected members may be more likely to do pre-reading and be more inclined to ask relevant and well thought out questions.

While I understand that opening workshops to the public will require a cultural shift, I consider several benefits to doing so, including:

- **Accountability** – Holding discussions and deliberation in an open workshop 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 representatives' participation in workshop discussions, and these experiences will allow the public to make informed decisions during the next local elections.
- **Trust** – To maintain public trust, the Council should go beyond 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. workshops) are open and transparent. Even where the public does not attend workshops, the fact that they are open will likely reduce public speculation that they are being used for making decisions behind closed doors.
- **Participation** – Observing the Council's operations during workshops can enhance the public's technical knowledge and understanding of its functions and operations, enabling them to participate more fully in the actions and decisions of local authorities.
- **Efficiency** – There may be 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.

Action points

12. Ensure workshops are presumptively open to the public, unless it is reasonable to close a workshop on a case-by-case basis.
13. Advertise workshops and consider actively promoting them to special interest groups or community groups.

14. Ensure the public is informed of closed workshops (such as the date of the workshop, the topic(s) it covers and the reason(s) as to why the workshop is closed).

15. Ensure current guidance (including Standing Orders) and training reflects updated workshop practices.

Keeping records of workshops

The Council's Standing Orders do not include any information on record keeping for workshops. The Standing Orders templates provided by Ko Tātou LGNZ (which are used by most councils) state:⁴⁰

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

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

In the agency questionnaire, the Council stated, '*...as no decisions are made at workshops, no minutes are taken.*' This is because '*Per Standing Orders, minutes are to be a record of decisions made.*' Further, '*Agendas are not generally prepared for workshops.*' In my meeting with him, the Chief Executive said a staff member who leads a topic in a workshop usually takes their own notes. Two staff meeting attendees said sometimes the staff member facilitating the workshop will take notes. One of those two staff meeting attendees said any notes taken by staff would have related to the workshop topic, so the notes taken would go into the development of a report or a project.

Although it was apparent from meetings that workshop records are ad hoc, I note the '*Representation Review for the 2022 Local Authority Elections*' report from the agenda of the Ordinary Council Meeting dated 29 June 2021 includes details about the Māori wards / constituency options considered at the closed workshops held on 18 May 2021 and 8 June 2021.⁴¹ This is an example of closed workshop proceedings being reflected in reports which are then heard in the open part of Council meetings. However, a respondent to my public survey also raised this as an example of a perception of a decision being made in a closed workshop (as discussed above in [Closed workshops](#)).

In order to ascertain the frequency and quality of record keeping at workshops, a number of workshop records were requested as part of the investigation. The Council created a table (as a one-off exercise) which had some of the information that other councils include in workshop notes (as per the standard Standing Orders template referenced above). Aside from the table, records provided by the Council included two presentations and an agenda. One of the

⁴⁰ Link to Ko Tātou LGNZ's [Governance](#) webpage where the Territorial Authority Standing Orders template and Regional Council Standing Orders template can be accessed.

⁴¹ Link to Taranaki Regional Council's [Ordinary Meeting Agenda - 29 June 2021](#) (see page 177)

presentations reviewed from a workshop held on 9 December 2021 included next steps and timeframes.

Workshops are a key part of the decision making process and, as such, to help promote accountability and transparency, align with good practice, and, importantly ensure compliance with section 17 of the PRA, the Council should ensure it keeps a full and accurate record of their content.

As noted above, section 17 of 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 to maintain records in an accessible form to enable use for subsequent reference. I consider there is a disconnect between the requirements of record keeping as prescribed by the PRA, and the lack of any prescribed requirements in the Council's Standing Orders. 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.

I encourage the Council to adopt a standard approach to recording information generated in workshops. The Council should take full and accurate notes of workshops and document any verbal conversations held in relation to workshops. These, and other relevant records (such as emails), must be maintained in a way that ensures they are accessible for future reference.

Similar to what I said above in [Local authority meetings](#), the Council should formalise the process of revisiting and considering for release material heard in closed workshops. For any material not released proactively, the Council could publish a detailed list of the items available from each workshop so the public know that they can request the records under the LGOIMA. Although workshops are not currently audio visually recorded, it would be good practice for the Council to do so. I discuss recording, along with livestreaming, above in [Accessibility of meetings](#). The Council should consider livestreaming and audio visually recording workshops.

Keeping records of workshops 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:

- transparency by providing a record of discussions which precede and inform formal decision making (which occurs during Council meetings);
- public perception and trust in the Council's decision making processes may be enhanced; and
- clarity in the event of an Ombudsman investigation or a complaint from another party (while the Ombudsman cannot investigate decisions made by the Council as a full council, they can investigate the reasonableness of any advice provided by council staff on which the decision was based) and the reasonableness of a decision to close a workshop.⁴²

⁴² See s 13(1) Ombudsmen Act 1975

Where possible, these records should be proactively released to the public. 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...*'⁴³

Action points

16. Review Standing Orders to ensure compliance with the Public Records Act (PRA) for workshops, and as part of the review, seek advice from Archives New Zealand about whether the Council's record keeping practices for workshops are compliant with section 17 of the PRA.
17. Amend practices to ensure that full and accurate records of workshops are kept and maintained in an accessible form.
18. Consider livestreaming and audio visually recording workshops.
19. Proactively release full and accurate records of workshops, where possible.

Guidance and training

The Council's Standing Orders provide some guidance to staff regarding workshops. *Appendix 8: Workshops* includes the definition of a workshop, the application of Standing Orders to workshops and calling a workshop (including the process). However, the Council has no further written guidance on workshops. The Council should expand its written guidance for workshops to include:

- that workshops are open to the public by default (unless it is reasonable to close the workshop to the public);
- how the public will be informed about workshops (both open and closed);
- whether workshops will be livestreamed or audio recorded;
- that information generated as part of the workshop should be kept (such as agendas, memos, presentations or notes taken by elected members and staff);
- the ways in which these records will be made available to the public (for example, released proactively);
- that information about workshops can be requested under the LGOIMA;
- who is responsible for the workshop record; and
- where the workshop record should be saved.
- that full and accurate notes should be kept.

⁴³ See s 4(a) of the LGOIMA

It is good practice for those involved in workshops to receive training. As stated above under [Local authority meetings](#), after the October 2022 local government election, councillors received an induction. However, there only appeared to be one sentence on one slide that related to workshops which stated that decisions cannot be made in workshops.

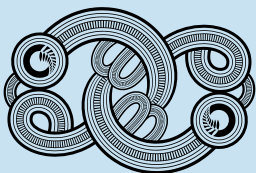
Providing training on workshops to elected members (and staff who are involved) would help reinforce the differences between a workshop and a Council meeting. Several staff meeting attendees thought training and additional guidance material on workshops would be beneficial to them. Training should include information on the circumstances in which a workshop is held, examples of reasons where it might be reasonable to close the workshop to the public and record keeping obligations.

It is especially important for small councils to have robust guidance and regular training in order to support organisational resilience. Guidance and training provides a consistent standard for staff to adhere to. Good practice is more likely to be maintained when, for instance, someone is away or leaves the agency, if there is clear guidance and training. Further, good quality guidance and training will upskill staff, and safeguard specialist knowledge, regardless of the individuals employed at any given time. I touch on organisational resilience further above in [Local authority meetings](#).

Action points

20. Expand written guidance on workshops to incorporate my suggestions.

21. Provide training on workshops to elected members and select staff.



Ombudsman

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