



AGENDA

Regulatory Hearings Panel meeting Thursday, 26 October 2023

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

Date: Thursday, 26 October 2023

Time: 9.30am

**Location: Ground Floor Meeting Room 1b
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.

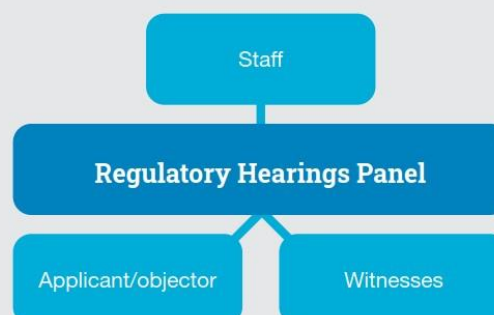
Regulatory Hearings Panel

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 BUSINESS

4.1 Bus Shelter Hearing Report 2023

File Number: A15204762

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.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Bus Shelter Hearing Report 2023".
- (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.

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. Tauranga City Council has consulted 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. Objections 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.
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 on inbound and high use bus stops. 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. Tauranga City Council consulted with property owners and tenants of properties adjacent to 85 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. 9 objections were received and will be considered by the Panel. A further 18 were removed from scope for various reasons including, safety concerns, reprioritisation, proposed bus route or stop changes and potential impacts on private retaining walls.
17. 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.

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

LEGAL IMPLICATIONS / RISKS

19. 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.*

20. 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.

21. 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.

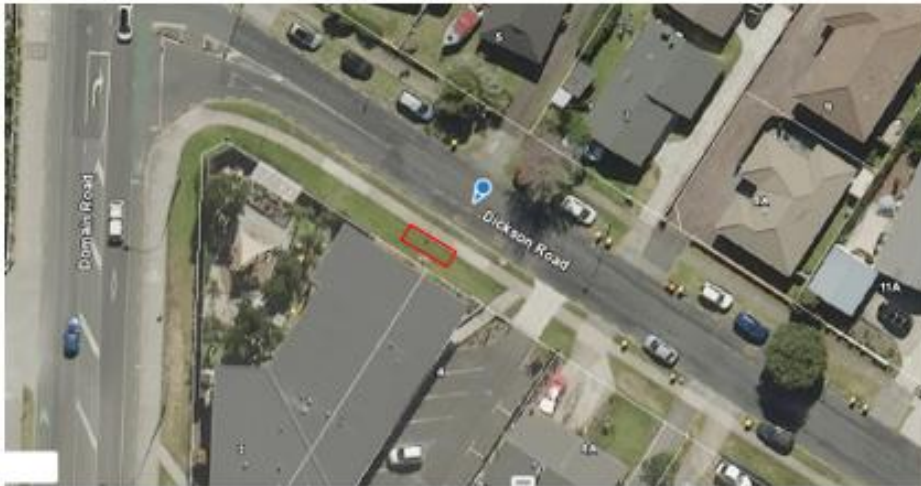
NEXT STEPS

- 22. 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.
- 23. The bus installation programme will be updated with the Panel’s decision.

ATTACHMENTS

- 1. **Objections Communication Summary October 2023 - A15214977** [↓](#) 

4 DICKSON ROAD



OBJECTION SUMMARY

- Visibility obstruction to pedestrians entering / exiting Future Focus premises
- Increased pedestrians on footpath could spill over onto road in the way of vehicles
- Bus stopping to collect an increased number of passengers will increase vehicle congestion
- Company signage obstructed
- Consent required painting of yellow line by owners; this is being disregarded with the use of the bus stop

EMAIL TRAIL

Mon 17/07/2023 5:56 PM

CAUTION: External Email.

Dear Paula Simmonds

We acknowledge the TCC letter dated 10 July 2023 regarding a proposed bus shelter near our property at 4 Dickson Road which was received by us on Thursday 13 July.

The letter welcomes the opportunity on your part to provide more information on the position and design of the shelter. That being the case we would appreciate the precise location of the shelter on a site map in relation to our property at 4 Dickson Road. The design of the bus shelter would also be appreciated.

Also we seek clarification on the time frame to respond. Is the 14-day timeframe 14 working days from the receipt of the letter being 3 August 2023, or 14 days from the receipt of the letter being 27 July 2023?

Your response to our queries would be appreciated.

Yours sincerely
Bill & Wendy Flowerday (trustees of Milan Trust)

Thu 20/07/2023 4:39 PM

Tauranga Standard Shelter.pdf
Good morning Bill and Wendy,

Many thanks for getting in touch to discuss the proposed bus shelter further. We understand there is a postage delay and happy to accept responses up until 3rd August 2023. The proposed shelter is in fact adjacent to #2 Dickson Road, but that parcel of land appears to be part of your property addressed as #4 Dickson Road. Attached is an indicative image of the bus shelter location for your reference.

A standard sized shelter is proposed. The shelter design document with measurements is also attached.

Resolution to exclude the public

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
<p>?? – Bus shelter objections deliberations</p>	<p>To enable the Panel to deliberate in private on the objections heard.</p>	<p>s48(1)(d) That the exclusion of the public from the whole or the relevant part of the proceedings of the meeting is necessary to enable the Council to deliberate in private on its decision or recommendation in any proceedings before a Council where the Council is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.</p>

5 CLOSING KARAKIA