

IN THE ENVIRONMENT COURT

AUCKLAND

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Clause 14(1) of First Schedule of the Act

BETWEEN PROGRESSIVE ENTERPRISES LIMITED

Appellant

AND MATAMATA PIAKO DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL BY PROGRESSIVE ENTERPRISES LIMITED

28 OCTOBER 2014

TO: The Register of the Environment Court at Auckland
AND TO: The Matamata Piako District Council

PROGRESSIVE ENTERPRISES LIMITED appeals a decision on the following matter.

Submission

1. Progressive Enterprises Limited ("Progressive") made a submission on the Matamata Piako District Council Plan Change 43 on 20 November 2013.
2. Progressive is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

Decision

3. The decision subject to this appeal is the Matamata Piako District Council decision on its Proposed Plan Change 43 ("Decision").
4. Notice of the decision was received by Progressive on 17 September 2014.
5. The decision was made by the Respondent. The part of the decision that is being appealed is the definition of supermarket.

General Reasons for the Appeal

6. The general reasons for this appeal are that the Decision:
 - a) Does not promote sustainable management of resources and will not achieve the purpose of the Resource Management Act 1991 ("Act");
 - b) Is contrary to Part 2 and other provisions of the Act;
 - c) Does not meet the reasonably foreseeable needs of future generations;
 - d) Does not enable social, economic and cultural wellbeing;
 - e) Is otherwise contrary to the purposes and provisions of the Act and other relevant planning documents;
 - f) Is inappropriate and inconsistent with the purposes and principles of the Act;
 - g) Will not avoid, remedy or mitigate the adverse effects of the proposed activity; and
 - h) Does not represent the most appropriate means of exercising the Matamata Piako District Council's functions, having regard to the efficiency and effectiveness of other available means and is therefore not appropriate in terms of section 32 and other provisions of the Act.

Particular Reasons for the Appeal

7. In particular, and without limiting the generality of paragraph 6, the matter below provides further reasons for the appeal.
8. The Decision adopted the supermarket definition in the Officer Report tabled at the hearing. The report inter alia claimed that:

"The parking requirements in the District Plan are based on a distinction in floor area. The distinction acknowledges that a smaller store will have a quicker turnover in parking and thus a lower parking ratio than supermarkets."

9. Such a claim is rejected by Progressive because it is not supported by trip generation data collected for such stores across New Zealand. Progressive's Super Value store type has a floor area ranging from 400m² to 1000m² depending on the size of the catchment being served and, without exception, aims to provide customer parking at a ratio of 1 space per 20m² gross floor area.
10. Progressives proposed supermarket definition is an industry standard.
11. Any suggestion that the floor space limit is a means of protecting the District's dairies is contrary to the trade competition provisions of the Act.
12. There is no technical basis for including the words ". . . in premises not smaller than 500m² of trading floorspace."

Relief Sought

13. Progressive seeks, in respect of the matter being appealed, the following relief:
 - a) That the current supermarket definition be replaced with:

"Supermarket" means a retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for consumption or use off the premises and includes lotto shops and pharmacies located within such premises and where liquor licenses are held for each premise.
 - b) Costs of and incidental to this hearing.

Attachments

14. The following documents are attached to this notice.
 - a) A copy of Progressive's original submission; and
 - b) A copy of the relevant decision.

PROGRESSIVE ENTERPRISES LIMITED
By its authorised agents, Zomac Planning Solutions Ltd

Signature: -----

M J Foster

Date: 28 October 2014

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**SUBMISSION ON PROPOSED DISTRICT PLAN CHANGES
MATAMATA-PIAKO DISTRICT PLAN
PLAN CHANGE 43 TRANSPORTATION**

TO: MATAMATA-PIAKO DISTRICT COUNCIL

NAME OF SUBMITTER: PROGRESSIVE ENTERPRISES LIMITED

SUBMISSION ON: Proposed Plan Change 43 Transportation

TRADE COMPETITION: I could not gain an advantage in trade competition through this submission. I am directly affected by an effect of the subject matter of the submission that:

- (a) Adversely affects the environment; and
- (b) Does not relate to trade competition or the effects of trade competition.

1. The specific provisions of the plan change that my submission relates to are:

Section 9: Transportation

- i. Part A – Section 3.8.1 Significant resource management issues
- ii. Part B – Section 1.1.1(x)
- iii. Part B – Section 9.1.1 Rooding Hierarchy
- iv. Part B – Section 9.1.2 Access
- v. Part B – Section 9.1.3 On-site Loading
- vi. Part B – Section 9.1.4 On-site Carparking
- vii. Part B – Section 9.1.5 General parking, loadings and formation standards
- viii. Part B – Section 15 Definitions

2. My submission is:

- i. The proposed amendments to Section 3.8.1 are supported in principle and should be adopted without modification.
- ii. The inclusion of a new sub-clause (x) is supported because it represents good industry practice.
- iii. The proposed rooding hierarchy is supported and should be adopted without modification.
- iv. The proposed amendments to section 9.1.2 are largely supported in principle, except with respect to the activity status for activities likely to generate 50 vehicle movements or more per day. It is also necessary to ensure that there is sufficient flexibility to recognise the operational requirements of supermarkets where vehicle crossings up to 9.5m in width are sometimes required to accommodate the tracking curves of B-trains.
- v. The proposed amendments to section 9.1.3 are supported and should be adopted without modification. The reference to RTS 18 New Zealand On-Road Tracking Curves for Heavy Motor Vehicles is endorsed.

- vi. The proposed amendments to section 9.1.4 are supported and should be adopted without modification. The requirement that supermarkets provide one car parking space per 20m² gross floor area is an industry standard for Countdown supermarkets.
- vii. The proposed amendments to section 9.1.5 are supported and should be adopted without modification.
- viii. The inclusion of a supermarket definition in Section 15 is supported in part only.

3. I seek the following decision from Council:

Section 3.8.1

Adopt the significant resource management issues as drafted.

Section 1.1.1

Adopt the inclusion of sub-clause (x) as drafted.

Section 9.1.1

Adopt the Roading Hierarchy as drafted.

Section 9.1.2

Amend the Activity Table to provide for existing and new vehicle crossings onto all roads which do not comply with Performance Standard 9.1.2(iii)(a)(iii) as Restricted Discretionary Activities. The current table provides Restricted Discretionary or Controlled status for vehicle crossings not meeting separation distances between vehicle crossings and it is appropriate that vehicle movements be treated in the same manner.

The matters which Council has discretion with respect to includes: the traffic volumes and mix; speed environment; the number of vehicle crossings; effects on the function, safety and efficiency of the transport network; integration of land use with transport; the results of an Integrated Transport Assessment; and methods to avoid, remedy or mitigate adverse effects on the road transport network. All these matters are appropriate for a consideration of vehicle numbers utilising a vehicle crossing and should be applied.

Section 9.1.3

Adopt the on-site loading provisions as drafted with particular reference to the "Road and Traffic Guidelines of RTS 18 New Zealand On-road Tracking Curves for Heavy Vehicles."

Section 9.1.4

Adopt the on-site parking requirements as drafted and in particular the parking requirement of 1 space per 20m² for supermarkets.

Section 9.1.5

Adopt the general parking, loading and formation standards as drafted.

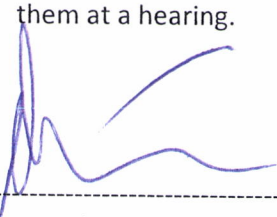
Section 15

Amend the definition of 'supermarket' to the following:

"Supermarket" means a retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for consumption or use off the premises and includes lotto shops and pharmacies located within such premises and where liquor licenses are held for each premise. Supermarkets are exempt from compliance with Local Alcohol Policies.

There is no soundly based resource management reason for specifying a minimum floor area of 500m² in the definition.

4. Progressive wishes to be heard in support of this submission.
5. If others make a similar submission Progressive will consider presenting a joint case with them at a hearing.



Signature of Person authorised to sign on behalf of the submitter

Date: 20 November 2013

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Attachment C

List of persons to be served

- Matamata Piako District Council, P O Box 266, TE AROHA 3342