



SUBMISSION

Prepared by the
New Zealand Retailers Association

For the
**Local Government and Environment
Select Committee**

In respect of
**The Resource Management (Simplifying and
Streamlining) Amendment Bill**

April 2009

Louise Evans
Government & Advisory Group Manager
New Zealand Retailers Association
Level 8, Willbank House
57 Willis Street
P O Box 12 086
Wellington

Ph: 04 472 3733
Fax: 04 472 1071

Introduction

These submissions are presented by the New Zealand Retailers Association

Background

The Association is the largest trade association involved in the retail industry in New Zealand.

We represent an industry that has annual sales of \$66billion and which employs 325,000 people (approx 20% of the New Zealand workforce) in more than 49,000 outlets throughout New Zealand.

Our national membership includes the major supermarket and general merchandise chains, specialised chains, traditional department stores and thousands of owner operators spread throughout the country.

The membership also includes a number of specialised trade groups representing manufacturers, distributors and retailers in the plumbing materials, metal fastener, pet, equestrian, jewellery, bicycle and sporting goods sectors.

General Submissions

These particular submissions have been prepared in consultation with our major members who attended a workshop on the proposed changes and their likely effect on the retail industry.

Our experiences with the Resource Management Act have generally been centred on members' concerns over the significant costs and delays that can arise from particular consent applications and appeals under the current legislation.

We understand that the Bill proposes substantial changes to the current administrative procedures and therefore we are generally supportive of the Bill's overarching objectives which are designed to:

- improve the quality and certainty of decisions.
- reduce delays and costs by simplifying procedures and rationalising appeal processes.
- ensure that penalties are sufficient to discourage inappropriate practices.

Prima facie, these objectives are a logical basis for the proposed amendments and we believe that a number of the provisions will achieve the Bill's objectives. However, when we have assessed the changes that are proposed to implement these objectives, the reality of the proposed changes within the Bill identify

significant issues and concerns for the retail industry which are detailed in our specific submissions below.

Accordingly, we support the objectives of the Bill, however do not recommend that the Bill proceed unless the following issues have been addressed.

Specific Submissions

a) Input into District and Regional Plans

The provisions introduced in the Bill are intended to speed up and reduce costs in district and regional plan preparations and change processes and on the face of it we accept that this is a laudable objective.

However, based on discussions amongst our membership we have concerns about clause 148 of the Bill which proposes to remove the requirement for local authorities to summarise submissions and call for further submissions as that change removes the opportunity for interested parties who have a legitimate interest in a particular plan to have input into the formulation of planning documents which may have direct impacts on them.

Often our members only become aware that a plan change will affect them when they review the summary of submissions and either:

- Become aware of concerns raised by other parties that also relate to them.
- Become aware of relief sought by other submitters which will directly or indirectly affect them.

We oppose clause 148 of the Bill, which would amend clause 8 of Schedule 1. This proposed change poses a threat to our members' ability to ensure that suitable planning provisions govern their activities. We set out some particular concerns below:

- a) The RMA places great emphasis on public participation and this proposed amendment is contrary to that objective. Rulings on plans not only have a 'legal' effect but they impact on people's livelihoods and day-to-day lives. Therefore, it is vital that full public participation occurs in the preparation or change of plans.
- b) If our members accept notified policy statements or plans they should not have to lodge submissions in support as doing so would be an onerous burden in terms of cost and staff resources. However, if the proposed changes proceed, this will be necessary to ensure an opinion is recorded and considered. Currently members can defer their submission and participate in the submission process at the summary stage if they wish, however losing the ability to participate in further submissions is unreasonable and a fundamental loss of participation rights.
- c) The 'second chance' created by the opportunity to make further submissions allows you to double check that you have not missed a crucial provision of concern. This is very important for our members who

- make their own submissions (rather than using consultants) because the importance of a provision may only become apparent when another party raises their concerns in the original submission stage.
- d) The ability to further submit has always been part of the RMA and the Town and Country Planning Act 1977 before it.
 - e) The proposed limited ability to cross submit only where Councils decide who is affected is insufficient. Councils are not necessarily the best judge of whether a provision will affect parties at that immediate time or in the future.
 - f) Also, the "direct adverse effects" test does not recognise why many people become involved in planning processes. Again this conflicts with the overall focus in the RMA of public participation. Many of our members submit on issues that affect the general form of the city or town that they operate in but may not be directly affected by a proposed change. It is entirely proper that our members are able to participate in this way.

The further submission process is crucial in allowing legitimate concerns to be vented.

Reservations are also held amongst industry representatives on the proposal that appeals should only be held on points of law. While decisions may be correct in law, they may have a significantly negative impact on the rights of affected parties – eg. Landowners. We therefore argue that such decisions should be able to be appealed on their merits.

b) Resource Consent processes

We understand that the intention of the proposed changes is simply to reduce time and costs in reaching decisions through the resource consent application process, while maintaining an appropriate degree of public participation and legal right to redress.

We are supportive in principle of this objective as over the years some of our members have had concerns at the costs and delays associated with the consenting process.

We also welcome the proposals to change the notification provisions (particularly the change in threshold of effects on affected persons), reducing the delays due to 'serial or iterative Council requests for further information', and streamlining the council processing of resource consent applications.

We also welcome as a matter of principle other procedures which are designed to produce more timely outcomes such as limits on the council ability to "stop the clock" pending requests for further information from the applicant, and the introduction of the ability for applicants for resource consents, with council agreement, to request that such applications be directly referred to the Environment Court.

Our members have repeatedly expressed concerns with the costs and delays associated with the consenting process, and we see the Bill as offering a significant improvement in this area.

We are also supportive of the requirement for councils to develop a discount policy in respect of breaches of statutory timeframes, and see this as an incentive tool. We would however recommend that consideration be given to the development of national policy guidelines for such discounting.

c) Trade Competition

Our members agree that inappropriate use of the RMA needs to be curbed.

However, our members have major concerns about the proposals:

- They will be shut out of planning or appeal processes that could seriously undermine their ability to legitimately enable their businesses.
- The trade competition provisions will become a device to oppose or prevent them from legitimately participating in resource management processes.
- Rather than streamlining RMA processes, these provisions could lead to significant delay as allegations of trade competition are made and have to be fully litigated.
- They will be required to pay more costs in legal and expert fees so as to demonstrate how in every case it is directly affected by a proposed rule or submission on a proposed rule or application for consent.

There are three areas of the RM Bill that cause the most concern, namely:

- All appeals on plans and proposed plans are limited to points of law except where leave to appeal the merits is obtained.
- The removal or fettering of the right of trade competitors to participate in plan change and review processes.
- The removal or fettering of the right of trade competitors to participate in resource consent processes.

We seek the following:

- *Appeals on plan changes:* There should be a full right to be involved in plan change processes and plan reviews, including the ability to appeal to the Environment Court on the merits. The business community needs to be able to secure good planning outcomes as this provides the foundation for investment.
- *Plan processes - trade competitor involvement:* Any person, trade competitor or not, should have a right to submit and appeal plan changes or plan reviews (including private plan changes). There should be no liability for indemnity costs or damages. The business community should

in common with other sectors of the community have equal access to Councils and then the Courts when law is being developed that directly or indirectly affects their rights and interests. Planning uncertainty is a much greater threat to investment than the delays caused by trade competitors.

- *Resource consent applications - trade competitor involvement:* All persons should be entitled to lodge submissions and appear at council hearings on resource consent applications. Excluding the business community from participation (unless directly affected) on the basis of trade competition is inappropriate. Often the impacts on the business community are indirect or diffuse, eg effects of congestion, amenity values, infrastructure, rates or development contribution policies. But these are important matters for the business community.
- Trade competitors should be able to lodge and pursue appeals to the Environment Court regarding resource consents, in the following circumstances:
 - Trade competitor must declare at the time the appeal is lodged that it is a trade competitor.
 - If the trade competitor does not declare its involvement in the proceedings, any party may seek a determination from the Environment Court (within a limited period of time of the appeal being filed) as to whether or not the appellant is a "trade competitor".
 - The Court must then make a determination as to whether the appellant is a "trade competitor".
 - If the appellant is a trade competitor then there will be a presumption that full indemnity costs will be payable by the trade competitor, unless special circumstances exist eg the trade competitor's appeal is successful.

d) Interface of the proposed reforms with other legislation

During our discussions it became evident that the proposed RMA reforms, particularly the section relating to trade competition, could have some implications for the Commerce Act and recommend the consequential effects of the proposed changes on other legislation be considered by the Committee.

Conclusion

We support that the Bill proceed subject to inclusion of the points covered in this submission.

We also seek the opportunity to appear to speak to our submissions.

New Zealand Retailers Association
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