
REPORT 1
(1215/11/IM)

**DECISION ON OBJECTIONS UNDER S.339 OF THE
LOCAL GOVERNMENT ACT IN RELATION TO
APPLICATION TO ERECT BUS SHELTERS UNDER SR
153592**

1. Purpose of Report

To report to Council the recommendations of the “Officer” of Council (with delegated authority to hear objections in relation to Bus Shelters) under s.339 of the Local Government Act

2. Recommendations

It is recommended that the Council:

1. *Receive the information.*
2. *Resolve, under s.339 of the Local Government Act 1974, to:*
 - a. *Note that a joint hearing of submissions to the Resource Consent under SR 153592 and objections under s.339 of the Local Government Act has been completed;*
 - b. *Agree that none of the shelters proposed under SR 153592, and listed in Appendix 1, unreasonably prevent access to any land having a frontage to the roads in question;*
 - c. *Note that the written and oral submissions and objections of property owners and/or occupiers have been considered and that no significant issues have been identified that would warrant that a particular proposed shelter should not proceed as permitted under the Resource Consent;*
 - d. *Dismiss the objections received from property owners and/or occupiers in relation to the Resource Consent application SR 153592.*

3. Background

In erecting a “Transport shelter” under s.339 of the Local Government Act it is necessary for Council to provide a notice to the owner and occupier “of any land the frontage of which is likely to be injuriously affected by the erection of the

shelter”, and to provide appropriate notice and to hear and determine any objection to the proposal.

The Council has given these notices and received a number of objections. At the same time the Council applied for a Resource Consent and called for objections. As these processes involved similar issues and in some cases the same objectors, approval was sought from the Council to have these objections heard together. That is, that the hearing would be a joint hearing to determine the issues under both the Resource Management Act and the Local Government Act. The Council agreed by Resolution of 21 February 2007 to this approach. This report proposes that Council now accept the outcome of the hearing of objections as outlined below.

The Resource Consent has been determined and is currently subject to appeals to the Environment Court

To be accepted at this point is the recommendation in relation to objections under s.339 of the LGA.

4. Discussion

The Local Government Act, in s.339, provides “That Council may erect on any footpath of any road a shelter for use by intending public transport passengers or taxi passengers:

“Provided that no such shelter may be erected so as to unreasonably prevent access to any land having a frontage to the road.”

As well as this explicit prohibition, Council is required to consider any objections and give objectors an opportunity to be heard in support of objection if they wish.

Thirty eight objections were received and considered under this Act. About half of these objectors appeared in person to speak to their concerns.

The following report gives careful consideration to all the issues raised by the submitters, including those issues elaborated on in presentations by the individuals who appeared at the hearing.

The general conclusion reached is that “no property will have access unreasonably prevented and that where property development plans were identified a suitable condition has been imposed under the Resource Consent to ensure that the shelter is appropriately relocated should it prove necessary.”

Once the Council has considered any objections under s.339 and made a decision there are no rights of appeal.

While this decision addresses any issues in terms of s.339 LGA there are still matters related to the Resource Management Act that are yet to be resolved and are currently following due process.

Report from: Ian Hutchings

“Officer” of Council

(with delegated authority to hear objections in relation to Bus Shelters)

REPORT TO COUNCIL UNDER THE LOCAL GOVERNMENT ACT

Proposal

This report recommends that Council resolve, under s.339 of the Local Government Act 1974, to:

Note that a joint hearing of submissions to the Resource Consent under SR 153592 and objections under s.339 of the Local Government Act has been completed;

Agree that none of the shelters proposed under SR 153592, and listed in Appendix 1, unreasonably prevent access to any land having a frontage to the roads in question;

Note that the written and oral submissions and objections of property owners and/or occupiers have been considered and that no significant issues have been identified that would warrant that a particular proposed shelter should not proceed as permitted under the Resource Consent;

Dismiss the objections received from property owners and/or occupiers in relation to the Resource Consent application SR 153592.

Background

In erecting a "Transport shelter" under s.339 of the Local Government Act it is necessary for Council to provide notice to the owner and occupier "of any land the frontage of which is likely to injuriously affected by the erection of the shelter", and to provide appropriate notice and to hear and determine any objection to the proposal.

Council has applied for the necessary Resource Consent which has now been heard and determined.

Council also agreed by Resolution of 21 February 2007 that the hearing would be a joint hearing to also determine the issues under both the Resource Management Act and the Local Government Act, and provided the authority necessary for that to occur.

This report proposes that Council now accept the outcome of the hearing of objections as outlined below.

Assessment criteria

The Local Government Act, in s.339, provides "That Council may erect on any footpath of any road a shelter for use by intending public transport passenger or taxi passengers:

Provided that no such shelter may be erected so as to unreasonably prevent access to any land having a frontage to the road."

As well as this explicit prohibition, Council is required to consider any objections

The Council, as instigator of the bus shelters, is required to give notice in writing to the occupier (and if appropriate also to the owner), of any land the frontage of which is likely to be injuriously affected by the erection of the shelter. Council has advised every property owner/occupier where a shelter is proposed outside a property frontage. I do not take that as meaning that every property is likely to be injuriously affected, merely that Council has acted in an open and responsible manner in seeking the views of the relevant parties.

The list of the proposed shelter sites and submissions from property owners/occupiers with shelters proposed directly outside their frontage is given in Appendix 1. There were 39 submissions from owners/occupiers relating to 38 of the 125 sites applied for.

For a property frontage to be injuriously affected by a bus shelter there should be a discernible permanent effect such as to degrade the ability of the property owner to access or maintain the property, or to significantly prevent the continued peaceful enjoyment of the property or to demonstrably degrade the overall economic value of the property.

The submissions from property owners also covered a range of matters which were of a more general nature and did not relate specifically to the property concerned. These wider matters have been considered under the Resource Consent process and are not reiterated here. In addition submissions were received from adjacent property owners, which although they do not have a shelter proposed outside their property frontage, may be able to claim injurious affect. I recognise that adjacent owners may also have concerns, but also that the Local Government Act recognises property frontages are the prime consideration under s.339. I note that any effect on adjacent land is likely to be less than any effect on the directly affected property and that the adjacent property need therefore only be assessed if there is found to be an adverse effect of the directly affected property.

Whilst this report does not seek to repeat the material heard under the Resource Consent it is necessary to briefly record that the provision of bus shelters is in accordance with the relevant Council and Regional plans and strategies, is being promoted in terms of promoting an efficient and effective public transport network, and is supported by the submissions of the Regional Council. Further, that funding constraints mean that without the proposal for Adshell shelters, there would be a minimal level of additional or replacement shelters for many years.

Property access

Several submitters were concerned about (vehicle) access to their property, or about future access required by a redevelopment plan for the property. I noted that the applicant had made minor alterations to the proposed site(s) through a

consultation process and had accordingly responded to a number of the concerns prior to the application being lodged.

In a number of cases submitters provided evidence of proposed or approved plans for redevelopment of the property and the applicant has agreed to a process, under the Resource Consent, where the shelter at nine particular sites would be relocated on the frontage, if proved necessary in the future, to suit redevelopments on the property.

On that basis I conclude there will be no obstruction of present access and that where a development is planned there is an adequate process in place, at the expense of the applicant, to relocate the shelter within the property frontage if future access is impeded.

There were several submissions that saw the proposed shelter as preventing access to maintain their property, i.e. painting or repairing a fence or a wall.

The applicant proposed, in most cases, to leave a narrow access gap between the shelter and the property, with appropriate low maintenance surfacing such as concrete. In addition, the panels of the shelter could be removed if necessary. In one case a condition relating to the timing of installation was imposed to allow a small wall to be replaced.

I therefore conclude that there are no injurious effects due to obstruction of, or impediments to, access to properties.

Effects on utilisation and appearance of road reserve

Several submitters were concerned about loss of parking outside their property, either through a new prohibition, or the bus stopping at that location.

There is no particular linkage of on-street parking with a specific property, and many cases exist where on-street parking is either used by non residents or residents are required to park some distance away from their residence. While there will, in a few cases, be a reduction of parking (either formal or informal) in a specific area through the proposal, the present parking use is not linked specifically to a particular property other than by tradition or convention.

There were also concerns about the removal of vegetation outside particular properties. The Council had requested conditions where appropriate to protect particular trees and I am satisfied that these Resource Consent conditions are adequate. The street vegetation is generally seen as an ever varying mix of grass berms, trees, and shrubs and therefore changes to one particular location must be seen in that context.

Views of a particular property from the road reserve, that include a view of the bus shelter, will normally include ancillary features such as garages, gates, fences, driveways and will also be set against a much wider backdrop of hillsides, or other dwellings or vistas. As such the shelter will only be a small part of the overall view and is therefore unlikely to be detrimental to the overall

views possible. The proposed shelters will be likely to be of a different design style to some dwellings, but there can be expected to be a mix of dwelling styles on adjacent properties which are accepted as a normal part of suburban development.

I therefore conclude that any changes to the use and appearance of the road reserve, including parking on formed or informal road or roadside areas, or by activities such as removal of vegetation, are not closely enough linked to an actual individual private property to constitute an injurious effect on such property.

Potential loss of property value

A handful of submissions were concerned about a loss of value to their property from the proposed shelter, and in one case provided an assessment from a real estate agent that the property could take a longer time to sell and “it could have an impact on the value of the property by as much as \$50,000 to \$80,000.” Other submitters simply saw a reduction of value, but without any estimation.

While it is clear that there are a variety of perceptions on possible effects on property valuations, it is far less clear if any actual loss of value does exist. There is no widespread evidence that a bus shelter on a property frontage lowers the saleability or value of the property. If this was the case it would be apparent in the time to conclude a sale and /or prices of such property. There is no demonstrable evidence of such lower than average values or linkage of such to the presence of a bus shelter, or other street furniture or utilities, throughout the property market. If there is any actual loss of value, such can only be determined when the property is sold and then only by gaining contracts for sale “with” and “without” the shelter. I note that the assessment provided recognised that “it is difficult to quantify the effect of the proposed bus shelter in terms of its effect on the property’s value” and used the wording “could” rather than “would” in the assessment.

I conclude that any perceptions on effects on value of residential properties are largely a subjective matter and any actual loss of value cannot be accurately quantified.

There was a submission that related to the potential loss of sales revenue from commercial premises (Site 4) because of the shelter proposals, and people using the shelter. The most intensive use of a bus shelter is likely to be in the commuter peak periods and at the site in question this would occur at morning periods when the shops in question were not experiencing peak trade, or perhaps not even open. Obstruction of existing signage by bus stop users is therefore unlikely to have any significant effect. The visibility of existing signage on the windows under the existing veranda from passing traffic is likely to be low and other more visible opportunities exist for the owner/occupier in any event. I conclude that there is likely to be no discernable loss of revenue from the proposed shelter and therefore no effect on the property value.

A series of submissions were received in relation to Site 45, and I have treated the submission from a Trustee who submitted as being from an “occupier”. The issues concerning advertising content are dealt with under the Resource Consent, as are matters concerning footpath width. The Church property is elevated from the road and the shelter cannot have any significant effect on activities within, and enjoyment of, the Church property. I acknowledge that the congregation may also use the footpath to meet and chat, but this is a use of road reserve rather than the property itself and such any congregational use is not assured or protected. I am convinced that access to and from the property is maintained at a reasonable level.

Anti-social activities

Some submitters were concerned about anti social effects of “non-passenger” users of bus shelters, including noise, littering and the like. These are transient effects that might (or might not) occur in any area, and there are existing mechanisms for managing these societal effects. In addition, there is a proposed schedule of regular cleaning and maintenance of the structures. Residences are, for the most case, set back from the property boundary and the probability of damage to a dwelling is seen as low, and the potential for vandalism to fences, letter boxes and the like are ever present, irrespective of the presence of a shelter or bus stop.

I do not consider these potential and irregular effects are strongly linked to bus shelters and the proposal can not therefore be seen as injuriously affecting any particular property.

Other matters

A number of submissions were concerned about loss or degradation of their private views. This is a subjective matter and, given that a bus shelter will be only a part of an overall view of a somewhat distant streetscape, is a matter that is not likely to cause any injurious effect on a property. I note in addition that private views are generally not protected under the District Plan, but can on some occasions be treated as a part of amenity value.

Several property owners (or neighbours) were concerned about sight lines for vehicles using driveways or garage entrances. These matters and other traffic safety issues were assessed in the Resource Consent process and it is inappropriate to attempt to apply a second and different standard or process under the Local Government Act.

Some of the shelters proposed were not approved under the Consent process. The associated properties were not assessed further under the Local Government Act. Similarly the shelter proposals withdrawn by the applicant were not further assessed.

I note that the proposed shelter at 7 Station Rd and 125 Hutt Rd are wholly or partly on private property and an assessment under s.339 is either not relevant or may be deemed to have been satisfactory if the owners approval for partial site use has been obtained.

Conclusion

I am satisfied that the relevant property owners/occupiers were notified as required under the Local Government Act and that relevant parties were advised of the hearing and have been provided with the opportunity to make objections as required under the Local Government Act.

I am satisfied that no property will have access unreasonably prevented, and that where property development plans were identified a suitable condition has been imposed under the Resource Consent to ensure that the shelter is appropriately relocated should it prove necessary.

I am also convinced that there will be no discernable injurious effect on the relevant properties through the provision of the bus shelters as proposed and as authorised under the Resource Consent.

On that basis the objections should not be sustained and there should be dismissed as outlined under the Local Government Act.

Ian Hutchings

“Officer” of Council
(with delegated authority to hear objections in relation to Bus Shelters)

10 April 2007

**LIST OF LOCATIONS AND SITE NUMBERS AND OBJECTIONS
FROM PROPERTY OWNERS/OCCUPIERS**

Shelter No.	Location	Submission/objection from property owner or occupier?	Sub. No	Summary of issues raised
1	Outside 93 Onepu Road	No		
2	Near 96 Onepu Road	Yes	10	Proximity, Fence construction
3	Outside 115 Onepu Road	No		
4	Outside 138 Onepu Road	Yes	163 (138 Onepu)	Obstruction, loss of signage visibility & sales
5	Outside 219 Onepu Road	No		
6	Near 66 Lyall Parade	No		
7	Outside 2 Rua Street	No		
8	Opposite 6 Rua Street	No		
9	Resource Consent declined (19 Rua St)	N/A		
10	Resource Consent declined (215 Sutherland Rd)	N/A		
11	Outside 190 Queens Drive	No		
12	Outside 252 Queens Drive	Yes	73	View, enjoyment, value, vehicle access visibility
13	Outside Hungerford Road Terminus, Hungerford Road	No		

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14	Outside 260 Oriental Parade	Yes	21	Vehicle access safety, affect on architecture, value, and impedes possible development
15	Outside 328 Oriental Parade	Yes	71,81	Value, streetscape, parking and access, privacy, safety and congestion
16	Outside 26 Evans Bay Parade	Yes	17	Footpath congestion, view, parking, sewer main
18	Outside 50 Evans Bay Parade	Yes	119	Redevelopment plans and access, shading, view
19	Withdrawn			
20	Withdrawn			
21	Outside 88 Evans Bay Parade	No		
23	Outside 218 Evans Bay Parade	Yes	11	Development and retaining wall, multiple shelters
24	Withdrawn			
25	Opposite Cog Park, Evans Bay Parade	No		
26	Outside Cog Park, Evans Bay Parade	No		
27	Near 406 Evans Bay Parade	No		
28	Withdrawn			
29	Outside 440 Evans Bay Parade	No		
30	Opposite 440 Evans Bay Parade (Evans Bay Yacht Club)	No		

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31	Opposite 464 Evans Bay Parade			
32	Outside 518 Evans Bay Parade	Yes	46	Access for future off street parking/garages, visibility and value
33	Opposite 506 Evans Bay Parade	No		
34	Outside 383 Broadway	No		
35	Outside 411 Broadway	No		
36	Outside 424 Broadway	No		
37	Outside 451 Broadway	Yes	80	Access visibility, privacy, safety, value
38	Outside 535 Broadway	No		
39	Outside 575 Broadway	Yes (577)	98	Loss of parking
40	Outside 493 Adelaide Rd	No		
41	Near 542 Adelaide Road	No		
42	Outside 559 Adelaide Road (Granville Flats)	No		
43	Outside 17 The Parade	Yes	2, 124	Traffic, pedestrian congestion/obstr uction, safety,
44	Outside 66 The Parade	No		
45	Outside 75 the Parade	Yes	33	Footpath width (funerals and pall bearers), parking, advertising content.
46	Outside 108 The Parade	No		

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47	Outside 111 The Parade	No		
48	Outside 221 The Parade	No		
49	Outside 300 The Parade	No		
50	Outside 311 The Parade	No		
51	Outside Karori Park	No		
52	Outside 359 Karori Road	No		
53	Outside 356 Karori Road	No		
54	Outside 333 Karori Road	Yes	9	Support (type H)
55	Outside 292 Karori Road	No		
56	Outside 289 Karori Road	Yes	62	Quality of life, vandalism, privacy
57	Outside 219 Karori Road	Yes	35, 36, 37	Access visibility, safety of driveway users and residents, view, unsightliness
58	Outside 218 Karori Road	Yes	64	Anti social activities, number of bus stops, access for maintenance.
59	Outside 198 Karori Road	No		
60	Outside 95 Karori Road	No		
61	Chaytor Street, Outside Joll Street Pedestrian Access	No		
62	Chaytor Street, Opposite Joll Street Pedestrian Access	No		

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63	Chaytor Street, Outside Appleton park	No		
64	Chaytor Street, by west portal, Karori Tunnel	No		
65	Opposite 183 Glenmore Street	No		
66	Outside 173 Glenmore Street	No		
67	Withdrawn			
68	Opposite Orangi-Kaupapa Road, Glenmore Street	No		
69	Outside 20 Glenmore Street (Sharella Motor Inn)	No		
70	Opposite 352 Tinakori Road	No		
71	Hutt Road, under northbound Aotea Bridge	No		
72	Corner of Hutt Road and Fore Street (Outside 125 Hutt Road)	Yes	117	Land ownership issues
73	Outside 5 Onslow Road	No		
74	Outside 41A Onslow Road	No		

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75	Corner of Homebush Road and Onslow Road	No		
76	Opposite 31 Homebush Road	No		
77	Outside 35A Homebush Road	No		
78	Outside 57 Homebush Road	Yes	122	Possible future property access, Parking, Advertising and lighting, traffic safety,
79	Outside 67 Homebush Road	No		
80	Outside 92 Homebush Road	No		
81	Outside 120 Homebush Road	No		
82	Corner of Homebush Road and Benares Street	No		
83	Outside 48 Mandalay Terrace	No		
84	Outside 47 Mandalay Terrace	No		
85	Outside 27 Mandalay Terrace	No		
86	Outside 24 Mandalay Terrace	Yes	156	Visual and shelter, propose alternate site

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87	Opposite 3 Mandalay Terrace (Rear 82 Onslow Road)	No		
88	Cashmere Avenue, outside 1 Mandalay Terrace	Yes?	51	Inadequate shelter
89	Outside 11 Cashmere Avenue	No		
90	Resource Consent declined (64 Cashmere Ave)	N/A		
91	Outside 55 Cashmere Avenue	Yes	165	Advertising, lighting and lack of use
92	Outside 7 Station Road	Yes	44 (7A)	Shelter now on private land.
93	Outside 8 Station Road	Yes	76	Advertising, traffic safety, vandalism and lack of use
94	Corner Burma Road and John Sims Drive	No		
95	Ranui Crescent, outside rear of 96 Cashmere Avenue	No		
96	Outside 71 Ranui Crescent	Yes	171	Retain foot and informal vehicle access.
97	Outside 85 Ranui Crescent	No		
98	Outside 2 Everest Street	Yes (new owner)	23	Safety of garage access

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99	Outside 27 Everest Street	Yes	151	Streetscape and vegetation issues
100	Outside 28 Everest Street	No		
101	Outside 1 Clutha Avenue (rear 2 Torwood Terrace)	No		
102	Outside 6A Clutha Avenue	Yes	42	View, security, traffic, access sightlines and vegetation.
103	Outside 40 Clutha Avenue	No		
104	Outside 49 Clutha Avenue	No		
105	Outside 30 Calcutta Street	No		
106	Outside 39 Calcutta Street	Yes	19, 153	Potential development plans, Vehicle access visibility, environmental impact
107	Outside 2 Waru Street	No		
108	Punjab Street (rear 46B Waru Street)	No		
109	Outside 35 Punjab Street	Yes	118	Advertising and lighting, vegetation, retaining wall issues
110	Outside 10 Punjab Street	No		
111	Opposite 10 Punjab Street	No		

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112	Cockayne Road, outside Nairnville Park	No		
113	Outside 75 Cockayne Road	No		
114	Outside 155 Cockayne Road	No		
115	Outside 158 Cockayne Road	No		
116	Outside 202 Cockayne Road [Relocated to 196 in hearing]	Yes	91	Advertising, streetscape, access visibility.
117	Outside 203 Cockayne Road	Yes	50	Limits subdivision opportunity, decreased visibility, inappropriate in suburbs
118	Outside 235 Cockayne Road	Yes	3	Support, seeks additional front panel
119	Outside 236 Cockayne Road	No		
120	Outside 2 Perth Street	No		
121	Outside 3 Perth Street	Yes	83	Unnecessary, advertising and illumination, noise, privacy/safety, and vandalism effects

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122	Outside 15 Perth Street	Yes	26	Too many in street, potential traffic hazards, out of character, advertising, inadequacy of shelter, privacy and safety, value
123	Near 16 Perth Street	Yes (18 Perth)	22	Access for planned development
124	Ngaio Gorge Road (rear of 73 Trelissick Crescent)	No		
125	Outside 11 Ngaio Gorge Road	No		
126	Outside 65 Ngaio Gorge Road	Yes	93	Obstruct proposed garage plans, inhibit vehicle access
127	Near Power Pole Number 1044, Ngaio Gorge Road (approximately opposite 67 Ngaio Gorge Road)	No		
128	Outside 105 Ngaio Gorge Road			
129	Near Power Pole Number 1037, Kaiwharawhara Road (approximately opposite 107 Kaiwharawhara Road)	No		

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130	Near Power Pole Number 1022, Kaiwharawhara Road	No		
131	Outside 52 Kenya Street	No		
132	Outside 39 Kenya Street	No		
133	Corner Kenya Street and Crofton Road	No		
134	Outside 1 Ottawa Road (Ngaio Community Hall)	No		
135	Outside 22 Ottawa Road	Yes	4	Support