

RETAIL ZONING AND THE RMA

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This is a response to Harry Bhana's article in the September issue of Planning Quarterly.

Harry Bhana, on behalf of the Ministry for the Environment, properly draws attention to the requirements of section 32 of the Resource Management Act RMA and the need for territorial authorities to be satisfied that continuation of traditional retail zoning is necessary and appropriate.

The article (drawn from a discussion paper for the Ministry entitled "Ideas") is headed "Strict Retail Zoning a Thing of the Past" instead of perhaps more correctly posing the proposition as a question, and challenges the historical rationale behind retail zonings. The reader's concern may be that the position for the *laissez-faire* approach promulgated by the Ministry has been overstated. A full and balanced debate is needed of this issue before traditional planning practice is abandoned.

It should be noted that Bhana does not challenge one of the fundamental bases of retail zoning, which is that there is a general balance between a given population and the retail facilities it can support. It is accepted that shopping patterns, and levels of support for different types of shop and shopping centre are changing. These trends simply point towards the need for better data and the need to discern the causes and effects in the current rapidly changing retail environment, rather than abandoning the current zoning approach.

He discounts the importance of retailing within the social infrastructure to support and sustain other cultural, economic, community and leisure activities. Bhana does not see retail centres as a community focus and therefore dismisses the view that hierarchical centres act as a social focal point and source of community identity. In that context, he also dismisses opinions that retailing is a magnet and that the weakening of their retail

activities will lead to disintegration of centres. Many people would disagree with Bhana's perceptions, untroubled as they are by reference to any hard data or conclusive research.

The primary question is, what would be the effects of indiscriminate development upon the social and economic wellbeing of the community as a whole? In the context of economic wellbeing, this is the focus of sustainable management which territorial authorities are required to promote.

Planning is also about efficient use of resources. In the absence of any increase in population or purchasing power, new retail development can only attract custom by way of a diversion of trade from existing shops.

While healthy competition is to be encouraged, the over-provision of retail facilities can lead to wasteful duplication and the under-utilisation of resources to the economic and social cost of the community.

Bhana states that where development has been permitted to occur outside the retail zone, the effects on the retail infrastructure have been insignificant. However, there are many instances, retail premises, particularly smaller premises, have suffered a substantial downturn without their "anchor" store or stores. This is an issue unsuited to generalisations, and one that requires analysis.

Much weight is given in the article to the concept that non-intervention is necessary to encourage competition between stores and a consequent control over prices. The inference, that non-intervention is necessary for freedom from price control, is not supported by experience. The siting of a shop or shops is but one of a host of economic factors that may influence competition and resultant prices.

Bhana closes by referring to recent court and Planning Tribunal decisions as rejecting traditional planning principles favouring the imposition of retail hierarchies. It is going too far to assert that these recent decisions under the RMA have opened a new direction away from the traditional retail planning hierarchy. Bhana's implication is that case law is moving to a position where strict detail zoning may be considered inconsistent with the requirements of the act. Such an implication is premature.

With reference to the cases cited, it should be recognised that the full bench of the High Court in *Countdown Properties (Northland) Ltd v Dunedin City Council* considered whether the tribunal had misconstrued the act by allowing the council to direct and control the use and development by natural and physical resources within the subject land by zoning to control activities that might otherwise meet applicable environmental standards. The court rejected such an assertion. In so doing, it took guidance from *Bachelor v Tauranga District Council* and *K B Furniture Ltd v Tauranga District Council*.

In particular, the court quoted from *Bachelor v Tauranga District Council* as follows: "Our conclusion on the competing submissions about the application of section 5 to this case is that the section does not in general disclose a preference for or against zoning as such, or a preference for or against Council's making provision for people, or a preference for themselves.

Depending on the circumstances, any measures of those kinds may be capable of serving the purpose of promoting sustainable management of natural and physical resources."

In *K B Furniture Ltd v Tauranga District Council*, the High Court did state that the act had moved away from the concept of

protection and control of development towards a more permissive system of management of resources focused on control of the adverse affects of activities on the environment. However, when justified in terms of assisting the social and economic wellbeing of a community and the efficient use of resources, the imposition of a planning technique such as zoning to set down a retail hierarchy is legitimate.

Finally, nothing in the recent tribunal decision in the *Imrie Family Trust v Whangarei District Council* can lead to a conclusion that strict retail zoning is a thing of the past.

In that case, the tribunal reiterated the need to focus on the requirements of section 5(2) of the act, and restated the basic principle that the act (just like the former Town and Country Planning Act 1977) is not about regulation of competition in the marketplace.

In conclusion, councils must be clear about their reasons for intervention in the siting of retail outlets. This is a consequence of the requirements of section 32, and the basis of sound resource management. When there are good grounds for believing that the imposition of a particular hierarchy or other form of planning control is warranted in order to enable particular communities to provide for their economic and social wellbeing, then that intervention may be legitimately effected under the act.

Bhana's article helpfully enunciates the contentious issues surrounding retail planning but in so doing exposes the lack of hard evidence in support of the *laissez faire* approach. The challenge is to consider the issues objectively on the basis of sound data. Regrettably, the article and the "Ideas" paper do not meet this challenge.

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