

Resource Management (Simplifying and Streamlining) Amendment Act 2009

October 2009

Ministry for the Environment



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Introduction and Purpose

- The presenters
- An overview – not legal advice
- Main changes not all 167 clauses
- Presentation in blocks



Content

- Origins
- Plans and plan changes
- Resource consents
- The EPA



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Content

- Proposals of national significance
- NES and NPS
- Trade competition
- Enforcement and Compliance

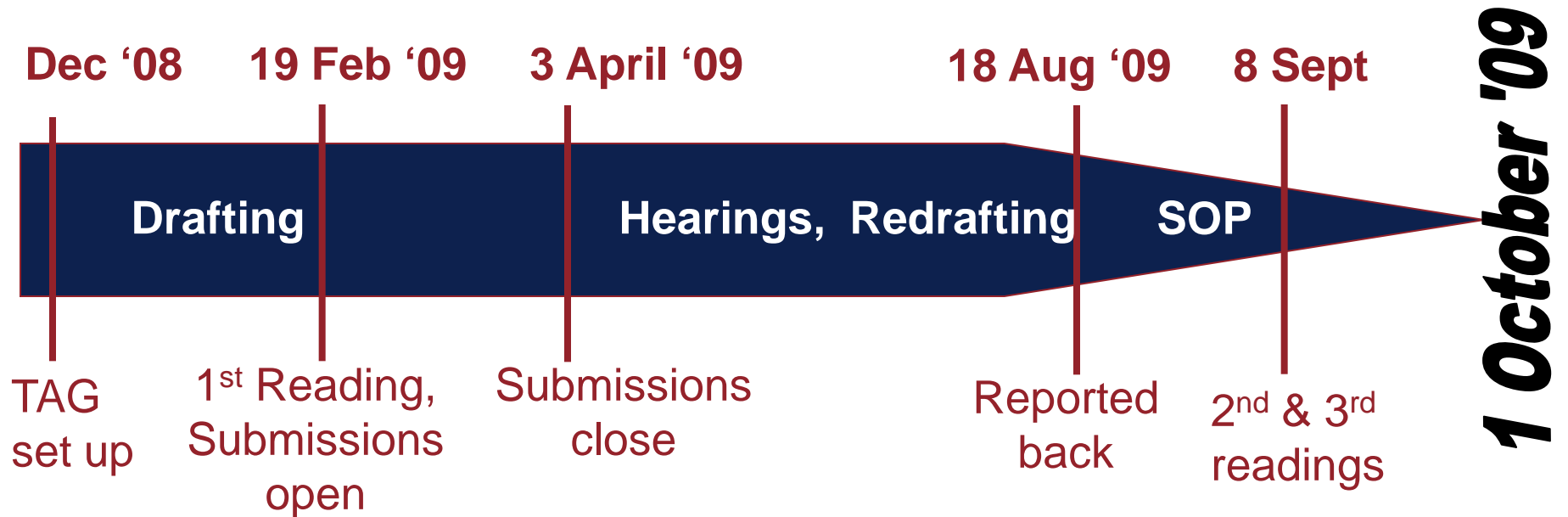


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Origins

- Passage of the Bill



Plans and Plan Changes - Intent

- To reduce the cost, time and complexity of the plan preparation process by:
 - reducing the time and effort councils spend undertaking administrative tasks
 - ensuring appeals on plans are focussed and do not unduly delay plan provisions that may be beneficial and of no concern



Plans and Plan Changes

- No ability for appeals to seek withdrawal of entire plan (does not apply to plan changes)
- Ability to use consultation under other enactments extended to 36 months
- Combined plan provisions clarified (virtually all combinations possible) (s.80)



Plans and Plan Changes

- No mandatory 10-year full plan review (but provisions must have been subject of plan change or review) (section 79(1)-(3))
- Who can make further submissions restricted
- Further submissions period 10 working days
- Decisions by topic or provision (cl.10 Sch.1)



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Plans- Legal Effect of Rules (s.86A-E)

- Default rules have no legal effect until decisions on submissions, but exceptions:
 - air, water, soil, historic heritage, vegetation or habitats, AMAs
 - a Court order is obtained (s.86D)
 - a council resolution delays the effect
- Must be identified in proposed plans (s.86E)



Plans – Rules Protecting Trees (s.76)

- Trees in “urban environments” only protected where specifically identified or in a reserve
- Does not rule out protection by other means
- “Urban environments” defined:
 - lot sizes below 4,000 sq metres; and
 - reticulated water and sewerage; and
 - built on



Question Break



From the
NZ Herald
4th Feb.



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Resource Consents - Intent

- To reduce the costs and delays in the resource consent process for consent applicants and local authorities
- To assist local authorities to process resource consents more efficiently through reducing the administrative burden



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Resource Consents – Further Info.

- Statutory clock stops only twice (once pre notification and once after) (s.88C)
- Notification if request refused or late (s.95C)
- Ability to object & appeal removed from s.92
- Consents may be declined if information inadequate (s.104(6))



Resource Consents - Notification

- Two “gateway” tests
 - i) effects on the Environment (notification)
 - ii) affected parties (limited notification)
- Neutral starting point for notification
- New threshold of “*will have or is likely to have adverse effects... that are more than minor*”



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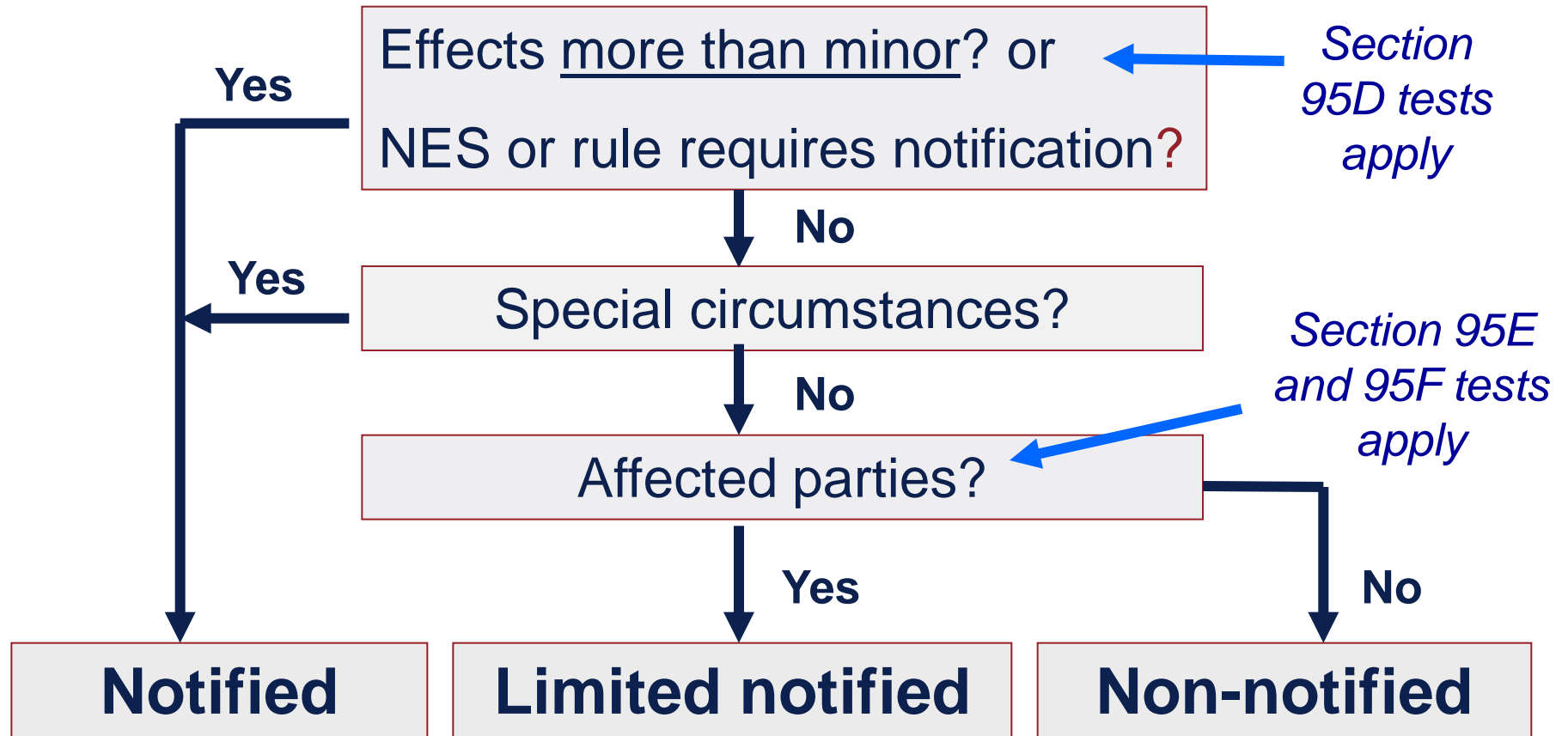


Resource Consents - Notification

- Public notification when effects on environment more than minor (s.95D) also:
 - notify if special circumstances
 - applicant requests
- “Affected person tests” in section 95E for limited notification and non-notification
- NES or plan rules can override general req.



Resource Consents - Notification



Resource Consents - Hearings

- Section 42A reports
 - able to ‘adopt’ information from application
 - report to be provided to applicants and submitters 15 days before hearing if evidence is directed to be provided; or
 - 5 days before hearing if no direction
- Hearing closed within 10 days (s.103A(2))



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Resource Consents

- Simplifying reporting/decision requirements for non-notified consents (s.113)
- Lapsing of pre-2005 applications with outstanding s92 requests (12 months +)
- Section 37A extensions, applicant must agree, 'special circumstances'



Resource Consents – Discount Policy

- Discount policy for late consents where council responsible (s.36AA) :
 - regulations set default policy in 9 months
 - councils can have more generous scheme
 - council version prepared under s.83 LGA (special consultative procedure)



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Decision Making - Intent

- To increase applicant confidence in the independence and soundness of decisions made on applications
- To reduce the time and cost associated with re-hearing resource consents, plan change applications and notices of requirement



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Decision Making

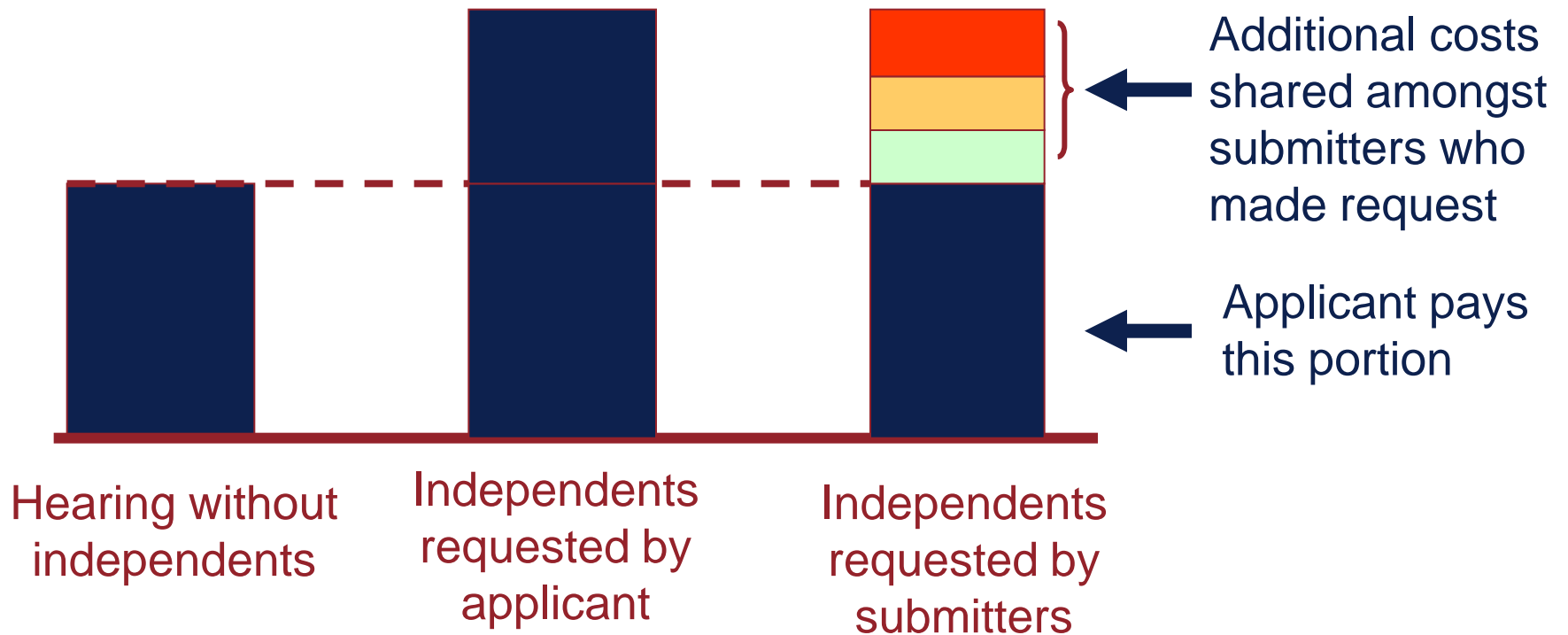
- Regional councils make decisions on RCAs
- Minister of Conservation:
 - retains other means to express interests
 - given an ability to appeal to Env. Court
- Independent commissioner(s) used if requested by applicants / submitters (s.100A)



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Charging Under s.100A & 36(1)



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Direct Referral (s.87C –I)

- Applies to notified resource consent applications, and changes to consents
- Request to council within 5 WD of close of submissions
- Council must decide whether to agree to direct referral (or not) within 15 WD



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Direct Referral

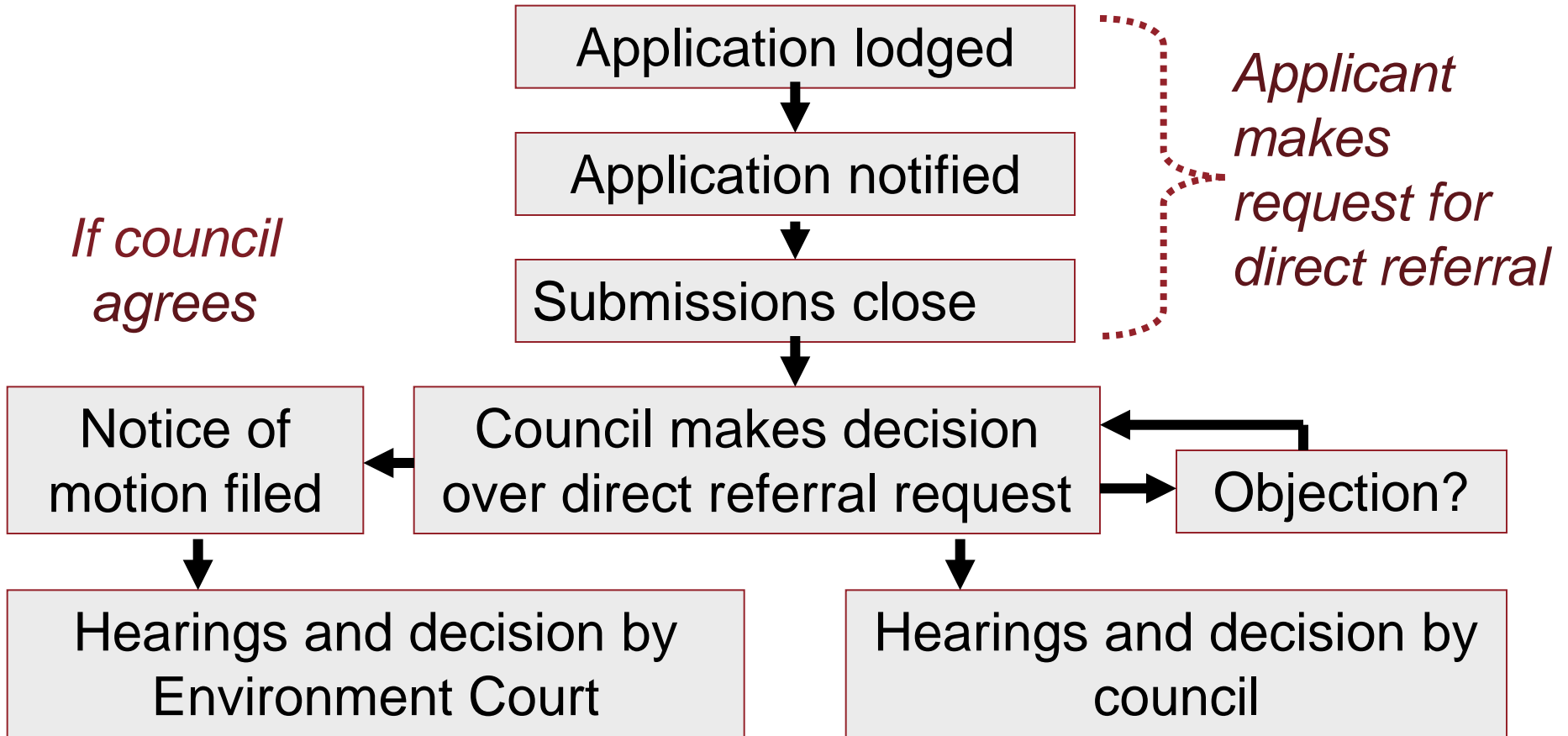
- Applicant can object (s.357) but not appeal
- Transfer to Court via “notice of motion”
- Council supplies all information to Court, including a report (similar to a s.42A report)
- Council has residual functions after decision



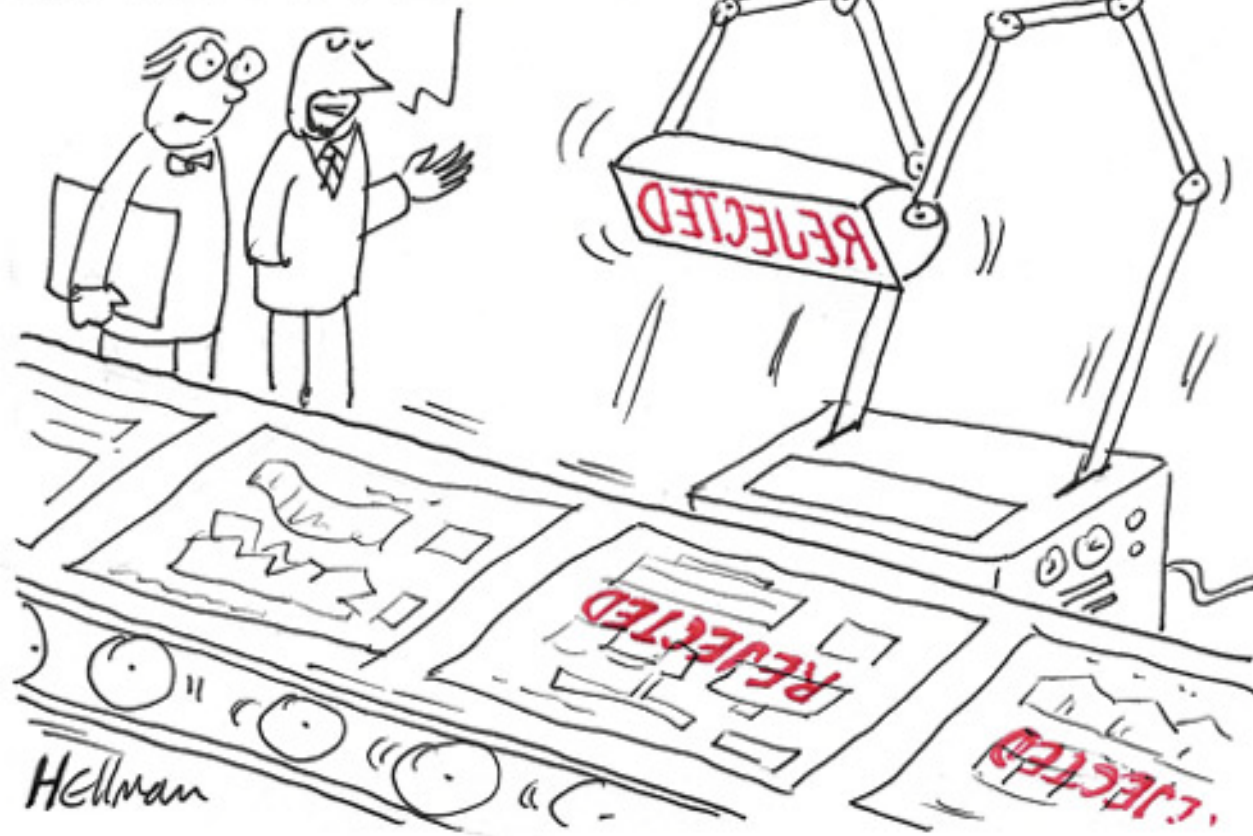
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Direct Referral



WE'VE SPEEDED UP PLANNING
DECISIONS BY 98%



Hellman



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EPA & Proposals of National Significance- Intent

- To establish a body that can provide efficient and timely administration of the proposals of national significance
- To provide an efficient and robust process for the consideration of, and decision making on, applications projects that are of national significance.



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The EPA (New Part 4A)

- Transitional statutory office within MfE
- Main functions associated with proposals of national significance, including:
 - receiving and processing applications
 - making recommendations to Minister
 - providing support to board of inquiry
 - supply of information to Court



The EPA – Administrative matters

- Emphasis on “up front” work
 - pre-application meetings and liaison with councils
 - will only accept complete & comprehensive applications
 - councils assist in assessing completeness and suggest board members

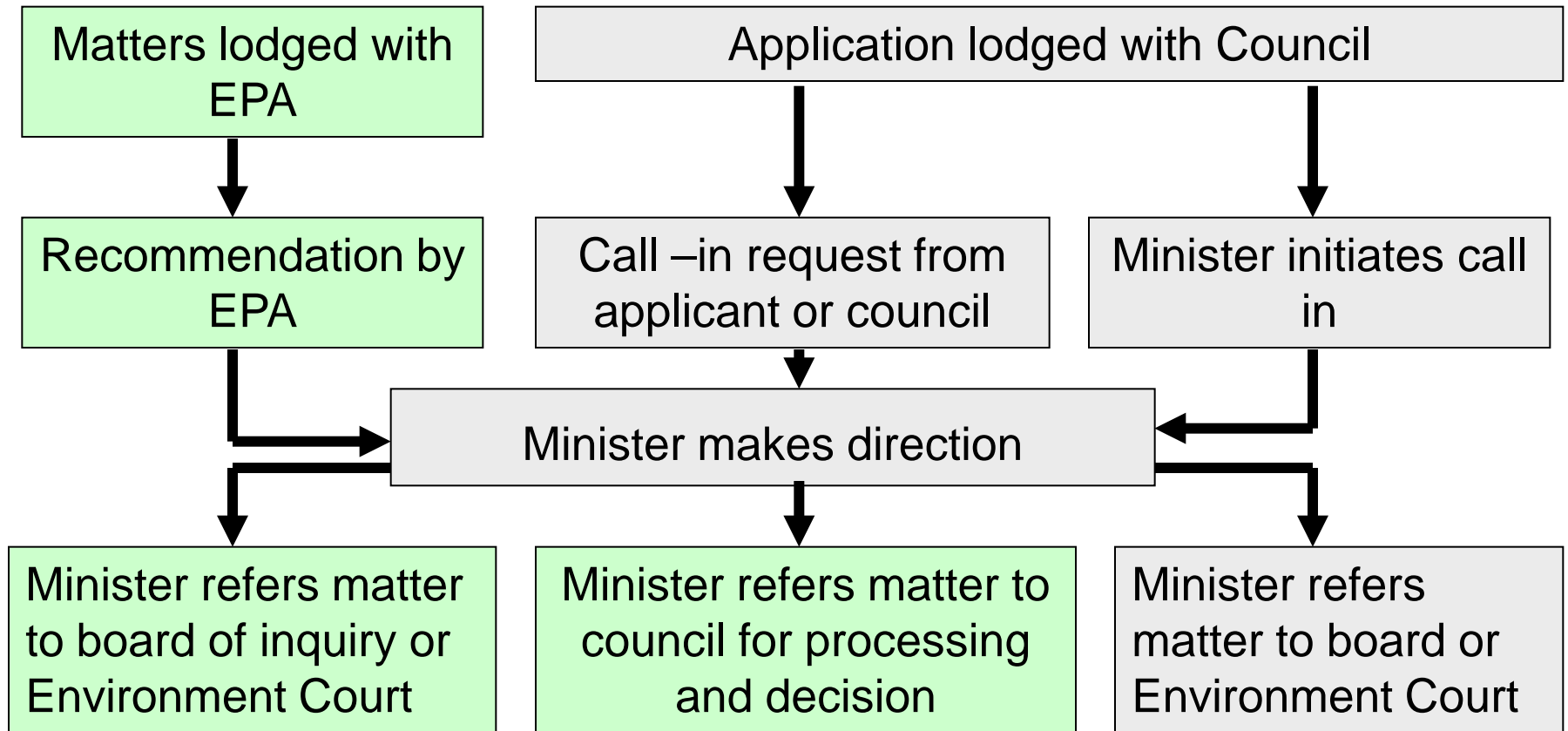


Proposals of National Significance

- Similar to call-in type process (Part 6AA)
- Consents (and changes), plan changes, NoRs
- Applications to EPA
- EPA makes recommendation (to Minister who makes the decision on who to direct it to)



Proposals of national significance



Proposals of National Significance

- Minister decides – two new factors (s.142)
- EPA notifies applications (s.149C-149F)
- Information provided to board or Court
- Final decision by board of inquiry in 9 months from notification (but Minister can extend)



Proposals of National Significance

- Appeals to High Court (then Supreme Court)
- Council roles:
 - a consulted party / Liaison with EPA
 - suggests board appointees (s.149K)
 - submitter (s.149E and 149F)
 - comments on draft board reports (s.149Q)
 - appeals to High Court (s.149V)
 - actual and reasonable costs (s.149ZD)





"Well I'll be darned! Accordin' to this here zoning law, this town is *plenty* big enough for both of us!"



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National Instruments - Intent

- To provide greater certainty for councils, applicants and the community by:
 - clarifying duties and roles relation to NPS and NES
 - streamlining the development of NES and NPS and their incorporation into plans
 - improving linkages between NES provisions and other RMA provisions,



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National Instruments - NPS

- Minister has powers to withdraw, suspend inquiry, or provide further information
- NPS can direct the insertion of objectives and policies into a plan without formality
- Appeals on plan changes implementing NPS on points of law only (s.290AA)



National Instruments - NES

- Must have regard to NES in making decisions on consents
- Certificates of compliance for NES (s.139)
- Councils have enforcement role for NES
- Councils must remove plan provisions which conflict with NES without further formality



Question Break



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Trade Competition - Intent

- To make it harder and less attractive for trade competitors to use the RMA as a means to delay or thwart projects of rivals
- To reduce costs and delays associated with frivolous and vexatious objections and appeals



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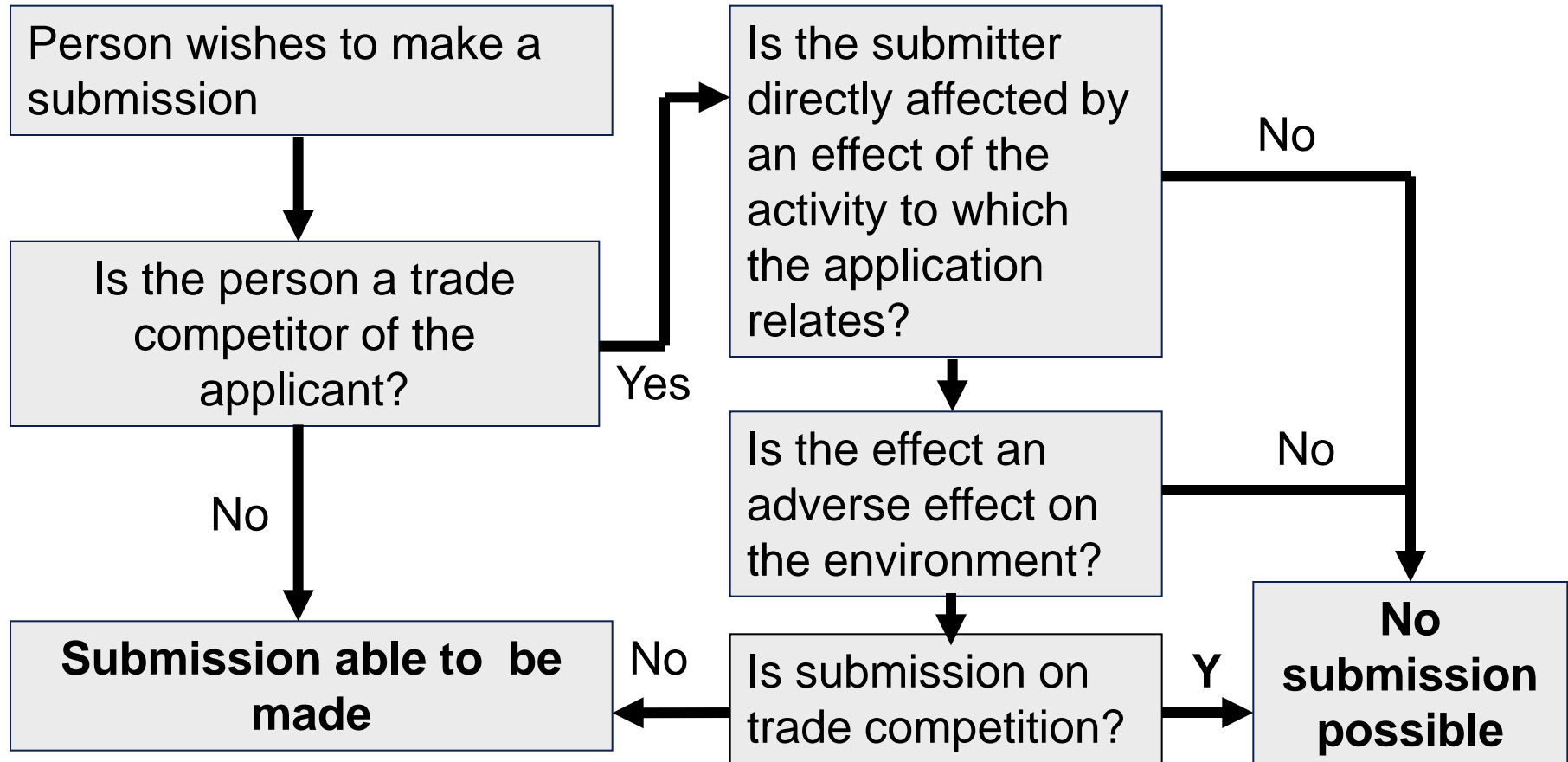


Trade Competition – ‘Filters’

- New Part 11A – trade competitors
- Limitation on submissions and appeals by trade competitors
- Prohibition on use of surrogates
- Trade competition not to be considered in notification decisions



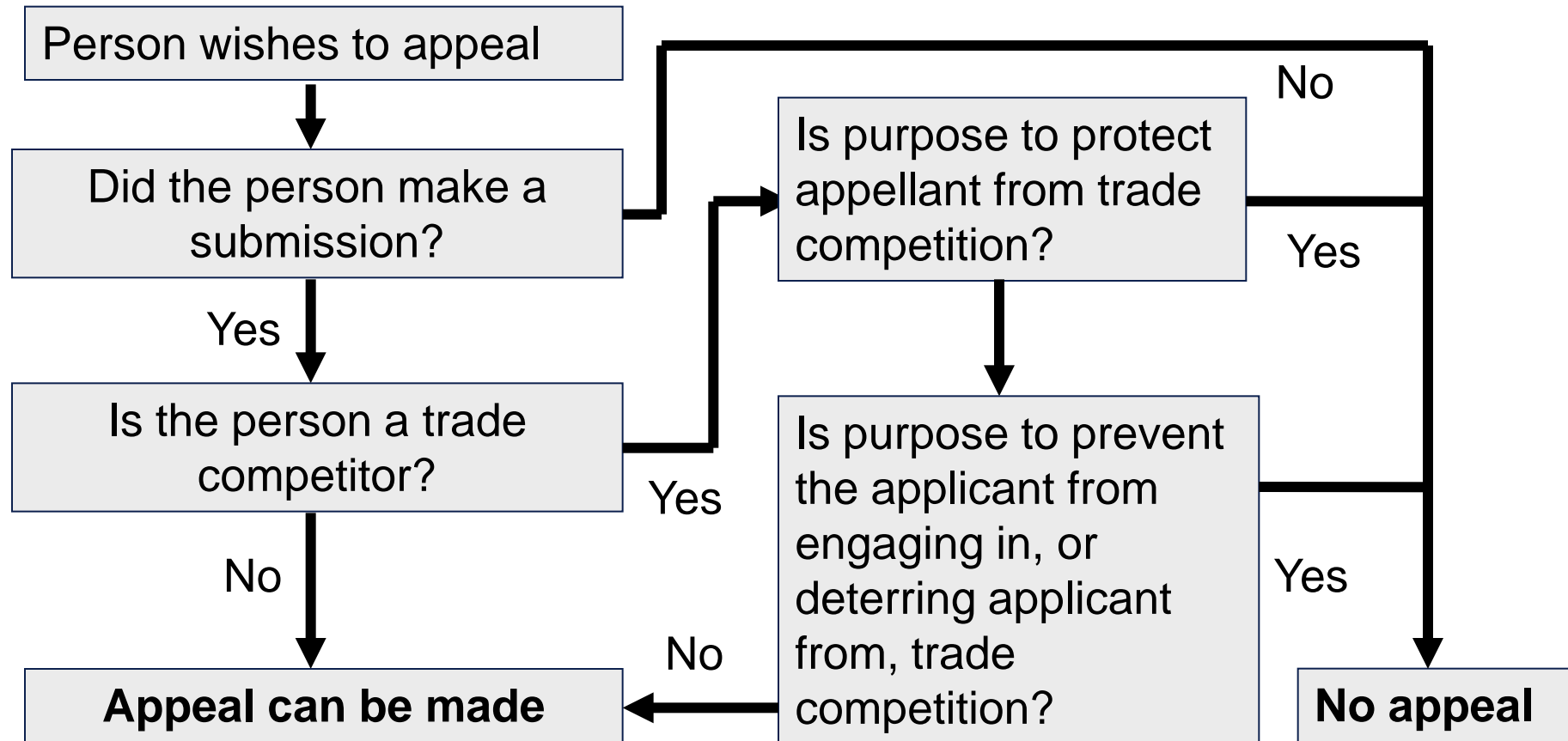
Trade Competition - Submissions



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Trade Competition - Appeals



Trade Competition – “Sanctions”

- Declaration that Part 11A breached leads to indemnity costs
- Declaration can be used in High Court to seek damages (s.308G – I)
- Filters and sanctions applicable to surrogates too



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Related Changes

- Security for costs
- S.274(1)(d) limitations (parties joining appeals)
 - Attorney General represents public interest
 - able to join if interest greater than general public



Compliance & Enforcement - Intent

- To provide greater disincentives in regard to non-compliance
- To more fairly reflect the ability of offenders to pay the fines for their non-compliance
- To improve consistency in the way enforcement provisions, and RMA compliance duties apply to all parties



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Compliance and Enforcement

- Maximum fines to \$300,000 (natural persons) and \$600,000 (others)
- Prosecution can lead to review of consent conditions (s.339(5) and s.128(2)):
 - council must have regard to reasons
 - consent can be cancelled
- Enforcement action against Crown possible



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Transitional Provisions

- Processes already underway unaffected
- RCAs applications not yet notified go through Amendment Act decision making processes
- Amendments regarding NES and NPS also apply to any existing NES and NPS



Transitional Provisions

- Blanket rules preventing trimming revoked on 1 October 2009
- No blanket tree rules preventing felling, damaging or removal of trees from 1 January 2012



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New and Upcoming Regulations

- New forms
- Environment Court lodgment fee now \$500
- Default discount policy within nine months
- Regulations for supply of information (RMA survey to become mandatory) (s.360)



But wait there's more...



**New
From 2010!**



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RMA Phase 2

- Further Bills in 2010
- Main areas of Phase 2
 - EPA roles, functions and powers
 - Freshwater management
 - Infrastructure
 - Urban



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- Overlaps with other legislation
 - Building Act 2004
 - Conservation Act 1987
 - Forests Act 1949
 - Historic Places Act 1993



Things to know now

- Rules for trimming in urban areas revoked
- Changes to further information requests
- Changes to notification (including notification provisions applying to notices of requirement)
- Changes to timeframe extensions & waivers



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- Independent commissioner requests (s.100A)
- Direct referral process and roles
- NES Enforcement role and certificates of compliance



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Action Points

- Should be updating tracking databases
- Update delegations procedures registers (e.g. decisions on direct referral requests)
- Updating internal manuals, template letters, forms and protocols etc.
- Financial systems preparation



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Action Points

- Send out 'warning letters' for pre-2005 applications with outstanding s.92 requests
- Consider tree position protection post Jan 2012



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Need to know more?

- Ministry for the Environment and EPA websites (www.mfe.govt.nz, www.rma.govt.nz and www.epa.govt.nz)
- Quality planning website www.qp.org.nz
- N Z Legislation website www.legislation.co.nz
- Fact sheets

