



Report of the
**REGISTRAR OF THE
ENVIRONMENT COURT**

For the 12 months
ended 30 June 2002

*Presented to the House of Representatives pursuant to section
264(1) of the Resource Management Act 1991*

9. RESOURCES

Expenditure and revenue of the Court during the 2001/2002 financial year and in the previous year was:

Expenditure	2001/2002	2000/2001
	\$	\$
Judges' salaries and allowance	1,555,737	1,292,336
Commissioners' fees and salaries	1,260,809	1,074,209
Staff salaries and wages	1,167,693	867,072
Judges' and Commissioners' travel costs	613,314	470,606
Staff travel costs	93,449	215,218
Staff and Commissioner training ¹⁷	21,878	7,923
Hireage of venues for sittings and mediations	59,528	29,018
Telephone, postage and courier costs	109,151	94,487
Stores and stationery	55,607	57,548
Textbooks and periodicals	59,050	60,126
Maintenance of buildings, furniture and equipment	116,044	122,970
Utilities (power and rates)	79,065	82,460
Miscellaneous overheads	54,116	3,637
Revenue		
	\$	\$
Sale of copies of Court decisions	22,092	11,932
Appeal and application lodgement fees	64,659	66,021

¹⁷ Increase in costs can be attributed to, in large part, the costs for introductory mediation training for newly appointed Environment Commissioners.

Of those cases referred to mediation, 141 (42%) have now settled or been withdrawn. A further 119 (36%) cases have been adjourned for the parties to continue discussions or are undergoing further mediation with the expectation that they too will settle. Only 74 (22%) cases have not resulted in full agreement being reached between the parties. These cases were remitted for further management, which may result in formal hearings being held.

Anecdotal evidence suggests an increasing determination by parties to seek a solution, that may require more than the one mediation session, than may have been the case in previous years. This is leading to the resolution of more complex cases through mediation, thereby freeing up more Court time.

The Court has noted delays in parties formalising settlements reached at mediations. In future, the Registry will be increasingly persistent with parties in following up matters in a timely fashion.

A reputable training provider conducted a two-day training programme on mediation and alternative dispute resolution with all of the Court's Commissioners in Wellington, in May of 2002. Using Court-based case scenarios, Commissioners received training in the development and application of strategies to the types of cases they frequently encounter, and training to enhance their ADR skills in an overall sense.

7. CONFERENCES AND MEETINGS

This year the Court held a number of regular, and more specialised meetings. This permitted Judges, Commissioners and registry staff alike, to focus on specific issues including case management and mediation.

Principal Environment Judge Allin presented a keynote address at the Australia-New Zealand Planning Congress, held in Wellington during 2002, and also spoke at other events.

8. INTERIM ENFORCEMENT ORDERS

The Court received 11 applications for interim enforcement orders. These applications receive the immediate attention of the Court, although not all require, or seek, immediate adjudication.

The Court made orders the same day they were lodged for five of these applications, with another three determined within twenty days of lodgement. Three applications have either been set down for hearing or await finalisation of enforcement orders.

CONTENTS

	Page
INTRODUCTION	3
ENVIRONMENT COURT	4
1. ADMINISTRATION OF THE ENVIRONMENT COURT	5
1.1 General	5
1.2 Special Jurisdictions Group Change Project	5
1.3 Appointments and Retirements	6
1.4 The Environment Court Advisory Committee	6
2. WORKLOAD OF THE ENVIRONMENT COURT	7
2.1 General	7
2.2 Hearings	8
2.3 Significant cases	9
3. CASE MANAGEMENT	11
4. ADDITIONAL RESOURCES	12
5. ALTERNATE ENVIRONMENT JUDGES	12
6. ADDITIONAL DISPUTE RESOLUTION (ADR)	12
7. CONFERENCES AND MEETINGS	13
8. INTERIM ENFORCEMENT ORDERS	13
9. RESOURCES	14

INTRODUCTION

Minister,

I have the honour to forward in terms of section 264(1) of the Resource Management Act 1991, my report on the administration, workload and resources of the Environment Court for the twelve months ended 30 June 2002.

Yours faithfully,

JA Grant, (Acting) Registrar, Environment Court

The Honourable the Minister for Courts

4. ADDITIONAL RESOURCES

The Government has approved new funding for the Court, to be delivered over a period of four years and primarily designed to enhance the level of support and service being provided to the Court. Funding is included for:

- Enhancements to the Court's database to create an improved ability to report on the Court's activities and to assist in the management of case loads more effectively.
- Enhanced judicial support through the appointment and development of new specialist support roles.
- Development of enhanced case management processes.

This funding represents the most significant investment by Government in the Court (and its Registry in particular) in its history and is recognition of the critical role it plays in the resource management process.

5. ALTERNATE ENVIRONMENT JUDGES

In consultation with the Chief District Court Judge, the Court has secured the services of Judge FWM McElrea of Auckland and Judge CJ Thompson of Wellington to hold appointments as alternate Environment Judges, to complement those of Judges Sheppard and Treadwell. During the year they have assisted, in the main, in the hearing and determination, in the District Court, of prosecution proceedings under the Resource Management Act.

6. ADDITIONAL DISPUTE RESOLUTION (ADR)

	30/6/99	30/6/00	30/6/01	30/6/02
Referred for ADR	188	188	334	334

This aspect of the Court's work continues to form a significant part of it, as it becomes more widely accepted as an alternative to a hearing before a fully constituted division of the Court.

Whilst the number of cases that accepted mediation has remained completely unchanged from that reported last year, the amount of time Commissioners spent in the facilitation of meetings throughout the country increased to 322 days.

Appeals against consents sought to enable the establishment and operation of a landfill facility at Hampton Downs, near Meremere, in the North Waikato. The Court concluded that consent should be granted as the proposal did not conflict with the RMA and that proposed consent conditions were appropriate to ensure that any adverse effects would be avoided, remedied or mitigated against¹⁴.

Appeals concerning a proposal by Winstone to develop a quarry to extract and process aggregate south of Pokeno. The proposal also required consent for the establishment and operation of a railway siding to connect with the main trunk line. The appeals were dismissed and the consents were granted subject to amendments required to the conditions for the consents¹⁵.

Appeals relating to the proposal to establish a regional prison at Ngawha, about 5km east of Kaikohe. Two of the appeals opposed the establishment of the prison and sought that the Minister of Corrections' requirement for designation of the site in the Far North District Plan be cancelled. The third appeal was brought by the Minister against the Regional Council's refusal to grant resource consents for the facility on the grounds of adverse effects on the spiritual and cultural values of tangata whenua. The appeals against the designation of the site for a regional prison were disallowed and the requirement was confirmed subject to conditions. The Regional Council's decision was cancelled and the appeal by the Minister of Corrections was allowed subject to additional conditions¹⁶.

3. CASE MANAGEMENT

Historically, case management in the Environment Court has been based on individual Judge lists. During the year, the Environment Court Bench has been developing a draft Practice Note updating the Court's case management principles. Effective case management requires an efficient, appropriately resourced registry. To that end, the Department for Courts undertook the change project referred to in paragraph 1.2 of this report and commenced a review to enable upgrading of the database used to manage cases.

The Environment Court continues to promote the use of mediation, and to set callovers and pre-hearing conferences much earlier in the process so that those cases that actually require a hearing are more readily identified. The Court is also increasing the use of back up cases for its fixture weeks, to maximise its available hearing time.

¹⁴ Land Air Water Association & Others v Waikato Regional Council & Others A110/01 dated 23/10/01.

¹⁵ Winstone Aggregates Ltd & Others v Franklin District Council & Waikato Regional Council A80/02 dated 17/4/02.

¹⁶ Shayron Lee Beadle & Others v The Minister of Corrections and Minister of Corrections v Northland Regional Council A74/02 dated 8/4/02.

ENVIRONMENT COURT

Principal Environment Judge

JES Allin

Residence

Wellington

Environment Judges

RJ Bollard
JR Jackson
SE Kenderdine
LJ Newhook
JA Smith
RG Whiting

Auckland
Christchurch
Wellington
Auckland
Christchurch
Auckland

Alternate Environment Judges

FWM McElrea (with effect from 28 September 2001)
DFG Sheppard
CJ Thompson (with effect from 28 September 2001)
WJM Treadwell

Auckland
Auckland
Wellington
Wanganui

Environment Commissioners

NA Burley
PA Catchpole
JR Dart (Retired 2 July 2001)
F Easdale (Retired 27 June 2002)
RF Gapes
R Grigg (Retired 2 July 2001)
AH Hackett
WR Howie (Appointed 28 June 2001)
IGC Kerr
CE Manning (Appointed 28 June 2001)
HA McConachy (Appointed 28 June 2001)
IG McIntyre
DH Menzies (Appointed 28 June 2001)
JR Mills
JD Rowan
RS Tasker

Christchurch
New Plymouth
Auckland
Christchurch
Auckland
Akaroa
Mt Maunganui
Wellington
Christchurch
Christchurch
Auckland
Auckland
Christchurch
Wellington
Wellington
Ruapuna

Deputy Environment Commissioners

F Easdale (Appointed 28 June 2001 Retired 27 June 2002)
R Grigg (Appointed 5 August 2001)
NJ Johnson (Retired 2 July 2001)
J Kearney
JR Fitzmaurice (Retired 2 July 2001)

Christchurch
Akaroa
Christchurch
Auckland
Auckland

1. ADMINISTRATION OF THE ENVIRONMENT COURT

1.1 General

For most matters heard in the Environment Court, a quorum for the Court is one Environment Judge and one Commissioner, but the Court often sits with two Commissioners. The Act also provides for Judge alone and Commissioner alone sittings. As required by legislation, hearings are conducted as near to the locality of the subject matter to which the proceedings relate, as the Court considers convenient. Outside Auckland, Wellington and Christchurch, where the Department for Courts maintains offices for the Court, it makes use of other Departmental facilities, and such other venues as are available. Approximately 34% of Environment Court hearings were held at venues that are not courthouses.

During the year the Tribunals Unit of the Special Jurisdictions Group of the Department maintained the Court's registry in Wellington. There were eight staff within the registry and the Unit's management group provided administrative, word processing and records services.

Hearing facilities specifically for the Environment Court are maintained in Auckland, Wellington and Christchurch. In Auckland the Environment Court also has a purpose built mediation facility. The Unit had ten staff based in Auckland, seven of whom were engaged principally in serving the Court's sittings and providing Judicial support services. In Christchurch there were five staff.

The Court also had the services of three legally qualified staff, who work directly with the Judges undertaking tasks including research, analysis and the processing of large numbers of consent orders. Their contributions allow the Judges to devote more time to case and list management, hearing cases and preparing decisions.

1.2 Special Jurisdictions Group Change Project

During the year a review of the structural and organisational requirements of the Special Jurisdictions Group of the Department of Courts was completed. As a consequence of that review, it has been determined that the administrative support the Department provides the Court can be better achieved by establishing an operating unit within the Group specifically for the Environment Court. As a result of this change, the Special Jurisdictions Group will comprise the new Environment Court Unit, the Maori Land Court Unit, the Waitangi Tribunal Unit and the Tribunals Unit. This re-alignment will allow the new Unit to focus on the specialised nature of the Court's activities. In particular, the Unit will have new case manager and hearing manager roles, files will be able to be managed locally and there will be an increased investment in staff training.

Appeal against the refusal to grant a resource consent for a non-complying activity to construct additional coolstores and an office building near Havelock North. The Court held that there would be adverse effects created that could not be adequately mitigated and that the proposal would be contrary to the Proposed District Plan. The council's decision was upheld and the appeal dismissed⁸.

An interim decision on references challenging some of the provisions (particularly the schedule of ecological sites) in the Natural Environment section of the proposed Western Bay of Plenty District Plan. The Court found that amendments were required and were to be incorporated in the plan and that a revised schedule be notified⁹.

Decision on references on the Proposed Variation 1 of the Proposed District Plan for the Western Bay of Plenty District, as it relates to development controls affecting the Coastal Protection Areas at Waihi and Pukehina beaches. The Court found that the approach taken by the District Council required further consideration with the parties to come back to the court with suggested criteria¹⁰.

References relating to the extent and form of future urban growth of Christchurch City. The Court decided to consider proposals to rezone sites on merit and in the context of the relevant locality¹¹.

Decision on preliminary questions of law, concerning the refusal by the Council of submissions to the Proposed Plan and a variation to it. The Court found that there was jurisdiction for the referrers to challenge the Council's decision and that the relief they sought was not beyond the relief sought in their submission. The Council's case was disallowed¹².

Decision in relation to a notice of requirement to designate land to upgrade a section of State Highway One at Paremata, north of Wellington. The Court found that the upgrade met the tests for sustainable management and efficiency and was consistent with the relevant District Plan and Regional Policy Statement. The designation was confirmed¹³.

⁸ EDENZ Ltd v Hastings District Council W20/02 dated 18/6/02.

⁹ Minister of Conservation & Anor v Western Bay of Plenty District Council A71/01 dated 3/8/01.

¹⁰ Bay of Plenty Regional Council & Waihi Beach Protection Society Inc v Western Bay of Plenty District Council A27/02 dated 8/2/02.

¹¹ Suburban Estates Ltd & Muir Park Corporate Ltd & Others v Christchurch City Council C217/01 dated 6/12/01.

¹² M & S Thompson v Marlborough District Council W53/01 dated 18/7/01.

¹³ Porirua City Council & Others v Transit New Zealand W52/01 dated 16/7/01.

2.3 Significant Cases

The Court heard and delivered judgments on a number of significant cases during the year including:

Decision on references arising from Proposed Plan Change 52 to the Transitional District Plan and the Proposed District Plan concerning the rezoning of land northeast of Woodend township. The Court concluded that the proposed change and the relevant provisions of the Proposed Plan should proceed².

Appeals against a decision on a notice of requirement by the Council for the proposed Western Link Road, involving a north/south arterial to be built in three stages north of Waikanae. By a majority, the requirement was confirmed subject to additional conditions to be submitted for further consideration³.

Interim decision on appeals relating to consents granted to extend an existing aggregate quarry operation on a staged basis northwest of Te Puke and 15km southeast of Mt Maunganui. The consents were granted and an amended set of draft conditions were to be submitted for consideration to enable a final decision to be issued⁴.

Interim decision on an appeal against a resource consent granted to construct and operate a large residential apartment and holiday home accommodation complex at West Ohope. Amended plans and conditions of consent were to be submitted addressing the concerns raised before a final decision issues⁵.

A decision on an appeal against a decision refusing a consent to subdivide property on Great Barrier Island. Despite measures designed to mitigate against adverse effects the Court determined that those effects would be more than minor and the appeal was disallowed⁶.

Hearings into references on a plan change to the District Plan concerning whether a new business centre would adversely affect the function of suburban shopping centres as community focal points. The Court concluded that the plan change would serve the purposes of the Resource Management Act and approved it with some amendment made⁷.

² Canterbury Regional Council v Waimakariri District Council & Pegasus Bay Coastal Estates Ltd (now Southern Capital Ltd) C5/02 dated 25/1/02.

³ Te Runanga o Ati Awa ki Whakarongotai Inc & Anor v Kapiti Coast District Council W23/02 dated 4/7/02.

⁴ Fulton Hogan Ltd & Others v Bay of Plenty Regional Council & Anor A106/02 dated 10/5/02.

⁵ Ohope Beach Development Society Inc v Whakatane District Council A136/02 dated 26/6/02.

⁶ Michael O'Shea v Auckland City Council A105/01 dated 18/10/01.

⁷ St Lukes Group Ltd & Others v Auckland City Council A132/01 dated 3/12/01.

1.3 Appointments and Retirements

At last report I advised that, as at 30 June 2001, four Commissioner warrants had expired and a further six warrants were due to expire by the end of December of that year. At that time the Minister of Justice had commenced, but not completed, a new round of Commissioner appointments/re-appointments

I can now report that the appointment process was concluded with the reappointment of five Commissioners for terms ranging from two to five years and the appointment of three new Commissioners to replace existing Commissioners (two of whom, in turn, were appointed as Deputy Commissioners). In addition, through additional funding released last year to appoint an additional Environment Judge, one further Commissioner position was also established and subsequently filled. The Court's total complement of Commissioner appointees now stands at 15 (thirteen Commissioners and two Deputy Commissioners).

Newly appointed Commissioners attended an induction-training course under the tutelage of Alternate Environment Judge Sheppard and Commissioner Paul Catchpole and attended a L.E.A.D.R introductory mediation workshop. They also receive support from other Commissioners under an in-house mentoring programme.

The important contributions made over many years by departing Commissioners Jim R Dart, John R Fitzmaurice, Frank Easdale and Nedra J Johnson are gratefully acknowledged.

Due to the expiry of the warrants of a further three Commissioners and one Deputy Commissioner on 8 June 2002, a new round of consultations was commenced between the Minister of Justice, the Minister for the Environment and the Minister of Maori Affairs.

Those Commissioners will, however, continue in office until such time as they are either re-appointed or their successors formally take up office.

1.4 The Environment Court Advisory Committee

The Environment Court Advisory Committee provides an important forum for liaison between the Court, the Department, the Ministry for the Environment, and the legal profession.

Members of the Committee during the year were Principal Environment Judge Allin (chair), and Marilyn Bramley (Ministry for the Environment), Jim Guthrie (New Zealand Law Society), Dr Royden Somerville QC (New Zealand Law Society), John Grant (Department for Courts), Hilary Sharland (Department for Courts).

The Committee met twice during the year, and considered the following issues:

- Caseload and case management strategies.
- Change Project.
- The impact of delays with Commissioner appointments.
- Committee membership.
- Evidence recording.
- Resourcing.
- The purpose and effectiveness of the Committee.
- Timing of meetings.

2. WORKLOAD OF THE ENVIRONMENT COURT

2.1 General

During the year, 1356 new cases were lodged which, leaving aside 1999, is similar to the number of cases lodged in previous years. The number of disposals was 1743 which is a significant increase from previous years and is the first time for a number of years that disposals outnumbered new lodgements.

	Year Ended				
	30/6/98	30/6/99	30/6/00	30/6/01	30/6/02
Appeals/Applications Registered	1373	2263	1270	1395	1356
Heard/Disposed of (includes consent orders and withdrawals)	1184	1380	1195	1295	1743
Sitting days	420	521	447	521	649
Decisions issued	408	502	832	833	984
Awaiting Determination ¹	1999	2869	2940	3016	2523

Of the 1743 cases disposed of, 1533 (88%) did not require a fixture for a full hearing and only half of the cases that were given a fixture (6% of total) proceeded to full hearing at an average hearing time of 7 days per case.

¹ Does not include cases actually heard and awaiting judgment.

2.2 Hearings

The Court sat for 649 days in the following centres:

	1999/00	2000/01	2001/02
Paihia	16	-	20
Kaikohe	-	1	-
Whangarei	8	3	7
Auckland	143	151	235
Thames	12	4	3
Paeroa	2	7	-
Whangamata	5	6	-
Whakatane	6	-	24
Gisborne	3	1	1
Tauranga	24	22	27
Hamilton	10	60	27
Rotorua	6	-	9
Taupo	19	-	4
Napier/Hastings	2	5	5
Palmerston North	-	3	5
New Plymouth/Wanganui	6	5	2
Levin	1	-	-
Masterton	-	3	-
Wellington	21	48	47
Blenheim	2	10	19
Nelson	62	7	30
Greymouth	1	2	1
Christchurch	34	105	95
Timaru	4	2	-
Queenstown	47	24	35
Oamaru	-	1	1
Wanaka	-	-	4
Alexandra	2	5	1
Twizel	-	1	-
Dunedin	8	28	37
Gore	1	-	2
Invercargill	2	17	8
	447	521	649