

RODNEY DISTRICT COUNCIL

SUPPLEMENTARY AGENDA

27 May 2010

ITEM NO: 25

REPORT



TO Council
ON 27 May 2010
FROM Ryan Bradley – Policy Planner
APPROVED BY Warren MacLennan – Assistant Chief Executive
SIGNATURE

A handwritten signature in black ink, appearing to read "Warren MacLennan".

SUBJECT **WAIMAUKU ESTATES – PRIVATE PLAN CHANGE APPEAL – HIGH COURT DECISION**

FILE REF TP/14/3/16

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 High 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 Environment Court ruled in favour of the Council in August 2009. The appellant appealed the case to the High Court on points of law and this court released its decision in favour of the Council last week.

The High Court held that the Environment Court ruled correctly on the matter. In particular, that the substance of the appellant's request had been considered and rejected in the last two years (during the Waimauku Structure Plan process).

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, took over the appeal.

RECOMMENDATION:

That the report be received.

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 eventually 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.

Rodney District Council initiated a structure plan process for the Waimauku area in October 2006. Cornerstone lodged a request for a private plan change 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:

- (a) 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;
- (b) 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;
- (c) 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 Environment 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 have not rejected this request simply because it conflicts with their 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.

Malory appealed the decision of the Environment Court to the High Court on points of law. The questions that it sought a ruling from the High Court on were:

- Was the Environment Court correct in holding it had a discretion on an appeal from a private plan change decision which went beyond the scope of the matters set out in clause 25(4) of Schedule 1 of the Act?
- Was the Court entitled to take into account matters not expressed in clause 25(4) or able, by reasonable implication, to be incorporated into that sub-clause?
- Is a non-statutory consultation process sufficient consideration in terms of clause 25(4)(b)?

- Does the phrase *sound resource management practice* appearing in clause 25(4)(c) include matters of the substance of the plan change and its planning merit?
- Does consistency with Part 5, in terms of clause 25(4)(d), require consistency with district or regional planning documents?

The High Court hearing was held on 18 March 2010 and the decision of the Court was sent to parties on Monday 17 May 2010.

The High Court stated:

Of the five questions of law raised by the appellant as its grounds for appeal, the first and fifth require no decision from this Court. On the second question, the third question decisively, and on the fourth question in a limited context, I have held against the appellant. My conclusion is that the judgment of the Environment Court dated 7 August 2009 is correct.

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

Malory can seek a leave to appeal of the High Court to appeal this decision to the Court of Appeal. Leave to appeal is usually only granted where the question of law is of general or public importance.

If Malory wishes to obtain leave to appeal it must notify the High Court and parties within 21 days of the High Court decision (7 June).

APPENDIX 1

