



AGENDA

Regulatory Hearings Panel meeting Friday, 10 March 2023

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

Date: Friday, 10 March 2023

Time: 9.30am

**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.

**Marty Grenfell
Chief Executive**

Terms of reference – Regulatory Hearings Panel

Membership

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

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.

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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 24 August 2022

File Number: A14466028

Author: Robyn Garrett, Team Leader: Governance Services

Authoriser: Robyn Garrett, Team Leader: Governance Services

RECOMMENDATIONS

That the Minutes of the Regulatory Hearings Panel meeting held on 24 August 2022 be confirmed as a true and correct record.

ATTACHMENTS

1. Minutes of the Regulatory Hearings Panel meeting held on 24 August 2022



MINUTES

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

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**MINUTES OF TAURANGA CITY COUNCIL
REGULATORY HEARINGS PANEL MEETING
HELD AT THE GROUND FLOOR MEETING ROOM 1, 306 CAMERON ROAD,
TAURANGA ON
WEDNESDAY, 24 AUGUST 2022 AT 2PM, AND
FRIDAY, 26 AUGUST 2022 at 9.30AM**

PRESENT: Mrs Mary Dillon, Mr Puhirake Ihaka, Mr Terry Molloy, Mr Alan Tate

IN ATTENDANCE: Kurt Graham (Project Manager), Brendan Bisley (Director of Transport), Warren Budd (Team Leader: Transport Safety), Paula Simmonds (Community Engagement Advisor: Infrastructure Delivery), Robyn Garrett (Team Leader: Governance Services), Sarah Drummond (Governance Advisor)

Wednesday, 24 August 2022 at 2pm

1 OPENING KARAKIA

Mr Puhirake Ihaka opened the meeting with a karakia.
The Chairperson introduced the members of the Panel.

2 APOLOGIES

Nil

3 CONFIRMATION OF MINUTES

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

COMMITTEE RESOLUTION RHP1/22/1

Moved: Mrs Mary Dillon
Seconded: Mr Alan Tate

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

CARRIED

COMMITTEE RESOLUTION RHP1/22/2

Moved: Mr Terry Molloy
Seconded: Mr Puhirake Ihaka

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

CARRIED

4 DECLARATION OF CONFLICTS OF INTEREST

Nil

5 BUSINESS

5.1 Bus Shelter Objection Summary

Staff Kurt Graham, Project Manager

Mr Graham briefly summarised the process so far, the numbers of objections received and advised that about 40 objections were still outstanding. Mr Graham also outlined the Panel's powers under s339 of the Local Government Act 1974 (LGA74), the decision options open to the Panel and the limits of relevant considerations.

The Chair outlined the process of the hearing, noting that the Panel could ask questions but the submitters could not. Submitters were allocated 10 minutes to make their submission to the Panel. The Chair noted that the hearing process was not an evidentiary process.

The following members of the public spoke to their objection to the proposed installation of bus shelters.

(1) June Jeffs, 130 Osprey Drive

Key points

- The objector had three main concerns. The property was raised and looked down to the road and would look right over the bus shelter, which would affect the visual amenity from the property; there were a lot of young children/teenagers in the area and there was concern that the shelter would become a hang out place and be subject to graffiti and vandalism; concerned about possible interactions with the objector's two large dogs with potential provocation and aggravation of the dogs.
- Did not want the dogs to be at risk of hurt or being antagonised or become the subject of noise complaints; considered there was potential for graffiti and vandalism and flow-on impacts on the objectors' property.
- Would like the bus shelter to be relocated from outside their house; or that the design be modified to be more attractive.
- Noted the high grass banks on Waitaha Rd before the Osprey Drive turnoff; suggested that might be a more appropriate location for a bus shelter. Suggested location would not service a very large number of streets and properties.

In response to questions

- Existing bus stop had been there some time and there had been no major incidents with the dogs, some minor issues with kids teasing the dogs with sticks on the property fence. The dogs had run of the full property which was securely fenced.
- The suggested 'grass bank' site on Waitaha Rd was about 100m away from the current bus stop.
- No objection to the shelter itself, just the proposed location.
- Complaints about vandalism/graffiti were tracked through Council's CCM system; the shelters mainly targeted were generally not outside houses. Council now had a much larger budget to make sure the shelters were better maintained and complaints could be responded to promptly.

(2) Jody Sinkinson, on behalf of Sun Pacific Villas Body Corporate, 123 Muricata Street

Key points

- Proposed shelter might provide opportunity for people to use the shelter as assistance to jump/climb over the fence.
- Noted that the proposed shelter was very close to the existing pedestrian crossing and that the street was very busy at times and that proximity could cause a problem.

- The bus tag on/off data showed no use of that bus stop during the week for which data was obtained so did not think the shelter was warranted in this location. Suggested the bus stop opposite would be more appropriate as used more frequently e.g. to get to Bayfair.
- Concerned that the shelter might entice people to hang out at night and look for distractions; the closeness to the fence could invite the shelter to be used to climb the fence.

In response to questions

- Shelters were mainly glass and steel construction so not easy to leverage off; no reports received of people climbing on to shelters.
- Sufficient clearance provided behind shelters and boundary fences for maintenance of the fence and the shelter.
- Regarding the alternate site proposed by Sun Pacific, staff noted that this round of proposed bus shelters focused on inward-bound routes heading into the CBD/Mt Maunganui.
- This bus route operated from 9am-3pm, was not fulltime.

(3) Scott and Tracey Vermeulen, 143 The Boulevard (tabled set of photographs)

Key points

- Concerned about the attention a bus shelter attracted; lived right next to a walkway so extra concern. Property did not have a front fence but was hedged; the objectors might not have purchased the property if there was a bus shelter outside.
- The streetscape view from the property was limited and did not want that viewshaft compromised by a bus shelter.
- Noted the existing bus stop was used quickly by passengers, no lingering.
- There were already lampposts and signs outside the property, adding a bus shelter would further detract from visual amenity.
- Suggested two possible alternative sites on the street, one next to a park; one seven houses down where there was no adjacent house.
- Concerned about graffiti and vandalism, noted that a bus shelter around the corner was often tagged with graffiti.
- Concerned about impact of the bus shelter on possible resale of the house.
- Concerned about width of the berm to accommodate the shelter and the hedging, and access to maintain either.
- There was a walkway, cycle lane, turning bay and bus stop all in one spot, considered that installing a bus shelter would increase the possibility of an accident.
- Noted low usage of the current bus stop.

In response to questions

- Knew was a bus stop outside the house when purchased the house; had been told by Council that unlikely to have a shelter built there.
- The park at the end of the street was about five-six house frontages along; the other bus stop seven houses along that served the same route/same street was on the opposite side of the road.

(4) Jill Prosser, 262 Range Road

Key points

- Used to be a fulltime bus stop which was removed; then reinstated. Had seen one person get on the bus since March this year. Shelter seemed a big expense for very low usage.
- Concerned that the shelter would create graffiti and rubbish issues, and be a focus for people to loiter.
- Not opposed to a bus stop in that location if it was being used.

- Objector had plans to subdivide the section and was concerned the shelter might unreasonably prevent access to the frontage of the land, inappropriate site for a shelter.
- Also owned the neighbouring property and had plans to develop the sites; concerned about obstruction of access by the shelter.

In response to questions

- The location currently proposed would have more impact on No. 262 rather than No. 260. Concerned about limitation of access location for future development.
- Council could shift a shelter in the future, current location would not preclude development. A future subdivision plan would be assessed and council work with the developers to identify the best location for shelters; shelters could be moved if reasonable to facilitate development.
- Under new intensification legislation, there was no requirement to provide driveway access to a development as no requirement for onsite parking. Space on the street did not belong to the property; there would be locations in the city where there is no adjacent on-street parking due to bus stops, no parking zones etc. Council could not make any guarantees around street parking.

(5) Dianne McGovern, 48 Oceanbeach Road**Key points**

- Concerned that the bus stop and shelter blocked the kerb crossing to the section. The kerb crossing had been there prior to the bus stop, considered the shelter unnecessary.
- The objector did not live fulltime at the property but had plans to renovate and move in.
- There was another legal access to the section from McDowell St. The access from Oceanbeach Rd had been there since the property was developed; the existing bus stop had been painted over the kerb crossing/access.
- Had a low front fence so considered the shelter would adversely impact on view as the property would look right into the back of the shelter.

In response to questions

- Staff advised that the kerb crossing was currently not a legal vehicle crossing, the objector would need to apply for that kerb crossing to become an additional legal access to the property; current legal access was from the side street. The location of the bus stop did not necessarily preclude a new legal access being approved, would need to check any restrictions around there being more than one legal access to a property.
- Current proposed shelter site was partly in front of this property and partly across the neighbour's property, due to the location of a water meter.

(6) Frank Szabo, 4 Emerald Shores Drive (tabled documents – plans and photos)**Key points**

- The objector was developing Emerald Shores Lifestyle Village right where the proposed shelter was, the shelter would be on the boundary of this property and the neighbouring property.
- Considered it would make more sense to relocate the bus stop and build the shelter alongside the existing retaining wall at 6 Emerald Drive, there was no access to that property from that point. If built there, the shelter would not be seen from that property due to the existing high retaining wall and fence.
- There would be a considerable amount of construction, with a total of 77 properties planned. Two had access right from Emerald Drive, the shelter would be right in the frontage of one of those properties.
- The shelter would be between two streetlights if placed in the alternative location.

In response to questions

- The distance from the proposed site to the suggested alternative site was about 15 -20

metres to the left.

- The neighbour at 6 Emerald Shores Drive had no objection to the current proposed site but was opposed to it being moved to the suggested retaining wall site.
- Noted existing vacant land which was a big section with a house, was possible the owners would do something with the back section in which case the proposed shelter could interfere with possible access.

COMMITTEE RESOLUTION RHP1/22/3

Moved: Mrs Mary Dillon

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
5.1 Bus shelter objections deliberations	<p>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</p> <p>s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons</p>	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

At 3.52pm the meeting adjourned. The meeting would reconvene at 6pm via video conference to hear a submitter.

At 6pm the meeting reconvened via video conference. Panel member Mr Molloy was not in attendance.

The Chairperson outlined the hearing process for the submitters and noted the decision options available to the Panel under the legislation.

(7) **Gavin and Jackie Schmidt, 268 Gravatt Rd**

Key points

- The objectors' house was one of the few that faced the road, with their lounge as well as outdoor area facing the road. Considered the proposed shelter would have a huge impact when they were using the outside living space.
- The shelter would impede the view of the road when backing out of the driveway and create a safety hazard.
- Noted impact on parking – there was no parking outside the house and the driveway was shared so was unable to be used for parking. The shelter would remove the ability to park outside the house. The objectors explained they also parked their boat on the grass berm next to the fence to load and to be able to exit onto the road safely; had to back the boat in to clean after fishing.

- Concerned about the proposed shelter leading to loitering, graffiti, antisocial behaviour, and devaluation of their property.
- Did not consider that the bus usage justified the expense of a shelter.
- It would cost the objectors \$5040 to erect a new higher fence to feel safer on their property; queried whether council would contribute to that cost.
- Would not have bought the house if had known there would be a bus shelter outside.
- Concerned about health and safety of visitors if unable to park/turn on the berm, it was too dangerous to back out directly across Gravatt Rd.

In response to questions

- There were two different shelter designs, 1.8m or 1.2m deep, and there would be sufficient space between the shelter and the fence to enable maintenance; the shelter would not be hard against the fence.
- Council would not contribute to cost if a homeowner chose to erect a fence.
- The bus service might not be well utilised currently, but there was a need to have viable public passenger transport to provide for future city growth, could not cope with increased vehicles on roads. Provision of facilities such as bus shelters would attract greater usage of the bus services by providing weather shelter.
- The objectors suggested No. 270 Gravatt Road next door (a government owned house with a streetlight outside) was a more appropriate viable option. The bus stop was outside 268 Gravatt Road and always had been.
- There was a formed driveway on the objectors' property, with planting along the boundary. The bus shelter site was at the other side of the property from the driveway.
- Clarified that the property fences were accurately on the property boundaries.

At 6.30pm the meeting adjourned and would reconvene at 9.30am Friday 26 August.

Friday, 26 August 2022 at 9.30am

PRESENT: Mrs Mary Dillon, Mr Puhirake Ihaka, Mr Terry Molloy, Mr Alan Tate

IN ATTENDANCE: Kurt Graham (Project Manager), Warren Budd (Team Leader: Transport Safety), Paula Simmonds (Community Engagement Advisor: Infrastructure Delivery), Robyn Garrett (Team Leader: Governance Services), Sarah Drummond (Governance Advisor)

At 9.30am the meeting reconvened. Mr Puhirake Ihaka opened the meeting with a karakia.

There were no apologies and no conflicts of interest declared.
Chairperson Mary Dillon explained the hearing process for the submitters.

6 BUSINESS *(continuation)*

6.1 Bus Shelter Objection Summary

(8) Yvonne Lendrum, 83 Coopers Road

Key points

- The objector was the owner of 83 Coopers Rd which was purchased in January 2022. The objector was aware of the existing bus stop but not the proposed bus shelter.
- Drew attention to the site plan; objectors owned Lot 1 which fronted the road; Lot 2 was behind with a shared accessway.

- Noted the dimensions and locations of the driveways/shared access.
- There was no turning point for cars in the house behind; had to back down the drive. Cars could not come out frontways from the rear house; would need to look through the bus shelter to reverse safely onto Coopers Rd. Concerned about safety with the diminished view from the shelter; considered the shelter would make the situation even more dangerous than it currently was.
- The proposed shelter would also block the view and outlook to green space from 83 Coopers Rd Lot 1.
- Noted there was also an existing bus stop on the same side near the Vanda Place corner on Coopers Rd. Suggested this was a more appropriate location for the shelter as there was a wider berm and the house behind the bus shelter was a two-storey building. Would be a five-minute walk between the two bus stops.
- Not opposed to the existing bus stop but to the installation of the bus shelter.

In response to questions

- The berm sloped at the proposed shelter site and installation would require some excavation. The shelters were 2.2m/2.4m high, the shelter roof would likely still be visible over 1.8m fence after any excavation required.
- Lot 2 had a different owner. Lot 1 had a separate different access from the road, but did have an accessway onto the front property from the driveway to the back house. The only access to the back property was down the driveway. The owners/occupiers of the back property were not notified of the bus shelter.

(9) Josephine Wilshire (shared frontage), 46 Oceanbeach Rd**Key points**

- Felt it was a waste of ratepayers' money; the bus very rarely picked up anyone from that stop. Area contained a lot of holiday homes and was a busy road; very low usage of the bus stop.
- Shelter would be in front of the submitter's kitchen window and would be above the fence and change the outlook from the property.

In response to questions

- The bus shelter was as much about futureproofing as well as catering for current users, need to encourage use of public transport.

(10) Garry McFarlane 50 Doncaster Drive**Key points**

- The objector was opposed to having the shelter in front of his property as it would be right outside his kitchen window and obstruct his view.
- Real estate agents had indicated to the objector that the value of the property would drop by \$150,000 with a shelter located in front of it. Suggested there should be compensation from the council.
- Suggested either moving the shelter further down the road or across the road; there was a wider berm and 1.8m fences over the road.
- Submitter had no fencing and there were generally open properties around the area.

(11) Nathan Miller, 2 Pumice Glade (tabled item)**Key points**

- The objector had been taken by surprise at the proposed bus shelter as there was already a bus shelter over the road and another further down the road. These shelters were no longer needed as the bus route had slightly changed - reduced by 800m - and now did not go past the existing shelters.

- Suggested that the bus route be put back to the original route and the existing shelters utilised, rather than another shelter being built to serve a minor route change.
- Did not consider the TCC guidelines to move/build shelters applied – no rationale, waste of ratepayers' money.
- Considered that where the bus stop currently was did not appear to allow for the right amount of room between Landing Drive, Pumice Glade and the Landing Drive crossing; the bus stopped within 6m of the intersection.
- When the bus was at the bus stop it was impossible to see down the road to see oncoming traffic and created a hazard for traffic coming out of the side street.
- The objector had seen young people climbing on top of the shelter over the road, and was concerned that this proposed shelter would provide a platform for young people to climb on and then climb over the objector's fence. Considered that the proposed shelter would create a health and safety risk, with the possibility of falls from the roof and smashed glass; would create an unsafe environment that children would be attracted to.
- TCC guidelines for selection of bus stop sited included safe design; there was no streetlight in this location; the positioning between two intersections posed a risk to road users when moving around the bus; construction of a shelter almost 4m long close to the property fence meant that the objector and his family would not feel safe. If anyone was on the roof of the shelter, they would look right into the property's living area.
- Suggested that bus shelters tended to attract anti-social behaviour not related to catching a bus.
- Returning the bus to its original route would avoid any issue.

In response to questions

- Staff would check with Bay of Plenty Regional Council regarding the route change and the rationale for the change.
- Was a high amenity high value area; across Landing Drive there were many families, children playing in the street were from within the neighbourhood.

At 10.19am the meeting adjourned.

At 11am the meeting reconvened.

(12) Peter Clarke (representing Michel and Brigitte Nardi), 178 Marine Parade**Key points**

- The proposed bus shelter was in front of the Reef Apartments, close to the corner of Clyde St.
- Considered there was a safety issue – the shelter being so close to a corner was an obvious safety hazard; obstructed the view of any vehicle trying to turn right from Clyde St into Marine Parade. Was an illogical spot for a bus shelter.
- Suggested that an area to the south of Clyde St where there was a council-owned wider road berm (200-300m towards Oceanbeach Rd away from the Mount) would be a more appropriate site.
- Mr Clarke was a real estate agent representing the Nardis.
- Suggested use of smaller buses, noted currently there were very large buses with few patrons.

In response to questions

- There was an existing bus stop that was marked with a sign on the lamppost but there was no street marking for the stop.
- Queried whether the bus stop could be moved slightly further away from the intersection; noted that there had been no complaints about safety for the existing bus stop placement. All frontage for the bus stop was outside the Reef Apartments.
- In Mr Clarke's experience as a real estate agent, a bus shelter may be viewed as a negative by some buyers, was subjective.

COMMITTEE RESOLUTION RHP1/22/4

Moved: Mrs Mary Dillon
 Seconded: Mr Puhirake Ihaka

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) considers 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 makes a decision to either dismiss the objection, not proceed with the bus shelter, or modify the proposal.

CARRIED

The hearings closed at 11.15am and the Panel moved into public excluded session to deliberate.

7 PUBLIC EXCLUDED SESSION**RESOLUTION TO EXCLUDE THE PUBLIC****COMMITTEE RESOLUTION RHP1/22/5**

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
6.1 – Bus shelter objections deliberations	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

CARRIED

The meeting returned to open session and adjourned at 3.40pm.

Monday, 19 September 2022 at 2.10pm

PRESENT: Mrs Mary Dillon, Mr Puhirake Ihaka, Mr Terry Molloy, Mr Alan Tate

IN ATTENDANCE: Kurt Graham (Project Manager), Robyn Garrett (Team Leader: Governance Services), Sarah Drummond (Governance Advisor)

At 2.10pm on 19 September 2022 the meeting reconvened.

The Panel moved into public excluded session to continue deliberations.

RESOLUTION TO EXCLUDE THE PUBLIC**COMMITTEE RESOLUTION RHP1/22/6**

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
6.1 – Bus shelter objections deliberations	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

CARRIED

8 CLOSING KARAKIA

Mr Puhirake Ihaka closed the meeting with a karakia.

The meeting closed at 4.30pm.

The minutes of this meeting were confirmed as a true and correct record at the Regulatory Hearings Panel meeting held on 10 March 2023.

.....
CHAIRPERSON

5 BUSINESS

5.1 Objection to menacing Dog Classification - Denese Konowe

File Number: A14363482

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an objection opposing the menacing classification of the dog Fiora (Fi) – Denese Konowe

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to menacing Dog Classification - Denese Konowe".
- (b) The panel may either:
 - (i) Uphold the classification; or
 - (ii) Rescind the classification.

EXECUTIVE SUMMARY

2. Denese Konowe is the registered owner of a 5-year-old Border Collie Cross dog called Fiora, commonly known as Fi.
3. On 31 December 2022 at approximately 8:30pm Fi was being walked off lead by her owner and the owner's husband, they approached a parking area at the end of Eden Crescent adjacent to number 11. (*Attachment 1 – Aerial Photograph*)
4. The victim, an 80-year-old female was with her husband and standing by a car in the parking area when the dog owner and her husband with the dog Fi approached.
5. Fi walked past the victim's husband and lunged at the victim, biting her on the knee without provocation. It happened very quickly and when she lifted her skirt, she saw blood, she had received four puncture wounds to her knee. (*Attachment 2 – Photograph of Bite*)
6. Staff conducted an investigation and completed an "attack rating" form, it was concluded that classifying the dog Fiora as a menacing dog was the most appropriate action. A classification notice was issued on 19 January 2023 (*Attachment 3 – Attack Rating form*) (*Attachment 4 – Menacing Classification*)
7. The dog owner lodged a formal objection to the classification for this panel's consideration. (*Attachment 5 – Objection to Classification*)

BACKGROUND

8. Prior to this attack, Council had no record of aggression or any complaints about the dog Fi.
9. During the investigation, a number of people in the area said that Fi had been aggressive to them and had bitten people. Each person thought they were the only victim and therefore hadn't contacted Council preferring to preserve community harmony rather than complain about a resident's dog.

10. Once this attack became evident in the neighbourhood, the true extent of the dog's propensity to bite became more evident and Council were called upon to remove the dog from the community because of the ongoing aggression.
11. In reaching the decision to classify this dog menacing, staff only considered the circumstances of the December attack as none of the other incidents had been documented.
12. When a dog has bitten a person, there are three main provisions of the Dog Control Act apply:
 - (a) Section 33A - Classify the dog as menacing – the dog must be muzzled in a public place and neutered.
 - (b) Section 31 - Classify the dog as dangerous – the dog must be muzzled and controlled on a lead in public, neutered and contained on its property so visitors can access one door of the house without encountering the dog.
 - (c) Section 62 – The dog must be muzzled and controlled by lead when in public.
13. Council has discretion whether it classifies a dog as menacing or dangerous and the dog owner may object to any such classification.
14. Section 62 applies automatically where the owner knows the dog to be dangerous or has attacked a person or any animal. Council cannot override section 62 and the owner has no right of appeal.
15. If Council relied entirely on section 62 and there was further offending, we would have to prove the owner knew the dog had bitten or was dangerous before we could take any action for failing to muzzle or control the dog by lead.
16. A classification provides more certainty and clarity for all involved should there be any repeat incidents of aggression.
17. Two residents from the neighbourhood have now provided statements about previous aggression shown by the dog Fiora. The incident reported by Mr Foot could be dismissed because he was the one that put his hand toward the dog. However, as Mrs Konowe was aware of the incident described by Mr Hickey, she should have ensured that an attack could not happen. (*Attachment 6 – Attack statement William Foot*) (*Attachment 7 – Attack statement of James Hickey*)
18. The Dog Control Act requires all dog owners to take all reasonable steps to ensure their dog does not injure, endanger, intimidate, or otherwise cause distress to any person. "All reasonable steps" is a high threshold and means everything possible to avoid an attack which included fitting a suitable muzzle to the dog.
19. Council may classify any dog menacing where we consider the dog may pose a threat to any person because of observed or reported behaviour of the dog. The threshold to classify a dog as menacing is quite low. In this matter the dog has shown that it does pose a threat to people in the community and clearly surpasses the minimum standard required to classify the dog.

STRATEGIC / STATUTORY CONTEXT

20. N/A

OPTIONS ANALYSIS

21. N/A

FINANCIAL CONSIDERATIONS

22. N/A

LEGAL IMPLICATIONS / RISKS

23. N/A

CONSULTATION / ENGAGEMENT

24. N/A

SIGNIFICANCE

25. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
26. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
- the current and future social, economic, environmental, or cultural well-being of the district or region
 - any persons who are likely to be particularly affected by, or interested in, the .
 - the capacity of the local authority to perform its role, and the financial and other costs of doing so.
27. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of low significance.








ENGAGEMENT

28. Taking into consideration the above assessment, that the decision is of low significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

NEXT STEPS

29. N/A

ATTACHMENTS

- Attachment 1 - Arial Photograph of Area - A14388951** [↓](#) 
- Attachment 2 - Photographs of Bite - A14387920** [↓](#) 
- Attachment 3 - Attack Rating Form - A14387919** [↓](#) 
- Attachment 4 - Menacing Dog Classification dated 19 Jan 2023 - Denese Konowe - A14387913** [↓](#) 
- Attachment 5 - Objection to Menacing - Denese Konowe - A14387916** [↓](#) 
- Attachment 6 - Attack statement William Foot - A14388632** [↓](#) 
- Attachment 7 - Attack statement of James Hickey - A14387966** [↓](#) 

5.2 Objection To Notice to Remove Barking Dog - Brendon Martin

File Number: A14194370

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To consider an objection from Brendon Martin to a notice to remove his dog from his property because it is causing nuisance by loud and persistent barking.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection To Notice to Remove Barking Dog - Brendon Martin"; and
 - (b) Confirms the notice to remove.
2. When considering an objection, the panel may:
 - (a) Confirm; or
 - (b) Modify; or
 - (c) Cancelthe notice to remove.

EXECUTIVE SUMMARY

3. The Dog Control Act 1996 says a dog is not allowed to cause nuisance by loud or persistent barking or howling.
4. The objector owns a female Rottweiler Cross dog named Kora.
5. Council have received complaints from 6 separate residents, that the dog Kora is regularly causing nuisance by loud and persistent barking.
6. The owner was served with an abatement notice which required the dog to wear an anti-barking collar. On two separate occasions, staff visited the property after receiving complaints and the dog was in breach of the abatement notice as it wasn't wearing the bark collar.
7. As a result of continued barking and the failure of the owner to comply with the abatement notice, a notice to remove the dog was issued and the owner has objected to this notice.
8. The situation with the dog has been further aggravated by regular roaming complaints.

BACKGROUND

9. Barking complaints are quite subjective and studies have concluded while some people will be adversely affected by a barking dog, others won't notice the noise at all.
10. Before Council can take any action in relation to a barking complaint, the officer must have reasonable grounds to believe that the barking is loud or persistent and the barking is causing nuisance.

11. Reasonable Grounds means the officer's observations of the evidence, professional training and experience leads them to believe there is a possibility (not a probability) an offence has been committed.
12. There is no definition in the Dog Control Act about what loud or persistent is.
13. Loud can be assessed as noise that can be heard outside the property from which it is coming and at such a level that it interferes with the normal quality of life of the complainant.
14. Persistent can be assessed as any barking that is repetitive either frequent barking over a short period of time or less frequent barking that continues over a longer period of time.
15. On 24 March 2022 Council received a complaint that the dog at 22 Arawata Avenue, Welcome Bay was barking loudly and causing nuisance. The caller said the dog had been causing nuisance for two months. (*Attachment 1 – Aerial photograph of area*)
16. When Council receives the first complaint about a barking dog, a letter is sent to the dog owner with a pamphlet about why dogs bark. (*Attachment 2 – Barking dog letter and pamphlet*)
17. On 30 May 2022 two different people phoned Council with further complaints about the dog barking and causing nuisance. One said it had been a nuisance for the last two months and the other said it had been barking for between 2 and 4 months and it had kept them awake during the night.
18. Staff conducted a barking survey in the neighbourhood to establish how widespread the problem is. A survey form is delivered to all houses neighbouring the problem dog, the survey does not identify where the barking dog resides but asks if there are any dogs in the neighbourhood causing nuisance with barking.
19. The last survey response was received on 17 June and in total, three people confirmed the dog from 22 Arawata was barking loudly causing nuisance. Two of these people were in addition to the complainants already identified. (*Attachment 3 – Barking Survey Results*)
20. As a result of the survey, staff visited the dog owner's property and sold them an anti-barking collar and discussed steps they could take to help mitigate further barking. The owner was also advised that if we received further complaints then a formal barking abatement notice would be issued.
21. On 12 July Council received further complaints from three separate people and as a result issued an abatement notice. The notice required the owner to:
 - (a) Use the barking collar; and
 - (b) Keep the dog indoors when no one is home; and
 - (c) Provide exercise; and
 - (d) Discourage barking; and
 - (e) Avoid long periods of separation.
22. The notice also encouraged the owner to seek the services of a qualified dog behaviouralist and discuss medication options with their vet. (*Attachment 4 – Barking Abatement Notice*)
23. On 8 August, staff visited the property of 22 Arawata as the dog was not registered for the new year, registration had expired on 30 June 2022. The owner immediately registered the dog online while staff were present.
24. While at the property, they noticed the dog was not wearing its barking collar and they located it laying in the dirt. The owner was advised of the ramifications of not complying with the abatement notice.
25. On 1 October Council received another barking complaint, so on 4 October staff visited 22 Arawata and found the dog was not wearing its bark collar. As a result, a Notice to Remove (NTR) the dog was served on the owner on 12 October. (*Attachment 5 – Notice to Remove dog*)

26. An NTR requires the dog owner to rehome their dog, they have 7 days to object to the notice. Any objection suspends the Notice to Remove. On 14 October 2022, Council received an objection to the NTR from the dog owner. (*Attachment 6 – Objection to NTR*)
27. When considering an objection, the panel may:
 - (a) Confirm; or
 - (b) Modify; or
 - (c) CancelThe notice to remove.
28. Upon the determination of the objection, the panel shall give to the objector a further notice stating the decision of the panel, and, if the effect of the decision is to modify the requirements of the dog control officer or dog ranger, shall set out those requirements as so modified. (*Attachment 7 – Schedule of Complaints and Outcomes*)
29. It should be noted that the dog owner has incurred three infringements for failing to control the dog Kora i.e., allowed it to roam. Once these infringements have been either paid or referred to the Court for non-payment, the Act requires Council to disqualify the dog owner for a period of up to five years unless there is good reason not to.















SIGNIFICANCE

30. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
31. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
 - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the decision.
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
32. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of low significance.

ENGAGEMENT

33. Taking into consideration the above assessment, that the decision is of low significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

ATTACHMENTS

1. **Attachment 1 - Aerial Photo Dog Owners House and Neighbourhood - A14234050**  
2. **Attachment 2 - Barking Letter and Pamphlet - A14234054**  
3. **Attachment 3 - Barking Survey Results - A14234052**  
4. **Attachment 4 - Barking Abatement Notice - A14234051**  
5. **Attachment 5 - Notice to Remove Dog - A14234053**  
6. **Attachment 6 - Notice of Objection - A14234049**  
7. **Attachment 7 - Schedule of Complaints - A14234056**  

5.3 Objection to Disqualification as Dog owner - Brendon Martin

File Number: A14414247

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an objection from Brendon Martin opposing his disqualification as a dog owner.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Disqualification as Dog owner - Brendon Martin".
- (b) It is recommended that the panel uphold the disqualification, however the panel may either:
 - (i) Uphold the disqualification; or
 - (ii) Bring forward the date of termination; or
 - (iii) Terminate the disqualification.

EXECUTIVE SUMMARY

2. The objector, Brendon Martin is the registered owner of Kora, a Rottweiler Cross dog aged 1 year 7 months.
3. In the short time Mr Martin has owned this dog, it has been subject to eight complaints about the dog roaming, the dog has been impounded twice and on one occasion was seen to try and attack another dog. (*Attachment 1 – Schedule of Roaming Complaints and Action*)
4. Section 25 of the Dog Control Act 1996 ("the Act") requires Council to disqualify a person from owning a dog if they receive three or more infringements within a two-year period and the infringements have either been paid or filed with the Court.
5. For the period 21 August 2022 to 23 November 2022 Mr Martin received five infringements, three of which so far have been filed with the Court.
6. As a result, on 31 January 2023, he was issued with a notice disqualifying him from owning a dog for a period of three years from the offence date of the third infringement, namely 27 September 2022. (*Attachment 2 – Notice of disqualification*)
7. A disqualified owner may object to the disqualification and that objection shall be heard by the Hearings Panel. Mr Martin submitted an initial objection to the disqualification on 8 February 2023 and this was followed by a supporting email on 13 February 2023. (*Attachment 3 – Objection to disqualification*)

BACKGROUND

8. The dog Kora was entered onto the TCC dog register in February 2022. On 19 May 2022 it was found roaming in Welcome Bay and taken to the pound and subsequently released upon payment of pound fees the next day. A warning letter was also sent to the owner. (*Attachment 4 – Roaming Warning Letter*)

9. Kora was then reported roaming on seven other occasions. Once an owner has received a warning letter for roaming, our policy is to issue an infringement fine for each occasion the dog subsequently roams unless there is good reason not to. (Refer attachment 1)
10. The “Act” provides that when a person receives three infringements within a two-year period and the infringement has either been paid or filed with the Court, then Council must disqualify that person from owning a dog for a period of up to 5 years.
11. Council doesn’t have to disqualify the person if they are satisfied the circumstances of the offence are such that:
 - (a) The disqualification is not warranted; or
 - (b) Council will classify the owner as probationary.
12. After considering the extensive negative history associated with this dog owner, we believed the disqualification was appropriate. Council doesn’t operate a probationary owner scheme.
13. Normal practice is to disqualify an owner for 3 years when they incur three or more infringements.
14. In considering any objection under this section, the territorial authority shall have regard to:
 - (a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and
 - (b) the competency of the person objecting in terms of responsible dog ownership; and
 - (c) any steps taken by the owner to prevent further offences; and
 - (d) the matters advanced in support of the objection; and
 - (e) any other relevant matters.
15. It is not the purpose of this panel to rule on the legality of each infringement, that is a matter for the Court should the dog owner chose to defend each infringement. Once the infringement has been paid or filed with the Court, the offence is deemed to have been proved. This panel must consider the objection in the terms of paragraph 14 above, as provided by section 26(3) of the “Act”.
16. When an infringement is issued the recipient can either:
 - Pay the infringement; or
 - Defend the infringement in Court; or
 - Do nothing.
17. If the person does nothing, a reminder will be sent in 28 days and then after a further 28 days the infringement will be filed with the District Court.
18. Only infringements which have either:
 - Been paid; or
 - A conviction entered (if they defended the infringement); or
 - Filed with the Courtcan be counted when disqualifying a person.
19. The three infringements highlighted in green (see attachment one) are the ones which triggered this disqualification. Since that time two further infringements have been issued and the dog has been roaming on three other reported occasions. On two of these occasions, infringements weren’t issued while an objection to the barking abatement notice was processed and on one occasion on 10 February 2023 as the victim did not report the incident. Infringements could have been issued but Council chose not to on these occasions.
20. Prior to disqualifying a person, we have created a process whereby we write to the dog owner and advise them that the “Act” requires them to be disqualified however before we

make a final decision, they may write to Council with any information they would like to be taken into consideration. (*Attachment 5 – Notification of pending disqualification*)

21. No response was received and a notice to disqualify (attachment 2) was delivered to the home of Mr Martin on 31 January 2023.
22. In considering this objection the panel may either:
 - Uphold the disqualification; or
 - Bring forward the date of termination; or
 - Immediately terminate the notice.
23. The objector may appeal the decision of the panel to the District Court if dissatisfied.

STRATEGIC / STATUTORY CONTEXT

24. N/A

OPTIONS ANALYSIS

25. N/A

FINANCIAL CONSIDERATIONS

26. N/A

LEGAL IMPLICATIONS / RISKS

27. N/A

CONSULTATION / ENGAGEMENT

28. N/A






SIGNIFICANCE

29. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
30. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
 - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the decision.
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
31. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of low significance.

ENGAGEMENT

32. Taking into consideration the above assessment, that the decision is of low significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

ATTACHMENTS

1. **Attachment 1 - Schedule of Roaming Complaints and Action - A14425674** [↓](#) 
2. **Attachment 2 - Notice of Disqualification - A14425676** [↓](#) 
3. **Attachment 3 - Objection to Disqualification - A14425675** [↓](#) 
4. **Attachment 4 - Roaming Warning Letter - A14425671** [↓](#) 
5. **Attachment 5 - Notification of Pending Disqualification - A14425672** [↓](#) 

5.4 Objection to Disqualification as Dog Owner - Tina Bowrind

File Number: A14116840

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an objection by Tina Bowrind opposing her disqualification as a dog owner for a period of 3 years.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Disqualification as Dog Owner - Tina Bowrind".
- (b) Staff recommend that the disqualification is upheld.
- (c) The Dog Control Act provides that, in determining any objection, the panel may either:
 - (i) Uphold the disqualification; or
 - (ii) Bring forward the date of termination; or
 - (iii) Terminate the disqualification.

EXECUTIVE SUMMARY

2. When a dog owner receives three or more qualifying infringements within a 24-month period, Section 25 of the Dog Control Act 1996 requires Council to disqualify that person from being a dog owner for up to 5 years. On 17 May 2022 the objector was issued with a notice disqualifying her as a dog owner until 5 February 2025.
3. A disqualification will not be mandatory if the Territorial Authority:
 - (a) Is satisfied that the circumstances of the offence or offences do not warrant a disqualification; or
 - (b) The person is classified as a probationary owner.
4. Staff assessment is that neither of these provisions apply to the objector.

BACKGROUND

5. Tina Bowrind was the owner of two dogs, Rosebud and Jasper, both Bull Terrier Cross dogs.
6. She obtained Rosebud in July 2020 and Jasper in July 2021
7. In January 2021 Animal Services started receiving complaints about the dog Rosebud roaming on the street, this then progressed into Rosebud rushing at people and then, complaints that both dogs were involved in attacks on domestic animals and roaming. (*Attachment 1 - Schedule of offences*)
8. Despite staff visiting the dog owner, issuing both verbal and written warnings, the offending continued which led to infringements being issued together with further discussions with the dog owner, requesting her to maintain control of her dogs.

9. When a person is disqualified, they have the right to object against that disqualification. Section 26 of the Act provides that in considering any objection under this section, the territorial authority shall have regard to—
 - (a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and
 - (b) the competency of the person objecting in terms of responsible dog ownership; and
 - (c) any steps taken by the owner to prevent further offences; and
 - (d) the matters advanced in support of the objection; and
 - (e) any other relevant matters.
10. In determining any objection, the territorial authority may:
 - (a) Uphold the disqualification; or
 - (b) Bring forward the date of termination; or
 - (c) Immediately terminate the disqualification of any person, and shall give written notice of its decision, the reasons for it, and the right of appeal to the District Court if they are not satisfied with the panel's decision.
11. The panel is not required to review the legality of the infringements, that is the realm of the Court. For the purpose of the disqualification process, an infringement offence is deemed to be complete once it has been either paid or filed with the Court. All the infringements relied on by Council in this matter have been filed with the Court. (*Attachment 2 - Schedule of Infringements – Tina Bowrind*)
12. The process associated with the issuing of infringements is prescribed for by the Summary proceedings Act 1957. When an infringement is issued, the recipient has 28 days to either dispute or pay the infringement. If they do nothing a reminder notice will then be sent after the 28 day period has expired. At the expiry of a further 28 days the infringement will be filed with the Court if not disputed or paid.
13. While not required by legislation, Animal Services has introduced a process whereby we send a dog owner an advisory letter when they have received two qualifying infringements. On 3 February 2022 we hand delivered to the objector a letter dated 1 February 2022 (*Attachment 3 - Notification of Second Infringement*)
14. Once a person has received three qualifying infringements' we send the dog owner a letter advising them that Council must disqualify them as a dog owner unless we are satisfied the disqualification is not warranted. We ask them to provide Council with any information they would like us to take into consideration. On 2 May 2022 we sent the objector one of these letters (*Attachment 4 – Notice of Pending Disqualification, Request for Explanation – Tina Bowrind*)
15. On 17 May 2022 Council generated a disqualification notice for Tina Bowrind, disqualifying her from owning a dog for a period of three years. This was because:
 - (a) We had not received any explanation from the objector; and
 - (b) The circumstances of the offences were such that a disqualification was warranted; and
 - (c) It was not appropriate to classify the objector as a probationary owner.(*Attachment 5 – Notice of Disqualification – Tina Bowrind*)
16. A three year disqualification is the standard period adopted for repeat infringement offences.
17. As it is important the dog owner is fully aware of the disqualification and implications, staff always, hand deliver these notices. The disqualification letter was not delivered until 1 June 2022 as staff could not locate the dog owner. While the officer was trying to discuss the disqualification with Bowrind, she turned and walked away and refused to discuss the matter.

18. Before she walked away, she was informed that she had 14 days to lodge an appeal against the disqualification or she must dispose of all her dogs. As she had walked away, the disqualification notice was placed in her letterbox.
19. Tauranga does not operate a probationary owner classification status as this requires engagement by the dog owner to be successful. A person who has been disqualified as a dog owner has had ample opportunity to voluntarily take proactive steps such as engage a dog trainer and take advantage of assistance from staff.
20. On 25 July 2022 the dog Rosebud was out roaming and caught in a Council trap and impounded. On 28 July 2022 the objector arrived at the pound and gave staff a false name in an attempt to release Rosebud. The dog Jasper was seen in the car and when staff realised she was actually Tina Bowrind, they seized the dog because of the disqualification.
21. The dogs were later released to a new owner.
22. On 4 August 2022 Council received an email from Tina Bowrind objecting to her disqualification from dog ownership. This was followed up by a second email on 1 September 2022. (*Attachment 6 – Objection to Disqualification – Tina Bowrind*)
23. On 5 September 2022 Council responded to the objection with an email, outlining the reason for the disqualification and asking for Tina to advise whether she wished to continue with the objection. (*Attachment 7 – Response to Objection to Disqualification – Tina Bowrind*)
24. On 3 October 2022 Council received confirmation from Tina that she wanted her objection to proceed and included her reasons for the objection. (*Attachment 8 – Confirmation of Objection – Tina Bowrind*)
25. On 28 October 2022 staff visited Tina Bowrind at her home, they found her in the possession of two dogs, Tina claimed the owner was asleep but wouldn't wake them. No evidence of a second person was established. Tina wouldn't accept that she couldn't be in charge of the dogs while someone was asleep. She then admitted that she was looking after one of the dogs for a third person who she said was at a funeral. She then said that being disqualified for receiving excess infringements wasn't a good enough reason to disqualify her.
26. The dog owner in this matter denies her offending and does not accept that her dogs are a problem and that she could see no reason why her dogs could not go for a walk on the street on their own. She doesn't accept that the disqualification should apply to her.

STRATEGIC / STATUTORY CONTEXT

27. N/A

FINANCIAL CONSIDERATIONS

28. There are none

LEGAL IMPLICATIONS / RISKS

29. The Panel is required to consider the objection and may either:
 - (i) Uphold the disqualification; or
 - (ii) Bring forward the date of termination; or
 - (iii) Terminate the disqualification.
30. The objector may appeal the decision of the panel to the District Court.

CONSULTATION / ENGAGEMENT

31. N/A

SIGNIFICANCE

32. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
33. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
 - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the .
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
34. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of low significance.









ENGAGEMENT

35. Taking into consideration the above assessment, that the decision is of low significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

NEXT STEPS

36. N/A

ATTACHMENTS

1. **Attachment 1 - Schedule of Offences - Tina Bowrind - A14161623** [↓](#) 
2. **Attachment 2 - Schedule of Infringements - Tina Bowrind - A14161619** [↓](#) 
3. **Attachment 3 - Notice of Second Infringement - Tina Bowrind - A14165397** [↓](#) 
4. **Attachment 4 - Notice of Pending Disqualification, Request for Explanation - Tina Bowrind - A14165395** [↓](#) 
5. **Attachment 5 - Notice of Disqualification - Tina Bowrind - A14161616** [↓](#) 
6. **Attachment 6 - Objection to Disqualification - Tina Bowrind - A14165398** [↓](#) 
7. **Attachment 7 - Response to Objection to Disqualification - Tina Bowrind - A14165400** [↓](#) 
8. **Attachment 8 - Confirmation of Objection to Disqualification - Tina Bowrind - A14165396** [↓](#) 

5.5 Objection to Barking Abatement Notice - Abigail Waters

File Number: A14343049

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an objection from Abigail Waters opposing a barking dog abatement notice.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Barking Abatement Notice - Abigail Waters".
- (b) It is recommended that the panel upholds the abatement notice. The panel may:
 - (i) Confirm; or
 - (ii) Modify; or
 - (iii) Cancel the notice.

EXECUTIVE SUMMARY

2. The objector is the registered owner of two registered dogs, Delta and Loki.
3. Between October and December 2022, Council received four complaints from two people alleging the dogs were causing nuisance by loud and persistent barking.
4. Staff discussed the complaints with the dog owner on two occasions in early October, but the complaints continued.
5. A survey of the neighbourhood in mid-October resulted in five people identifying the objector's dogs as causing nuisance by loud and persistent barking.
6. As a result, an abatement notice was issued in November 2022, requiring the objector to abate the nuisance caused by the dogs by:
 - (a) Using an anti-barking collar on the dogs; and
 - (b) Installing material on a gate to block the dogs view of the street.
7. The dog owner complied with the notice but has lodged an objection to the notice as she disputes the accuracy of the complaints and disputes that her dogs cause nuisance.

BACKGROUND

8. The Dog Control Act provides that where a Dog Control Officer has reasonable grounds to believe that a dog is causing nuisance by loud and persistent barking, then the officer may issue a notice:
 - (a) Requiring the owner to abate the nuisance; or
 - (b) Remove the dog
9. Any person issued with a notice may, within 7 days, object to the notice. The objection shall be heard by this panel.

10. In hearing any objection, the panel may either confirm, modify, or cancel the notice.
11. The objector has a long history of owning dogs which have caused nuisance by loud and persistent barking and has previously been required to remove a dog because of this.
12. Complaints originally started in March 2017 and concluded in January 2019 when a Notice to Remove the dogs Tigger and Lupin were issued to the objector.
13. There were no further complaints until 3 October 2022 when a complaint was received about two dogs at 16 Nicole Place barking and had been for the last two weeks, the owner does nothing to stop it.
14. On 5 October an officer visited the property and spoke to the objector, who said she was familiar with our barking dog process as she had previously had to rehome a dog for barking. She was asked to minimise the barking and try moving the dogs on her property to see if that helped.
15. A further complaint was received on 6 October 2022 and the officer visited the property again. The objector said she has a difficult neighbour who complains about everything. The dogs sleep inside at night, she has been keeping the dogs away from the neighbour's fence.
16. On 14 October 2023 another complaint was received followed by an email saying the dogs had been "going to town for the past hour" and it was 8:41pm on a Saturday. As a result of the ongoing complaints, the neighbourhood was surveyed to see if others were also being affected by the barking. (*Attachment 1 – Barking Survey Forms*)
17. Survey forms were delivered to 12 properties, the form doesn't identify which property we are investigating and asks a series of questions to identify if the person has an issue with any barking dogs in their community.
18. Six forms were returned with all stating barking dogs were causing nuisance, 5 of which identified the objector's property, and one was unsure where the dogs lived.
19. The survey provided sufficient grounds for the officer to issue a notice to abate the barking which is the subject of this objection. The notice gives the dog owner 7 days to object. The notice was served on the objector on 22 November 2022 and an initial objection was notified to Council on 29 November 2022. (*Attachment 2 – Barking Abatement Notice*), (*Attachment 3 – Initial Objection to Abatement Notice*)
20. On 19 December 2022 the objector was responded to, and she confirmed that she wished to proceed with the objection. (*Attachment 4 – Council response to initial objection*), (*Attachment 5 – Confirmation of Objection – Abigail Waters*)
21. On 20 December 2022 the objector purchased two anti-barking collars.
22. The last complaint about barking dogs was received on 4 December 2022.

STRATEGIC / STATUTORY CONTEXTD

23. Nil

SIGNIFICANCE

24. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
25. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
 - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the .






(c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.

26. In accordance with the considerations above, criteria and thresholds in the policy, it is considered that the decision is of low significance.

ENGAGEMENT

27. Taking into consideration the above assessment, that the decision is of low significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

ATTACHMENTS

1. **Attachment 1 - Barking Survey Forms - A14344353** [↓](#) 
2. **Attachment 2 - Barking Abatement Notice - A14344354** [↓](#) 
3. **Attachment 3 - Initial Objection to Abatement Notice - A14344356** [↓](#) 
4. **Attachment 4 - Council Response to Initial Objection - A14344355** [↓](#) 
5. **Attachment 5 - Confirmation of Objection - Abigail Waters - A14344352** [↓](#) 

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
6.1 - Public Excluded Minutes of the Regulatory Hearings Panel meeting held on 24 August 2022	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