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## ENVIRONMENT/ RESOURCE MANAGEMENT

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APRIL 2009

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## BELL GULLY'S TAKE ON CHANGES TO THE RMA

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Bell Gully has prepared a submission on the Resource Management (Simplifying and Streamlining) Amendment Bill. We support the proposal to reform and improve the Act but are concerned about several aspects of the Bill which could have unintended results. This update outlines some of our key concerns.

### Scope of appeals

Bell Gully has identified the proposal to limit appeals on proposed plans and plan changes as a major area of concern. The amendment will heighten existing concerns that local authorities can often act as 'the judge in their own cause' under the Resource Management Act (RMA). If local authorities are made responsible for both promulgating and making the final decision on plan provisions without any right to appeal, there will be a perception (and at times a reality) that the process is unfair.

In our view the amendment is also likely to compromise the quality of the planning instruments prepared under the Act. The Environment Court has provided valuable input on planning instruments in the past, due to its first hand knowledge of the approaches being taken to key issues around the country. The Court also has the advantage of hearing the reliability of evidence tested by way of cross examination, unlike local authority decision makers.

### Trade competitors

The Bill includes extensive provisions restricting the rights of trade competitors. In our view, they go too far.

The new provisions curtail landowners' rights to seek appropriate provision for their own properties in district and regional plans where this could give them a "trade advantage" over other developers.

Similarly, the provisions on resource consent applications take an overly proscriptive approach by preventing trade competitors from mounting an opposition unless they are "directly affected" (and the effects in issue don't relate to trade competition).

We agree that the issue of vexatious submissions and appeals should be addressed. However, in some cases trade competitors have assisted consent authorities by resourcing inquiries into legitimate resource management issues. A better balance can be struck by allowing trade competitors to participate in hearings provided they are permitted to pursue only those issues which have already been raised by other parties.

### Independent commissioners

Applicants are to be allowed to elect to have their proposals dealt with by independent commissioners. This change sounds good on paper, but it needs to be understood that many consent authorities

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appoint commissioners from a shortlist they have prepared themselves, and that some commissioners rely on repeat work for their livelihoods. For commissioners to be truly independent they should be chosen from a national database.

### National environmental standards

The proposed amendments only require the Minister for the Environment to publicise the “subject matter” of new environmental standards for public comment. There is no requirement to provide a draft of the standard, or the opportunity for submissions to be made on the Minister’s recommendation (which is prepared following the review of public comments). We consider that it is critically important that environmental standards, which have such far-reaching impacts, be subject to more careful and thorough consideration.

### Incentivising faster decision-making

The Bill introduces new provisions which require local authorities to adopt a policy for discounting administrative charges where a resource consent is not processed within the timeframes set out in the Act, and the fault lies with the consent authority.

Unfortunately little guidance is provided on formulating those policies.

Among other things, the Bill doesn’t make it clear that discounts should reflect the duration of delays (by providing for some form of sliding scale). If policies do not specify for the discount to increase with the passage of time, consent authorities will have little incentive to prioritise applications after the trigger date for a reduction has passed.

### Public notification

There are extensive proposed changes to the public notification regime, including a new section providing that a consent authority must publicly notify an application if it is satisfied that the adverse effects of the activity beyond the “immediate

environment” will be more than minor.

The meaning and scope of the term “immediate environment” is vague and uncertain. It is unclear whether it is intended to refer only to the subject site, adjoining properties or a wider area.

Bell Gully is suggesting that the term “adjacent environment” be substituted for clarity.

### Representation at proceedings

The Bill provides that only the Attorney-General can represent the public interest in proceedings in the Environment Court.

Other amendments to the Act (including the changes on notification of applications for resource consent and the proposal to remove the right to make further submissions on plan provisions) may create situations where the scope or significance of a matter is not identified by affected parties until after the first-instance decision is made. In those situations the right to join proceedings may assume critical importance. In order to ensure good outcomes it is important that those who are best placed to provide useful input are able to do so.

Statutory or iwi authorities and industry representatives will often be better placed in terms of institutional knowledge, inclination and resources to represent the public interest than the Attorney-General. We have sought a change to enable them to do so.

We have also sought further changes to the Bill to enhance the effectiveness of some of the other initiatives. Please contact your usual Bell Gully adviser if you would like a copy of our submission, or for us to prepare an individual submission on your behalf.

The closing date for submissions to the Local Government and Environment Select Committee is Friday 3 April.