

Our ref CASE-006799 (Complaint ground: GROUND-0007360)
Contact Katty Lau
18 July 2024



Marty Grenfell
Chief Executive Officer
Tauranga City Council

By email: marty.grenfell@tauranga.govt.nz

Dear Mr Grenfell

Final opinion on complaint
Neil Pollett – Marine Park reclassification

I refer to the letter from Scott Martin of 2 July 2024.

My investigation concerned the public consultation undertaken by Tauranga City Council (the Council) in relation to the decision to reclassify about 7,000m² of land at Marine Park from 'recreation reserve' to 'local purpose reserve'.

I have now formed the final opinion that the Council has not acted unreasonably.

I **attach** details of my opinion.

I have now completed my investigation. Thank you for the assistance that has been provided.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Boshier".

Peter Boshier
Chief Ombudsman

Appendix 1. Details of my opinion

Extract from Scott Martin's letter to Neil Pollett of 2 July 2024

Under the Reserves Act 1977 (Reserves Act), the power to reclassify a reserve lies with the Minister of Conservation. In this case, the Minister has delegated this decision-making power to the Council. The Reserves Act requires the decision-maker to consider all submissions received before resolving to confirm or abandon the reclassification.

As a local authority, decisions made by the Council must also comply with the requirements of the LGA. Under the LGA, the Council may determine how it will comply with the requirements. In this case, the Council determined the proposal to be of medium significance under its [Significance and Engagement Policy](#), which means the Council may decide whether it is appropriate or necessary to engage with the community with regard to the proposal. That engagement must comply with the Council's obligations under the LGA.

Consultation

Public consultation on the reclassification took place from 16 May to 20 June 2022, followed by a public hearing on 27 June 2022. You complain that the Council provided insufficient publicity or advance notice of the public hearing.

Inquiries have established that the Council posted a notice in print and social media on multiple occasions during this period. Readers were directed to the Council's webpage for Marine Park reclassification for further information and to the [submission form](#). Paper copies were also made available at Council service centre, libraries, and mobile service centre. Submissions could be made by email or by post.

An [overview document](#) summarising the proposal was available on the Council's website. It included a diagram showing the area within the recreation reserve area that the Council proposed to reclassify. It explained that the intention was to develop a marine research and education facility, and why that particular site was identified as the most suitable for that purpose. It stated that the location of the facility would not impact existing car and trailer parking or access to boat ramps in the vicinity. It also provided contact details for readers who had questions, including the relevant team's phone number and email address.

The publicly available agenda of the Ordinary Council meeting of [4 October 2021](#) provided further details about the proposal. The document provided background context to the proposal, and the Council's analysis of the proposal. It summarised the Council's analysis of alternative options to reclassification the reserve, including revoking the reserve status and investigating alternative sites. It outlined the advantages, disadvantages and key risks in relation to each option.

One aspect of your complaint is that the information provided to the public omitted that other viable sites for the marine research centre existed. However, the scope of the consultation was to seek feedback on the specified site, therefore the omission of discussion regarding other options in the consultation information does not seem unreasonable. I note that the overview document nevertheless provided an explanation as to why the proposed site was preferred. It stated:

We've identified the proposed site at Marine Park as the most suitable location for a marine research and education facility because of its proximity to the ocean, Tauranga

city centre, tertiary and education institutions, boat ramps, and a deep-sea channel connected to the harbour entrance.

The closing date for submissions of 20 June 2022, and the hearing date of 27 June 2022, were clearly included in the materials that were part of the public awareness campaign. The submission form asked submitters to indicate whether they wished to speak at the hearing in support of their written submission, and that the Council would contact the speaker to arrange a 10 minute speaking time.

With regard to your specific complaint that you did not receive adequate notice of your time allocation at the hearing, I acknowledge that being notified one day prior left you with little time to arrange your affairs. However, it is unlikely that the Ombudsman would consider that this undermined the consultation process or your opportunity to be heard. There is no requirement in the consultation process for submitters to present oral submissions. All written submissions received were considered regardless of whether the submitter spoke at the hearing.

It would appear that the Council made genuine efforts to provide relevant information to the community about the proposed reclassification, and to invite submissions to be made on the proposal. It is unlikely that the Ombudsman would consider that the Council's public awareness and consultation process to be inadequate or unreasonable.

Council's deliberations on feedback

The Council's deliberation on the feedback received is documented in a report dated 25 July 2022 (Deliberation Report).

All written submissions received from public consultation were included in this report. It documents that the Council received 323 submissions from the public. A majority of those were in support of the proposal.

With regard to the submissions objecting to the proposal, the Council identified the key objection points from the individual submissions. This showed a significant portion of objections related to themes of 'Open Space' (including loss of green space and/or the recreational value of the reserve), and 'Alternative Site/Use' (including that the site would be better used for boating-related activities and parking, and consideration for alternative locations for the research facility). The Deliberation Report also outlines the Council's view on how concerns about adverse effects of proposed reclassification and marine education facility can be mitigated.¹

In addition, the Council engaged with:

- Tangata whenua: Though Ngāi Tamarawaho and Ngāti Pukenga did not raise objections, their respective views on the proposal were documented in the Deliberation Report.

¹ For example, the Feedback Report noted in response to 'Open Space' related objections that the proposed site for reclassification was chosen to mitigate loss of open space, being set back from the water's edge maintaining access to harbour margins, and as far South as possible to minimise impact on casual users and dog walkers. It also noted that the delivery of more boat ramps/parking is provided for in the Council Long-Term Plan, and that the proposal will not impact on current or planned service levels.

- Department of Conservation (DOC): DOC indicated that the Council should have regard to the previously raised Ministerial considerations. The Minister's concerns were evidently revisited and addressed in the Deliberation Report.

You consider that the omission of the Minister of Conservation's rejection of the Council's 2018 proposal to revoke the reserve status of the land was misleading. However, while that decision may provide context, the 2022 decision was a separate decision, made by a different decision-maker. Nevertheless, it seems evident that the Council has turned its mind to the concerns previously raised by the Minister, and the Council's response to those concerns were presented to the decision-makers for consideration.

I note that consultation is not a delegation or sub-contracting of decision-making. It is an information gathering process. The process of consultation does not mean that the consulting body must reach agreement with those consulted. The meaning of 'consultation' for legal purposes was considered in the leading case of *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 (CA). The Court of Appeal stated:

The word 'consultation' did not require that there be agreement as to the charges nor did it necessarily involve negotiations towards an agreement, although this might occur particularly as the tendency in consultation was at least to seek consensus. It clearly required more than mere prior notification. If a party having the power to make a decision after consultation held meetings with the parties it was required to consult, provided those parties with relevant information and with such further information as they requested, entered the meetings with an open mind, took due notice of what was said and waited until they had had their say before making a decision: then the decision was properly described as having been made after consultation.

In this case, it seems that relevant information was provided to the community. It is appropriate that the Council considered feedback from a range of sources and applied its own analysis to the feedback received from public engagement. The Council appears to have taken due notice of the objections to, and feedback on, the proposal before advising the decision-makers whether to proceed with it. The fact that it was not persuaded by the submissions opposing the reclassification does not indicate that the Council's view was predetermined or that its process was flawed. In this case, there does not appear to be basis for the Ombudsman to form the view that the Council's consultation process had departed from good administrative practice or from its obligations under the LGA and the Reserves Act.