

RODNEY DISTRICT COUNCIL

SUPPLEMENTARY AGENDA

19 August 2010

ITEM NO: 10A

REPORT



TO Council
ON 19 August 2010
FROM Peter Vari – Manager: District Planning
APPROVED BY Warren MacLennan – Assistant Chief Executive
SIGNATURE

A handwritten signature in black ink that reads "Warren MacLennan".

SUBJECT HEARINGS PROCESS FOR DISTRICT PLAN CHANGES AND VARIATIONS
FILE REF TP/14/2; TP/14/12

PURPOSE OF REPORT:

To obtain the Council's agreement to using Hearing Commissioners for hearing of submissions and making decisions on some District Plan Variations and Plan Changes prior to 31 October 2010.

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input type="checkbox"/> Policy decision	<input type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input checked="" type="checkbox"/> Delegation	<input checked="" type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

IMPLICATIONS:

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? No
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? Yes, the District Plan enables continued consideration of variations and plan changes.
(v)	Is a budget amendment required? No

(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required?
	No
(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?)
	No

FINANCIAL IMPLICATIONS:

Capital cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	Not applicable
Is it currently budgeted for?	Not applicable
Funding and rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

SUMMARY:

The Council has notified a number of variations and private plan changes to the District Plan which have not yet reached the hearing stage, and a number of others which are proposed to be notified shortly. Some of the hearings to consider submissions could be held prior to the new Council coming into being on 1 November 2010, but there may be practical difficulties in completing hearings and making decisions as that date approaches. The principles of natural justice require that the individuals who make a decision on submissions must be the same individuals who heard submissions on the matter.

Many councillors may be focussed on firstly the 9 October elections and secondly on training and induction for the new Council and local boards in the second half of October. Currently the last scheduled Council meeting is the Ordinary Council meeting on 30 September.

It is suggested that three councillors be appointed as commissioners, along with three other independent commissioners, to act as a hearing panel and decision maker on those District Plan variations where there is a risk of decisions not being completed.

RECOMMENDATION:

That the Council appoint a hearing panel consisting of a minimum of two of the following five people: Crs Gaye Harding, Suzanne Weld and Grahame Powell, and Independent Commissioners Bill Smith, Alan Watson and Harry Bhana to hear and make decisions on District Plan changes and proposed variations to the Proposed District Plan where, in the opinion of the Manager: District Planning this is the most effective way of ensuring that the hearing and decision making process will be completed by 31 October 2010.

1.0 Background

1.1 The Council has notified a number of variations to the District Plan which have not yet reached the hearing stage, for example variation 140 (Small Business Centres), Variation 141 (Blacked Out Rules) and a number of private plan changes. There are 14 such variations and another five that are to be notified shortly. In the case of the variations already notified, many will now be procedurally at a stage where a hearing can be held. However, for some of the more complex plan changes/variations, there is a risk that a hearing could raise issues that require further research or time to resolve. In these cases a decision could not be made by the existing Council prior to 30 September 2010, after which councillors may also be focussed

on the election and on new responsibilities and roles, some of which may be with the new Auckland Council. If a hearing is held but a decision cannot be made before that time, the normal process would be for the new Council to hear the submissions again and for the new Council to make a decision.

- 1.2 In addition, due to the delay in making Chapters 9, 21, 13 and 3 operative because of the LGAAA appeals, decisions on some variations which introduce changes to these chapters will not be able to be issued until the abovementioned chapters are operative. These appeals could possibly be resolved in late September, in which case decisions on these variations could not be issued. This affects, for example, Variation 140 (Small Business Centres) and Variation 141 (Blacked Out Rules).
- 1.3 An alternative approach to overcome the issue in 1.1 above is to appoint commissioners to hear the submissions to the variations most likely to run close to the time limit imposed by the impending elections, because of timing or complexity of subject. Commissioners would not be affected by the election and would simply be appointed to hear and make decisions on the variations and would have the legal power to do so despite the Council elections occurring in early October. This would enable decision making to continue over the period between the last Rodney District Council meeting and the new Auckland Council taking up its responsibilities in terms of plan changes/variations from 1 November 2010.

2.0 Options

- 2.1 If Commissioners are appointed for the purpose of interim decision making, there is the issue that such decision making is a key element of the policy making process and is a more appropriate function for the Council itself to undertake, rather than commissioners. Creating the District Plan is generally a Council function and a key part in local decision making. Variations are part of this key process. To address this issue there are three options:
 - (a) Appoint the current Council as commissioners so they can continue the process after the current Council in effect goes out of existence.
 - (b) Appoint a hearing panel consisting of both councillors and independent commissioners, ideally with local knowledge, to continue decision making in the interim period between the last scheduled meeting of Rodney District Council and the new Council setting up its decision making structure.
 - (c) Do nothing and leave for new Council.
- 2.1.1 Option 1 above leaves the decision making in the hands of the currently elected representatives, thereby addressing the issue outlined above. However, there could be negative perception issues about councillors making decisions after the election result is known. There could also be the difficult situation whereby current councillors appointed as commissioners became councillors or local board members in the new Council and are therefore focussing on new responsibilities.
- 2.1.2 Option 2 offers the opportunity to have a small number of councillors who are familiar with the issues to be joined by other independent commissioners to address the issues at hand. This could consist of three councillors, including the Chair and Deputy Chair of the District Plan and Regulatory Committee (which would in the normal course of events have heard these submissions and made decisions) and three independent commissioners. Former Deputy Mayor Bill Smith, an experienced and qualified commissioner, is available and would bring a 'local' perspective to any matter put before the panel. Other similar qualified commissioners could also be sought. This approach would provide continuity and reduce the risks with the first option.
- 2.1.3 Option 3 would be not to set up a hearing panel, rather to delay submissions, hearings and decisions for the new Council. However, this is not in the interest of efficient decision making or completing processes already started.
- 2.2 The hearing panel would need to have the power to hear submissions and make decisions on submissions for the process to work effectively.

- 2.3 The panel would then be assigned only those hearings where it was considered by the officers that a hearing and decision making process would not be completed by the last scheduled Council meeting for the Rodney District Council on 30 September 2010. The present Council would continue to hear those variations where it is clear a hearing and decision can be undertaken fully by the present Council before its final scheduled meeting.

3.0 Conclusion

The Council needs to have in place the ability to continue to issue decisions in respect of variations already publicly notified. Where it can hold a hearing and make decisions prior to the last scheduled meeting on 30 September 2010, that process should continue. However, appointing a hearing panel consisting of three councillors and three independent commissioners will provide the opportunity for decision making on variations in the period between the last scheduled meeting on 30 September 2010 and the new Council taking up its responsibilities on 1 November 2010.