



AGENDA

Extraordinary Regulatory Hearings Panel meeting Thursday, 20 June 2024

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

Date: Thursday, 20 June 2024

Time: 11am

Location: 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 22 April 2024

File Number: A16086373

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 22 April 2024 be confirmed as a true and correct record, subject to the following correction/s:

(a)

ATTACHMENTS

1. Minutes of the Regulatory Hearings Panel meeting held on 22 April 2024



MINUTES

**Regulatory Hearings Panel meeting
Monday, 22 April 2024**

UNCONFIRMED

Order of Business

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**MINUTES OF TAURANGA CITY COUNCIL
REGULATORY HEARINGS PANEL MEETING
HELD AT THE TAURANGA CITY COUNCIL, GROUND FLOOR MEETING ROOMS 1 & 1B, 306
CAMERON ROAD, TAURANGA
ON MONDAY, 22 APRIL 2024 AT 1PM**

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

IN ATTENDANCE: Kurt Graham (Project Manager), Rhulani Mothelesi (Senior Traffic & Safety Engineer), Anahera Dinsdale (Acting Team Leader: Governance Services), Caroline Irvine (Governance Advisor), Aimee Aranas (Governance Advisor)

1 OPENING KARAKIA

Mr Puhirake Ihaka opened the meeting with a karakia.

2 APOLOGIES

Nil

3 CONFIRMATION OF MINUTES

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

COMMITTEE RESOLUTION RHP1/24/1

Moved: Mr Alan Tate
Seconded: Mr Puhirake Ihaka

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

CARRIED

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

COMMITTEE RESOLUTION RHP1/24/2

Moved: Mrs Mary Dillon
Seconded: Mr Terry Molloy

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

CARRIED

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

COMMITTEE RESOLUTION RHP1/24/3

Moved: Mr Puhirake Ihaka

Seconded: Mr Alan Tate

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

CARRIED

4 DECLARATION OF CONFLICTS OF INTEREST

Nil

5 BUSINESS

5.1 Bus Shelter Hearings Report

Staff Kurt Graham, Project Manager: Transport
Rhulani Mothelesi, Senior Traffic and Safety Engineer

Key points

- Staff believed that option one (1) was the most viable option as it had least impact on visibility.
- Upon staff visiting the site, they suggested that the removal of the tree outside 555 Grenada could be possible and have the bus shelter straddle both properties.

In response to questions

- It would be difficult to move the bus shelter as there are two roundabouts and a side street.
- Mr Stock questioned if the bus shelter could be relocated outside 549 Grenada street as there are no driveways. Upon viewing a map of Grenada St, the Panel determined that it was too close to an intersection, a roundabout, the road has yellow lines painted, and it is a shallow shoulder for the bus shelter to be placed there.
- Statistics will be looked at to see if there are any complaints against anti-social behaviour.
- In response to a query from Mr Tate, Mr Graham had received data from Bay of Plenty Regional Council showing that 338 people aboard the bus per month at that specific spot.
- Mr Graham confirmed that two Bay of Plenty routes as well as school routes go past the bus stop.
- In response to a query from Mr Tate, Mr Graham expected bus usage to grow but did not have any evidence currently to support the statement.
- In response to a query from Mr Tate, Ms Mothelesi said that vehicles were able to pass at the current location whereas at 549 there was no off-road shoulder for the bus to pull in. It was a requirement that buses stop 20 metres from an intersection to avoid obstructing the view of vehicles using side roads.
- Staff confirmed that the bus shelter would be 1.5 metres back from the roadside which meant that it would pose no risk to obstruction, the bus shelter would be closer to the footpath than the road. Also, the plan was to make sure that the bus shelter was as close to or where the tree currently is which was of near equal distance from either driveway.
- Transplanting the tree would be difficult, as the tree would unlikely survive as it was quite young, per the advice from an arborist and the arborist proposed that two trees get planted on either side of the shelter instead.

- Staff were unsure of statistics pertaining to complaints and their nature per year from existing bus shelters around the city. Mr Graham acknowledged that he would have to go through past CCM lodgings to find that answer.
- Staff would consider a third option of installing the bus shelter in the proposed space between option 1 and option 2.
- In response to a query from Madam Chair, Ms Mothelesi confirmed that the Grenada street was a collector road.

Discussion points raised

- The Panel proposed an alternative option three, where the bus shelter was placed in the centre of both properties, and believed it would be a viable option.
- Ms Mothelesi explained that options recommended by Ms Taylor may not be viable because it did not take into account people with mobility issues.

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

(1) Louise Taylor, 553 Grenada Street

Key points

- Ms Taylor noted that there was no mention of the bus shelter when purchasing/building her house.
- Most users at the bus stop were alighting and had referenced TCC guidelines that show that a shelter was not necessary if users were majorly alighting.
- Expressed concern about anti-social behaviour and lingering by school students as there were multiple buses that stopped outside her property.
- Ms Taylor occasionally used the vandalised bus shelter on the opposite side of the street as an example to what could potentially happen to the proposed one outside her property. Therefore, Ms Taylor wanted the bus shelter to be moved away from her property.
- Ms Taylor expressed concerns over removing the magnolia tree to erect a bus shelter and used TCC guidelines around vegetation as reasons why the tree should not be removed.
- Ms Taylor suggested to the Panel that the proposed bus shelter and bus stop be moved down to outside the retirement village where there was more space for the buses.

In response to questions

- Ms Taylor responded to a question regarding her privacy not already compromised with people already being there to catch the bus, regardless if there was a bus shelter present, with that she responded that she was seeking enhanced privacy by not encouraging gathering and lingering by non-bus users.
- Ms Taylor agreed that her privacy was already compromised by bus users outside her property but states that a bus shelter would encourage gathering and lingering by non-bus users and requested that a bus shelter not be placed outside her property for enhanced privacy and security. Ms Taylor further goes to say that her neighbourhood did not have the option of installing a high fence along her boundary. Ms Taylor continues to say that her gardens are already established to her liking and does not want to alter the state of her home just to increase privacy, if it can be avoided.
- In response to a query from The Panel, Ms Taylor did not believe that option one should be an option because according to TCC recommended guidelines it did not meet the requirements of correct placement as the bus shelter should not be at the rear of a stopped bus. Ms Taylor also did not believe option two was viable as she believed that there was nothing wrong with using the tree as a shelter.

Discussion points raised

- There was already an established bus shelter on the opposite side of the street and questioned if it was necessary to have another one.
- Ms Taylor queried if another gathering spot was necessary for anti-social behaviour.
- Ms Taylor queried whether safety was a priority for the initial implementation of the bus stop and submitted a photo taken over the Easter break displaying backed up buses and a car being forced to cross the centre line to overtake the stopped buses.
- It was agreed by both objectors that 549 Grenada Street was a better solution for the proposed bus shelter.

(2) Charlie Stock and Rachel Johnston, 555 Grenada Street**Key points**

- It was noted that they were most concerned about a bus shelter being outside their property because of safety reasons. He noticed while people were considerate of the property, some anti-social behaviour such as graffiti, littering, and the breaking of tree branches has been observed at the bus stop area.
- There were privacy concerns with the bus shelter being directly outside his property because he noticed that bus users have entered their property. Furthermore, Mr Stock stated that the regulated low fence offered no privacy, and that the proposed bus shelter would be directly outside a child's bedroom and visible from the front door.
- There was no turning circle on the property's driveway and that he had to reverse onto the street and the proposed bus stop area.
- It was noted that although the bus shelter would obstruct the view leaving the driveway and expressed concerns about being able to clearly view oncoming traffic and cyclist passing by.
- It was noted that if the bus shelter was implemented the bus stop would remove the only available off-street parking for five houses.
- Mr Stock questioned whether another bus shelter was necessary as the bus stop was used for outbound users only. He observed that users tend to quickly disperse from the bus stop and thus questioned if a shelter was necessary.
- Mr Stock also proposed moving the bus shelter outside 549 Grenada Street.

In response to questions

- Both objectors input was that most bus users tend to walk away from the bus stop once they have disembarked whereas with a bus shelter he noticed that people tend to stay longer at bus shelters and observe their surrounds. Which he believed impacted onto his privacy.
- Ms Johnston also responds to the same question that bus users to utilise the tree as shelter which also moves those people away from outside their child's bedroom window but where the bus shelter was proposed to go it directs people back to in front of the bedroom window.
- Mr Stock responded to the Panel when asked about the tree planted in front of their child's bedroom on their property, he argued that the tree was too small currently to provide any privacy.
- Ms Johnston responded to a query from Madam Chair that graffiti on their property had occurred twice over the last couple months.
- In response to a query from Mr Tate, Mr Stock preferred option one. However, acknowledged that it would not be fair towards Ms Taylor.
- In response to a query from Madam Chair, Mr Stock explained that it was not necessary for his property to have a turning bay despite being located on a collector road.

Discussion points raised

- Mr Stock noted that the proposed bus shelter would mean the removal of the only established magnolia tree on their street and he is reluctant to lose it.

- Ms Johnston shared her experience of witnessing people vandalising her property from within her home and felt scared for her and her child's safety. Mr Stock acknowledged that the Council does quickly deal with the graffiti.

6 PUBLIC EXCLUDED SESSION

UNCONFIRMED

COMMITTEE RESOLUTION RHP1/24/4

Moved: Mr Puhirake Ihaka

Seconded: Mr Alan Tate

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

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

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
6.1 - 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
6.4 - 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

7 BUSINESS (continued) – decisions released into open

5.1 Bus Shelter Hearings Report (continued)

(1) Louise Taylor, 553 Grenada Street

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Request that the officer explore the options of moving the bus shelter closer to the tree if possible.
- (b) Request that the officer explore making the bus shelter a slim line and closer to the footpath if possible.
- (c) Request that the officer explores the option of moving the bus shelter as close to the centre of both properties as possible.
- (d) Request that the officer explores the option of the back of the bus shelter having frosted glass to aid with privacy issues.

(2) Charlie Scott and Rachel Johnston, 555 Grenada Street

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Request that the officer explore the options of moving the bus shelter closer to the tree if possible.
- (b) Request that the officer explore making the bus shelter a slim line and closer to the footpath if possible.
- (c) Request that the officer explores the option of moving the bus shelter as close to the centre of both properties as possible.
- (d) Request that the officer explores the option of the back of the bus shelter having frosted glass to aid with privacy issues.

8 CLOSING KARAKIA

Puhirake Ihake closed the meeting with a Karakia at 2:15

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 Objection to Disqualification as Dog Owner - David Epiha

File Number: A15994234

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an objection from David Epiha opposing his disqualification as a dog owner.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

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

EXECUTIVE SUMMARY

2. David Epiha is the owner of the dog Patu, a three year old, entire male American Staffordshire Terrier Great Dane Cross dog. He has owned this dog since January 2023.
3. Patu is unregistered and hasn't been registered since he has owned it.
4. We have received ten complaints about the dog roaming. (*Attachment 1 – Schedule of Roaming Complaints and Action*)
5. For the period 7 January 2023 to 5 May 2024 Mr Epiha was issued with five infringements, three for roaming and two for owning an unregistered dog. Four infringements have been filed with the Court. One infringement was issued after the notice of disqualification was issued.
6. Section 25 of the Dog Control Act 1996 ("the Act") requires Council to disqualify a person from owning a dog if they receive three or more infringements within a two-year period and the infringements have either been paid or filed with the Court.
7. As a result, on 22 February 2024, he was issued with a notice disqualifying him from owning a dog for a period of three years from the offence date of the third infringement, namely until 5 September 2026. (*Attachment 2 – Notice of disqualification*)
8. A disqualified owner may object to the disqualification and that objection shall be heard by the Hearings Panel. Mr Epiha submitted an objection to the disqualification on 29 February 2024. (*Attachment 3 – Objection to disqualification*)

BACKGROUND

9. Council doesn't have to disqualify the person if they are satisfied the circumstances of the offence are such that:

- (a) The disqualification is not warranted; or
 - (b) Council will classify the owner as probationary.
10. After considering the extensive negative history associated with this dog owner, and the fact that Patu remains unregistered we believed the disqualification was appropriate. Council doesn't operate a probationary owner scheme.
 11. Normal practice is to disqualify an owner for 3 years when they incur three or more infringements.
 12. In considering any objection under this section, the territorial authority shall have regard to:
 - (a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and
 - (b) the competency of the person objecting in terms of responsible dog ownership; and
 - (c) any steps taken by the owner to prevent further offences; and
 - (d) the matters advanced in support of the objection; and
 - (e) any other relevant matters.
 13. It is not the purpose of this panel to rule on the legality of each infringement, that is a matter for the Court should the dog owner chose to defend each infringement. Once the infringement has been paid or filed with the Court, the offence is deemed to have been proved. This panel must consider the objection in the terms of paragraph 12 above, as provided by section 26(3) of the "Act".
 14. When an infringement is issued the recipient can either:
 - Pay the infringement; or
 - Defend the infringement in Court; or
 - Do nothing.
 15. If the person does nothing, a reminder will be sent in 28 days and then after a further 28 days the infringement will be filed with the District Court.
 16. Only infringements which have either:
 - Been paid; or
 - A conviction entered (if they defended the infringement); or
 - Filed with the Courtcan be counted when disqualifying a person.
 17. The three infringements highlighted in yellow (see attachment one) are the ones which triggered this disqualification. An additional infringement (highlighted in orange) has also been issued and filed with the Court and a fifth infringement issued but has not yet filed with the court.
 18. Prior to disqualifying a person, we have created a process whereby we write to the dog owner and advise them that the "Act" requires them to be disqualified however before we make a final decision, they may write to Council with any information they would like to be taken into consideration. (*Attachment 4 – Notification of pending disqualification*)
 19. No response was received and a notice to disqualify (attachment 2) was delivered to the home of Mr Epiha on 22 February 2024.
 20. In considering this objection the panel may either:
 - Uphold the disqualification; or
 - Bring forward the date of termination; or
 - Immediately terminate the notice.

21. The objector may appeal the decision of the panel to the District Court if dissatisfied.
22. It is acknowledged that Mr Epiha has taken steps to modify his property to try and limit the dog's ability to escape however this has not worked.
23. In addition to the infringements issued for owning an unregistered dog we have written to Mr Epiha on the 7 December 2023 about dog registration and also advised him when he objected that owning an unregistered dog could negatively affect the outcome of the objection.





SIGNIFICANCE

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

ENGAGEMENT

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

ATTACHMENTS

1. **Attachment 1 - Schedule of Roaming Complaints and Action - A15994286** [↓](#) 
2. **Attachment 2 - Notice of Disqualification - A15994287** [↓](#) 
3. **Attachment 3 - Objection to Disqualification - A15994288** [↓](#) 
4. **Attachment 4 - Notification of Pending Disqualification - A15994289** [↓](#) 

David Epiha						
Complaints				Infringements		
Complaint	Offence	Comment	Outcome	Sent	Reminder	District Court
1129284 5 May 2024 01:45am	Roaming	Patu roaming on street	Infringement 27697	7-May-24		
6-Mar-24		Respond to objection advising it has been accepted however unlikely to be successful while dog remains unregistered.				
29-Feb-24		Objection to disqualification received				
1115653 23 Feb 2024 09:48am	Roaming	Dog in driveway and caller required assistance to get to house because scared of dog.	Infringement 27624	4-Mar-24	9-Apr-24	15-May-24
22-Feb-24		Notice of Disqualification Delivered				
1114676 19 Feb 2024	Customer Message	Dog has been roaming on complainants property several times over past week.	Phoned complainant and advised disqualification likely.			
1111169 05 Feb 2024 12:10am	Roaming	On property digging holes	Unsubstantiated			
14-Dec-23		Schedule four - Notice requesting explanation				
7-Dec-23		Letter to dog owner advising dog still unregistered.				
1099302 05 Dec 2023 11:49am	Roaming	Roaming on street	Phoned complainant			

1098299 30 Nov 2023 12:17pm	Roaming	Dog roaming and attacked a duck	Discussed with dog owner who showed improvements to fence and said he was tying dog up at night. NFA			
1085601 25 Sep 2023 10:30am	Unregistered 2023/2024 year		Infringement 27119	25-Sep-23	31-Oct-23	6-Dec-23
7-Sep-23		Agreement for extension of time to pay dog registration				
1078624 18 Aug 2023 11:56am	Roaming	Regularly roams, scares our cat and mother-in-law and comes onto our property.	Written Warning			
1078286 16 Aug 2023 04:08pm	Roaming	Roaming on street				
1078149 16 Aug 2023 09:15am	Roaming	Roaming on street				
1053980 01 Apr 2023 03:34pm	Unregistered 2022/2023 year		Infringement 26856	6-Apr-23	17-May-23	28-Jun-23
1053980 01 Apr 2023 03:34pm	Roaming	Roaming on street	Infringement 26857	6-Apr-23	17-May-23	28-Jun-23
1035523 07 Jan 2023 11:48pm	Roaming	Roaming on private property at night	Written warning			

5.2 Objection to Disqualification as Dog Owner - Samuel Meichtry

File Number: A15996460

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an objection from David Epiha opposing his disqualification as a dog owner.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

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

EXECUTIVE SUMMARY

2. The objector, Samuel Meichtry is the registered owner of Millie, an entire Golden Retriever dog aged 3 year 8 months.
3. For the period 14 June 2022 through to 26 April 2024 Council has received fourteen complaints about Millie roaming in the street. (*Attachment 1 – Schedule of Roaming Complaints and Action*)
4. Section 25 of the Dog Control Act 1996 ("the Act") requires Council to disqualify a person from owning a dog if they receive three or more infringements within a two-year period and the infringements have either been paid or filed with the Court.
5. By February 2023 Mr Meichtry had received three infringements and Council commenced the disqualification process. Mr Meichtry provided an explanation about the steps he had taken to stop his dog roaming and as a result his explanation was accepted and he was not disqualified. (*Attachment 2 – Notice of Intention to Disqualify Feb 2023*) and (*Attachment 3 – Response from Meichtry Feb 2023*)
6. By February 2024 Mr Meichtry had incurred a further three infringements and he was issued with a notice disqualifying him from owning a dog for a period of three years up until 26 June 2026. (*Attachment 4 – Notice of disqualification Feb 2024*)
7. A disqualified owner may object to the disqualification and that objection shall be heard by the Hearings Panel. Mr Meichtry submitted an objection to the disqualification on 23 February 2024. (*Attachment 5 – Objection to disqualification Feb 2024*)

BACKGROUND

8. Millie has been registered throughout this period; she first came to our attention when we received a complaint about her rushing a person in June 2022. Because it was the first complaint, a written warning was issued.
9. Since then, a total of eight infringements have been issued in relation to Millie roaming. One of these was for when Millie was roaming after the objection to the disqualification had been received. One of the infringements was waived.
10. The “Act” provides that when a person receives three infringements within a two-year period and the infringement has either been paid or filed with the Court, then Council must disqualify that person from owning a dog for a period of up to 5 years.
11. Council doesn’t have to disqualify the person if they are satisfied the circumstances of the offence are such that:
 - (a) The disqualification is not warranted; or
 - (b) Council will classify the owner as probationary.
12. After considering the extensive negative history associated with this dog owner, we believed the disqualification was appropriate. Council doesn’t operate a probationary owner scheme.
13. Normal practice is to disqualify an owner for 3 years when they incur three or more infringements.
14. In considering any objection under this section, the territorial authority shall have regard to:
 - (a) the circumstances and nature of the offence or offences in respect of which the person was disqualified; and
 - (b) the competency of the person objecting in terms of responsible dog ownership; and
 - (c) any steps taken by the owner to prevent further offences; and
 - (d) the matters advanced in support of the objection; and
 - (e) any other relevant matters.
15. It is not the purpose of this panel to rule on the legality of each infringement, that is a matter for the Court should the dog owner chose to defend each infringement. Once the infringement has been paid or filed with the Court, the offence is deemed to have been proved. This panel must consider the objection in the terms of paragraph 14 above, as provided by section 26(3) of the “Act”.
16. When an infringement is issued the recipient can either:
 - Pay the infringement; or
 - Defend the infringement in Court; or
 - Do nothing.
17. If the person does nothing, a reminder will be sent in 28 days and then after a further 28 days the infringement will be filed with the District Court.
18. Only infringements which have either:
 - Been paid; or
 - A conviction entered (if they defended the infringement); or
 - Filed with the Courtcan be counted when disqualifying a person.

19. In considering this objection the panel may either:
 - Uphold the disqualification; or
 - Bring forward the date of termination; or
 - Immediately terminate the notice.
20. The objector may appeal the decision of the panel to the District Court if dissatisfied.
21. In summary, Mr Meichtry has been given every opportunity to control his dog and avoid disqualification. The dog has continued to roam after the disqualification process has commenced. Note: Under normal processes this disqualification would have been activated in July 2023, but an administrative oversight meant this action wasn't completed.











SIGNIFICANCE

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

ENGAGEMENT

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

ATTACHMENTS

1. **Attachment 1 - Schedule of Roaming Complaints and Action - A15996394**  
2. **Attachment 2 - Notice of Intention to Disqualify Feb 2023 - A15996393**  
3. **Attachment 3 - Response from Meichtry Feb 2023 - A15996392**  
4. **Attachment 4 - Notice of Disqualiification Feb 2024 - A15996395**  
5. **Attachment 5 - Objection to Disqualification Feb 2024 - A15996396**  

5.3 Application to Release Impounded Barking Dog Vinchella - Cherylyne Schischka

File Number: A15966105

Author: Brent Lincoln, Team Leader: Animal Services

Authoriser: Sarah Omundsen, General Manager: Regulatory and Compliance

PURPOSE OF THE REPORT

1. To hear an application from Cherylyne Schischka for the release of impounded barking dog Vinchella.

RECOMMENDATIONS

That the Regulatory Hearings Panel:

- (a) Receives the report "Application to Release Impounded Barking Dog Vinchella - Cherylyne Schischka".
- (b) It is recommended that the application to release the impounded dog Vinchella is declined.
- (c) The panel however may:
 - (i) Return the dog where they are satisfied that the return of the dog will not result in the resumption of a barking nuisance.
 - (ii) Retain the dog if they are not satisfied that the return of the dog will not result in the resumption of a barking nuisance.

EXECUTIVE SUMMARY

2. The applicant, Cherylyne Schischka, resides at 61 Blake Boulevard, Papamoa.
3. Council has received numerous complaints from numerous callers about the nuisance that dogs at this property have caused by loud and persistent barking. (*Attachment 1 – Schedule of Complaints*)
4. On 30 November 2021 Cherylyne was issued with a barking abatement notice for the dog Vinchella, this notice required the owner to use a functioning anti-bark collar to reduce barking by this dog to an acceptable level. (*Attachment 2 – Barking Abatement Notice*)
5. After numerous recent complaints, staff executed a search warrant at 61 Blake Boulevard and impounded Vinchella who was not wearing an anti-barking collar as required. The abatement notice had not been cancelled.
6. On 27 February 2024 Council accepted an email response from Cherylyne as an application for the release of the dog Vinchella. As staff were not satisfied that the barking nuisance wouldn't resume, the request was declined. (*Attachment 3 – Application for Release*)

BACKGROUND

7. Cherylyne Schischka is a breeder of German Shepherds and lives at 61 Blake Boulevard.
8. As of 1 January 2024, the Council Dog Register showed:
 - Two dogs registered to Cherylyne, they were named Puppups and Vinchella;

- Two dogs registered to her son, they were named Bella and Roxarna; and
 - One dog with no known name and unregistered under the name another person who resided at the address.
 - The registration fees of the four dogs were paid for by Cherylyne.
9. Council has received many complaints, primarily associated with dogs barking and whining and mainly during periods when there are a number of puppies on the property.
 10. Responding to these complaints has been difficult as the Dog Control Act requires identification of specific dogs which is difficult when all the dogs are German Shepherds.
 11. In addition, the owners have been uncooperative, the dogs are quite aggressive, the property is difficult to access and is littered with obstructions where dogs can hide. The owner has refused to microchip the dogs making identity an issue.
 12. Over the period 1 December 2023 to 7 January 2024 staff received five formal complaints about the dogs' causing nuisance by barking and whining. Adverts on Trade me offering German Shepherd puppies for sale indicated the puppies were all over the age of 3 months and none of which were registered.
 13. The Dog Management Bylaw 2018 limits the number of dogs over the age of three months to two, that can be kept by any person unless they have a kennel licence. There are no kennel licences issued for 61 Blake Boulevard.
 14. On 11 January 2024 Animal Services staff accompanied by the Police and SPCA executed a search warrant at the address.
 - Four adult German Shepherds were impounded.
 - Nine puppies from two separate litters were impounded. The puppies were later aged by a vet as being three and a half months and four and a half months old.
 - In addition, the SPCA later removed approximately 40 cats and two more puppies from the property.
 - The puppies had been missed during the initial search due to the nature of the property.
 15. Of the adult dogs impounded, only Vinchella was recorded on the Tauranga dog register. The other three adults were three unregistered dogs which were unknown to Council. We subsequently found that the three dogs on the dog register being Bella, Roxarna and Puppups were all deceased and had been for a long time.
 16. All the dogs were in poor condition and severely flea and worm laden.
 17. In addition, another adult dog had been taken to the vet prior to the warrant being executed and had to be euthanised because of untreated injuries it had suffered.

Barking History and Process

18. When a Dog Control Officer receives a complaint about a barking dog, they must be satisfied that a particular dog is causing nuisance with loud and persistent barking or howling before they take any action.

Note: Neither persistent nor loud is prescribed by the Dog Control Act, based on other noise related legislation, any noise that emanates beyond the boundary of the property to such a degree that it negatively impacts on a neighbour can be deemed loud. Persistent can be classified as either continuous for over 10 minutes or stop start barking for over 20 minutes.

19. If satisfied the dog is causing nuisance, Council may either:
 - (a) Issue a notice to the owner requiring them to make such reasonable provision on the property to abate the barking; or
 - (b) Issue a notice requiring the owner to remove the barking dog from the property.

The owner commits an offence if they don't comply with an abatement notice.

20. If an officer receives further complaints and the abatement notice is not being complied with and has not been cancelled, then they may seize the dog.
 21. In November 2021 a barking abatement notice was issued requiring the dogs Vinchella, Puppups and Bella to wear a functioning anti bark collar to help abate the nuisance. This followed a number of complaints through 2020 and 2021.
 22. After issuing the abatement notice the barking stopped until recommencing in February 2023. A written warning was issued as a result. (*Attachment 4 – Written warning dated 27 February 2023*)
 23. On 6 March 2023 staff visited 61 Blake Boulevard and discussed microchipping with Cherylynne as none of the dogs had been chipped as required by legislation. She refused to microchip any of the dogs', so infringements were issued for the five adult dogs at the property.
 24. Barking complaints commenced again in May 2023 at which time an abatement notice was issued for Roxarna, requiring her to wear a functioning anti-bark collar.
 25. Barking complaints stopped again until October 2023 and continued through to January 2024 when we impounded the dogs from the property. The complaints indicated that there were an unknown number of puppies at the property, and they were constantly whining and crying which was in addition to the adult dogs barking.
 26. Unfortunately, we were short staffed during this period and despite receiving numerous complaints, it wasn't until January 2024 when we could execute a search warrant to resolve this matter.
 27. We seized 9 puppies, all of which were over the age of three months and none of which were registered as required by the Act. The puppies ages were verified by a veterinarian. Unfortunately, unbeknown to Council, none of the puppies had been vaccinated to protect them from Parvo and 8 succumbed to parvo while in the pound.
 28. We seized four adult dogs, only one of which was registered.
 29. None of the dogs were microchipped.
 30. At the conclusion of the process, we released:
 - (a) Two dogs to Cherylynne being Luna and Marco
 - (b) Two dogs to one of her sons being Geah and Kayla (one of the puppies)
 - (c) Two dogs to a second son being AJ and an unnamed (both puppies)
- Cherylynne has sold the unnamed puppy and the remaining five dogs reside at 61 Blake Boulevard. Two of these puppies were released from the SPCA once registered.
31. The dog Vinchella has been retained by Council as we believe that the return of this dog will result in the recommencement of barking complaints. While in the pound, Vinchella was the most vocal of all the dogs, constantly barking.
 32. We have fostered Vinchella from the pound pending the outcome of this hearing.
 33. A number of complainants advised Council that there has been a significant improvement since the dogs were impounded and they can now get a full night's sleep without been woken by barking dogs. (*Attachment 5 – Summary of comments from complainants after dogs impounded.*)
 34. Throughout the impounding and release process Cherylynne has denied her dogs have caused any nuisance by barking and that all the complaints are orchestrated by neighbours who don't like her.
 35. This constant denial together with the positive feedback from former complainants now that the number of dogs has been reduced and that Vinchella is not at the address, supports Councils stance that the dog Vinchella should not be returned to the property.

36. If the panel declines the application for the return of Vinchella then the applicant may appeal that decision to the District Court.
37. If Vinchella is not returned to the current owner, then Council will adopt or rehome the dog. Since being fostered into a positive environment there has been no issues with loud or persistent barking.






SIGNIFICANCE

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

ENGAGEMENT

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

ATTACHMENTS

1. **Attachment 1 - Schedule of complaints - A15993380** [↓](#) 
2. **Attachment 2 - Barking Abatement Notice - A15993381** [↓](#) 
3. **Attachment 3 - Application to Release Vinchella - A15993379** [↓](#) 
4. **Attachment 4 - Written Warning - A15993383** [↓](#) 
5. **Attachment 5 - Summary of Comments from Complainants - A15993382** [↓](#) 

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 22 April 2024	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	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
5.1 – David Epiha – Deliberations – Objection to Disqualification as Dog Owner	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.
5.2 – Samuel Meichtry – Deliberations – Objection to Disqualification as Dog Owner	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.
5.3 – Cherylynn Schischka Deliberations – Application to Release Impounded Barking Dog Vinchella	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.
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7 CLOSING KARAKIA