

20 April 2024

The Ombudsman,
PO Box 10152,
Wellington 6143

Dear Ombudsman

AC Code complaint: Additional Comments following Open for Business Report

Further to my forwarding of the decision by Auckland Council (AC) for your review [28 March 2024], AC has released a memo (attached as APPENDIX 3) for local boards to follow-up your October 2023 “Open for Business” report and recommendations on local government meetings and workshops.

This has caused me to reflect on our experience of the behaviour of AC elected members and officials in a structure that we (NAG) have argued from the outset is not properly fit for purpose. (It ignore much of the Royal Commission report that was relevant and was not designed with intelligent regard for both the size and diversity (rural/urban) of Auckland). [viz A LGA (and LGACA) that works for TAs or Councils of up to -at most- 100k population is seriously unfit for an area the size of Auckland and a population of 1.5m with an urban centre and large rural areas - Rodney is 40% of total area with 5% of the population.]

All of these comments are about AC. They are about the way AC processes complaints and how its processes do not allow for the consideration of outside ideas prior to proposals for consultation already being formed. Some apply generally and some are related to the circumstances we have had in the Rodney Local Board Area (RLBA).

These comments are mine, but I am confident they are generally shared by other community groups in Rodney struggling to get genuine engagement with the centralised, functional, silo based AC. [At 5% of pop. and remote from the city, we get one Councillor and have little voice and no power to make changes.]

AC’s response to Open for Business

Your report recommends more openness and transparency in council decision making forums, to which AC is responding positively in general.

However, they are still reluctant to take openness as far as you suggest. If AC supported your views, they would amend their Code or SO's of Local Boards to provide that workshops are to be open to the public, as meetings are required to be, instead of making it optional for local boards.

I agree with your observation that they perceive harms to council deliberations without giving substantive reasons on many occasions where public participation or observation is legitimate (as your report points out regarding the abuse of "commercial sensitivity" [p31]).

This is a very human characteristic of elected and appointed persons in positions of power, that they want to control the narrative, and are reluctant to share all their information or views with the public - fearing a loss of decision-making control.

This can be seen at the Governing Body (GB) level in AC, where Councillors have had difficulty implementing subsidiarity to the extent required by the law (by making extensive reliance on the exception that decision-making on anything that has regional implications may be retained by the GB... and the big things that RLB members and local ratepayers care about, like rating, where and how funds, investments and service provision get allocated, all have regional implications!

In much of AC, elected members and council staff have over-relied on the exceptions allowing meetings to be held in confidence (with the public excluded). A classic and democratically significant example of this is the Joint Governance Working Party (JGWP) – commented on in more depth later.

AC's response to your report reflects this behaviour.

In para 14 of their memo AC perceive as "risks" (i.e negatives) things that ratepayers would actually perceive as positives: viz:

- (a) the possibility of wilful or advertent disclosures – showing that AC does not Trust or Respect its own members to uphold the Code (is that a technical breach by AC itself!). Representatives are not fools and surely such disclosures would lead to appropriate action against them for the breaches.
- (b) The suggestion here is that members may hold "free and frank" views they do not want to public to hear (but the public would want to hear), or that the public (or groups) may be perceived to hold views that AC staff or members may not want to be obliged to discuss in public because they hold differing views. (see below about AC not wanting public input BEFORE significant decisions are made.)
- (c) Any potential to create misinformation or confusion is there already with everything AC does, but those situations also provide an opportunity to publicly put the facts and information right. There is no evidence that open workshops do what is hypothesised. Its pure speculation without substance put forward as an item to "balance" the positives.

- (d) The suggestion here is that members would possibly conduct themselves to breach the Code in private but not in public simply for the reason that the public might complain about their breach! Really?
- (e) There is no evidence that open workshops increase any risk to staff that is not already present in their work. There is no good reason why advice to elected members should be advice the public should not hear. If it is personal, opinionated, speculative, not well founded, or wrong, it is advice that should not be given. Unless reasonable exceptions prevail, the LGOIMA means that all advice is publicly accessible anyway. If the purpose of non-disclosure is to get a preferred decision made before the advice has to be disclosed because there might be public objections that is ethically indefensible.

The Summary talks about balancing the need for transparency with the need to manage risk. They suggest the “risk” includes the potential to restrict the nature of the discussion, but offer no clarification, or examples of why that would lead to worse outcomes, or of how that should be judged. No evidence is given to show that increased openness (and dare I say honesty), with its Trust and Respect benefits, has resulted in constrained discussions leading to inferior decision-making.

As discussed below, the practices of the non-public Joint Governance Working Party meetings give the lie to the statement in para 20 that “workshop records are proactively published as part of its next meeting agenda, including presentations and other documentation discussed or made accessible.”

Why should ratepayers not be entitled to hear what their elected representatives really think, and what is it that makes members afraid to say in public what they would in private? Do they really have different private and public views? If so, aren't ratepayers who elected them entitled to know that?

Matters where commercially sensitive details such as non-public commercial and particularly financial information are required to be disclosed are an obvious exception to public disclosure which is provided for, but beyond that it is surely wrong to exclude the public from gatherings of members just because some people or groups may not like, or may disagree with, what members have to say.

So clearly getting AC to conduct business in a way which is open transparent and democratically accountable is still a work in progress.

Complaints Process

What I suggest is missing from your report is the need for a robust and independent complaints process, for breaches of the Code of Conduct (Code) and Standing Orders (SO).

The Code and SO will have little utility if breaches are not considered in a manner which both complainants and those complained against can Trust and Respect.

In our complaint referred to you we argue that AC does not have such a process and there is no transparency - the process is not even publicly shown. As you say in your introduction to the report:

"Trust is at the core of the relationship between the people and their locally elected representatives. One way local government can earn trust is through transparent decision making that is open to public involvement and scrutiny. Transparency supports accountability, encourages high performance and increases public confidence. People may not always agree with council's decisions but a transparent process allows them to understand a council's reasoning, and can mitigate any suspicions of impropriety in the decision making process. Even a perception of secrecy can be damaging, as secrecy breeds suspicion."

I note that an Ombudsman has previously held in a 2016 case that it was "procedurally unsound for the Council not to determine and communicate at the outset the process for addressing a Code of Conduct complaint.." and that "it was unreasonable for the Council to embark on a process of investigation without making the complainant aware of what that process was."

In our case there was no communication from AC following the lodging of our complaint until the decision we received from the Investigator.

I know the LGA does not require Councils to have a robust, independent and transparent process for the management of Code and SO complaints, but councils are responsive to your recommendations and this is a missing piece of the conduct framework that you might usefully address for them pending an overdue review of the LGA.

Professional organisations and regulated entities have long had tried and tested robust self-regulatory or independent regulator-managed complaints management systems. Large corporate entities (particularly international) typically also have these. I see no reason why local government should not be required to have the same. Politically led organisations should not be free to avoid the processes which assist accountability and that they require others to have.

Independence and integrity of complaints management process: administrative law and natural justice concerns: lack of reasons: lack of process

Reasoning needed as part of the complaints process

As I noted in referring our complaint to you,

The essence of decision-making that engenders trust and respect most is that decisions are explained with reasons for making them. If administrative decision makers (elected representatives, appointed officials, complaints investigators or arbitrators included) have no good reason for making or supporting any decision they make, ratepayers

should be able to see that and judge for themselves whether that supports or detracts from their trust and respect for that member.

Principles of administrative law in New Zealand¹ require that Local Government decisions be made in accordance with law (proper exercise of authority) , fairly (procedural fairness and natural justice, without bias or predetermination) , and reasonably (not perverse, absurd or illogical).

It is not a mandatory requirement of natural justice that reasons be given for Administrative decisions, but it is now generally accepted practice.

Further, Auckland Council is subject to the Official Information Act 1975 (OIA), which requires reasons to be given following a request under Section 23.

You might reasonably agree that decisions should proactively always be accompanied with explanation and reasons, rather than these being made available only on request.

No reasoning and no process

In the complaint we have referred to you, I have been advised (email 5 April) by a very helpful Shirley Coutts, that:

“..Louise’s inquiries into your complaint involved various modes of communication and was summarised in the decision letter. So as we currently don’t have a single report documenting what you seek.”

As you can see from Louise’s decision letter, the summary was just the decision, without reasons. No reasons were collated to support her decision mistakenly confining our complaint to just being under the Trust principle and the assertion that their interpretation of the Chairman’s wide ranging powers to make decisions is correct. [Notwithstanding that if that was true he could have just ignored the motion and the pretext of seeking more information was unnecessary.]

No reasons were documented dismissing (or even arguing) our reasoning for our complaint prior to the decision being made. We received no communication prior to the decision advice. The conclusion must be that AC effectively has no established formal process for reasonable and effective consideration of complaints.

We have subsequently received (and forwarded to you) advice of the reasoning for Louise Mason’s decision – which we think is inadequate to support the decision which was unreasonable.

Perceived Lack of independence and unbiased investigation

¹ <https://oag.parliament.nz/1998/public-consultation/part2.htm>

Our complaint was investigated by a manager responsible for the staff supporting the Chairman who was the subject of our complaint, and whose staff were involved in the decision which was the source of the conduct complained about.

Following our request for an independent investigator, there was again no further communication until the decision. In this case the person the matter was referred to was a senior person in the governance department responsible for the Code and he was not asked to review the complaint but only the process – this being one he personally had been heavily involved in during the redrafting of the Code in 2021.

We had requested our complaint be investigated by a person with an understanding of administrative law in an independent department, such as personnel, legal, or audit, with no perceived connections to the conduct rules or local board support. This was ignored, raising the question of the perceived commitment within AC to its own principles of independence and freedom from bias, and the perceived prevalence of a closed-ranks/ closed-minds approach to fault finding.

Party or ticket lists for elected LG positions

If workshops are to be transparent and publicly visible, one of the problems we have had in Rodney (for the two previous election periods) is that “parties” or “tickets” can be formed that ties members to act in concert. When they form a majority (as 5 out of 9 did in Rodney) that allows that “ticket” to make decisions in advance. They are free to circulate and discuss the matters for decision amongst themselves, hold meetings in secret and predetermine decisions without any public scrutiny (even though the Code says they should not do this). As these meetings are held privately in secret, there is no public documentation available to support suggestions of Code breaches such as predetermination at the subsequent formal meetings where the final decisions are publicly made.

While there is no fool proof method to prevent this kind of “abuse of the majority” conduct, you might like to consider recommending that councils make it a requirement for candidates standing on a “ticket” that they agree to disclose the fact of any meetings they have held amongst themselves to discuss council business. A further stronger recommendation would be that any meeting or gathering of three or more members of a council, local board or community board is regarded as a workshop and must be treated accordingly (i.e open to the public unless the commercial confidentiality exception applies, in which case the reason for exclusion must be made public and why other council or board members were not invited).

As the Chair is inevitably a member of the ticket when they form a majority, this also points to the requirement for the Chairman to strictly follow standing orders and ensure that non-ticket members have a full opportunity for comment and questions and matters or motions tabled for discussion and resolution by a ticket member.

In the interests of ensuring minority representation and avoid making minority members irrelevant, it might be useful to require any motion tabled by a ticket member to be seconded by an independent member before it can be discussed or voted on.

In situations where the Chair is a majority ticket member, AC officials have an incentive to work in support of the Chair, but must be required under their own processes to avoid any discussion with the Chair that are not in the presence of at least one other independent member.

While attempts to implement such measure to ensure open and independent decision making might be regarded as naïve or idealistic, they would be ignored anyway without a robust and independent complaints management process that provided incentives for compliance.

Are Conduct Codes rules for compliance, or just guidelines for the exercise of discretion?

The lack of a robust and independent complaints process indicates that AC's approach to the Code, and SO's for local boards, is that they are guidelines – to be followed when it suits, and ignored when it doesn't (unless that provokes public concern that might affect voter support, when they may be taken seriously).

As I quoted from Henry Robert from his Robert's Rules of Order - the basis for much of our meeting procedures in my letter back to AC following the second report:

“Whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business, **not subject to the caprice of the chairman** or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.”

A Hive mentality?

The governance and structure of AC is not conducive to the effective efficient running of the Auckland region. (ref submissions and AC submissions).

Even when AC acknowledges its deficiencies (as senior reps and staff will do privately) they have no real incentive to drive needed change.

Failure to implement and run a robust and independent complaints process for elected members is one aspect of this.

AC is effectively closed to outside ideas not driven by politically significant interests – The membrane of communications is designed to explain what AC does and how it is a good thing – never to admit failure or weakness or to objectively review suggestions and

ideas for change. Advisory groups are established to screen inputs and keep out unconventional ideas, rather than forward them.

In my comments for NAG on the 10 year plan, we have persistently complained about the waste and inefficiency of delivery of infrastructure investments and services at a remote local level by different separate CCOs and Departments with different management controls driving outcomes that can't be efficiently integrated. I characterised community frustration in Rodney as:

AC and its CCO's are a closed shop. Outside ideas can't get through the skin. Its the homeostasis of the bureaucracy. Any ideas that get taken on board are shaped to become AC's ideas. All proposals for consultation are generated by and within AC.

Subsequent "consultation" is then just a sham because discussions are controlled and there is no genuine reciprocal engagement with a view to accept other than inconsequential change.

New or outside views are lost in the numbers game. AC considers feedback and makes decisions and communicates them. Ratepayers have no prior opportunity for original input to shape anything.

Consultation on the AC 10 year plan is a good example. The proposal for consultation is based on 3 levels of rates increases – low medium and high. There is no opportunity for exploring options outside that range and any ideas to save or generate more money to spend will be ignored unless a majority of ratepayers express them - which is unlikely. Most Ratepayers will not have time to read, let alone comment on the proposals, and those who have the ability to do so must rely on their representatives to understand, support their views and argue on their behalf. Since elected reps have more power and influence if more money is spent and more people depend on them, there is no incentive for them to reduce the size of local Government.

The Joint Governance Working Party (JGWP) closed shop

Context

AC Councillors and local board members struggle with the idea that ratepayers expect them to make decisions, and that being open to public knowledge of their deliberations prior to making decisions does not change that. They have a natural political fear that people will perceive them as bad decision makers and hold them accountable, so wish to make all decision in private and control information flows, only releasing information which supports their decisions (i.e put the best positive spin on them).

That is why we have to push them to be more accountable and get them to allow the public to hear their deliberations before decision are made and the public is asked for its view on them. The process of deciding what options to present for consultation (drawing up a long list and getting a short list from the long list) is something they want to shape without public input or submissions.

None of this is unexpected or unusual. We experienced that mentality when the Local Government Commission - in hearing our application for a North Rodney TA, made up its own list of options to consider, listening only to officials tasked with supporting them, and excluding options that might have been put forward by thoughtful citizens.

The JGWP

ACs JGWP is tasked with developing resolutions for the GB on fundamental reorganisation and representation matters. It is also the formative body shaping recommendations on issues of organisation and fairness and equity in AC's allocation of resources across local board areas – e.g the Governance Framework Review and Service level Reviews.

The JGWP has six GB members and 6 LB members. Meetings are not public. Only other elected members may attend and listen. It considers matters referred to it by the GB (or exceptionally the Chair and CEO). It reports to the GB (whose Agenda items are mostly public). Since inception the JGWP has not published any Agenda or Minutes for its meetings or deliberations. The shaping of outcomes on all matters it considers is thus done by incumbents who naturally have vested interests. There is no independent input or contribution. Governance staff of AC support and advise the JGWP.

NAG's Representation Review Experience

In late 2020, for the last possible representation review by AC, NAG made submissions supporting a motion by RLB Councillor Greg Sayers and 6 other GB members for a resolution to change the subdivision boundaries in the Rodney Local Board area only, to recognise the rural/urban nature of the district. The proposal for change also had the support of local MPs and other Community Groups, name the social media Rodney Community Voices group (RCV) and the Wellsford based Landowners and Contractors Association (LCA).

The proposal was not adopted by the GB on reasons of cost, and its potential to open up other representation issues for review, and deferred to the current (2024) representation review.

As the membership of the JGWP had changed since 2020 following the 2022 Local Body elections, we were keen to ensure members of the JGWP understood NAG's proposal for change and sought to present it briefly to the JGWP. [28 June 2023 email to Julie Fairey (Chair JGWP).²]

The current Chair did not reply for some time (29 August 2023), saying they were focussed on internal discussions rather than input from the community, but would keep in mind our offer of a briefing. (Basically a don't call us – we'll call you advice).

² This email thread is attached as APPENDIX 1. Attachments are not included but we are happy to provide them if useful.

I followed immediately (29 August 2023) with a presentation we had given the RLB in August and repeated our request to be head. Julie responded on 5 September 2023 and repeated that they would keep our offer in mind.

We have heard nothing since from the JGWP and never been given an opportunity to present to them. Instead they have followed a process of seeking Local Board comments on proposals and declining to accept any outside comments or submissions prior to having the GB resolve proposals for consultation.

We have had excellent engagement with governance staff working on the proposals for representation and local board members who have been asked for their views on proposals for changes, but the process remains that input to the JGWP deliberations is restricted to LB and staff recommendations – there is no process to allow ratepayers to present proposals for representation directly to the JGWP .

AC also have advisory panels that purport to provide the views of their respective sectors of communities to the GB or its committees. While these have ratepayer representation they are Chaired by elected members who can shape the deliberations of the panels.

As an example, the Chair of the Rural Advisory Panel (RAP), Andrew Baker is also a member of the JGWP. Since our reorganisation proposal affected (and supported) rural communities, we sought to present it to the RAP. (email 24 October 2023³). He responded promptly (25 October) saying he wanted to protect the RAP; that the matter we wanted to present on had already been addressed by the RAP (not true) and that he did not want to panel to be open to lobby or issue groups.

I sent a more extensive response to his comments on 30 October 2023 and followed up with a note and our presentation on 11 December 2023 requesting that Andy refer it to his members. He replied directly saying he did not wish to and felt that it did not fit the purpose of the RAP, though it is hard to see how that could be an interpretation since the TOR for his Committee says:

2. Purpose

As one of council's engagement mechanisms with the rural sector in Auckland, the Rural Advisory Panel provides advice to the council within the remit of the Auckland Plan on the following areas:

- council policies, plans and strategies relevant to rural issues
- regional and strategic matters relevant to rural issues
- any matter of particular interest or concern to rural communities.

The response received from the Chair was (in our view) contrary to the purpose of the Panel that it should provide advice on matters relevant to rural areas of interest to rural communities. (At least two members of that panel who supported our proposal wanted to have the presentation and discussion).

³ This email thread is provided as APPENDIX 2

Conclusion

Whatever the outcome of our proposals for Rodney's subdivision boundaries, the experience has demonstrated that AC does not welcome or have any process to allow proposals for change to be presented directly to its decision making bodies while they are in the process of forming or formulating their recommendations. All ideas to be considered must be filtered indirectly either through staff processes or elected member groups sympathetic to what is being proposed.

Engagement please, not consultation

As a related concern, I note that workshops (the subject of your report) even when public, do not allow for contributions or presentation by community groups and are confined entirely to members discussion of matters raised by officials or by the members themselves (with the Chair's approval).

I can think of no good reason why it would be bad for community groups to be able to present ideas or proposals directly to deliberating bodies of AC, in the same way this is allowed by submission to the Local Board, or even the Governing Body, at their decision making meetings.

NAG has suggested to the RLB that it would be positive for Community groups if the RLB would hold a one day meeting annually and invite the Chairs of community groups to submit for the agenda and discuss 3 to 5 "big picture" issues with district wide impact (i.e not local or community worries or issues). In Rodney e.g. these might be how to improve – 1) poor and inefficient planning; 2) roads; and 3) CCO and AC silo local project and resource allocation integration.

As AC's (Citizens Insights Monitor (CIM) surveys show, respect for AC, and ratepayer perceptions of trust in AC and its integrity are at persistent lows, and it gets worse in the outlying more rural districts of AC. If AC's Councillors are reluctant to delegate any serious material decision making to Local Board areas and provide the necessary support to make that work (local boards can't currently employ any of their own staff), then we ask for your help in improving the processes of genuine engagement that incentivises ratepayers to participate again.

Your sincerely,

William Foster
Chairman, Northern Action Group Inc.

APPENDIX 1: Email thread with Julie Fairey (JGWP Chair)

From: Councillor Julie Fairey <Julie.Fairey@aucklandcouncil.govt.nz>
Subject: RE: NAG engagement with JGWP work
Date: 5 September 2023 at 6:33:38 PM AEST
To: William Foster <northernactiongroup@gmail.com>
Cc: Mayor Wayne Brown <Mayor.Wayne.Brown@aucklandcouncil.govt.nz>, Phil Wilson <Phil.Wilson@aucklandcouncil.govt.nz>, Rose Leonard <Rose.Leonard@aucklandcouncil.govt.nz>, Warwick McNaughton <Warwick.McNaughton@aucklandcouncil.govt.nz>, Councillor Greg Sayers <Greg.Sayers@aucklandcouncil.govt.nz>, Councillor Andrew Baker <Andrew.Baker@aucklandcouncil.govt.nz>, Divya Raghubar <divya.raghubar@aucklandcouncil.govt.nz>

Thanks for this Bill, the presentation made interesting reading. As I said previously, we are at very early days, but I will definitely keep in mind the offer of a briefing and share that offer with the working group.

From: William Foster <northernactiongroup@gmail.com> [1] **Sent:** Tuesday, August 29, 2023 3:55 PM [1] **To:** Councillor Julie Fairey <Julie.Fairey@aucklandcouncil.govt.nz> [1] **Cc:** Mayor Wayne Brown <Mayor.Wayne.Brown@aucklandcouncil.govt.nz>; Phil Wilson <Phil.Wilson@aucklandcouncil.govt.nz>; Rose Leonard <Rose.Leonard@aucklandcouncil.govt.nz>; Warwick McNaughton <Warwick.McNaughton@aucklandcouncil.govt.nz>; Councillor Greg Sayers <Greg.Sayers@aucklandcouncil.govt.nz>; Councillor Andrew Baker <Andrew.Baker@aucklandcouncil.govt.nz>; Divya Raghubar <divya.raghubar@aucklandcouncil.govt.nz> [1] **Subject:** Re: NAG engagement with JGWP work

Hi Julie,

Thank you for kindly getting back to me on this. Even if it has now been two months since our approach we still express our keenness to ensure that members of your JGWP who were not involved in our Councillor's proposal to the GB in 2020 have the opportunity to get to understand the thinking behind our proposal for the Rodney subdivision changes.

I am confident that council officers will represent our proposal well, but we will naturally feel more confident if given the opportunity to participate in any questions and discussion that will help shape the JGWP's thinking on what to recommend that the GB resolve for public consultation.

The question of subdivision boundaries will also be a lower level of focus and interest for your JGWP while you grapple with the possible implications of the passing of the Local Government Electoral Legislation Bill into law. So we naturally would not wish to see any bias for the status quo in our Local Board area arise just

because of the heightened level of interest and attention generated by any possible proposals for change to Councillors, Wards or Local Board areas.

And while we appreciate that two members of your JGWP are from Franklin, and rural/urban distinctions are possibly also relevant there in terms of representation, they are much more significant in Rodney, which has 40% of Auckland Council's area, nearly 80% of AC's unsealed roads (which are deteriorating in quality), and only 5% of AC's population, but where half the ratepayers are rural and they pay half of Rodney's rates while receiving in the main only road and drainage services.

You have no JGWP members who are representatives from Rodney and other than those from Franklin members are unlikely to have any particular interest in our proposal for Rodney as it only has conceptual relevance in local board areas which are significantly rural.

Also as we noted in 2020, local board members affected personally could reasonably be considered to have a declarable interest. Notwithstanding this we have presented the concept to the RLB in August and hope to follow that up with a lengthier workshop session, so everyone has time to think about any implications before AC provides its resolution for consultation. I **attach** a copy of our presentation for your information.

We are also seeking to engage as many of the Rodney public as we can in a [Survey](#) to explore support for the proposal. We will keep that open as long as we can and are encouraging everyone to promote awareness of it. We will happily share results with anyone interested, including your officials.

With all that in mind I repeat our offer of a briefing as soon as convenient. We would be happy to coordinate with your officials on that if it removes any sensitivities about being seen to open up conversations for public input pre-emptively. With the uncertainties of the general election outcomes and two thirds of the year already gone available time may vanish all too quickly. 😊

Thanks again, and Kind regards

Bill

11:11
SEP 1 2023

On 29/08/2023, at 1:09 PM, Councillor Julie Fairey
<Julie.Fairey@aucklandcouncil.govt.nz> wrote:

Kia ora Bill,
My sincere apologies for not getting back to you on this earlier.

As you note, the Joint Governance Working Party (JGWP) is considering the council's options in terms of the review of representation arrangements and the reorganisation of local boards. The JGWP has met once to be briefed about the legislative requirements for both of these exercises. The JGWP noted the proposal

from NAG as one of the issues relating to local board representation arrangements that needs to be addressed. At this early stage we are focused on internal discussions rather than seeking input from the community, but we do have both the local board chair and ward councillor for Franklin on the working group, and the local board reps are expected to go back to the local boards they cover to keep in touch too.

We are meeting again next month to progress this work and will keep in mind your offer for a briefing.

Thank you
Julie Fairey

From: William Foster <northernactiongroup@gmail.com> **Sent:** Wednesday, June 28, 2023 8:44 AM
To: Councillor Julie Fairey <Julie.Fairey@aucklandcouncil.govt.nz>
Cc: Mayor Wayne Brown <Mayor.Wayne.Brown@aucklandcouncil.govt.nz>; Phil Wilson <Phil.Wilson@aucklandcouncil.govt.nz>; Rose Leonard <Rose.LLeonard@aucklandcouncil.govt.nz>; Warwick McNaughton <Warwick.McNaughton@aucklandcouncil.govt.nz>; Councillor Greg Sayers <Greg.Sayers@aucklandcouncil.govt.nz>; Councillor Andrew Baker <Andrew.Baker@aucklandcouncil.govt.nz>
Subject: NAG engagement with JGWP work

Dear Julie,

I am reaching out, on behalf of NAG, to you as Chair of the JGWP considering representation arrangements for the 2025 elections and possible reorganisation of local boards under the provisions of the “unitary authority-led reorganisation application” of the proposed Schedule 3A to the Local Government Act 2002.

As noted at the 27 April GB meeting we proposed revised arrangements for subdivisions of the Rodney Local Board at the 17 December 2020 meeting through a notice of motion by Councillor Greg Sayers. We note the proposal is noted for the 2025 elections but at this stage the process for its consideration is not clear.

We note that the JGWP is tasked with developing Auckland Council’s initial review of representation arrangements after seeking feedback on issues and options from the Governing Body and local boards, then make recommendations to the Governing Body...

This does not appear to invite contributions from parties outside AC until the GB has resolved a proposal for consultation. NAG wishes to be engaged at the earliest stage in this process. We consider the basis of our proposal for reorganisation of Rodney is still sound (and likely also has merit for Franklin). Some variation to the proposal may be appropriate following updated population from the latest census, as may the effects of any proposed reorganisation of local boards made possible by the new legislation.

As a related issue, both Rodney and Franklin have concerns about the way in which the current organisation of AC and its CCOs raises concerns about integrated planning, management and implementation of service provision at the local board level in our heavily rural local board areas, something that may require legislation changes to improve (in the form of a local Bill as envisaged by Mayor).

We will be liaising with our Rodney Local Board to seek their support for positive changes in this review, but are mindful (as you will be) that some representatives may have a vested interest in the status quo (as we saw, for example, when seeking support for Councillor Sayers' motion in 2020).

NAG has consistently committed to improving governance and management arrangements that improve outcomes for Rodney and has over a decade of experience to contribute. We seek your guidance on how we may best contribute to your work for the GB.

As a starting point, and to introduce us to your WP members who may not know us, we would be happy to make a brief presentation (around our earlier subdivision reorganisation proposal) as background for your deliberations.

Kind Regards

Bill Foster
Chair



**The Northern Action
Group
Incorporated**



T: 09 422 6347

W: www.nag.org.nz

“ Campaigning to get Democracy for the people of North Rodney”



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APPENDIX 2: email thread with Andrew Baker (RAP Chair, JGWP member)

From: Councillor Andrew Baker <Andrew.Baker@aucklandcouncil.govt.nz>
Subject: RE: RAP Meeting Presentation
Date: 11 December 2023 at 3:27:04 PM AEDT
To: William Foster <northernactiongroup@gmail.com>
Cc: Councillor Greg Sayers <Greg.Sayers@aucklandcouncil.govt.nz>, Brian Mason <waikauri1@xtra.co.nz>, "Tim Holdgate (Rodney Local Board)" <tim.holdgate@aucklandcouncil.govt.nz>, glen.ashton <glen.ashton@xtra.co.nz>, Colin Smith <colinmichelesmith51@gmail.com>, Sandra Gordon <Sandra.Gordon@aucklandcouncil.govt.nz>, "Alan Cole (Franklin Local Board)" <Alan.Cole@aucklandcouncil.govt.nz>

Hi Bill

Looking at the presentation, whilst I respect your desire to see some change, I am uncomfortable having the Rural Advisory Panel and membership thereof used for as a way of distributing that type of material as it does not meet in any way the purpose of the RAP nor is it contained within our terms of reference.

There is a fairly significant piece of work currently being undertaken by Council through the Joint Governance Working Group (JGWG) chaired by Councillor Fairey. That work will go before the Governing Body in the new year and that is where you would be best to make a presentation. There was detailed discussion at the JGWG last Friday.

Greg will be in a position to support you in that should he want to. Perhaps making contact with Julie Fairey might help.

Obviously there is nothing stopping you contacting the relevant organisations but I am not comfortable as above to use our contact data base to distribute.

Hope you see the reasoning.

Have a happy and safe Christmas & New Year.

Andy

Andy Baker
Councillor, Franklin Ward
Mobile: 021 283 2222
Email: Andrew.Baker@aucklandcouncil.govt.nz
Visit our website: www.aucklandcouncil.govt.nz

From: William Foster <northernactiongroup@gmail.com> [1] **Sent:** Monday, December 11, 2023 4:52 PM [1] **To:** Councillor Andrew Baker <Andrew.Baker@aucklandcouncil.govt.nz> [1] **Cc:** Councillor Greg Sayers

<Greg.Sayers@aucklandcouncil.govt.nz>; Brian Mason <waikauri1@xtra.co.nz>;
Tim Holdgate (Rodney Local Board) <tim.holdgate@aucklandcouncil.govt.nz>;
glen.ashton <glen.ashton@xtra.co.nz>; Colin Smith
<colinmichelesmith51@gmail.com>; Sandra Gordon
<Sandra.Gordon@aucklandcouncil.govt.nz>; Alan Cole (Franklin Local Board)
<Alan.Cole@aucklandcouncil.govt.nz>
Subject: Re: RAP Meeting Presentation

Dear Andy,

Further to our correspondence we have been arranging discussions of local community groups, and our RLB members, around the attached presentation (in this case to our WALG).

We are keen to stimulate interest in the process and in the Rodney subdivision boundaries, which we expect will have to change in the current review.

Our suggestions should be of considerable interest to rural people, who in Rodney make up over half the population.

We are keen to hear what all Rodney voters think and have created a poll for that purpose. It is referred to in the attached presentation.

I would appreciate it if you would follow up your offer to send the presentation to your members. It doesn't really need any explanatory memo, but if they would like some background you may refer them to this [background document on our website](#).

Kind Regards, and Merry Xmas 🎄

Bill



**The Northern Action
Group
Incorporated**



T: 09 422 6347 W: www.nag.org.nz

“ Campaigning to get Democracy for the people of North Rodney”



On 30/10/2023, at 10:23 AM, William Foster <northernactiongroup@gmail.com> wrote:

Hi Andy,

Thanks for your prompt response last week

I'll likely send you a memo you can distribute, as you suggest, but I would first like to make a few points in reply.

1) You seem to have lumped two different issues together in choosing to decline our request. The concerns about roading, drainage, infrastructure planning and AT's

performance is quite a separate matter from that of rural representation in our local board areas.

On the issue of rural roading and drainage and interaction with AT, if you have already made useful representations on that to AT we understand and support that and are happy not to engage on the issue further with your panel. We are separately coordinating with Rodney experts in Warkworth to focus on getting better performance out of AT and would be happy to share what we are doing for the information of your members. But perhaps the memo you suggest would be the best way of doing that.

2) I was a bit confused by your reference to wanting to protect your RAP members. and am wondering what, or who, from? since they presumably are the ones supposed to bring matters to the panel for consideration? I know some of your panel members would be happy to have the rural representation item on your Agenda for their information and discussion. Surely the form of rural representation is a matter for rural people worthy of an opinion from those who advise AC on their behalf?

3) We are not a "lobby" or "issue" group. We have no partisan affiliations and simply support initiatives that offer better governance and delivery outcomes for Rodney ratepayers (and rural Rodney in this case since it represents half of Rodney's voters and ratepayers).

4) Our purpose in seeking a presentation for your panel was simply to assist panel members understanding of the representation process - what the current system and possible alternatives mean for rural representation and how rural voters and communities might benefit from a change. AC officials would likely be happy to be present at any discussion to inform and answer any questions. We support the alternative to the current "place-based" process for determining groupings or communities for how representatives are elected because it provides fairer representation, but few people understand the choice. Better reelecting rural interests is a vital issue for Auckland's rural communities - which face creeping urban dominance in the population numbers game often used to determine resource allocation.

We have had good engagement with community groups so far and generally positive responses to a change.

And yes we know Council is looking at representation matters through the JGWP and that the process is that public input will be sought when Council resolves its proposals. But getting the issue understood, and discussed widely early on is helpful in allowing the JGWP and its AC advisors to see that a revised basis is supported by rural ratepayers and voters. Your RAP could play a useful role in that without prejudging any outcomes.

It's basically because we know how the process works in practice (AC's consultations are naturally biased in favour of the proposals it consults on and general voter apathy means that what is proposed is likely to be supported unless it raises a strong negative community response). What Council resolves as its proposals for consultation has a better chance of adoption than an alternative and

we would like to see strong support for a fairer approach being resolved by AC as its initial proposal. Thus it's important to socialise the ideas early to see if people are for or against them - before AC has made up its mind as to what is best.

We would be happy to facilitate a discussion with the JGWP on this topic but we understand other representation matters under consideration will likely take priority for them. Our thinking was that since the RAP is established to present advice from the rural communities to AC, giving it an opportunity to be informed about rural representation and possibly offer advice to the JGWP or AC generally on the subject at an early stage would assist the JGWP and AC in deciding on the proposals it will resolve for consultation.

Thank you again for your consideration of our offer. If you are still not minded to place the item on your Agenda for discussion, perhaps you would be kind enough to circulate our request to your panel members so they are aware of our interest and the topic?

Kind Regards

Bill

[LTL]
[SEP:SEP]

On 25/10/2023, at 8:57 AM, Councillor Andrew Baker
<Andrew.Baker@aucklandcouncil.govt.nz> wrote:

Hi Bill

Thanks for the email and request to present at the next RAP.

I am very protective of what the RAP is there to do, who sits around the table and what it considers. Having sat through your presentation to the AT Board and reading your request below, I do not believe it is appropriate for you to come along to the RAP. This does not in any way say I do not believe your message or desired outcomes are wrong, but more that you would be advocating to an advisory panel of sector reps on a matter the panel has already provided advice on and that RAP has presented directly themselves to AC and AT. We had a very productive session with AT at our last RAP meeting where the issues you raise were discussed. As an aside, I am maintaining my push within AT for better funding and attention for rural areas.

As I am sure your elected reps have told you, Council is currently looking at it's representation and possible changes across a number of parts. Formal decisions on next steps are yet to be made and at some stage there will be the opportunity for groups like yours to play a part in that. It would be better, if there was ever an agenda item on RAP whereby we were to discuss it as an advisory panel, for you to make a short presentation then, however again, I am not willing at this stage to open the floor up to lobby and issue based groups as it is not what the advisory nature of the panel is all about.

If you want to prepare a bit of a memo explaining what it is you are concerned about and how that might relate to the groups on the RAP including how they can contact you, send it through and we can get it out, but in regard to the coming in and making a presentation, sorry but I am going to have to say not now.

Regards

Andy

Andy Baker
Councillor, Franklin Ward
Mobile: 021 283 2222
Email: Andrew.Baker@aucklandcouncil.govt.nz
Visit our website: www.aucklandcouncil.govt.nz

From: William Foster <northernactiongroup@gmail.com> **Sent:** Tuesday, October 24, 2023 10:01 AM **To:** Councillor Andrew Baker <Andrew.Baker@aucklandcouncil.govt.nz>; Sandra Gordon <Sandra.Gordon@aucklandcouncil.govt.nz> **Cc:** Councillor Greg Sayers <Greg.Sayers@aucklandcouncil.govt.nz>; Brian Mason <waikauri1@xtra.co.nz>; Tim Holdgate (Rodney Local Board) <tim.holdgate@aucklandcouncil.govt.nz>; glen.ashton <glen.ashton@xtra.co.nz>; Colin Smith <colinmichelesmith51@gmail.com> **Subject:** RAP Meeting Presentation

Hi Andy,

I'm writing to you in your capacity as Chair of the Rural Advisory Panel.

On behalf of NAG, LCA and RCV, we would like to request some time at your next RAP meeting (17 Nov) to brief Panel members on issues of importance to the rural communities that we have been raising recently with AC and AT.

Not all Panel members may be aware of our proposals to improve rural representation in local board elections. We have focused on Rodney, but the shift from a "place based" to an "common interest based" or "services based" representation has implications generally for rural communities who are increasingly disadvantaged relative to urban populations under the population numbers game of democratic resrepresentaiton.

Equally all rural members and communities will be aware of the poor state of our unsealed roads (and sealed in many cases) and associated drainage. We have approached AT with our suggestions for improving the planning, prioritisation and delivery of investment and services at the local (and especially rural) level. Auckland is grappling with the effects of failing to plan and act long term for stormwater management. AT's role in that for roading and drainage has material effects on rural landowners and the Panel may want to hear how we think that can and should be addressed.

For background I attach the two five minute presentations we gave the RLB and AT Board respectively. We are conscious of the Panel's limited meeting time and can reshape these to as much time as you can give us.

Looking forward to your positive response.

Kind Regards

Bill

<image001.png>

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APPENDIX 3: AC Memo in response to Ombudsman Report



Memorandum

3 April 2024

To: All local board members

Subject: Update on response to Ombudsman's recommendations for workshops

From: Alyson Roach, Senior Advisor Business Planning and Projects

Contact information: Alyson.roach@aucklandcouncil.govt.nz

Purpose

1. To provide an update on Auckland Council's response to the Ombudsman's recommendations in relation to transparency and workshop practices.

Summary

1. In August 2023 the Ombudsman released a report detailing the findings of an investigation into eight councils' practices around meetings held under the Local Government, Official Information and Meetings Act 1987 (LGOIMA) and workshops (and other informal meetings) to test concerns that councils were using workshops and other informal meetings to make decisions.
2. Although no evidence of actual or effective decisions being made in workshops was found, the Ombudsman observed workshop practices that, in his opinion, were "counter to the principles of openness and could contribute to a public perception that workshops are not being used in the right way". Within the report, the Ombudsman made recommendations for all councils to consider, to ensure their workshop practices meet principles of openness.
3. Staff are currently working on an analysis of these recommendations, along with relevant options for elected member consideration.
4. In the interim, the decision to open workshops sits with each local board.
5. Opening workshops to public observation could increase perceived transparency, but it also has inherent risks, such as potentially restricting the nature of discussion.
6. We consider the best practice recommendations for local board workshop processes, developed in 2022, to still stand. These are in line with practices for the Governing Body:
 - a. information provided at workshops should be proactively released/published as part of the next business meeting agenda
 - b. summary of the workshop proceedings (current practice adopted by most local boards) should continue to be published on the business meeting agenda.
7. It is recommended that all local boards consider and adopt these recommendations as a baseline to balance the need for transparency while also maintaining the ability to manage risk.

Context

2. In August 2023, the Ombudsman investigated eight councils' actions and decisions in relation to both council meetings held under the Local Government Official Information and Meetings Act 1987 (LGOIMA) and workshops (and other informal meetings) to which LGOIMA meeting provisions do not apply.
3. The purpose of the investigation was to test concerns that councils were using workshops and other informal meetings to make decisions.
4. The eight councils investigated were Rotorua Lakes Council, Taranaki Regional Council, Taupō District Council, Palmerston North City Council, Rangitīkei District Council, Waimakariri District Council, Timaru District Council and Clutha District Council.

The report findings

5. The Ombudsman's report (Attachment A) highlights the requirement under the Local Government Act 2002 (LGA) for a local authority to "conduct its business in an open, transparent, and democratically accountable manner". It also highlights the requirement in the LGOIMA that anything taking place or provided to any meeting is "official information" and subject to the principle of availability, unless there is a good reason to withhold it.
6. While the Ombudsman found no evidence of actual or effective decisions being made in workshops, he did see workshop practices that in his opinion were "counter to the principles of openness and could contribute to a public perception that workshops are not being used in the right way". Of particular concern to the Ombudsman were general policies of not advertising workshops or having all workshops closed to the public; in his view this practice is likely to be unreasonable.
7. The Ombudsman has also cautioned against using workshops to include a significant component of determination, such as a substantial narrowing of options prior to public consultation. Overall, it is important that closed workshops not be used (or be seen to be used) to do "everything but" make a decision.
8. The Ombudsman has provided three principles of good administrative practice, which he considers should guide council workshops:
 - a. Councils have a general discretion to advertise and undertake all meetings in public, and this is consistent with the principle in the LGA that councils should conduct their business in an open, transparent, and democratically accountable manner.
 - b. A general policy of not publicising / closing all non-decision-making meetings, such as workshops, may be unreasonable and / or contrary to law. The Ombudsman can assess this on a case-by-case basis.
 - c. Using closed workshops to do "everything but" make a final decision could be seen as undermining the principles in the LGA and purposes of the LGOIMA and may be unreasonable in terms of the Ombudsmen Act 1975.

Discussion

The Ombudsman's recommendations

9. Following his investigation, the Ombudsman made a number of recommendations as to how councils should manage workshops.
10. The Ombudsman's recommendations are non-binding. However, there may be reputational and / or political risks if action isn't taken where needed.

11. Staff are undertaking a detailed feasibility analysis of these recommendations. This analysis and relevant options will be brought to elected members for consideration.
12. In terms of local board workshops, the decision to open them sits with each local board. Staff consider that the 2022 Local Board Services best practice recommendations still stand.

Local Board Services Best Practices Review 2022 (BPR) findings and recommendations

13. At the end of each political term the Local Board Services Department undertakes a review of governance processes and makes recommendations for best practice. The last review was done in 2022 and included recommendations for workshops.
14. Open workshops have the potential benefit of perceived transparency and increased trust / decreased speculation, staff provided the following advice on risks that should be considered when making this decision:
 - a. increased likelihood of breaching the LGOIMA and the Auckland Council Confidential Information Policy and Protocols through willful or advertent 'disclosure of information for which good reason to withhold would exist'
 - b. discourages free and frank exchange of views between members and provision of advice from staff, which is often necessary in the early stages of a project or idea
 - c. potential to create misinformation or confusion about the status of projects
 - d. increase potential for Code of Conduct complaints about predetermination and conflicts of interest if elected members indicate specific preferences in a workshop
 - e. expose staff to opportunities for harassment and complaints based on any positions they take, or comments made when giving free and frank advice to elected members (note Auckland Council has obligations under the Health, Safety and Work Act 2015 to ensure staff are not put at risk while conducting their role).
15. To enable transparency, staff recommended that:
 - a. information provided at workshops should be proactively released / published as part of the next business meeting agenda
 - b. a summary of the workshop proceedings (current practice adopted by most local boards) should continue to be published on the business meeting agenda.

Current local board practice

16. Five local boards allow public observation at their workshops. They are: Devonport-Takapuna, Kaipātiki, Waitākere Ranges, Hibiscus and Bays and Rodney.
17. While the driver for this practice is to demonstrate a commitment to openness and transparency, public attendance has been low.
18. Eight local boards have adopted the practice of proactively releasing workshop materials. They are: Devonport-Takapuna, Hibiscus and Bays, Kaipātiki, Puketāpapa, Rodney, Waiheke, Waitākere Ranges and Waitemātā.

Current Governing Body practice

19. The Local Board Services best practice workshop recommendations align with current Governing Body workshop practices.
20. Governing Body workshops are closed to public observation. To address transparency, workshop records are proactively published as part of its next meeting agenda, including presentations and other documentation discussed or made accessible.

Next steps

21. In keeping with a consistent council approach, staff recommend that each local board consider adopting the current recommended best practice as a baseline.
22. A detailed analysis of the Ombudsman's recommendations along with relevant options for consideration will be brought to elected members as soon as possible.

Attachments

Attachment A: Open For Business