



AGENDA

Regulatory Hearings Panel meeting Monday, 22 April 2024

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

Date: Monday, 22 April 2024

Time: 1pm

Location: Tauranga City Council
Ground Floor Meeting Rooms 1 & 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 CONFIRMATION OF MINUTES

4.1 Minutes of the Regulatory Hearings Panel meeting held on 12 July 2023

File Number: A15819664

Author: Anahera Dinsdale, Acting Team Leader: Governance Services

Authoriser: Anahera Dinsdale, Acting Team Leader: Governance Services

RECOMMENDATIONS

That the Minutes of the Regulatory Hearings Panel meeting held on 12 July 2023 be confirmed as a true and correct record.

ATTACHMENTS

1. Minutes of the Regulatory Hearings Panel meeting held on 12 July 2023



MINUTES

Regulatory Hearings Panel meeting

Wednesday, 12 July 2023

Tuesday, 5 September 2023

Thursday, 7 September 2023

and

Tuesday, 24 October 2023

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**MINUTES OF TAURANGA CITY COUNCIL
REGULATORY HEARINGS PANEL MEETING
HELD AT THE BAY OF PLENTY REGIONAL COUNCIL CHAMBERS,
REGIONAL HOUSE, 1 ELIZABETH STREET, TAURANGA
ON WEDNESDAY, 12 JULY 2023 AT 9AM**

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

IN ATTENDANCE: Brent Lincoln (Team Leader: Animal Services), Coral Hair (Manager: Democracy & Governance Services), Anahera Dinsdale (Governance Advisor)

1 OPENING KARAKIA

Mr Puhirake Ihaka opened the meeting with a karakia

Mr Dylan Anderson, Ms Dayna Osborne, Mr Tumanako Farrell and Mrs Gurmeet Johal are all unavailable to attend today.

2 APOLOGIES

Nil

3 CONFIRMATION OF MINUTES

4.1 Minutes of the Regulatory Hearings Panel meeting held on 4 May 2023

COMMITTEE RESOLUTION RHP4/23/1

Moved: Mr Alan Tate

Seconded: Mr Terry Molloy

That the minutes of the Regulatory Hearings Panel meeting held on 4 May 2023 be confirmed as a true and correct record.

CARRIED

4 DECLARATION OF CONFLICTS OF INTEREST

Nil

At 9.02am the meeting adjourned.

At 10.31am the meeting reconvened.

5 BUSINESS

5.2 Objection to Disqualification as Dog owner - Britney Eagle

Staff Brent Lincoln, Team Leader: Animal Services

Objector Britney Eagle

Key points staff

- Staff provided a brief overview of the report and recommendation to the Regulatory Hearings Panel (Panel).

In response to questions

- Ms Eagle had been served notice of disqualification as a dog owner. The Dog Control Act 1996 required that after the service of three notices a dog owner be served notice of disqualification as a dog owner.
- There had been a number of complaints against Ms Eagle in relation to two separate dogs, Saydee and Polo.
- Since July 2021, complaints were received by the Tauranga City Council (Council) that included rushing and aggressive behaviour by Saydee and Polo in public places.
- Tauranga City Council Animal Control Officers (Officers) had issued written warnings and spoken to Ms Eagle regarding the behaviour of her dogs and her requirements as a dog owner to have control of her dogs at all times and not allow them to roam.

Key points objector

- Ms Eagle informed the Panel that she was aware of only one event of her dogs rushing a person and considered that it did not include both dogs as was put forward in the complaint and subsequent notice of offence.
- Polo was a loved family member.
- Saydee had been an intelligent dog and Ms Eagle expressed that she had done all she could to contain Saydee to her property.
- Both dogs were people and children orientated, and had not displayed aggression in the home.
- Saydee was removed from Ms Eagles care when she was not at home.
- Ms Eagle felt that Polo had been punished for Saydee's actions.
- Polo had been in her care since birth. Polo was contained in a 4 metre x 4 metre fully fenced commercial kennel for six months.
- Polo had been impounded by the Tauranga City Council.
- Ms Eagle raised concerns to the Panel that both her family and Polo had experienced emotional distress by not all being present at the family home.
- Ms Eagle believed that there were other dogs resident on her street that looked like her dogs and requested that physical evidence be provided to prove that her dogs had committed the offences in question.
- The dogs had provided extra safety and security for Ms Eagle and her children when they were at home.
- Ms Eagle had paid all outstanding pound and registration fees and subsequently had found Polo accommodation outside of her residence.
- If she had been given another opportunity, Ms Eagle would take extra precautions and more care of Polo.

In response to questions

- Polo was a Neapolitan Mastiff cross breed however, Polo was only of knee height so not the typical size and weight of a Neapolitan Mastiff.

- Ms Eagle had housed Polo in Paeroa with relations since May 2023, when she had been served notice of disqualification as a dog owner.
- Ms Eagle owned the property.
- The use of the 4 metre x 4 metre fully fenced commercial kennel, two padlocks and a chain had worked to keep Polo contained to the property.
- Polo would be contained at the property and kept on the chain, unless he was fully supervised.
- Ms Eagle considered that the property was of a decent size. The compound had been estimated as roughly the size of a two bedroom cabin. The compound construction was of wood with chicken wire at the top of the fence.
- The property had two layers of full fencing at top and bottom.
- Ms Eagle felt that the measures provided for by the kennel for Polo, provided 100% security and containment for Polo at the property.
- Of the 16 complaints contained in the schedule of complaints Ms Eagle requested that physical evidence be produced to substantiate the complaints.
- The rushing complaints were disputed and Ms Eagle had apologised to the neighbour concerned for the one event she was aware of.
- The property was located at the bottom of the hill and it was noted that a school located 14 houses up the hill. She would ensure that the dog Polo was kept at the property during school hours.
- Ms Eagle again requested that physical evidence of complaint and offences for 24 January 2023 be provided to her. Ms Eagle noted that the Welcome Bay Community Facebook page had over 70 posts that related to roaming dogs, she believed none of which were in relation to Polo.
- There was someone present at the property when Ms Eagle was at work. Ms Eagle had been puzzled by the five complaints over a nine day period and felt that there would need to be physical evidence to prove the offences.
- The Panel was advised that Saydee had been impounded by Animal Services Officers through use of a dog trap baited with meat (trap) and that a trap had also been put placed for Polo.

Council right of reply

- Tauranga City Council Officers had been offered a right of reply to the submission given by Ms Eagle.
- Council received complaints from four different people of three instances of a roaming dog. On investigation of those complaints, and based on subsequent investigation by Officers, Polo had been identified as the dog roaming in the received complaints.
- Officers investigative process included recontacting the complainants to substantiate their report and that process had identified that Polo was the dog in question without doubt.
- Some photographic evidence had been provided but not from all complainants.
- Traps were used by Officers to safely capture roaming dogs in instances where Officers could not retrieve/contain the dog safely.

6 PUBLIC EXCLUDED SESSION

Resolution to exclude the public

COMMITTEE RESOLUTION RHP4/23/2

Moved: Mrs Mary Dillon
Seconded: Mr Terry Molloy

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

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

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
6.2 Deliberations - Objection to disqualification as dog owner - Britney Eagle	To enable the Panel to deliberate in private on the objections heard.	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/Committee to deliberate in private on its decision or recommendation in any proceedings where the local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.

CARRIED

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

5 BUSINESS *(continued)*

5.2 Objection to Disqualification as Dog owner - Britney Eagle *(continued)*

COMMITTEE RESOLUTION RHP4/23/3

Moved: Mr Alan Tate

Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Disqualification as Dog owner - Britney Eagle".
- (b) Upholds the disqualification of Britney Eagle as a dog owner for a period of three years from the date of disqualification from 8 February 2023.
- (c) Notes that Ms Eagle is entitled to apply to have the disqualification lifted after 12 months from the date of this hearing (after 12 July 2024) as provided for in section 26(2) of the Dog Control Act 1996 which states "*An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification*".

Reasons for decision:

1. The Panel gave weight to the evidence presented by the staff and their recommendation that the disqualification of Ms Eagle as a dog owner be upheld.
2. The Panel took into account the recidivist nature of the offending of both dogs owned by Ms Eagle.
3. The Panel acknowledged that the Council has a duty of care to ensure the dog Polo does not pose a threat to people.
4. The Panel had regard to the steps taken by Ms Eagle to prevent further offences, and mitigate the risk posed by the dog Polo roaming or rushing at people. The Panel was not satisfied that these measures had prevented the dog Polo from escaping the property or would guarantee this from happening in the future.
5. The Panel agreed that a disqualification for three years was appropriate for the repeat infringement offences and noted that Ms Eagle is entitled to apply to have the disqualification lifted within 12 months of the date of this hearing as set out in section 26(2) of the Dog Control Act 1996.
6. The Panel heard from Ms Eagle that Polo was a beloved family pet and acknowledged the hurt she was experiencing from being separated from Polo. The Panel was pleased to hear that Polo was accommodated by a family member and Ms Eagle visited Polo regularly.

CARRIED

At 11.57am the meeting adjourned to a later date.

Continuation of meeting – Tuesday, 5 September 2023 at 12:30 pm in the Ground Floor Meeting Room, Tauranga City Council, 306 Cameron Road, Tauranga**PRESENT:** Mrs Mary Dillon (Chairperson), Mr Puhirake Ihaka, Mr Terry Molloy**IN ATTENDANCE:** Gary Dixon (Acting Team Leader: Animal Services), Sarah Drummond (Governance Advisor)

5 BUSINESS *(continued)*

5.4 Objection to menacing classification - Gurmeet Johal

Staff Gary Dixon, Acting Team Leader: Animal Services

- Mrs Johal attended the meeting on line.
- The Panel Chairperson Mary Dillon, opened the meeting with a brief introduction to Mrs Johal of the Panel members present. The Chairperson then advised Mrs Johal of the process that would be followed for the hearing including that the hearing was a public process and while not being livestreamed was being recorded and this could be requested.

Tauranga City Council

- Staff took the report as read and had no further comments to make.

Objector – Gurmeet Johal

- Mrs Johal opened her submission and thanked the Panel for their patience and willingness to reschedule the hearing .
- The dog ‘Tiger’ was a beloved family pet who had been with Mrs Johal and her family. Tiger was considered another ‘Child’ by the whole family, as such, Tiger went all places that the family did, including on holiday.
- Mrs Johal, notes that the family had wanted to show Tiger but that was now at risk if Tiger received a menacing classification.
- Tiger had been enrolled and attended behaviour training since he had been with the family and regardless of the outcome of the hearing this would be continued, Mrs Johal advised the Panel that Tiger was to commence the next round of training before the end of the year.
- Tiger was a young dog and still full of energy, he was walked on a daily if not twice daily basis.
- In Mrs Johal’s opinion the bite wound had occurred when the two dogs greeted each other, as their leads became entangled and Tiger pulled away his open mouth has caused the wound to the much smaller dog. At the time of the incident Mrs Johal was unaware of the full extent of the wound. The Panel sought clarity from Mrs Johal on why she had been taken to the small claims court for payment of vet fees.
- Mrs Johal had paid her fine to the Council and had assumed that this also included the payment of vet fees. At the time of this Mrs Johal and her family were in the process of moving (to a section and area that provided better fencing for Tiger) and had suffered a personal bereavement at the loss of her Mother.
- The Panel offered their sincere condolences to Mrs Johal for her loss.
- Mrs Johal noted that she had only been aware of one formal complaint against Tiger.
- Animal Services Staff confirmed that the four other possible offences, had not been formally registered or a complaint laid at Council and were therefore considered hearsay and were not a matter for the Panel’s consideration.
- Mrs Johal confirmed for the Panel, that Tiger had now been neutered.
- Tiger would only be walked on a short lead, and never walked by children.

Right of Reply – Tauranga City Council,

- Staff confirmed that there had been no formal complaints against Tiger since the incident referred to and confirmed the full definition of a short lead that was appropriate for a dog of Tiger’s size.

Mrs Johal and Mr Dixon left the meeting and the Panel considered the evidence of staff and Mrs Johal.

COMMITTEE RESOLUTION RHP4/23/4

Moved: Mr Terry Molloy

Seconded: Mrs Mary Dillon

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Menacing Classification – Gurmeet Johal".
- (b) Uphold the classification of menacing for the dog 'Tiger'.
- (c) Directs the Council to review this classification in six months (March 2024) and if satisfied that no further incidents have occurred, remove the classification.
- (d) Notes that Mrs Johal is entitled to apply to have the disqualification lifted after 12 months from the date of this hearing as provided for in section 26(2) of the Dog Control Act 1996 which states "An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification".

Reason for decision:

1. The Regulatory Hearings Panel (Panel) weighed up the evidence presented by the staff, victims, and Mrs Johal both before and at the Hearing.
2. The Panel heard that the victim in this incident, when providing their statement, advised staff this there had been four other incidents of Tiger rushing and barking aggressively. As these incidents were not subject to a formal complaint/report to Council, the Panel considered this was hearsay evidence and as such no weight could be given to them and they did not form part the decision.
3. The Panel accepted and had regard to the following evidence presented by Mrs Johal:
 - (a) That Mrs Johal had moved home since this incident occurred and double fencing and self-closing mechanisms had been installed on the gated area of the property.
 - (b) As per the Dog Control Act 1996 there was free access to the front door of the property.
 - (c) Tiger had now been neutered.
 - (d) Tiger was no longer walked on a long/retractable lead and only walked by an adult.
 - (e) There had been extensive effort in time and consistent intensive training of Tiger to prevent any further incidents occurring.
 - (f) This was the first and only incident they were aware of that involved Tiger and his training and behavioural work would be continued regardless of the outcome of this hearing.
 - (g) Tiger was a loved family member and like any other family member travelled with the Family and was part of everyday family life.
 - (h) Acknowledged that civil action had been undertaken by the victim to recover veterinary costs. The non-payment of those costs was in part due to a misunderstanding by Mrs Johal of her responsibilities as a dog owner and where costs lie for this offence. The disputed costs had also occurred at the same time as a significant bereavement for Mrs Johal and her family.
4. The Panel gave regard to the intensive and ongoing training Mrs. Johal and her family

had undertaken with Tiger to prevent further offences and mitigate the risk of Tiger rushing at people and other dogs. The Panel was satisfied that these measures had prevented the dog Tiger being involved in any further incidents.

5. The Panel heard from Mrs. Johal that she was concerned about the impact on their ability to show Tiger if the classification was upheld. The Panel noted that this was not a matter that could be considered by the Panel in their decision making.
6. The Panel acknowledged that the Council has a duty of care to ensure the dog did not pose a threat to people or other animals and the Panel considered there was a low probability of further incidents occurring and was satisfied that Tiger did not pose a threat to people or other animals.
7. The Panel agreed that should there be no further offences notified to the Council within the six month period, that at the end of the six months Council would reassess the classification of Tiger as a menacing dog and the classification could be removed. However, should there be any enforceable incidents involving Tiger during the six-month period the classification will stand and be enforced.

Advisory note of the hearings panel

8. The Panel have directed that an advisory note be added to this decision. The Panel strongly recommends that Tiger is only walked by an adult on an appropriate short lead (not extendable and or light weight) that was also strong enough to hold a dog of Tiger's weight and strength.

CARRIED

5.3 Objection to Disqualification as Dog Owner - Tumanako Farrell

Staff Gary Dixon, Acting Team Leader: Animal Services

Objector Tumanako Farrell

Key points staff

- The report was taken as read and the meeting moved to the objection and further submissions of Mr Farrell.

Key points objector

- Mr Farrell provided the Panel with the history of how he had come to own Harley and Frankie Girl, through a period of uncertainty and severe ill health and the large role they had played in allowing him to return to full health.
- That was in part due to the uncertainty of living arrangements during the Covid 19 Pandemic border restrictions that meant he had been unable to return to his former country of residence and occupation, and suffering a trauma that had led to Mr Farrell not being as aware of his dogs movements on and off the property.
- After receiving ongoing treatment and as he returned to a more stable living environment Mr Farrell became aware of the issues of roaming by Frankie Girl and Harley.
- Mr Farrell acknowledged over this period Frankie Girl and Harley had been roaming and Mr Farrell had realised that their ability to leave the property unnoticed had been exacerbated by the open village area that he lived in, which had not provided for Frankie Girl and Harley to be contained to the property.
- Once he had been made aware of the issues of roaming of by Frankie Girl and Harley, Mr Farrell had been shocked that 13 formal complaints had been substantiated and recorded by Council.
- Ongoing from the first contact with Animal Services Officers, Mr Farrell had completed work on the fencing and gates that strengthened the fencing at his property, and locks to access gates had been installed along with signage that had secured his property against an accidental gate or other egress point.
- The Panel were provided with appropriate medical statements from Mr Farrell. The medical certificate provided to the Panel acknowledged that the dogs were now not only companion animals but were service and support companion animals, that allowed Mr Farrell to continue the regaining of his health and retained employment.
- After a difficult period in his life and after caring for Frankie Girl and Harley Mr Farrell wished to gain a kennel licence and would look to open or operate an animal rescue centre. If the notice was upheld there would be a serious delay or inability to open this type of centre. Mr Farrell felt that he had complied with all directives from Animal Services Officers and since the installation of stronger fencing and locks on gates, there had been no complaints regarding Frankie Girl and Harley.

Council right of reply

- The Officer was given the opportunity of a right of reply to the submission of Mr Farrell.
- The Officer confirmed that there had been no new complaints against Frankie Girl and Harley and they were satisfied with the measures taken by Mr Farrell.

Supporting documents provided by Mr Farrell are not available under sections s7(2) Health and safety of members public and s7(2)(e) privacy of persons.

6 PUBLIC EXCLUDED SESSION**Resolution to exclude the public****COMMITTEE RESOLUTION RHP4/23/5**

Moved: Mr Terry Molloy

Seconded: Mrs Mary Dillon

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
6.3 Deliberations - Objection to disqualification as dog owner - Tumanako Farrell	To enable the Panel to deliberate in private on the objections heard.	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/Committee to deliberate in private on its decision or recommendation in any proceedings where the local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.

CARRIED

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

5 BUSINESS (continued)

5.3 Objection to Disqualification as Dog Owner - Tumanako Farrell *(continued)***COMMITTEE RESOLUTION RHP4/23/6**

Moved: Mrs Mary Dillon

Seconded: Mr Terry Molloy

The decision of the Regulatory Hearings Panel is:

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Disqualification as Dog Owner - Tumanako Farrell".
- (b) Sets the date of disqualification to six months after the objection was heard. Being the 7 March 2024.
- (c) Directs the Council to review the disqualification in six months (7 March 2024) and if the Council is satisfied that no further incidents have occurred, directs the Council to revoke the disqualification notification.
- (d) Notes that Mr. Farrell is entitled to apply to have the disqualification lifted after six months from the date of this hearing (after March 2024) as provided for in section 26(2) of the Dog Control Act 1996 which states "An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification".

Reason for decision:

1. The Regulatory Hearings Panel (the Panel) weighed up the evidence from both staff and Mr Farrell and on balance determined that a disqualification for three years without amendment as recommended by staff was not appropriate and agreed that an appropriate course of action was to delay the date for the disqualification by six months.
2. The Panel accepted and had regard to the evidence and recommendations of staff that the repeat nature of the offending by Mr Farrell (who had received three qualifying infringements), together with numerous impounds, warranted a disqualification as a dog owner and heard that disqualification for a three-year period was normal practice.
3. The Panel accepted and had regard to the following evidence presented by Mr Farrell
 - (a) Evidence from a qualified medical professional that both dogs were support animals for Mr Farrell.
 - (b) Mr Farrell's dogs were his family, and, after a significant event in his life had become not only companion animals but support and assistance animals.
 - (c) Since being served with the disqualification notice Mr Farrell has made changes to the fencing of his property.
 - (d) No further incidents of roaming have occurred.
4. The Panel was satisfied that the measures taken by Mr Farrell had prevented the dogs from escaping the property.
5. The Panel commended Mr Farrell for his courage and the dignity in appearing before them and presenting his evidence. The Panel acknowledged the importance in his life of the dogs Harley and Frankie Girl.
6. The Panel acknowledged that the Council has a duty of care to ensure the dogs did not pose a threat to people or other animals and the Panel was satisfied that the dogs Harley and Frankie Girl did not pose a threat to people or other animals.

7. The Panel considered the option of extending the date of commencement of disqualification. The Panel could not consider an option to classify the owner as a probationary owner as the Council did not run a probationary owner scheme.
8. The Panel agreed that should there be no further incidents of roaming, or other offences notified to them in that period, that at the end of the six months Mr Farrell could apply for the disqualification as a dog owner to be removed. However, should there be any issues during the six-month period the disqualification as a dog owner would stand and be enforced.

CARRIED

The meeting adjourned at 2:30pm.

Continuation of meeting – Thursday, 7 September 2023 at 10am in the Ground Floor Meeting Room, Tauranga City Council, 306 Cameron Road, Tauranga

PRESENT: Mrs Mary Dillon (Chairperson) and Mr Terry Molloy

IN ATTENDANCE: Gary Dixon (Acting Team Leader: Animal Services), Anahera Dinsdale (Governance Advisor), Shaleen Narayan (Team Leader: Governance Services)

5 BUSINESS *(continued)*

5.5 Objection to Menacing Classification - Dayna Osborne *(continued)*

Staff Brent Lincoln, Team Leader: Animal Services

Key points

- Ms Dayna Osborne had informed the Governance Advisor Ms Dinsdale that she would not be able to attend the hearing as she had a prior commitment
- The Panel agreed to leave the report on the table to be heard at a later date when Ms Osborne could attend.

5.1 Objection to Disqualification as dog owner - Dylan Anderson

Staff Gary Dixon, Acting Team Leader: Animal Services

- Mr Anderson had advised staff he was unable to attend the meeting of 12 July 2023.
- Governance and Animal Services staff confirmed that Mr Anderson had been served notice of the rescheduled hearing and no further correspondence from Mr Anderson had been received on the matter.
- The Panel considered the matter of Mr Anderson on the papers before them and agreed that they had given weight to the evidence of staff provided in their report to the Panel.
- After determining that there were no other factors that the Panel needed to discuss or consider,

the Panel would not need to move into public excluded session for deliberation on the matter.

COMMITTEE RESOLUTION RHP4/23/7

Moved: Mrs Mary Dillon

Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel:

- (a) Receives the report Objection to the Disqualification as a Dog Owner – Dylan Anderson.
- (b) Upholds the disqualification of Dylan Anderson as a dog owner.
- (c) Notes that Mr Anderson is entitled to apply to have the disqualification lifted after 12 months from the date of this hearing (after July 2024) as provided for in section 26(2) of the Dog Control Act 1996 which states “*An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification*”.

Reason for decision:

1. Three hearing dates were set for the Regulatory Hearings Panel to consider Mr. Anderson's objection.
2. Mr Anderson did not attend the first hearing due to illness. A second hearing date was set, at which time Mr. Anderson advised the Governance Advisor that he was no longer residing in Tauranga and that he was no longer the registered owner of the dog Chico, who had been rehomed in the Waikato area.
3. A third hearing date was set, and Mr Anderson was advised by email that his objection to disqualification as a dog owner would still be heard and decided by the Regulatory Hearings Panel, and that if Mr. Anderson did not attend the hearing the matter would be 'decided on the papers' already before the Regulatory Hearings Panel (the Panel).
4. Mr. Anderson was offered the ability to attend the hearing remotely, either through an online meeting or a phone conference, and that he could still attend in person. Mr. Anderson was advised that he could submit further written evidence for the Panel to consider.
5. Mr Anderson did not exercise his right to attend the hearing or provide any further mitigating material for the Panel to consider.
6. Without further evidence before them to consider, the Panel gave weight to the staff report and recommendation and resolved to uphold the notice of disqualification as a dog owner served on Mr Anderson.

CARRIED

The meeting adjourned at 11:00 am.

Continuation of meeting – Tuesday, 24 October 2023 at 11.30am in the Ground Floor Meeting Room, Tauranga City Council, 306 Cameron Road, Tauranga

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

IN ATTENDANCE: Gary Dixon (Animal Services Officer), Anahera Dinsdale (Governance Advisor), Shaleen Narayan (Team Leader: Governance Services)

OPENING KARAKIA

Mr Puhirake Ihaka opened the meeting with a karakia.

5 BUSINESS *(continued)*

5.5 Objection to Menacing Classification - Dayna Osborne *(continued)*

Staff Gary Dixon (Animal Services Officer)

Objector Dayna Osborne was present at the meeting.

Tauranga City Council

Key points

- Staff Gary Dixon provided a brief overview of the report and recommendation to the Regulatory Hearings Panel (the Panel)
- Spud, a 6-year-old male American Bull Dog Cross had no adverse history apart from barking with Council until he bit a person on 27 March 2023. Victim had a significant bite to her hand and couldn't work for a week.
- Legally the owner of a dog has to always take into account their dog's behaviour at all times.
- Dispute was that the victim did or did not pat the dog, with the owner stating the victim did pat the dog, however, in terms of the law it does not make any difference.
- The dog was classified as dangerous or menacing, Section 62 of the Dog Control Act 1996 (the Act) has the same requirements as a menacing classification but also required the owner to control the dog by way of a leash and muzzled when in public.
- There was potential for the incident to happen again, therefore it was the owner's responsibility to take measures to ensure the dog did not bite.

In response to questions

- The incident took a bit of time to reach the Panel and this was due to Ms Osborne's work commitments.
- Section 62 of the Act applied automatically while an application for the objection was made. . Although the law applied to muzzling outside the property it was the responsibility of the owner to take care of the dog should anyone visit the owner's property.
- The property where the incident happened was not fenced currently.
- In general a fearful dog would hold back if people pat them but can only hold for a certain period of time, therefore if someone was entering an unfenced property the owner needed to take responsibility to ensure that person was safe.

Objector – Dayna Osborne

Key points

- Ms Osborne had no idea someone was coming to her property, Max her partner had made the arrangement, and she was upstairs at the time of the incident. Ms Osborne heard something and came downstairs and saw the marks on the victim.

- Spud was a shy dog naturally, unfortunately when people touch him he doesn't like it and runs away. Ms Osborne had moved from Wellington and had moved houses here in Tauranga. People started harrasing Spud on several occassions, like patting him.
- Ms Osborne has been working with Spud on his behaviour, he has had two knee surgeries.
- Ms Osborne had spoken to Animal Control Services and they advised that nothing can be done with the people, it's more about managing Spud.
- Spud had been on a muzzle and lead, except when on the beach.
- Normally if someone was coming to her house, the dog would be on a muzzle and after sometime the dog gets used to the situtaion. During this incident, Ms Osborne was not aware that someone was coming.
- Ms Osborne took full responsibilty for what had happened and had taken all the precautions with Spud to date.

In response to questions

- The property was not fenced and does not have a gate either, however cameras were on the property and Spud was trained to stay at home.
- The victim's medical bills has been paid by Ms Osborne.
- Before this incident Spud was always on a leash and now he was also muzzled when Ms Osborne takes him out of the property.
- Ms Osborne had been trying to work with the owners to have a fence installed and there was a temporary fence on the deck.
- Spud wears a collar and there were signs that state "Do not pat dog and stay away".
- Spud was under voice control as well when in the house or at the beach.
- Spud was microchipped and registered.
- Ms Osborne was told by Animal Control Services that she was going to get a warning and not a menancing classification and was confused when she had received a letter.
- Ms Osborne'spartner had been made well aware that Spud was her responsibilty and that an incident such as this should not happen again.

The Panel acknowledged that Ms Osborne was taking responsibility as a dog owner and training Spud well.

6 PUBLIC EXCLUDED SESSION *(continued)*

Resolution to exclude the public

COMMITTEE RESOLUTION RHP4/23/8

Moved: Mrs Mary Dillon
Seconded: Mr Terry Molloy

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

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

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
6.2 Deliberations - Objection to menacing classification - Dayna Osborne	To enable the Panel to deliberate in private on the objections heard.	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/Committee to deliberate in private on its decision or recommendation in any proceedings where the local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.

CARRIED

The meeting resumed in the public session at 12.12pm.

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

5 BUSINESS *(continued)*

5.5 Objection to Menacing Classification - Dayna Osborne *(continued)*

COMMITTEE RESOLUTION RHP4/23/9

Moved: Mrs Mary Dillon

Seconded: Mr Terry Molloy

- (a) Receives the report "Objection to Menacing Classification – Dayna Osborne".
- (b) Upholds the menacing classification for the dog Spud.
- (c) Notes that Ms Dayna Osborne is entitled to apply to have the disqualification lifted after 12 months from the date of this hearing (after 24 October 2024) as provided for in section 26(2) of the Dog Control Act 1996 which states *"An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification"*.

Reasons for decision:

1. The Regulatory Hearings Panel (the Panel) weighed up the evidence presented by staff and Ms Osborne at the hearing.
2. The Panel accepted and had regard to the following evidence presented by Ms Osborne:
 - (a) Ms Osborne accepted full responsibility for the incident, had paid for the medical bills of the victim and had taken a number of precautions to ensure that a further incident did not happen.
 - (b) this was the first and only incident involving Spud that had come to the attention of Animal Control Services and in other respects Ms Osborne was considered a responsible dog owner.
 - (c) Spud was muzzled at home if Ms Osborne was aware that someone was coming to her house.
 - (d) Spud was under voice control at home.
 - (e) Spud was always on a leash and now muzzled when taken out of the property.
 - (f) Signage was installed to warn people not to pat Spud and to stay away from the dog.
 - (g) A temporary fence on the deck had been installed.
3. The Panel gave regard to the ongoing behavioural training Ms Osborne had undertaken with Spud to prevent further offences and that Spud was muzzled to mitigate the risk of Spud biting people coming onto the property.
4. The Panel acknowledged that the Council has a duty of care to ensure the dog did not pose a threat to people or other animals and the Panel considered there was a low probability of further incidents occurring and was satisfied that with the precautions taken by Ms Osborne Spud did not pose a threat to people or other animals.
5. The Panel accepted the evidence presented by staff and upheld the classification of Spud as a menacing dog with the muzzling requirements in both public and private spaces to prevent the dog from biting.
6. The Panel agreed that should there be no further offences notified to the Council within a 12 month period, that at the end of the 12 months Council would reassess the classification of Spud as a menacing dog and the classification could be moved. However, should there be any enforceable incidents involving Spud during the 12

months period the classification will stand and be enforced.

CARRIED

CLOSING KARAKIA

Mr Puhirake Ihaka closed the meeting with a karakia.

The meeting closed at 12.15pm.

The minutes of this meeting were confirmed as a true and correct record at the Regulatory Hearings Panel meeting held on 22 April 2024.

.....
Mary Dillon
CHAIRPERSON

UNCONFIRMED

4.2 Minutes of the Regulatory Hearings Panel meeting held on 13 July 2023

File Number: A15819684

Author: Anahera Dinsdale, Acting Team Leader: Governance Services

Authoriser: Anahera Dinsdale, Acting Team Leader: Governance Services

RECOMMENDATIONS

That the Minutes of the Regulatory Hearings Panel meeting held on 13 July 2023 be confirmed as a true and correct record.

ATTACHMENTS

- 1. Minutes of the Regulatory Hearings Panel meeting held on 13 July 2023**



MINUTES

Regulatory Hearings Panel meeting
Thursday, 13 July 2023,
Tuesday, 5 September 2023
and
Thursday, 7 September 2023

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**MINUTES OF TAURANGA CITY COUNCIL
REGULATORY HEARINGS PANEL MEETING
HELD AT THE BAY OF PLENTY REGIONAL COUNCIL CHAMBERS,
REGIONAL HOUSE, 1 ELIZABETH STREET, TAURANGA
ON THURSDAY, 13 JULY 2023 AT 9AM**

PRESENT: Ms Mary Dillon (Chairperson), Mr Puhirake Ihaka, Mr Terry Molloy, Mr Alan Tate

IN ATTENDANCE: Brent Lincoln (Team Leader: Animal Services), Coral Hair (Manager: Democracy & Governance Services), Anahera Dinsdale (Governance Advisor)

1 OPENING KARAKIA

Mr Puhirake Ihaka opened the meeting with a karakia.

2 APOLOGIES

Nil

3 DECLARATION OF CONFLICTS OF INTEREST

Mr Puhirake Ihaka declared that his late wife and Ms Batten had been friends and Ms Batten had visited Mr Ihaka's home on many occasions.

Given that conflict of interest Mr Ihaka would not take part in any discussion or decision making for Item 4.2.

4 BUSINESS

4.1 Objection to retention of impounded dog - Vance Skudder

Staff Brent Lincoln, Team Leader: Animal Services

External Vance Skudder, Objector
Yvonne Skudder (into meeting at 9:40 am)

The Regulatory Hearings Panel (the Panel) Chair Mary Dillon welcomed parties to the meeting and gave the Objector a brief explanation of how the hearing would progress and run.

A copy of tabled document/s for this item can be viewed on Tauranga City Council's website in the Minutes Attachments document for this meeting.

Key Points Tauranga City Council (Council)

The Officer provided a brief summary of the report to the Panel noting as follows:

- Officers alleged that two dogs registered to Mr Vance Skudder (The Objector), Charlie and Sadie, had roamed on three separate occasions between 19 April and 4 May 2023 and that during the instances of roaming Charlie and Sadie had attacked and killed five cats.
- During the investigations of the cat attacks, and based on identification of the dogs by witnesses, staff visited the residence of Mr Skudder and spoke to his wife Yvonne, and advised

that their dogs were being investigated. The dogs at that time were registered with the Western Bay of Plenty District Council.

- Three cats were killed on 4 May 2023 all around Twelfth and Thirteenth Avenue. Officers undertook an investigation of these alleged offences that included analysing CCTV footage that showed two dogs crossing Cameron Road at the intersection with Thirteenth Avenue at 4:30 am on 4 May 2023 and the identify of those dogs was confirmed as Charlie and Sadie.
- Charlie was found roaming at 6:30 am and taken to a vet as he had fresh blood around his mouth. The vet confirmed that the blood did not come from Charlie and he had no injuries. Charlie was impounded and Sadie was seen running along Cameron Road and turning in towards the hospital.
- Officers subsequently executed a search warrant on 29 May 2023 to seize Sadie. Mr Skudder said Sadie was no longer at the property but she was safe, and declined to be interviewed about the allegations his dogs had attacked cats.
- DNA swabs were taken from the deceased cats and from Charlie to assist in identifying who attacked the cats. While Charlie was indicated, there were two dogs DNA involved, and the results of the DNA analysis were inconclusive in some circumstances. The Officer advised that he required a deeper understanding of the DNA analysis and until that was completed the DNA analysis sat on the side and he was not relying on that to support the case.
- A review of the circumstances of the attacks on the cats led Council to consider a prosecution and decided to retain Charlie in the pound pending the outcome of the decision to prosecute.
- Officers expressed concerned at the high risk posed to other domestic animals, if the dog Charlie were to be released, although they did not see Charlie as posing a risk to people.
- Mr Skudder has objected to the retention of Charlie in the pound.
- It was not uncommon for roaming dogs to travel a larger than expected distance from their residence.
- A photo of Charlie, found on the file, was supplied to the Panel and Mr Skudder.

In response to questions – Tauranga City Council

- The Officer outlined the process to determine prosecution and stated that prosecution dogs were kept in the pound anywhere from 3 months to 2 years. If a conviction was successful then dogs were usually euthanised.
- Mr Skudder had exercised his right as an individual and answered no questions.
- While the DNA reports had not been conclusive, Council had exercised its right to detain Charlie. If there was a second sample from Sadie it may have made it clearer in the unidentified DNA samples.
- It was noted that there was concern with the behaviour exhibited by Mr Skudder, that led Officers to believe that should Charlie be returned to Mr Skudder that the dog would be removed to another location and the Council would not be able to locate Charlie again.
- The Officer was not concerned about the threat to people from Charlie, it was the threat to domestic animals that was of concern. Since Charlie had been impounded and Sadie removed from the property, there had been no further reports of cats being attacked or killed.
- A dog could jump over a 1.8 m high fence and a gate was only as good as the last person who went through the gate and secured it. Officers had not visited the residence as had been requested by Mr Skudder. Should the Panel be of a mind that a residence visit was required, they could direct Officers to complete a residence visit. Staff had no grounds to go on the property unless Mr Skudder gave his approval.
- The Officer advised the Panel that dogs would behave in a different manner when in the presence of their owner.

Objector - Vance Skudder

- Mr Skudder provided a brief summation to the Panel noting that:
 - Charlie had been with Mr Skudder for over 12 months and was a Vada rescue dog.
 - The dogs had been registered with the Western Bay of Plenty District Council as Mr Skudder travelled to Te Puke between 5:00 am and 6:00 pm most days.

- Charlie would be under supervision of Mr and Mrs Skudder on a farm and kiwifruit orchard. They were cats on the farm as well as neighbouring and feral cats and none of those cats had been attacked by Charlie.
- Mr Skudder sought that the Panel release Charlie and presented evidence that he had taken steps to increase the height of the fence at his Tauranga residence to a 1.8 metre fence and had an internal perimeter fence of 1.8 metre fence that surrounded the front of the house. When in the interior of his premises Charlie would sleep in the laundry room which had been fortified so that Charlie could not escape.
- Mr Skudder noted to the Panel that neighbouring cats to his property were still alive.
- Mr Skudder was happy for Council Officers to visit his home to ensure that the property was secure enough that Charlie would not escape.

In response to questions Mr Skudder

- The fence at Mr Skudder' property was previously a corrugated iron fence of 1.6 metres high.
- It was believed that Charlie escaped through a gate at the property that may have been left open when Mr Skudder left in the early hours of the morning.
- In response to questioning as to how he would ensure the gate would not be left open by visitors, he stated that the gate was difficult to open. Extreme measures could be taken by padlocking the gate shut if that would satisfy the Council.
- Mr Skudder had only become aware of Charlie roaming on 4 May 2023. He had searched for Charlie through areas of Tauranga that were common for dogs to roam and had searched areas of Tauranga that were well known to Charlie. He advised that this was an area he felt would be within the distance Charlie could travel. Mr Skudder then rang the Tauranga City Council and was advised that a dog of Charlie's description had not been impounded.
- Mr Skudder had sited the photo from the CCTV when the report was sent to him a couple of days ago and he advised that Charlie was not the dog in the CCTV footage.
- Mr Skudder advised that he was not prepared to take Sadie into the Council for DNA testing in case they retained Sadie in the pound until the end of the prosecution process. If there was a guarantee that Sadie would not be detained in the pound he may consider a DNA sample being provided.
- Mr Skudder felt that all correspondence had been one way from himself to the Council Officers. Mr Skudder had asked for his rights as a dog owner and not received any response i.e. rights to visit, rights for DNA to be taken. Mr Skudder clarified to the Panel that he had concerns over the poor communication he had received from Council and had laid a formal complaint with Council on the matter.
- Mr Skudder did not notice that Charlie and Sadie were missing on 4 May 2023 when he left the house for the gym and when he came home only Sadie was there and he started searching for Charlie.
- Mr Skudder intended to bring Sadie back to his property in the future.
- Mr Skudder stated that the photos provided by the staff were not those of his dogs and he could prove that.

The Chairperson noted that the identification of the dogs in the CCTV footage was a matter for the court and the Panel was not concerned with that today. Mr Skudder was advised that the photos of his dogs supplied at the hearing could be used by both parties at any prosecution going forward. Mr Skudder confirmed that he would supply the photos to the Panel.

- Mr Skudder provided photos of the dogs Charlie and Sadie. The first photo was Charlie and the alleged dog in the CCTV footage. The second photo was Sadie and the alleged dog in the CCTV footage. Mr Skudder advised that Sadie was black in colour.
- Mr Skudder advised the Panel that he knew his dogs and their temperaments. Charlie would not be the lead dog in the home environment. Charlie was a passive dog not a lead dog.
- An offer had been made by the animal rescue charity Vada's Angels, to house Charlie and remove him from the pound, should Mr Skudder's objection be declined on the grounds that his residence was deemed not acceptable to the Panel.

Attachments

- 1 Tabled item - Vance Skudder - photos of dogs Charlie and Sadie

Brent Lincoln, Team Leader: Animal Services left the meeting at 9.54am.

5 PUBLIC EXCLUDED SESSION**Resolution to exclude the public****COMMITTEE RESOLUTION RHP5/23/1**

Moved: Mr Alan Tate

Seconded: Mr Puhirake Ihaka

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 - Public Excluded minutes of the Regulatory Hearings Panel meeting held on 4 May 2023	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
5.2 - eliberations - Objection to retention of impounded dog - Vance Skudder	To enable the Panel to deliberate in private on the objections heard.	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/Committee to deliberate in private on its decision or recommendation in any proceedings where the local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.

CARRIED

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

BUSINESS *(continued)***4.1** **Objection to retention of impounded dog - Vance Skudder** *(continued)***COMMITTEE RESOLUTION RHP5/23/2**

Moved: Mr Terry Molloy

Seconded: Mr Puhirake Ihaka

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Retention of Impounded Dog - Vance Skudder".
- (b) Upholds the decision to hold the dog Charlie in the pound pending the outcome of any potential prosecution and court proceedings.
- (c) Recommends an alternative arrangement to release the dog Charlie into the custody of Vada Rescue pending the outcome of any potential prosecution and court proceedings, subject to the conditions of the arrangement being satisfactory to Tauranga City Council Animal Control Services and agreed to by Mr Skudder.

Reasons for decision:

7. The Regulatory Hearings Panel gave weight to the evidence presented by the staff and their recommendation to hold the dog Charlie in the pound pending the outcome of any potential prosecution and court proceedings.
8. The Panel recommends an alternative arrangement for the dog Charlie to be released to Vada if details of this arrangement can be satisfactorily agreed to by both the Council and Mr Skudder.
9. The Panel acknowledged that the Council has a duty of care to ensure that the dog Charlie does not potentially pose a threat to other domestic pet animals, namely cats, and noted that since Charlie had been impounded there had been no further cats reported attacked or killed in this area.
10. The Panel acknowledged that the dog Charlie posed no threat to people.
11. The scope of the Panel's decision related to the impounding of the dog and was not related to any potential future prosecution.

CARRIED

The meeting adjourned at 11:06 am.

Continuation of meeting – Tuesday, 5 September 2023 at 2:30 pm in the Ground Floor Meeting Room, Tauranga City Council, 306 Cameron Road, Tauranga

PRESENT: Mrs Mary Dillon (Chairperson), Mr Puhirake Ihaka, Mr Terry Molloy

IN ATTENDANCE: Gary Dixon (Acting Team Leader: Animal Services), Sarah Drummond (Governance Advisor)

4 BUSINESS *(continued)*

4.2 Objection from Katherine Batten opposing the menacing classification for her dog Patrick

Staff Gary Dixon, Acting Team Leader: Animal Services

External Ms Katherine Batten (also known as Christine Batten)
Mr Mark Beech, Legal Counsel for Ms Batten

Mr Puhirake Ihaka had previously declared that his late wife and Ms Batten had been friends and Ms Batten had visited Mr Ihaka's home on many occasions. Given that conflict of interest Mr Ihaka would not take part in any discussion or decision making for this objection.

The Regulatory Hearings Panel (the Panel) Chair Mary Dillon welcomed parties to the meeting and gave the Objector a brief explanation of how the hearing would progress and run.

Further statements of Ms Batten, a witness statement re: Patrick's temperament and a photograph of Patrick were tabled at the hearing and are attached to these minutes.

Tauranga City Council

- The Officer advised that the dog Patrick was off lead at the Carmichael Reserve and Patrick bit a jogger on the thigh as she ran past. The victim ended up with bruising and a puncture wound. Staff interviewed both parties and completed an attack rating form which rated the attack as serious to place a menacing classification on the dog Patrick.
- Ms Batten had raised a number of points of defence of the classification and the Officer addressed each of these. Although it may have been a passing bite, in effect it was an attack which had caused an injury. The injury was consistent with a bite rather than merely an impact.
- It was clear that Patrick was not under direct control of the owner as required by the bylaw, as in Ms Batten's own words stated "Patrick "bounced" up to the jogger and his head bashed into the jogger's hip".
- A one-off failure by an otherwise responsible owner to maintain effective control of a dog was not a defence, as set out in rulings by the Court of Appeal. However one of the considerations the Panel must take into account were any steps taken by the owner to prevent any future risk of the dog biting again.
- A number of endorsements for Patrick have been provided with the objection from a range of people who attest to the exuberant nature of Patrick and his general good demeanour and the work that he has undergone to bring him to the stage that he was at now.
- Patrick was an adult dog and because of his boisterous nature another similar incident could not be ruled out in the future if he was not controlled on a lead and muzzled when in public.
- Council had recorded no other complaint against Patrick or any other dog that Ms Batten has owned in the past 20 years.

Objector – Katherine Batten

- Mr Beech thanked the Panel for their patience in scheduling of this hearing to enable Ms Batten to be present. The Panel expressed to Ms Batten, they were glad to see her health improving.
- The report and pre-circulated evidence provided by Tauranga City Council Animal Services Officers, Ms Batten and her legal Counsel were taken as read.
- Mr Beech tabled an updated statement from the animal behaviourist.
- The evidence provided by Ms Batten and her witnesses showed that undue weight had been given to the behaviour matrix and scale used by Animal Control Officers that determined if any offence had occurred it would warrant classifying a dog as menacing or dangerous.
- Mr Beech provided detail to the Panel on how he and Ms Batten came to the conclusion that the assessment matrix was not the correct tool to use to make the assessment of the classification of Patrick as menacing, as it was a subjective tool. The seriousness was classified as 13, however his client did not accept it was an attack and there was sufficient doubt for the incident to be characterised as “rushing a person” and this would reduce the score.
- In terms of negligence, Mr Beech stated that the dogs were within Ms Batten’s sight, under voice control and able to be off leash in this area. The mere fact that an adverse event occurred was not considered negligence on his client’s behalf. The dogs were under Ms Batten’s control and were doing a lawful activity in an off leash area.
- The evidence presented was overwhelming that Patrick was trained and the training was ongoing, and he did not pose a threat. The endorsements of a number of people who had an understanding of Patrick and had interactions with him stated that it was totally out of character.
- If the classification was upheld, Patrick should get five months off for having already served part of the “sentence” and there had been no other incidents in that time.
- Ms Batten described the event in question and noted that neither she nor Patrick had heard the runner approaching them from behind. Patrick had completed a circle to return to Ms Batten as had been part of his ongoing training. Patrick had collided with the runner that caused a bite/puncture wound, it was not an attack.
- Ms Batten and Mr Beech contended that there was no intentional bite and had been a collision wound.
- The runner had stopped and rubbed her thigh and kept running, that also led Ms Batten to conclude it was a collision.
- Ms Batten would be about to enter a different stage of her life and living arrangements. Patrick would be her last dog, any decision to class Patrick as menacing would seriously affect the plans of Ms Batten, and was a punishment out of proportion to the alleged occurrence.
- Mr Beech contended that the training already undertaken by Ms Batten both past and ongoing with professionally qualified dog behaviourists which made the risk on an event occurring again extremely low.
- As evidenced in the statement of Ms Batten she was a dog owner of long experience and had never received an infringement or any other sort of notice regarding her dogs in over 20 years.

In response to questions

- Patrick had and, regardless of the hearing outcome, would continue to receive behaviour training.
- Patrick was no longer walked off lead or in the same location, where the offence occurred.

Council right of reply

- Council advised that they agreed Ms Batten in all other respects had shown herself to be a proactive and careful dog owner of many years standing.
- No other complaints had been received regarding Patrick.

Attachments

- 1 C Batten - Further Statement of Objector - Dog Objection Hearing
- 2 C Batten - Statement of Behaviour - Dog Objection Hearing
- 3 C Batten - Image of Patrick- Dog Objection Hearing

The meeting adjourned at 3:20 pm.

UNCONFIRMED

Continuation of meeting – Thursday, 7 September 2023 at 10am in the Ground Floor Meeting Room, Tauranga City Council, 306 Cameron Road, Tauranga

PRESENT: Mrs Mary Dillon (Chairperson) and Mr Terry Molloy

IN ATTENDANCE: Sarah Drummond (Governance Advisor)

5 PUBLIC EXCLUDED SESSION

Resolution to exclude the public

COMMITTEE RESOLUTION RHP5/23/3

Moved: Mr Terry Molloy

Seconded: Ms Mary Dillon

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
5.3 - Deliberations - Objection from Katherine Batten opposing the menacing classification for her dog Patrick	To enable the Panel to deliberate in private on the objections heard.	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/Committee to deliberate in private on its decision or recommendation in any proceedings where the local authority is required, by any enactment, to make a recommendation in respect of the matter that is the subject of those proceedings.

CARRIED

The meeting resumed in the public session at 11:00 am on 7 September 2023.

4 BUSINESS (continued)

4.2 Objection from Katherine Batten opposing the menacing classification for her dog Patrick (continued)

COMMITTEE RESOLUTION RHP5/23/4

Moved: Mrs Mary Dillon

Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel:

- (a) Receives the report "Objection to Menacing Classification – Christine Batten".
- (b) Delays the date of commencement of the classification of menacing for the dog 'Patrick' to 01 March 2024.
- (c) Directs the Council to review the classification in six months (March 2024) and if the Council is satisfied that no further incidents have occurred, directs the Council to revoke the menacing classification notification.
- (d) Notes that Ms Batten is entitled to apply to have the disqualification lifted after 12 months from the date of this hearing (after 12 March 2024) as provided for in section 26(2) of the Dog Control Act 1996 which states "*An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification*".

Reasons for decision:

12. When considering an objection against a menacing classification, the Regulatory Hearing Panel (the Panel) may uphold or rescind the classification, and in making its determination the Panel had regard to:
 - (a) The evidence which formed the basis for the classification; and
 - (b) Any steps taken by the owner to prevent any threat to the safety of persons or animals; and
 - (c) The matters relied on in support of the objection; and
 - (d) Any other relevant matters.
13. The Panel gave weight to the evidence presented by the staff, and the evidence provided by Ms Batten both before and at the Hearing.
14. The Panel noted the effort in time and consistent intensive training of Patrick that Ms Batten had undertaken to ensure that there were no further incidents relating to Patrick.
15. Ms Batten provided a number of endorsements for Patrick. Those were provided by a range of people who have had interactions with Patrick, including a veterinarian, dog trainers and pet groomers. They generally attested to the exuberance or boisterous nature of Patrick and his general good demeanour and the work that he has undergone to bring him to the stage he is at now. They also attested to the friendly non-aggressive nature of Patrick.
16. Council records show Ms Katherine Batten has owned dogs in Tauranga since 2012 and has no other reported incidents of any kind.
17. Animal Services Staff advised the Panel that the classification could be reviewed after six months. Should there be no further offences notified to the Council in that period, at the end of the six months Council would reassess the classification of Patrick as a menacing dog and the classification could be removed.

18. The Panel agreed that the classification be reviewed after six months, however, should there be any enforceable incidents involving Patrick during the six-month period, the classification will stand and be enforced.
19. The Panel acknowledged that the Council has a duty of care to ensure the dog had a low probability of further incidents. The Panel did not consider that Patrick posed a threat to people.
20. The Panel gave regard to the intensive and ongoing training Ms Batten had undertaken with Patrick to prevent further offences and mitigate the risk of Patrick rushing at people. The Panel was satisfied that these measures had prevented the dog Patrick being involved in any further incidents.
21. The Panel heard from Ms Batten that Patrick was a loved family member and likely to be her last dog, and if the classification of menacing remained it would impose a detrimental and disproportionate negative effect on her choice of future housing options as she looked to downsize her current home. This was the first and only incident that had involved Patrick and his training and behavioural work would be continued regardless of the outcome of this hearing.

CARRIED

The meeting closed at 11:04 am.

The minutes of this meeting were confirmed as a true and correct record at the Regulatory Hearings Panel meeting held on 22 April 2024.

.....
Mary Dillon
CHAIRPERSON

4.3 Minutes of the Regulatory Hearings Panel meeting held on 26 October 2023

File Number: A15819690

Author: Anahera Dinsdale, Acting Team Leader: Governance Services

Authoriser: Anahera Dinsdale, Acting Team Leader: Governance Services

RECOMMENDATIONS

That the Minutes of the Regulatory Hearings Panel meeting held on 26 October 2023 be confirmed as a true and correct record.

ATTACHMENTS

- 1. Minutes of the Regulatory Hearings Panel meeting held on 26 October 2023**



MINUTES

**Regulatory Hearings Panel meeting
Thursday, 26 October 2023**

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4	Business	3
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UNCONFIRMED

**MINUTES OF TAURANGA CITY COUNCIL
REGULATORY HEARINGS PANEL MEETING
HELD AT THE GROUND FLOOR MEETING ROOM 1B, 306 CAMERON ROAD,
TAURANGA ON THURSDAY, 26 OCTOBER 2023 AT 9.30AM**

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

IN ATTENDANCE: Kurt Graham (Project Manager), Warren Budd (Team Leader: Transport Safety), Coral Hair (Manager: Democracy & Governance Services), Anahera Dinsdale (Governance Advisor)

1 OPENING KARAKIA

Mr Puhirake Ihaka opened the meeting with a karakia.

2 APOLOGIES

Nil

3 DECLARATION OF CONFLICTS OF INTEREST

Nil

4 BUSINESS

4.1 Bus Shelter Hearing Report 2023

Staff Kurt Graham, Project Manager: Transport
Warren Budd, Team Leader: Transport Safety

The Chair welcomed the objectors to the hearing and outlined the process of the hearing, noting the constraints that the Regulatory Hearings Panel (the Panel) had under the legislation to consider the injurious affection to/obstruction of the frontage of the land resulting from the shelter. The Panel could proceed with the bus shelter, dismiss the objection or modify the proposal. Objectors were allocated 10-15 minutes to speak to their objection. The Chair noted that the hearing process was not an evidentiary process.

(1) 1012a Pāpāmoa Beach Road – Otis Wilson

Key points

- Described safety problems with the current bus stop location and the proposed bus shelter which included traffic safety concerns as the bus stop was located opposite the intersection to the Taylors Reserve carpark and this created traffic congestion and an unsafe road crossing by pedestrians directly outside the bus stop.
- Considered the bus stop location was located at a dangerous and difficult place to cross the road as vehicles came from different directions due to the intersection which, at peak hour, was busy.
- There was a pedestrian refuge fifty metres down the road and also a pedestrian access way to the beach and reserve.

- Where the bus stop was located encouraged people's behaviour to cross the road in this location.
- Mr Wilson acknowledged there were proposed safety works to make the intersection safer but advised that he did not believe the current bus stop location was low risk.
- Mr Wilson proposed two alternative options for the bus stop to be moved to as outlined in his submission, either in front of 1016A or 1018A Pāpāmoa Beach Road (50 m to 70 m away from the current bus stop) as these were further away from the intersection and closer to the pedestrian refuge.
- Mr Wilson believed an investment in a safer bus stop location was a more future proof approach and would protect the community.

In response to questions

- The bus stop was existing and he had taken this opportunity, when advised that a bus shelter would be built outside his property, to suggest that the bus stop be moved to what he considered was a safer location.
- Bus shelter or no bus shelter, he advocated that the bus stop be moved.
- The locations were better alternatives because they were closer to the pedestrian access way and further away from the dangerous intersection.
- Confirmed that the retaining wall on his property was located on Council owned land.
- Mr Wilson had not discussed his alternative locations with the neighbours but was happy to do so.

Staff response to questions:

- If the bus stop was moved from its current location, further consultation would be required with owners. Staff confirmed they could place a bus stop as of right.
- Staff considered that the bus stop was in a safe location and were not convinced bus users who got off the bus crossed the road to access the beach.
- Staff considered that it was a relatively low number of bus users who crossed the road at this location and noted that people could not be forced to use the pedestrian refuges.
- The alternative bus stop locations proposed were not suitable as the road narrowed by the pedestrian refuge and vehicles passing a bus in this location would drive onto the median white lines.

(2) 42 Fifteenth Avenue – Brendon Woodhouse

Key points

- Mr Woodhouse was the owner of Poolwerx, and the bus stop was currently located directly in front of his building.
- Mr Woodhouse advised that he did not oppose the bus stop but opposed the bus shelter as it was located right outside Poolwerx's store front and could obscure the marketing material that the business displayed in the window and this would in turn deflect business.
- Discussed with Bernina, the store owner next door, and she agreed the location of the proposed bus shelter would deflect business.
- Mentioned traffic safety issues present which included speeding through the intersection and the two lanes merging to one lane.

In response to questions

- The Panel enquired about the possibility to move the bus shelter closer to the intersection which staff replied that it was not possible due to traffic safety concerns. However, the bus shelter could be moved further along the grass area towards the car park entrance. To move the bus stop and shelter 20-30 m along the road would require a consulting process with business owners that would be affected.
- It was noted that the red square in Mr Woodhouse's photo was not to scale and misrepresented the size of the bus shelter, the actual size of the shelter was 4x2m.

- The Chair noted that the current marketing material of Poolwerx on the side of their building and with flags out front were visible, especially by cars stopped at the traffic lights.

(3) 137 Doncaster Drive – Navjot Cheema

Key points

- Mr Cheema's house was located approximately 60m from Pāpāmoa College and the College students were hanging around the property expressing behaviour issues which included vaping, smoking, littering and hiding in the corner against his fence.
- Mr Cheema advised that College students were the major users of the bus stop, with very little use by the general public.
- Mr Cheema requested that the bus stop be moved closer to the College as he believed most of the bus users were students and moving the bus shelter would mean better monitoring of the bus shelter by College staff.
- Appreciated that it would be safer for his family if the bus shelter was moved and believed the erection of a bus shelter outside his property would further enhance the bad behaviour.
- Pāpāmoa College staff had visited Mr Cheema regarding the behaviour of students around his property.

In response to questions

- The bus shelter located across the road also had the same behavioural issues.
- The bus stop located outside of 137 Doncaster Drive was for general purpose. Majority of the College students were picked up from the College.
- Staff had visited Mr Cheema's property around 3pm and witnessed the students gathering.
- The Panel enquired about the possibility to move the bus shelter forward and the footpath going behind the bus shelter and staff advised that this was an option available to the Panel to consider.

At 10.32am the meeting adjourned.

At 10.50am the meeting reconvened.

5 PUBLIC EXCLUDED SESSION

Resolution to exclude the public

COMMITTEE RESOLUTION RHP6/23/1

Moved: Mr Puhirake Ihaka

Seconded: Mr Terry Molloy

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

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

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
5.1 – Bus shelter objections deliberations	To enable the Panel to deliberate in private on the objections heard.	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.

CARRIED

4 BUSINESS (continued) – decisions released into open

4.1 Bus Shelter Hearing Report 2023 (continued)

(1) 4 Dickson Road – Bill and Wendy Flowerday

COMMITTEE RESOLUTION RHP6/23/2

Moved: Mr Alan Tate
Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel acknowledges that the objection to the proposed bus shelter at 4 Dickson Road had been withdrawn on the basis that the bus shelter would not obscure the objector's signage and that a slimline bus shelter would be installed in this location.

CARRIED

(2) 42 Fifteenth Avenue – Brendon Woodhouse

COMMITTEE RESOLUTION RHP6/23/3

Moved: Mr Alan Tate
Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel modifies the shelter proposal for 42 Fifteenth Ave, to which the objection relates, by:

- i. Encouraging staff to minimise the injurious affect of the bus shelter on Poolwerx store front by endeavouring to find the best location for the bus shelter. The exact location will be subject to technical confirmation by council staff.

CARRIED

(3) 55 & 55a Farm Street – Ivan & Paula Iles

COMMITTEE RESOLUTION RHP6/23/4

Moved: Mr Puhirake Ihaka
Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel dismisses the objection to the proposed bus shelter at 55 & 55a Farm Street.

CARRIED

(4) 559 Fraser Street – Stephen Cornwall, Veros**COMMITTEE RESOLUTION RHP6/23/5**

Moved: Mr Alan Tate

Seconded: Mrs Mary Dillon

That the Regulatory Hearings Panel dismisses the objection to the proposed bus shelter at 559 Fraser Street after discussion with objector and agreeing to bus shelter location and design.

CARRIED**(5) 1012a Pāpāmoa Beach Road – Otis Wilson****COMMITTEE RESOLUTION RHP6/23/6**

Moved: Mr Terry Molloy

Seconded: Mr Puhirake Ihaka

That the Regulatory Hearings Panel modifies the shelter proposal for 1012a Pāpāmoa Beach Road, to which the objection relates, by:

- i. Further investigation for bus shelter location whereby a minor repositioning of the proposed location to minimise the impact on the hedge and retaining wall which encroached on road reserve. The exact location will be subject to technical confirmation by council staff.

CARRIED**(6) 12b Kiteroa Street – Helena Foy****COMMITTEE RESOLUTION RHP6/23/7**

Moved: Mr Puhirake Ihaka

Seconded: Mr Alan Tate

That the Regulatory Hearings Panel dismisses the objection to the proposed bus shelter at 12b Kiteroa Street and requested staff work with the arborist to ensure the tree can remain.

CARRIED**(7) 73 Poike Road – Adrian & Amanda Delany****COMMITTEE RESOLUTION RHP6/23/8**

Moved: Mr Alan Tate

Seconded: Mr Terry Molloy

That the Regulatory Hearings Panel dismisses the objection to the proposed bus shelter at 73 Poike Road and noted that the bus shelter was proposed to be located to the further corner of the property.

CARRIED

(8) 1 Forstera Way / 93 The Boulevard – Kayleen Rowe and Dean Rand**COMMITTEE RESOLUTION RHP6/23/9**

Moved: Mr Puhirake Ihaka

Seconded: Mr Alan Tate

That the Regulatory Hearings Panel dismisses the objection to the proposed bus shelter at 1 Forstera Way / 93 The Boulevard and noted there was flexibility in the location of the bus shelter as the property was being developed.

CARRIED

(9) 137 Doncaster Drive – Navjot Cheema**COMMITTEE RESOLUTION RHP6/23/10**

Moved: Mr Terry Molloy

Seconded: Mr Puhirake Ihaka

That the Regulatory Hearings Panel modifies the bus shelter at 137 Doncaster Drive to which the objection relates, by:

- i. Further investigation for bus shelter location whereby a minor repositioning of the proposed location to move the bus shelter closer to the kerb and relocate the footpath behind the bus shelter.
- ii. The exact location will be subject to technical confirmation by council staff.

CARRIED

6 CLOSING KARAKIA

Mr Puhirake Ihaka closed the meeting with a karakia.

The meeting closed at 11:25pm.

The minutes of this meeting were confirmed as a true and correct record at the Regulatory Hearings Panel meeting held on 22 April 2024

.....
Mary Dillon
Chairperson

5 BUSINESS

5.1 Bus Shelter Hearings Report

File Number: A15819638

Author: Kurt Graham, Project Manager

Authoriser: Nic Johansson, Head of Transport

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 Hearings Report".
- (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 proposed shelters as required under Section 339 of the LGA 74. Residents were able to approve the proposal or object to the proposal, with non-responses deemed to be an approval for Council to proceed.
17. Of the 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 CONTEXT / 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. **Attachement 1 pdf - A15837695** [↓](#) 

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 26 October 2023	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
6.2 - Public Excluded Minutes of the Regulatory Hearings Panel meeting held on 13 July 2023	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
6.3 - Public Excluded Minutes of the Regulatory Hearings Panel meeting held on 12 July 2023	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

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
?? – Bus shelter objections deliberations	To enable the Panel to deliberate in private on the objections heard.	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.

7 CLOSING KARAKIA