

Our ref CASE-008701 (Complaint ground: 0009476, 0009479)
Contact Katty Lau
25 March 2024



Coastal Ratepayers United Inc
C/- Salima Padamsey

By email: spadamsey@yahoo.com

Dear Ms Padamsey

Investigation of complaint against Kāpiti Coast District Council

Chief Ombudsman Peter Boshier is investigating the complaint made on behalf of Coastal Ratepayers United Inc ('CRU') against Kāpiti Coast District Council ('Council').

Background

CRU's complaint concerns the coastal risk assessment that the Council has commissioned as part of the Takutai Kāpiti coastal adaptation project ('Project').

CRU explains that:

- In 2020, CRU was part of the Taikutai working group. At the time, it was agreed that the standards to be applied to the Project was the New Zealand Coastal Policy Statement (NZCPS). CRU says that the NZCPS is a statutory requirement for district planning under the Resource Management Act 1991.
- The Council put out a tender for analysis/report in accordance with the NZCPS. It also referred to the Ministry of the Environment ('MfE') Guidelines 2017. CRU says that the MfE Guidelines specify that it does not supersede the NZCPS.
- Jacobs submitted a proposal in that tender process, outlining how they were going to meet those requirements under the NZCPS, and was subsequently awarded the contract.
- However, Council contracted Jacobs to undertake its assessment in accordance with the MfE Guidelines, with no reference to the NZCPS. The effect is that Jacobs is providing a vulnerability assessment with reference to the requirements under the MfE Guidelines, and not a risk assessment in accordance with the NZCPS.

On 29 July 2021, CRU made a request under the Local Government Official Information and Meetings Act 1987 ('LGOIMA') for *'all communication both formal and informal between KCDC and Jacobs, of content in the preparation of the scope of services'* in order to understand the reasoning for the change.

The request was refused under section 17(f) of the LGOIMA. However, the Council indicated that there was no difference between what was contracted and what was produced by Jacobs, other

than a title change. Council's position was that an assessment was yet to be completed, and that once completed, this would form Volume 3 of the report.¹

On 8 June 2022, CRU made a more refined request for 'the documented communication between Council and Jacobs regarding Volume 3 only - emails, memos, telephone notes, meeting minutes etc'. This was refused under section 17(e) of the LGOIMA.

On 8 November 2023, Tim Power, Council's legal advisor, advised this Office that:²

Volume 3 will have a mixed input from Jacobs and other technical experts. The contracts for Jacobs are specific to Jacobs, with separate contracts for the other subject matter experts who will also have input into Volume 3.

The original contract outlined a Coastal Hazard and Risk Assessment Report. Due to subsequent changes to the original contract covering scope and timeframe, changes to the original deliverables therefore occurred. A key amendment clarified that Jacobs would only be doing the Built Environment risk assessment for Takutai Kāpiti. Other subject matter experts will be completing the other required risk assessment as noted below.

Volume 3, as outlined within the Takutai Kapiti: Coastal hazards adaptation decision-making framework, is a combination of reports and risk assessments consisting of:

- *Decision Making Framework Report ([publicly released](#) - Jacobs) -*
- *Planning framework relevant to coastal hazards memo ([publicly released](#) - Jacobs)*
- *Social Impact Assessment (in progress – not Jacobs)*
- *Cultural Values Assessment (in progress – not Jacobs)*
- *Natural Character Report (in progress – not Jacobs)*
- *Ecology Report (in progress – not Jacobs)*
- *Risk assessments for:*
 - *Northern Adaptation Area (in progress – partially Jacobs)*
 - *Central Adaptation Area (in progress – partially Jacobs)*
 - *Raumati Adaptation Area (in progress – partially Jacobs)*
 - *Paekākāriki Adaptation Area (in progress – partially Jacobs)*

Mr Power indicated that all elements were expected to be completed by end of March 2024.

The investigation

CRU complains that the Council has acted unreasonably with regard to the coastal risk assessment. It says that ratepayers' money is being spent on an assessment from Jacobs that does not reflect what was intend, and that it will not be valid for planning purposes. It is also

¹ Volumes 1 and 2 of Jacobs' Kāpiti Coast Coastal Hazard Susceptibility and Vulnerability Assessment had already been delivered at the time. Volume 1 set out its methodology. Volume 2 sets out the results.

² In the course of responding to enquiries from this Office with regard to CRU's complaints under the LGOIMA. Those complaints are no longer being pursued.

concerned about the lack of transparency regarding the decision not to apply the NZCPS when it had previously indicated that it would.

The Ombudsman is investigating whether the Council has acted unreasonably with regard to:

1. the decision to rely on the MfE Guidelines instead of the NZCPS; and
2. the process by which the NZCPS component was removed from the scope of work to be completed by Jacobs, and substituted with the MfE Guidelines.

Today I have written to the Council's Chief Executive to commence the investigation. I have asked for information and comment from Council, including all the relevant papers.

We will keep you updated on the investigation.

Contact person

If you wish to discuss the investigation or advise of any change of circumstances, please contact Investigator Katty Lau (04 260 5455, katty.lau@ombudsman.parliament.nz).

Yours sincerely



Nick Wright
Manager – Investigation and Resolution

Encl Appendix: An Ombudsman's role

Appendix 1. An Ombudsman's role

An Ombudsman may investigate any administrative action by a public sector agency which affects someone in their personal capacity.

After investigating, the Ombudsman forms an opinion whether the action:

- appears contrary to law;
- was unreasonable, unjust, oppressive or improperly discriminatory;
- was in accordance with a rule of law, legislative provision or practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- was based wholly or partly on a mistake of law or fact; or
- was wrong;

and whether:

- a discretionary power has been exercised for an improper purpose or on irrelevant grounds; or
- reasons should have been given for the decision.

The Ombudsman does not act as an advocate for either the complainant or the agency. The Ombudsman will form an independent opinion on the merits of the complaint.

The investigation process

The Ombudsman's first step is to notify the Chief Executive of the agency that an investigation has been commenced. The Ombudsman will seek comments and relevant information from the agency, complainant and third parties as necessary.

The complaint may be resolved during the course of the investigation—for example by the agency offering to remedy the matter of concern. If so, the Ombudsman may discontinue the investigation.

If the matter is not resolved, the Ombudsman will provide any party adversely affected an opportunity to comment before forming a final opinion. Once a final opinion is formed, the Ombudsman can make any recommendations he or she thinks fit.

If the Ombudsman decides to publish details of the matter, the parties would be advised.

Confidentiality

Ombudsmen must conduct their investigations in private,³ and are required to maintain secrecy in respect of all matters that come to their knowledge. This is subject only to specific exceptions, one of which relates to explaining to parties the outcome of an investigation.

Because of this, we ask that you maintain the confidentiality of the Ombudsman's correspondence to you, until the outcome of this investigation is finalised. This does not prevent you from seeking legal advice or support on your complaint.

³ Section 18(2) Ombudsmen Act 1975. This also applies to OIA and LGOIMA investigations: see sections 29 and 28, respectively.