

BY JESSICA WILSON STUDENT, VICTORIA UNIVERSITY, WELLINGTON

# PARTICIPATION FOR WHOM?

WHILE RMA REMOVES  
LEGAL BARRIERS,  
EFFECTIVE PARTICIPATION  
STILL REQUIRES MONEY,  
TIME AND EXPERTISE.

The rhetoric surrounding the *Resource Management Act 1991* (RMA) has lauded the opportunities for public participation provided by the legislation. In theory, at least, the RMA promises everyone the right to participate in the sustainable management of New Zealand's resources. In practice, however, the promise is a qualified one. While the open standing provisions of the Act have removed a significant legal barrier to participation, the ability of the public to participate remains dependent upon the resources available to do so.

This paper presents research undertaken to assess the barriers to participation in the preparation of regional policy statements.<sup>1</sup> Regional policy statements (RPS) form part of the hierarchy of policies and plans established by the RMA to achieve its purpose of sustainable management. The research presents an analysis of who is making use of the opportunities afforded by the Act to participate in the formation of regional policy statements. The results suggest that the process is being dominated by organisations which can afford the time, money and expertise to take part.

## PARTICIPATION IN PRACTICE

### The participation process

The process for preparing RPS is set out in the first schedule to the RMA. The process requires all regional authorities to first prepare a "Proposed RPS". The Act stipulates that the Proposed RPS must be prepared in consultation with the Minister for the Environment, any other ministers of the Crown who may be affected, local authorities who may be affected and the tangata whenua of the area (First Schedule:Part I:clause 3(1)). Regional authorities may also consult with anyone else they wish, during the preparation of the Proposed RPS (First Schedule:Part I:clause 3(2)). However, there is no statutory obligation for authorities to ensure the public has the opportunity to participate at this stage of the process. It is only once the

proposed RPS has been publicly notified that the public is entitled to take part. Under the Act, all regional authorities were required to publicly notify a Proposed RPS by 1 October 1993.

The statutory provisions for public participation contained in the First Schedule establish three stages for public participation. Once the Proposed RPS has been publicly notified, any person can make a submission (First Schedule:Part I:clause 6). This is the first stage of the submission process. The council is required to publicly notify a summary of all submissions received and the public then has the right to make further submissions, but only in support of, or opposition to, the "original" submissions received by the council (First Schedule:Part I:clause 8). This is stage two. The third stage of the process is the hearing of submissions. Councils are required to hold a hearing of submissions and every person who made a submission or further submission has the right to be heard (First Schedule:Part I:clause 8b).

### The participants

There are currently 16 units of regional local government in New Zealand. Four of these are unitary authorities having the combined functions of regional and territorial councils. For the purposes of this research, information was requested from all 16 councils on the numbers of individuals and organisations who participated in the RPS preparation process through the formal submission stage. Replies were received from 14 of the 16 councils (Table 1).

Per region, the total number of participants ranged from a minimum of 44 in Gisborne, to a maximum of 198 in Northland. The average number of participants was 108. However, in just over half of the 14 regions (8), the number of participants was less than 100.

Differences between regions in the number of participants, was largely due to differences in the number of individuals who took part in the process. For example, of the 198 submitters in Northland, 111 were individuals. The higher than average number of participants in Marlborough (187), Otago (177) and Tasman (139), similarly reflects a higher than average number of submissions from individuals.

Councils which received a higher than average number of submissions from individuals, tended to attribute the numbers to a recent issue, or issues, that had mobilised local opinion. These submissions also tended to be "pro-forma" submissions.

Few councils, however, managed to attract a large number of individuals to the process. In just over half (8) of the 14 regions, the number of individual submitters was less than 20. Individual submitters also tended to "drop-out" of the submission process along the way. The majority of individuals participated only at the first submission stage. Less than a fifth made an oral submission and just 3% participated at all three stages of the submission process (making original, further and oral submissions).

This high "drop-out" rate of individual participants was also observed in regions where the number of individual was significantly above average. Over 90% of individual submitters in Northland and Marlborough made just one submission.

**Participation by organisations**

Of the organisations taking part in the process, the number of industry organisations by far outnumbered that of any other type of organisation. Industry organisations accounted for 41% of submissions received from organisations (Table 2).

Central government organisations accounted for the second largest percentage at 19%. A further 11% of organisations participating in the process represented local government. Environmental groups accounted for 12% and other NGOs a further 12%. Just 5% were iwi organisations. A total of three councils did not receive any submissions from iwi.

The dominance of industry organisations was evident throughout the submission process. Industry organisations participated in higher numbers at each stage of the submission process, than any other organisation. The majority of industry organisations which took part in the process made at least two submissions (Table 3). This pattern was consistent across all 14 regions.

Central government organisations, the second largest type of organisations grouping taking part in the process, also participated at a consistently high rate throughout all 14 regions. Over half (62%) of central government organisations made two or more submissions.

Of the environmental groups taking part in the process, most made more than one submission. However, in contrast to industry and government organisations, participation by environmental groups was not consistent across

all 14 regions. In a number of regions, environmental groups "dropped-out" of the process at the further submission stage.

"Other NGOs" were the most likely group to "drop-out" of the process. The majority of "other NGOs" (57%) made only one submission. Just 4% participated at each stage of the submission process. Iwi organisations also tended to have a high rate of attrition. Of the iwi organisations which took part in the process, just 12% participated at all three stages of the process.

One suggestion offered by a number of regional councils to explain why participants may have "dropped-out" of the process was that they may have felt their concerns had been addressed and consequently they didn't have any reason to participate further. While this could explain why some participants dropped out, the difference in the level and degree of participation between different groups suggests that there may be other reasons related to the capacity of each group to take part in the process.

This proposition was tested by a survey of groups and individuals who participated in the preparation of the Waikato Regional Council's RPS. The survey included just over 20% of submitters and incorporated representatives from industry and government, environmental NGOs and iwi, as well as individual submitters. Rather than reflecting satisfaction that their views had been taken into account, the survey results indicate that the higher attrition rate of individuals, environmental groups and iwi, was more likely to reflect the lack of resources available to these groups to take part in the process.

The main barriers to public participation, highlighted by the survey, were:

Region	Organisations	Individuals	Total
Canterbury	103	36	139
Bay of Plenty	74	8	82
Gisborne	39	5	44
Hawke's Bay	54	45	99
Manawatu	68	10	78
Marlborough	65	122	187
Northland	80	118	198
Otago	116	61	177
Southland	59	8	67
Taranaki	36	15	51
Tasman	63	76	139
Waikato	100	18	118
Wellington	70	7	77
West Coast	51	7	58
<b>Total</b>	<b>978</b>	<b>536</b>	<b>1514</b>
<b>Average Number</b>	<b>70</b>	<b>38</b>	<b>108</b>

Organisation	Number	Percentage of Total
Industry	402	41%
Central Government	189	19%
Local Government	104	11%
Environmental NGOs	113	12%
Other NGOs	121	12%
Iwi	49	5%
<b>Total</b>	<b>978</b>	<b>100%</b>

Organisation	Number of Submissions			Total
	1	2	3	
Industry	45% (180)	34% (136)	21% (86)	100% (402)
Central Government	39% (73)	38% (71)	24% (45)	100% (189)
Local Government	47% (49)	31% (32)	22% (23)	100% (104)
Environmental NGOs	38% (43)	41% (46)	21% (24)	100% (113)
Other NGOs	57% (69)	39% (47)	4% (5)	100% (121)
Iwi	49% (24)	39% (19)	12% (6)	100% (49)
<b>% of Total</b>	<b>45% (438)</b>	<b>36% (351)</b>	<b>19% (189)</b>	<b>100% (978)</b>

Top: Table 1-Number of participants per region

Middle: Table 2-Number and type of organisations participating in the RPS Process

Above: Table 3-Number of submissions made by each organisation

**i) Information**

Inadequate and poor quality information was a major barrier to participation. Survey respondents were critical of the lack of information explaining what the process was about and how to participate. Respondents who had no prior experience of submission-making

didn't know how the process worked and found council staff they approached for assistance also seemed "unfamiliar" with the process. Survey respondents were also critical of the poor quality of the information that was provided, the use of jargon, the relevance of the information and the high volume of information. A number of respondents described the volume alone as "enough to put people off". Others felt the material was "written for staff and bureaucrats". One respondent, expressing the sentiment of many, said she "almost needed to hire a lawyer" to interpret the information provided. Industry organisations which took part in the survey could afford to do so, and did, just that.

#### ii) Time

Time was a significant factor in the ability of many survey respondents to participate in the RPS process. For NGOs and individuals who were giving their time free, work commitments and, in some instances, family responsibilities, constrained the time available to them. Time constraints limited the amount of time that could be spent preparing submissions and meant some individuals and NGOs were unable to attend the RPS hearings. A number of NGOs stated they would have liked to make a more comprehensive submission, but were unable to, due to a lack of time. While many just did what they could in the time available, industry and government organisations were able to employ full-time staff over a period of several weeks to prepare detailed submissions. Several industry organisations costed the amount of staff time spent, at upwards of \$100,000, with one organisation estimating \$450,000 was invested in the process.

#### iii) Attitude of councils

One of the main sources of criticism was the dismissive attitude of the councils towards respondents' views and concerns. While survey respondents expressed a genuine desire to participate in the management of the region's resources, they also wanted to feel their concerns were being listened to and taken into account when decisions were made. The majority of respondents expressed doubt whether this would be the case. Many did not think their participation would make any difference. This perception was created, in part, by what respondents saw as the lack of public consultation, both preceding notification of the proposed RPS and during the submission process. Survey respondents were critical of the lack of feedback from the councils as to how their concerns were being treated. Several

respondents commented that the councils had failed to provide any substantial justification for accepting or rejecting submissions. Others felt that submissions had been "cursorily dismissed" by their council. The behaviour of councillors during the hearing of submissions compounded the feelings many had that their concerns were not being taken seriously. Respondents commented that "councillors were inattentive", "frequently had their backs to speakers" and "some were openly aggressive". One respondent, representing an environmental group, reported that when he got up to present his submission, one councillor picked up a newspaper and proceeded to read it, while others held conversations between themselves, until the speaker had finished.

The only group of participants who were generally satisfied with the way their concerns were treated, were industry organisations.

## THE CASE FOR PARTICIPATION AID

The Parliamentary Commissioner for the Environment has called for greater assistance to be made available to the public to participate in proceedings under the RMA. Releasing her 1996 report on public participation, former commissioner Helen Hughes, commented that while the RMA "ushered in a new era in which it was expected that the public would have a greater say in decisions affecting the environment, the reality has been somewhat different". Inadequate information, inadequate time, lack of resources and councils adversarial approaches and "unfriendly attitudes" are among the main barriers to public participation identified in the commissioner's report.<sup>2</sup>

The report recommends that the Ministry for the Environment "identify and assess options for funding and providing" a network of advisory services to provide information and advice to the public on planning procedures. It further identifies the need for central government to consider providing resources for public participation. The report also calls on local authorities to acknowledge the responsibility they have to facilitate public participation. This responsibility requires councils to ensure that the public is not prevented from participating, due to a lack of information or time. Further, it requires councils to show genuine consideration for the public's views and concerns.

Implementation of the commissioner's recommendations would be a first-step towards ensuring effective public participation in the planning process. It would also provide much-needed evidence that local authorities and central government are genuinely committed to public participation.

## CONCLUSION

The open standing provisions of the RMA have removed a significant legal restraint on participation. The Act reverses the assumption implicit in the *Town and Country Planning Act 1997* that participation is not a right but a privilege. However, while the RMA improves the possibilities for participation and provides new openings into processes from which the public were previously excluded, the formal right to participate has overcome only the legal barrier to participation. To take part requires time, money and expertise. These resources are more readily available to some groups than others.

While barriers to effective participation remain, the potential of the RMA to improve the quality of environmental decision-making by ensuring all views are heard, is unlikely to be realised. If some groups are not able to participate effectively because they do not have the resources to take part, then it is doubtful whether their concerns will be taken into account when decisions are made. Instead, the result is likely to be that debate over the management of environmental resources will be restricted to the options favoured by those with the resources to take part.

The future of public participation under the RMA will depend on the commitment of both local authorities and the Ministry for the Environment in facilitating effective public participation in the planning process. Five years after the RMA's enactment, evidence of this commitment remains to be seen.

## FOOTNOTES

1. The research was carried out for the purposes of completing a thesis in fulfilment of the requirements for a Master of Arts (Applied) in Environmental Studies at Victoria University Wellington.

2. *Public Participation under the Resource Management Act 1991: The Management of Conflict*, Office of the Parliamentary Commissioner for the Environment, Wellington, 1996. 