

RODNEY DISTRICT COUNCIL

SUPPLEMENTARY AGENDA

13 August 2009

ITEM NO: 17

REPORT



TO Council
ON 13 August 2009
FROM Ryan Bradley – Policy Planner
APPROVED BY Warren Maclennan – Acting Chief Executive
SIGNATURE

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

SUBJECT **WAIMAUKU ESTATES – PRIVATE PLAN CHANGE APPEAL – ENVIRONMENT COURT DECISION**
FILE REF TP/14/3/16

Request for Consideration of Urgent Item

Following a decision by the Environment Court in relation to an appeal by Cornerstone Group Ltd / Malory Corporation Ltd, the latter has fifteen working days, or until 31 August, to lodge a further appeal to the High Court. The Council should therefore receive the information presented in the item at this meeting as the date by which a further appeal may be lodged falls before its next scheduled meeting on 24 September.

RECOMMENDATION:

That the following item be considered as a matter of urgency at this meeting as the date for the Council's next meeting falls after the date by which a further appeal by Malory Corporation Ltd in relation to its Waimauku Estates Private Plan Change request can be lodged with the High Court.

PURPOSE OF REPORT:

<input checked="" 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 type="checkbox"/> Delegation	<input 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?
	Retains the integrity of Vision Rodney.
(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?
	Retains the integrity of Planning Rodney.
(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 Transitional Authority 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 & rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

SUMMARY:

The Environment Court has ruled in favour of the Council's rejection of the Waimauku Estates Private Plan Change request. The Waimauku Estates proposal involved a large new settlement of approximately 3,000 people to the northwest of Waimauku (current population 930).

The Council rejected the private plan change request in September 2008 and this decision was appealed to the Environment Court. The hearing was held in June 2009 and the Court's ruling was released in August 2009.

The Court held that the private plan change request was not in accordance with sound resource management and that the substance of the request had been considered and rejected by the Council in the past two years (during the Waimauku Structure Plan process).

The Court noted:

We have concluded that the Council has not rejected this request simply because it conflicts with its conclusions as to the appropriate growth for Waimauku, but rather that the Structure Plan represents the outcome of a detailed consideration of options addressing the substance of the request before it.

The private plan change request was originally lodged by Cornerstone Group Ltd. The land has since been sold and the new land owner, Malory Corporation Ltd, had taken over the appeal.

RECOMMENDATION:

That the information in relation to the Environment Court's decision regarding the Waimauku Estates - Private Plan Change Appeal be received.

1.0 Background

In 2004 Cornerstone Group Ltd (Cornerstone) proposed a large development of approximately 3,000 people and associated commercial facilities on the old Rennall's farm near Waimauku.

The subject site is located on State Highway 16 (SH16) immediately adjoining and to the north of the existing Waimauku township. It is bisected by the North Island railway line, with the northern part of the property lying directly to the west of the Countryside Living areas of Taylor Road. The subject site is zoned General Rural in the Proposed District Plan 2000.

Over the next few years Cornerstone refined its design and publicised the development, but did not lodge any official applications to the Council. The development was called Waimauku Estate and was designed to include 1,375 dwelling units in a generally mixed use format. There were associated community and social facilities (including retail and offices, sports fields, school, public square and aquatic centre), all within an urban development area of approximately 60ha, or 13% of the overall landholding.

The urban activities were comprised in four main village nodes and two farm hamlet and clusters formats. These nodes/clusters were:

- station village
- garden suburb and lifestyle cluster
- main town
- hilltown
- farmland
- rural cluster.

In addition to the urban development area was approximately 27ha of open space and amenity areas, 107ha of tree crops/pasture, 104ha of orchards/vines, and 20ha of perennial crops, totalling 231.2ha overall. In addition, approximately 150ha of native revegetation was proposed to supplement the 26.5ha of existing native bush and 6.25ha of existing wetland/riparian areas.

Rodney District Council initiated a structure plan process for the Waimauku area in October 2006. Cornerstone lodged a private plan change request for the Waimauku Estate proposal in December 2007. The private plan change provided for a new special zone enabling the establishment of an urban village with associated countryside living, as set out in the Waimauku Estate proposal.

A number of structure plan options for the future of Waimauku were presented to the community in February 2008, including the Waimauku Estate proposal. In June 2008 the Council responded to the public feedback on the structure plan options by choosing a slow growth option for the township. This growth was much less than proposed in the Waimauku Estate option and was to the south rather than the northwest.

As a consequence of its decision on the structure plan, the Council then also rejected the private plan change application by Cornerstone for the Waimauku Estate proposal in September 2008. The Council rejected the request at the outset - the merits of the proposal were not considered, but rather the limited grounds for refusal under Clause 25(4) of the First Schedule to the Resource Management Act 1991 (RMA) were used as below:

1. The substance of the request has been considered and rejected (as a potential growth option as part of the Waimauku Structure Plan process) by the Council in the last two years;
2. The request is not in accordance with sound resource management practice as it has been considered and rejected as a potential growth option for Waimauku and is therefore in direct conflict with the Council's agreed policy outcomes for Waimauku;

3. The request is inconsistent with part 5 of the Act as it would not give effect to the Auckland Regional Policy Statement (ARPS) (as required by section 75(3)(c)) and would directly conflict with Council-initiated plan changes that would follow the structure planning process and give effect to the stated outcomes for Waimauku.

Cornerstone appealed the Council's decision to the Environment Court. Shortly after this, the subject land was sold to Malory Corporation Ltd (Malory) which took over the appeal and proceeded to Court.

An Environment Court hearing was held in June 2009 and the Council presented evidence in defence of its position, with the support of Vision Waimauku (residents' group), which was a s274 party to the appeal.

The Environment Court released its decision in August 2009 and dismissed the appeal by Malory. In short, the Court held that:

- Clause 25 of the First Schedule is a threshold test;
- The substance of the request had been considered and rejected by the Council in the past two years:

We have concluded that the council has not rejected this request simply because it conflicts with its conclusions as to the appropriate growth for Waimauku, but rather that the Structure Plan represents the outcome of a detailed consideration of options addressing the substance of the request before it.

- The request is not in accordance with sound resource management; and
- The Council reached the correct decision in rejecting the request.

The Court did not entirely agree with the Council's submission that the request was inconsistent with Part 5 of the RMA therefore held that inconsistency in isolation was not a ground for the Council to reject the request. However, overall the Court considered there were sufficient grounds for the Council to reject the request.

A full copy of the Court's decision is attached in **Appendix 1**.

Malory can appeal the decision to the High Court on a point of law only. It has 15 working days in which to lodge an appeal (August 31).

APPENDIX 1