



# AGENDA

## **Regulatory Hearings Panel meeting Wednesday, 24 August 2022 Friday, 26 August 2022**

**I hereby give notice that a Regulatory Hearings Panel Meeting will be held on:**

**Date: Wednesday, 24 August 2022 (continuation  
Friday, 26 August 2022)**

**Time: 2pm**

**Location: Ground Floor Meeting Room 1  
306 Cameron Road  
Tauranga**

*Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: [www.tauranga.govt.nz](http://www.tauranga.govt.nz).*

**Marty Grenfell  
Chief Executive**

# Terms of reference – Regulatory Hearings Panel

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## Membership

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<b>Chairperson</b>	Mary Dillon
<b>Members</b>	Puhirake Ihaka Terry Molloy Alan Tate
<b>Quorum</b>	At least two members
<b>Meeting frequency</b>	As required

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## Role

- To conduct hearings and make decisions of a quasi-judicial nature on regulatory matters through specific hearings and decision making.

## Scope

### Regulatory matters

- To conduct hearings and make decisions of a quasi-judicial nature on behalf of the Council on any regulatory matter that the Council is legally:
  - empowered or obligated to hear and determine;
  - permitted to delegate to a subordinate decision-making body of Council under the Local Government Act 2002, or any other Act.
- To exercise this function in accordance with:
  - the applicable legislation;
  - the Council's corporate strategies, policies, plans and bylaws; and
  - the principles of administrative law and natural justice.
- Regulatory matters include (but are not limited to):
  - dog control matters;
  - matters arising from the exercise of Council's enforcement functions; and
  - regulatory matters that require a hearing under Council's policies (including, without limitation, Council's Gambling Venues Policy) and bylaws.

### Matters excluded from scope

- The following are excluded from the scope of the Regulatory Hearings Panel:
  - matters relating to the sale and supply of alcohol;
  - matters under the Resource Management Act 1991; and
  - matters the Council is precluded from delegating to a subordinate decision-making body by the Local Government Act 2002, or any other Act.

## Power to Act

### Regulatory matters

- All powers, duties and discretions necessary to conduct hearings and make decisions of a quasi-judicial nature on behalf of the Council on any regulatory matter that the Council is legally empowered or obligated to hear and determine, including (but not limited to):
  - All powers, duties and discretions necessary to hear and make decisions on behalf of the Council in respect of any matter that the Council is empowered or obligated to hear and determine under the Dog Control Act 1996, the Local Government Act 2002, the Local Government Act 1974 and any regulatory matters that require a hearing under Council's policies and bylaws.
- For the avoidance of doubt, the above delegation includes authority to hear and make decisions on appeals under Council's Gambling Venues Policy, including to decline an application to appeal.
- The power to establish and amend hearings protocols relating to the general conduct of hearings and hearings related matters in accordance with the applicable legislation and the principles of administrative law and natural justice.
- The power to co-opt expert advice on an as required basis.

### Matters excluded from power to act

- For the avoidance of doubt, the Regulatory Hearings Panel does not have the power to hear:
  - matters relating to the sale and supply of alcohol;
  - matters under the Resource Management Act 1991; or
  - matters that the Council is precluded from delegating to a subordinate decision-making body by the Local Government Act 2002, or any other Act.

## Power to Recommend

- The Regulatory Hearings Panel is unlikely to need to make recommendations to the Council as it has the power to conduct hearings and make decisions of a quasi-judicial nature on behalf of Council as per its powers to act. However, the Panel may make recommendations to the Council if, in the circumstances of a matter, it considers it appropriate to do so.

*Note: The Regulatory Hearings Panel is established as a subordinate decision-making body of Council and delegated the powers specified in its Terms of Reference under clauses 30 and 32 of Schedule 7 Local Government Act 2002 respectively. It is not a committee or subcommittee of Council.*

# Regulatory Hearings Panel

## Summary of hearings procedure



### Who is involved in a hearing?

- Regulatory Hearings Panel – these are independent persons who make the decision
- Tauranga City Council staff – staff who write the report and attend the hearing
- Applicant/objector or their representative – those who will present their evidence
- Witnesses/experts – called by staff or applicant/objector



### What happens before the hearing?

- The applicant/objector will be given at least seven days' notice of the date, time and place of the hearing.
- An agenda with the staff report and any documents will be sent to the panel members and the applicant/objector before the hearing.
- The applicant/objector can organise evidence and call witnesses in support of their application/objection.
- If the applicant/objector can't be present at the hearing they can organise a representative to attend on their behalf.

### What happens at the hearing?

- The hearings will be conducted without a lot of formality and will make sure that all parties and witnesses receive a fair hearing.
- Staff will present Council's case (including evidence and any witnesses) in support of its decision that is the subject of the application/objection.
- The applicant/objector presents their case (including any evidence and any witnesses).
- Council staff have a right of reply but can't submit any new evidence or call any further witnesses.
- The chairperson and panel members may ask questions from any party or witness.
- Other persons may ask the chairperson to put a question to any party or witness on their behalf but that is at the discretion of the chairperson as to whether the question is put.

- No cross examination is permitted.
- The chairperson's rulings on any matter is final.
- The hearing is generally open to the public unless there is good reason to have the hearing with the public excluded.

### What happens after the hearing?

- The panel will usually deliberate in private immediately after the hearing and make their decision.
- The panel may, but is not required to, deliver its decision in the open section of a meeting. A notice of decision will be given (or sent) in writing to the applicant/objector as soon as practicable after the panel has made its decision.
- The chairperson will then close the hearing.
- If the chairperson has allowed further information to be provided before the hearing is closed, then the hearing will be adjourned, and the panel will reserve its decision until it has considered the further information.
- Where the applicant/objector has a right to appeal the panel's decision, that will be advised in writing.
- No discussions or communication of any kind will happen outside of the hearing between the panel, the parties or witnesses until a decision is issued, including during any site visits, adjournment or break.
- Minutes of the meeting will be kept as evidence of the hearing.

## Order of Business

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**1 OPENING KARAKIA**

**2 APOLOGIES**

**3 DECLARATION OF CONFLICTS OF INTEREST**

## **4 CONFIRMATION OF MINUTES**

### **4.1 Minutes of the Regulatory Hearings Panel meeting held on 11 November 2021**

**File Number: A13804304**

**Author: Robyn Garrett, Team Leader: Committee Support**

**Authoriser: Robyn Garrett, Team Leader: Committee Support**

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### **RECOMMENDATIONS**

That the Minutes of the Regulatory Hearings Panel meeting held on 11 November 2021 be confirmed as a true and correct record.

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### **ATTACHMENTS**

#### **1. Minutes of the Regulatory Hearings Panel meeting held on 11 November 2021**





# **MINUTES**

**Regulatory Hearings Panel meeting  
Thursday, 11 November 2021**

UNCONFIRMED

**Order of Business**

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<b>5</b>	<b>Business (continued)</b> .....	<b>9</b>
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<b>7</b>	<b>Closing karakia</b> .....	<b>10</b>

**MINUTES OF TAURANGA CITY COUNCIL****REGULATORY HEARINGS PANEL MEETING  
HELD AT THE TAURANGA CITY COUNCIL, TE AWANUI HARBOUR ROOM, 91 WILLOW  
STREET, TAURANGA  
ON THURSDAY, 11 NOVEMBER 2021 AT 9.30AM**

**PRESENT:** Mrs Mary Dillon (Chairperson), Mr Puhirake Ihaka, Mr Terry Molloy and Mr Alan Tate

**IN ATTENDANCE:** Nathan Speir (Counsel for the Prosecutor, Rice Speir), Ben Cochrane (Counsel for the Prosecutor, Rice Speir), Nigel McGlone (Manager: Environmental Regulation), Brent Lincoln (Team Leader: Animal Services), Coral Hair (Manager: Democracy Services) and Robyn Garrett (Team Leader: Committee Support)

**1 OPENING KARAKIA**

Mr Puhirake Ihaka opened the meeting with a karakia.

**2 APOLOGIES**

Nil

**3 CONFIRMATION OF MINUTES****3.1 Minutes of the Regulatory Hearings Panel meeting held on 5 August 2021****COMMITTEE RESOLUTION RHP2/21/1**

Moved: Mr Alan Tate  
Seconded: Mr Terry Molloy

That the minutes of the Regulatory Hearings Panel meeting held on 5 August 2021 be confirmed as a true and correct record.

**CARRIED**

**4 DECLARATION OF CONFLICTS OF INTEREST**

Nil

**6 PUBLIC EXCLUDED SESSION****RESOLUTION TO EXCLUDE THE PUBLIC****COMMITTEE RESOLUTION RHP2/21/2**

Moved: Mr Alan Tate  
Seconded: Mr Terry Molloy

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<b>6.1 - Application to Release Impounded Dog - Ryde</b>	s6(a) - The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial	s48(1)(a) - the public conduct of 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 6 or section 7

**CARRIED**

The meeting resumed in the public arena.

The meeting adjourned from 11am to 11:20am.

## **5 BUSINESS**

### **5.1 Objection to Dangerous Dog Classification - Stacey Tawa**

**Staff** Ben Cochrane, Rice Speir, Counsel on behalf of Tauranga City Council  
Brent Lincoln, Team Leader: Animal Services, Tauranga City Council

**External** Stacey Tawa, Applicant  
Beverley Edwards, StraightTalk Law, Counsel on behalf of applicant

Refer to the following tabled documents:

1. Tauranga City Council's position regarding the objection by Stacey Tawa to the classification of 'Gucci' as a dangerous dog.
2. Ruling of Judge T R Ingram – District Court – Tauranga City Council v Stacey Tawa – 11 August 2021.
3. Photographs of Stacey Tawa garage, driveway and fence.
4. Note: Photographs of victim's injuries included in the public excluded agenda and not released to the public arena.

#### **Tauranga City Council**

- Ben Cochrane read the document "Tauranga City Council's position regarding the objection by Stacey Tawa to the classification of 'Gucci' as a dangerous dog." Refer to tabled document 1.
- The evidence presented at the trial demonstrated Gucci's dangerous disposition. As such there was a genuine risk that Gucci may attack again, especially in an unfamiliar environment. Gucci was therefore a threat to the safety of people.
- The Council was not aware of any steps taken by the owner to prevent any threat to the safety of persons and animals.
- Counsel for the applicant stated that Ms Tawa was coerced and forced to sign documentation but it was unclear precisely what the Counsel was referring to.
- Ms Tawa accepted the offending at the trial but that did not preclude the Council from seeking

a dangerous dog classification.

- The Court's declination to make an order for the destruction of Gucci was based on separate and distinct statutory criteria set out in section 57(3) of the Dog Control Act 1996 (DCA).
- The requirement for a dangerous dog to be muzzled and controlled on a leash while at large or in any public place or in a private way would reduce the risk of Gucci attacking a person again.

**In response to questioning:**

- Mr Lincoln advised that there was no previous record of an attack by the dog Gucci. He explained that a multi-faceted approach was taken when making a decision to classify the dog as dangerous including what happened during the attack, the seriousness of the attack, the responsibility taken by the owner, and the history of the dog.
- Some dogs calm down in the pound and others display stress, but Gucci had remained aggressive all the way through, lunging at the bars. This behaviour was not common and had been one of the factors that was considered when making the decision to classify the dog as dangerous.
- Dogs had control over their biting capability and in this case there were puncture marks in the hands of the victim, which were made through leather gloves.
- The victim was cross examined robustly in court regarding whether their actions had provoked the attack. The dog had shown territorial behaviour when the victim walked up to the gate and the dog could react in this way with anyone walking past.

**Applicant**

- Bev Edwards tabled the District Court decision "Ruling of Judge T R Ingram – Tauranga City Council v Stacey Edwards – 11 August 2021". Refer to tabled document 2 and referred to paragraph 4 which stated that the circumstances in this case were fairly straightforward.
- Ms Tawa had argued during the trial that the dog Gucci was agitated by the noise and was provoked into biting the complainant and the Court agreed with her and had declined to make an order to destroy the dog.
- Ms Tawa had pleaded guilty but had made an application, which was granted, that the nature of the offending was such that it would not result in a conviction against her name.
- Ms Edwards stated that the matter had been dealt with by the Court, the Council had lost the case and the dog was not declared dangerous by the Court and the Council was now attempting a backdoor method to declare Gucci a dangerous dog. Ms Edwards queried why the Council was undertaking a separate process which had started following the trial.
- Ms Tawa had taken urgent steps to make sure the dog could not leave her property by increasing the height of the gate and ensuring it could not be shaken open. The dog was also enclosed in an area in the garage. Bev Edwards tabled three photographs of Ms Tawa's garage, driveway and fence that were tabled during the criminal trial. Refer to tabled document 3.
- The dog Gucci was a family pet with a clean record and had not previously attacked a person or animal.

**In response to questioning:**

- Ms Tawa had made improvements to the gate the day after the attack happened once she realised the dog could jump the gate.
- The dog Gucci had been held in the pound from 4 February 2021 until after the court date in August 2021 and had displayed stress due to being caged and held for this length of time. The dog had interacted in a friendly way with Ms Tawa at the pound.
- Ms Tawa had set up two kennels, one in the caged area in the carport and one on a line under the tree, following the incident.
- Ms Tawa stated she had received letters in the mailbox stating that she shouldn't leave a dog at home alone, and she had put a muzzle on Gucci to keep the peace, not because she thought the dog was dangerous, but to stop the complaints and the letters.
- Ms Tawa stated that she was prepared to take on the consequences of a classification of the dog as dangerous, which was to place a muzzle on the dog when in public and when the dog

was wondering around the property outside the enclosure.

- The problem with muzzling a dog was that the dog could not defend itself from attack by other dogs when out on a lead.

### Council right of reply

- While there may have been aggravating factors in the attack, the dog had shown a predisposition to attack a person when agitated.
- Given that it was impossible to prevent agitating factors in each situation, declaring the dog to be dangerous was appropriate in this case.
- The delay in filing a dangerous dog classification was related to the time taken by the Council to consider whether to lodge an appeal against the Court decision.
- The requirement to wear a muzzle would significantly reduce the risk of Gucci attacking a person in future.
- Ms Tawa stated that she was prepared to muzzle her dog regardless of the outcome of her objection, which was the effect of upholding the classification to declare the dog as dangerous.

The Chairperson advised that the Panel would deliberate later in the day and the decision would be relayed as soon as possible. She thanked the applicant and the Council staff and representatives.

The Panel deliberated in public excluded and released the decision in the public part of the meeting. Refer to the decision below.

The meeting adjourned from 12:20pm to 1pm.

## 6 PUBLIC EXCLUDED SESSION *(continued)*

### RESOLUTION TO EXCLUDE THE PUBLIC

#### COMMITTEE RESOLUTION RHP2/21/3

Moved: Mr Terry Molloy

Seconded: Mr Alan Tate

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<b>6.1 – Deliberations on Application to Release Impounded Dog - Ryde</b>	s6(a) - The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial	s48(1)(a) - the public conduct of 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 6 or section 7

**CARRIED**

The open meeting resumed at 2pm.

## 5 BUSINESS (continued)

### 5.2 Objection to Classification of Menacing Dog - Carl Cosford

**Staff** Ben Cochrane, Rice Speir, Counsel on behalf of Tauranga City Council  
Brent Lincoln, Team Leader: Animal Services  
Nigel McGlone, Manager: Environmental Regulation

**External** Carl Cosford and Tina Morice, applicants

Refer to the following tabled documents:

1. Tauranga City Council's position regarding the objection by Carl Cosford to the classification of 'Maximus' as a menacing dog.
2. Police Case Summary Report Incident 16 March 2021.

#### Tauranga City Council

- Ben Cochrane read the document "Tauranga City Council's position regarding the objection by Carl Cosford to the classification of 'Maximus' as a menacing dog." Refer to tabled document 1.
- Mr Cochrane apologised for the incorrect spelling of Mr Cosford's name in the tabled document.
- The dox Maximus posed a threat to domestic animals and was discovered in the neighbour's guinea pig pen with two dead guinea pigs. Maximus was not seen attacking the guinea pigs but the circumstantial evidence was persuasive. Ms Morice, Mr Cosford's partner, appears to have acknowledged that Maximus was likely to have attacked the guinea pigs.
- Maximum could be expected to behave in the same manner in similar circumstances.
- Maximus was a Maltese Shih Tzu Cross and was not a large dog, however smaller dogs can still be a threat to domestic animals.
- Maximus barked at the Council Officer and displayed aggressive tendencies when they attended the property.
- The incorrect date on the classification notice was a typo error and not fatal to the classification.
- This was the first time that the Council had received a report about the behaviour of Maximus and this fed into the decision not to issue an infringement notice.
- The property was fenced and the fence had been reinforced when they became aware that the neighbour had guinea pigs to prevent Maximus gaining access. However this did not prevent the incident and the Council was not aware of any new steps to prevent similar attacks on domestic animals.
- Mr Cosford continued to deny that Maximus was responsible for the attack and the threat that Maximus poses was unlikely to be addressed.

#### In response to questions

- There was one other Maltese dog classified as menacing. Maltese dogs were a ratter-terrier type of dog, and they could display aggression although this depended on the genetic make-up of the dog.
- The bodies of the guinea pigs were not examined as they were buried.
- The staff took the complaint from the neighbour at face value and did not witness the erratic behaviour described by the applicant.

#### Applicant

- Mr Cosford advised that Maximus was a rescue dog, a family pet.
- Mr Cosford tabled a police report of the incident on 16 March 2021. Refer to tabled document 2. Their neighbour had come onto their property, wielding an axe and yelling at the children in the shed, asking where Maximus was, as he was convinced Maximus had killed his guinea pigs. Ms Morice was in the shower at the time and confronted a crazy man with an axe.

- The Police arrived and located the neighbour who was described as very angry in the police report. The Police told him to cool down and discuss the matter in the morning.
- Ms Morice was shaken with this behaviour and attempted to calm the neighbour down by offering him money to fix his cage and help him replace the guinea pigs.
- A few hours later the neighbour had come back to the house threatening to kill Maximus and asked for \$2,000.
- The neighbour's flatmate kicked him out of the house because of this behaviour.
- Mr Lincoln gave advice that they should take out a trespass order against their neighbour.
- The neighbour created a picture that it was Maximus who had attacked his guinea pigs but there was no physical evidence connecting the dog Maximus to the attack and no one had witnessed the attack. There was more than one dog wandering the neighbourhood and yet Maximus got the blame.
- Maximus did bark at the Council staff member as he was supposed to do when a strange man came to the house.
- They discovered that Maximus had been classified as a menacing dog when they went to pay the dog registration fees and they then lodged an objection.
- Maximus posed no threat to any animal, stock, human or wildlife.

#### **In response to questions**

- The walls of the guinea pig cage were knee height with no wire on top of the cage.
- The guinea pigs were not marked, they were whole, looked dishevelled but there was no blood or obvious signs of attack.
- Maximus had not attacked any pets and was scared to walk past the cat.
- Ms Morice had never seen the neighbour before until the incident.
- Ms Morice advised that the neighbour had stated he had seen Maximus running out of the driveway but he never said that he saw Maximus killing the guinea pigs.
- The neighbours across the road called the Police as they saw a crazy man walking down the street with an axe yelling and swearing.
- Maximus can get out of the house through the front door if it is left open.
- Mr Cosford advised that he had intended to build a gate for the driveway and would now build this as a priority.
- Mr Cosford gave his opinion that the neighbour had it in for Maximus as he would yell at the dog to shut up when Maximus patrolled the fence line.
- There was another neighbour who lived adjacent who stated that her dog also barked at the guinea pigs through the fence.

#### **Council withdraws classification of menacing dog**

- Mr Cochrane stated that the Council withdrew the classification of menacing dog for Maximus in light of the evidence presented today. Mr Cosford had stated his intention to put in a gate and the Council would encourage Mr Cosford to do that as soon as possible.

#### **COMMITTEE RESOLUTION RHP2/21/4**

Moved: Mrs Mary Dillon

Seconded: Mr Alan Tate

That the Regulatory Hearings Panel:

- (a) Notes that the Council withdrew the classification of Maximus as a menacing dog following the evidence at the hearing and as such the Panel has no further role.

**CARRIED**



**6 PUBLIC EXCLUDED SESSION** *(continued)***RESOLUTION TO EXCLUDE THE PUBLIC****COMMITTEE RESOLUTION RHP2/21/5**

Moved: Mr Terry Molloy

Seconded: Mr Alan Tate

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<b>6.2 - Application to Release Impounded Dog - Chopper</b>	s6(a) - The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial	s48(1)(a) - the public conduct of 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 6 or section 7
<b>Item 5.1 – Deliberations on Objection to Dangerous Dog Classification - Stacey Tawa and receipt of Confidential Attachment 2</b>	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons	s48(1)(a) the public conduct of 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 6 or section 7

**CARRIED**

The open meeting resumed at 4:15pm.

**5 BUSINESS** *(continued)***5.1 Objection to Dangerous Dog Classification - Stacey Tawa – Decision** *(continued)***COMMITTEE RESOLUTION RHP2/21/6**

Moved: Mr Alan Tate

Seconded: Mrs Mary Dillon

That the Regulatory Hearings Panel:

- (a) Accepts the notice of objection; and
- (b) Upholds the classification of the dog Gucci as a dangerous dog under section 31 (1) (b) of the Dog Control Act 1996.

Reasons for decision:

1. The Regulatory Hearings Panel (the Panel) gave weight to the evidence presented by the staff

that there was sworn evidence attesting to the aggressive behaviour of the dog Gucci.

2. The Panel was satisfied that the Council has a duty to classify the dog as dangerous and that given the aggression and territorial behaviour displayed, the dog Gucci represents a threat to public safety.
3. The Panel took into account the District Court decision not to make an order for the destruction of the dog which included the extenuating circumstances as stated in the Dog Control Act 1996.
4. The Panel heard from the applicant that she would be willing to voluntarily muzzle the dog Gucci when in public and had taken steps to increase the height of the fence, however on balance these voluntary actions were not considered to be sufficient mitigation to ensure public safety and there were reasonable grounds to believe that the dog Gucci constitutes a threat to the safety of any person, stock, poultry, domestic animal or protected wildlife and therefore the classification was upheld.

**CARRIED**

## **7 CLOSING KARAKIA**

Mr Puhirake Ihaka closed the meeting with a karakia.

**The meeting closed at 4:17 pm.**

**The minutes of this meeting were confirmed as a true and correct record at the Regulatory Hearings Panel meeting held on 24 August 2022.**

.....  
**CHAIRPERSON**

## 5 BUSINESS

### 5.1 Bus Shelter Objection Summary

**File Number:** A13757083

**Author:** Kurt Graham, Project Manager

**Authoriser:** Nic Johansson, General Manager: Infrastructure

#### PURPOSE OF THE REPORT

1. The purpose of this report is to inform the Regulatory Hearings Panel Members of the background to the objections received to the installation of bus shelters.

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#### RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Bus Shelter Objection Summary" and:
- (b) In accordance with Section 339 of the Local Government Act 1974:
  - (i) consider for each objection to the installation of a bus shelter, the possible injurious affection to/obstruction of the frontage of the land, resulting from the shelter.
  - (ii) For each objection received make a decision to either proceed with the bus shelter, dismiss the objection or modify the proposal.

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#### EXECUTIVE SUMMARY

2. Tauranga City Council is looking to make the most of the existing road networks before investing in high-cost infrastructure.
3. One of the initiatives is to invest in new bus shelters, especially on inbound routes. The shelters will allow passengers to wait in a safe space, protected from the elements, while having clear visibility of arriving buses.
4. Increasing the number of bus shelters around the city provides a consistent and professional city-wide bus network 'look and feel', which aims to encourage the uptake of Public Transport.
5. In February 2022 Tauranga City Council began consultation with property owners and tenants of properties adjacent to proposed shelters as required under Section 339 of the Local Government Act 1974 (LGA 74).
6. There are 40 Objections, which require a decision through the hearing process in accordance with Section 339 of the LGA 74.
7. Staff have reviewed all objections received and have chosen to proceed with a shelter installation at these sites. There were 16 objections which council reviewed and chose not to proceed with.
8. The Regulatory Hearings Panel (Panel), as a subordinate decision-making body, must consider the objections at the hearing and make the decision under delegated authority from the Council. There is no appeal process provided for in the LGA 74 to the Panel's decision.
9. Legal advice is that the focus of Section 339 of LGA 74 is on possible injurious affection to/obstruction of the frontage of the land, resulting from the shelter, rather than wider issues resulting from buses stopping or passengers gathering etc.

10. The Panel is able to dismiss an objection or decide not to proceed with the bus shelter proposal. It is also able to “make such modifications to the proposal to which the objection relates as it thinks fit”.

## BACKGROUND

11. A key principle of the Tauranga Transport Strategy is to make the most of the existing road networks before we invest in high-cost infrastructure. This includes:
  - (a) Improving planning to reduce transport demand;
  - (b) Encouraging uptake of walking, cycling and public transport;
  - (c) Encouraging alternatives to travel; and
  - (d) Better managing the use of the existing network.
12. There are no quick fix solutions to the current traffic challenges facing the city. The City’s transport partners, Western Bay of Plenty District Council, Bay of Plenty Regional Council (BOPRC), Waka Kotahi NZ Transport Agency, as well as Tauranga City Council, realise the importance of the private motor car to the transport system, and over the last 25 years, significant investment in a car-based transport network has occurred in Tauranga. Investment in other modes, however, has lagged behind.
13. Tauranga City Council is now investing in infrastructure to support Multi Modal Transportations including investing in new walking and cycling facilities and improving the level of service of the Public Transport Network.
14. One of the initiatives is to invest in new bus shelters, especially on inbound routes. The shelters will allow passengers to wait in a safe space, protected from the elements, while having clear visibility of arriving buses. A designated waiting place for bus users also ensures the footpath is kept clear and safe for resident use. Increasing the number of bus shelters around the city provides a consistent and professional city-wide bus network ‘look and feel’, which aims to encourage the uptake of Public Transport.
15. To evaluate suitable sites for shelters around the city, a consultant was engaged to undertake a review of all bus stops on inbound routes. The Consultant looked into site specific constraints, such as space, underground and overhead services and topography, and made suggestions on suitable locations for bus shelters.
16. In February 2022 Tauranga City Council began consultation with property owners and tenants of properties adjacent to proposed shelters as required under Section 339 of the LGA 74. Residents were able to approve the proposal or object to the proposal, with non-responses deemed to be an approval for Council to proceed.
17. Of the 155 proposed shelter locations sent to owners and tenants, there are now 40 objections to be resolved within the hearing. 55 affected parties did not respond to council’s letters which is deemed to be an acceptance of the shelter under Section 339 of the LGA 74. 26 affected parties also responded accepting the installation of the shelter.
18. Tauranga City Council (TCC) staff reviewed all proposals initially sent for consultation and made the decision not to proceed with or amend 31 of these proposals, 16 of which were a result of reviewing the objections and agreeing with the objector. The reasons for this included:
  - (a) Feedback from BOPRC on potential future route changes rendering future shelters redundant (unrelated to any objections).
  - (b) Other projects or business cases impacting the area in the near future and potential bus stop location changes (Sites on hold, unrelated to Objections)
  - (c) The ability to move the shelters and bus stops a short distance away to be adjacent to a council reserve.

- (d) Site safety concerns.
  - (e) Site constraints such as insufficient space, existing retaining walls and slopes.
  - (f) Other.
19. Three Objections are also currently on hold and will be heard separately due to recent changes in ownership and in one case due to being unable to attend the hearing in person on these dates as desired.
20. TCC has also worked with several properties to adjust the proposed location to a more preferable position on their property.
21. Of the objections received, the majority have revolved around common themes. TCC staff are recommending that the shelter installations proceed based on the rational listing below:

**(a) Graffiti, littering and vandalism**

Unfortunately, some shelters may be targets of anti-social behaviour including graffiti, littering and vandalism. However, this is not an issue unique to Tauranga or New Zealand and it is the opinion of staff that TCC like other cities should continue to invest in Bus Shelters which provide protection from the elements for Public Transport users.

**(b) Loitering**

All sites are current active bus stops where people wait for the busses. Shelters are expected to improve the usage of the stop which TCC staff view as a good result. To prevent rough sleeping and help deter the use of the shelter at night when busses are not in service, bus shelter seating will have two armrests placed centrally at 1/3 intervals, so that it is not possible to lie down on the seat.

**(c) Visual appearance and interruption of outlooks**

Unfortunately, some shelters may interrupt views or streetscape outlooks for some properties. The majority of the back of the shelters will be glass to limit this impact. However, it is the opinion of Staff that TCC must still continue to provide Bus Shelters for Public Transport users to ensure they can seek protection from the elements, and to help deliver a professional Public Transport Network with a high level of service to help improve the uptake of Public Transport.

**(d) Impact on privacy**

All sites are current active bus stops where people wait for the busses currently. Installing a Bus shelter should not increase the standing height of waiting passengers or impact negatively on privacy in terms of view into the property. In many instances the shelter may be slightly closer to the property than the existing footpath, giving the feel of lost privacy especially if there is no front fence. However, it is the opinion of Staff that TCC must still continue to provide Bus Shelters for Public Transport users to ensure they can seek protection from the elements, and to help deliver a professional Public Transport Network with a high level of service to improve the uptake of Public Transport. Staff are happy to work with residents to try find a suitable positioning in front of their property that impacts them least.

**(e) Lack of boundary fence**

In many situations the lack of boundary fence is due to covenants. So, moving the stop elsewhere in the street would not resolve this issue. It is also the opinion of Staff that moving the bus stop location and proposed shelter to another property who may have a fence or more space is equally unfair on the residents of the new location who never previously had a bus stop.

**(f) Lack of maintenance of existing shelters**

Council Staff are looking to improve maintenance by initiating regular inspections and shelter cleaning. However, as mentioned above there may be some reliance on public

notification to TCC Staff for any graffiti or vandalism incidents that require quick responses.

**(g) Lack of use**

A major driver for the upgrade project is to improve the level of service at bus stops, to help encourage further uptake of Public Transport. On this basis it is hoped that installing the shelter will increase usage at the stop. Therefore, Staff still wish to proceed with the installations.

**(h) Safety**

All sites where safety concerns were made known to TCC Staff during the consultation, have been either reviewed internally by Safety Engineers or reviewed independently by a consultant. Two sites have been removed from scope on safety grounds, and processes are underway to shift the stops a short distance. No significant safety concerns were noted for the sites still in scope. Side and back walls of the shelter are predominantly glass, so the sight lines are not expected to be impacted greatly by the installation of a Bus Shelter. Given this and that all Bus Stop locations are existing, TCC does not expect the addition of a shelter will negatively impact the safety of the existing road environment.

22. A detailed account of all objections to be heard by the hearings panel, can be found in Appendix 1.

## LEGAL CONTEXT / RISKS

23. Legal advice has been sought to ensure correct legal processes are followed with regards to hearing objections to the installation of the proposed bus shelters. The advice received was based on the process under Section 339 of the Local Government Act 1974, which is set out below:

### **Section 339 Transport shelters**

*(1) The council may erect on the footpath of any road a shelter for use by intending public-transport passengers or small passenger service vehicle passengers:*

*provided that no such shelter may be erected so as to unreasonably prevent access to any land having a frontage to the road.*

*(2) The council shall give notice in writing of its proposal to erect any shelter under this section to the occupier and, if he is not also the owner, to the owner of any land the frontage of which is likely to be injuriously affected by the erection of the shelter, and shall not proceed with the erection of the shelter until after the expiration of the time for objecting against the proposal or, in the event of an objection, until after the objection has been determined.*

*(3) Within 14 days after the service of the notice, the occupier or owner, as the case may be, may object in writing to the council against the proposal.*

*(4) Where any person objects to the proposal in accordance with subsection (3), the council shall appoint a day for considering the objection and shall give notice to the objector of the time when and place where the objection is to be heard. Any such time shall be not earlier than 7 days after the date on which the notice of objection was received at the office of the council.*

*(5) The council shall, at the time and place stated in the notice referred to in subsection (4), consider the objection, and after hearing any submissions made by or on behalf of the objector, may either dismiss the objection or decide not to proceed with the proposal or make such modifications to the proposal to which the objection relates as it thinks fit. The hearing of any such objection may be adjourned from time to time and from place to place.*

*(6) Where there are more objectors than 1, the council shall, as far as practicable, hear all objections together and give each objector an opportunity of considering and being heard in respect of all other objections.*

*(7) No resolution under this section shall be passed until the council has considered all the objections of which notice has been given in accordance with this section.*

*(8) In this section the term **road** does not include an access way.*

24. Council has followed steps (2) through (4), inclusive. This includes that the Council has given appropriate notice of the proposal to erect the shelter (to the relevant people), objections have been received, and the Council has appointed a day for considering the objections and has given notice to the objectors of the time and place where the objection is to be heard.
25. In terms of the process for the hearing (in the notice under section 339(4)) of LGA 74, TCC has received the following legal advice:
- (a) The Regulatory Hearings Panel (Panel), as a subordinate decision-making body, that will make the decision under delegated authority from the Council, must consider the objections at the time and place stated in the notice.
  - (b) Where there is more than one objection to the same bus shelter, the Council must (“as far as practicable”) hear all objections together and give each objector the opportunity to consider and be heard in respect of all the other objections.
  - (c) The Panel must consider the objections (and any submissions made on behalf of objectors) in accordance with the general principles of good administrative decision-making, including considering objections and submissions with an open mind (with no pre-determination), not being biased etc, taking into account all relevant considerations and not taking account irrelevant considerations.
  - (d) In terms of the considerations to be taken into account by the Panel, the focus of Section 339 of LGA 74 is on possible injurious affection to/obstruction of the frontage of the land, resulting from the shelter, rather than wider issues resulting from buses stopping or passengers gathering etc. On this basis, the Panel should focus its attention on the physical effect of the proposed bus shelter itself (especially in terms of obstruction of access to the relevant land), and is entitled to take less account of other considerations arising from the overall proposal about the location of the bus stop.
  - (e) In terms of the scope of decisions that the Panel is empowered to make, the Panel is able to dismiss an objection or decide not to proceed with the bus shelter proposal. It is also able to “make such modifications to the proposal to which the objection relates as it thinks fit”. The exact scope of this power will depend on the particular circumstances, but in terms of some general guidelines, in our view this is likely to be limited to modifications to the proposal (i.e. a decision that fundamentally changes the proposal is unlikely to be a “modification” to it, although as noted above the Panel can decide to not proceed with the proposal at all). Arguably, the scope of the potential modification to the proposal ought also be limited to those modifications that relate to the relevant objection (i.e. the Panel should not use the objection process to make unrelated modifications to the proposal).
  - (f) The Panel should pass a resolution to make its final decision under this section.
  - (g) There is no appeal process provided for in the LGA 74 to the Panel’s decision.

## NEXT STEPS

26. Objectors will be advised of the Regulatory Hearings Panel decision to either dismiss their objection, decide not to proceed with the bus shelter proposal or amend the proposal.
27. The bus installation programme will be updated with the Panel’s decision.

## ATTACHMENTS

1. **Proposed Shelter Locations and Objection record - A13782667** [↓](#)
2. **GHD Safety Assessment Report - A13782675** [↓](#)
3. **Existing Bus Shelter and Proposed New Bus Shelter Locations - A13782722** [↓](#)

















































































































































































































































































































































































































## 5.2 Hearing Schedule (as at 19 August)

### ATTACHMENTS

1. Hearing Schedule (as at 19 August) - A13804389 [↓](#)
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## 6 PUBLIC EXCLUDED SESSION

### RESOLUTION TO EXCLUDE THE PUBLIC

#### RECOMMENDATIONS

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<b>6.1 - Public Excluded Minutes of the Regulatory Hearings Panel meeting held on 11 November 2021</b>	s6(a) - The making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial  s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons	s48(1)(a) - the public conduct of 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 6 or section 7

## 7 CLOSING KARAKIA