



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2013

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

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INTRODUCTION

The Honourable Minister for Courts

Minister,

I have the honour to forward in terms of s.264 (1) of the Resource Management Act 1991, my report on the administration, workload and resources of the Environment Court, for the 12 months ended 30 June 2013.

Yours faithfully,

Harry Johnson,
Registrar
Environment Court.

The Honourable the Minister for Courts

1. Profile of the Environment Court

1.1 Members of the Court

Title	Appointed	Residence
Principal Judge (Acting) Environment Judge L J Newhook	Aug 2001	Auckland
Environment Judges Judge J R Jackson Judge J A Smith Judge C J Thompson Judge B P Dwyer Judge J Borthwick Judge M Harland	Sept 1996 May 2000 Sept 2001 Sept 2006 Nov 2008 Sept 2009	Christchurch Auckland Wellington Wellington Christchurch Auckland
Alternate Environment Judges Judge J Doogue Judge C Doherty Judge C Fox Judge S Clark Judge J Kelly Judge P Kellar Judge R Wolff Judge G Rea Judge G Davis	Feb 2011 Aug 2008 July 2009 July 2009 July 2009 July 2009 Feb 2011 Feb 2011 April 2011	Wellington Christchurch Gisborne Hamilton Wellington Dunedin Hamilton Napier Whangarei

Title	First appointed	Re-appointed	Residence
Environment Commissioners Mr J R Mills Mr W R Howie Mr R Dunlop Mr K Prime Ms M P Oliver Ms K A Edmonds Dr A J Sutherland Mr D Bunting Ms A Leijnen Mr I Buchanan Ms Eileen von Dadelszen Mr James Hodges	July 1999 June 2001 March 2003 March 2003 April 2004 Jan 2005 Jan 2005 Aug 2007 Jan 2011 Jan 2013 June 2013 June 2013	Sept 2009 June 2013 June 2013 June 2013 March 2009 Jan 2010 Jan 2010 Aug 2012	Wellington Wellington Auckland Bay of Islands Auckland Wellington Christchurch Wellington Auckland Wellington Wellington Auckland
Deputy Environment Commissioners Mr O A Borlase Mr D Kernohan Ms C Blom Mr John Illingsworth Dr B Maunder	March 2003 Aug 2007 Nov 2010 June 2013 May 2013	Aug 2011 Aug 2012	Dunedin Wellington Auckland Cambridge Auckland

1.2 Judicial Appointments and Retirements

Environment Judges

There were no appointments or retirement of Environment Judges. The number of permanent Environment Judges remains at 7. This is a reduction from the 8 permanent Judges the Court had in place between 2002 and March 2012. This current reduction in judicial capacity has the support of the Acting Principal Environment Judge and reflects a lower number of matters coming before the Court in comparison with historic case loads.

Environment Commissioners

Retirements

During the 2012/13 year, Environment Commissioners Heather McConachy, Helen Beaumont and Deputy Commissioners Ken Fletcher and Dr Bruce Gollop, retired from sitting with the Court. Their contribution to the work of the Court is valued and appreciated.

Re - appointments

In August 2012, Deputy Environment Commissioner David Kernohan was re-appointed for a further 5 year term and in June 2013, Environment Commissioners David Bunting and Russell Howie were both reappointed for a further 5 year terms.

Appointments

Mr Ian Buchanan was appointed an Environment Commissioner in January 2013 and in June 2013, Ms Eileen von Dadelszen and Mr James Hodges were appointed, each with 5 year terms. Also in June, Mr John Illingsworth was appointed a Deputy Environment Commissioner for 5 years and in May 2013, Dr Brian Maunder was appointed a Deputy Environment Commissioner for a 3 year term.

Over the last few years, the Court has reduced its Commissioner establishment from 15 permanent Commissioners to 12. This current reduction in Commissioner capacity has the support Acting Principal Environment Judge. The Court is also assisted by having 5 Deputy Environment Commissioners. Together with the reduction from 8 to 7 permanent Judges, the reduced Commissioner establishment reflects a change in the Court's caseload and judicial requirements which follow a lower level of resource consent and plan review appeal activity being experienced by territorial authorities.

1.3 The Registry

The Court Registrar has overall administrative responsibility for the Court. The Registrar, and Deputy Registrars exercise quasi-judicial powers such as the consideration of certain waiver applications.

The Environment Court Unit falls within the Specialist Courts Group of the Ministry of Justice. The Registrar is also the Operations Manager for the Environment Court and has reporting and budgetary responsibilities to the National Manager of Specialist Courts.

The Court maintains registries in Auckland, Wellington and Christchurch. Each registry is led by a Regional Manager (each of whom are Deputy Registrars and have all the powers, functions and duties of the Registrar). Each registry provides client services and administrative support through case and hearing managers together with legal and research support to resident Judges and Commissioners to assist them in hearing and determining cases.

The Court's Judicial Resources Manager co-ordinates the Court's sitting programme. This follows directions from the Principal Environment Judge who, pursuant to s 251(2) of the Resource Management Act 1991 (RMA) is responsible for ensuring the orderly and expeditious discharge of the business of the Court.

1.4 The Court's Jurisdiction

The Environment Court is established by section 247 of the RMA as a Court of Record. It is a specialist court that has jurisdiction over environmental and resource management matters. It can be characterised as follows:

- a Judge usually presides at sittings to hear and determine proceedings
- it is required by law to act judicially
- it hears contesting parties to the proceedings before it and gives a determination which is binding upon them

The Court currently comprises 16 (inc. 9 alternate) Judges and 17 Commissioners (inc. 5 deputies). Commissioners are appointed for a term of up to 5 years on either a full or part (75%) time basis. Deputy Commissioners sit as required usually on the basis of their expertise.

The Court's functions are primarily to determine appeals in respect of resource consents, designations and abatement notices, plan appeals in respect of the content of regional and district planning instruments, applications for enforcement orders, and inquiries in respect of water conservation orders. The Court may also make declarations about the application and interpretation of resource management law. Judges of the Court also hold warrants as District Court Judges, and from time to time sit in the District Court to hear prosecutions laid under the RMA.

For matters heard in the Environment Court, a quorum for the Court is one Environment Judge and one Commissioner, but the Court is most often constituted with one Environment Judge and two Commissioners. The RMA also provides for Judge or Commissioner alone sittings. As required under the RMA, hearings are conducted at a place as near to the locality of the subject matter to which the proceedings relate and as the Court considers convenient.

2.0 Highlights for 2012/13

2.1 Improvement Initiatives for 2012/13

The Acting Principal Environment Judge and the Registrar are focused on continuous improvement and looking for opportunities to increase the effectiveness and efficiency of the Court's operations. Many initiatives taken over the years to improve case and hearing management has resulted in the Court being recognised by those who appear

before the Court more regularly, as one of the more efficient parts of the Resource Management system.

Use of tablets

The Court has continued to look for opportunities to operate more efficiently. Over 2012/13, the Court adopted the use of tablet computers in three substantial cases: the proposal to establish an open cast coal mine at Denniston Plateau; the proposal to establish a wind farm within the Hurunui district and, the proposal to construct an enlarged cricket oval within Hagley Park, Christchurch. The Ministry of Justice has supported the Court in its endeavours to operate more efficiently and plans to roll out iPads to all Judges, Commissioners and Hearing Managers.

The use of iPads essentially allows the Court to better manage and review evidence in volumetric terms. Evidence filed in Court has been traditionally in paper form and the number of witnesses and technical reports for large cases can become very unwieldy in a courtroom setting as well as time consuming to navigate through manually. The Court and the registry have continued to look for opportunities to facilitate the filing and management of evidence in an electronic form. Where possible, the Registry will transfer the evidence onto tablets to aid the management and retrieval of evidence during the course of a hearing. This evidence may also be posted on the Court's web page which then makes it available for download by other parties. Future filing and exchange of evidence may more conveniently be made through synchronisation with a remote server, making the evidence exchange process more convenient and efficient for parties and the Court. Over 2013/14, the Ministry of Justice will explore options to enable parties to initiate proceedings, pay fees and file other case related material via a web page portal. This initiative if implemented, would improve access to the Court's services.

Expert witness conferencing

Over 2012, in partnership with the Resource Management Law Association (RMLA), Acting Principal Environment Judge Newhook and Environment Commissioner Ross Dunlop conducted 11 workshops around the regions to increase the understanding and effectiveness of witness caucusing amongst experts and practitioners. Issues raised covered a broad spectrum and will assist further development of the Court's Practice Note over 2013/14. Together with other speeches and papers presented by members of the Court, a report from the RMLA/Expert Witness steering group can be found on the Court webpage:

<http://www.justice.govt.nz/courts/environment-court/annual-reports-of-the-registrar>

Mediation

In seeking to improve efficiency in the Court's mediation service, and improve the Court's ability to ensure orderly and expeditious disposal of matters before the Court, the Court conducted consultation on a proposal to amend the Court's requirements in mediation. The proposal concerns a requirement for parties at mediation to be represented throughout by persons who have full authority to settle the dispute or the issues at stake.

The Court is of the view that mediations often produce a high rate of early and cost effective resolution of proceedings. However, early resolution can be frustrated by there being no one at the mediation (particularly from councils) with authority to settle and any proposals needing to be referred back to a relevant standing committee which creates

delay. Feedback from consultation has been received and will inform part of a review of the Court's Practice Note over 2013/14

2.2 Changes to Court Fees

Cabinet has approved fee changes to the schedule of fees payable in the Environment Court. Together with an increase in filing fees, a daily hearing fee will also form part of the fees schedule. For matters referred directly to the Court, there is provision under the RMA for the Registrar to seek to recover from the applicant, the costs incurred by the Court (the Crown) arising out of a direct referral. Cost recovery and monitoring of judicial activity in such circumstances has been shown to be impracticable and inappropriate and consideration is being given to the inclusion in the Fees schedule of fixed fees for matters referred to the Court. A fixed fee schedule would also improve the ability of applicants to better assess the potential for the Crown's costs in considering a referral to the Court. Changes to fees in the Environment Court are dependent on amendments to legislation which are likely to come into effect in 2014.

2.3 Responsiveness to the needs of users

The Acting Principal Environment Judge (and other members of the Court) meet formally and informally with the professions that regularly engage with the Court with a view to identifying areas for improvement in practice and process. Each year, the Judges and Commissioners routinely participate in numerous conferences and seminars, to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

Community Education

During 2012/13 the Court's registry staff presented a series of workshops to educate young Resource Management practitioners on how the Court operates, its practice and procedures. These sessions also provide good feedback on potential areas for registry service improvements. The Court runs mock courts. At these sessions, information is made available on courtroom protocols, how to act in a courtroom, what is involved with the giving of evidence/submissions and in cross examination as well as information about the mediation and expert witness caucusing procedures.

Accessibility

The Environment Court has registries in Auckland, Wellington and Christchurch which provide services to all New Zealanders. To be accessible means ensuring parties and their representatives and witnesses are able to access the Court in geographical terms. The Court therefore travels extensively to hold hearings as close to the subject matter as is convenient. The Court also utilises audio visual technology where convenient and where witnesses are at a distance from the court room.

The Court also makes special efforts to assist self represented litigants through its website and its published information and by the Registry staff. Registry staff cannot however provide legal advice.

3.0 Court's Performance

3.1 Overview

The Court has an overriding duty to ensure the efficient resolution of the matters before it. The RMA states that the Principal Environment Judge is responsible for the expeditious discharge of the business of the Court. Therefore, in conjunction with the other Environment Judges, the Principal Environment Judge determines the day-to-day case-flow management strategy of the Court. This strategy is reflected in the Court's Consolidated Practice Notes. The Ministry of Justice supports the Principal Environment Judge in the execution of that strategy through its registry and administrative case management services. Some matters filed under the RMA are substantial in terms of their complexity, range and numbers of parties and issues, and are challenging to administer. The key to effective and proactive administration and case management is the provision of staff who are trained and experienced in the work required of them at all stages of the life of a case.

Various improvements over the last decade have seen significant development and refinement of the Court's case management and dispute resolution techniques. During this time, mediation has become established and refined, the techniques having been instituted in the Court not long before that period commenced. As highlighted earlier in this report, expert witness caucusing is now an established procedure in the case management process.

A key focus of the Court and registry is on the Court's management of its caseload. In comparison with the previous reporting year, of particular note is:

- An improvement and reduction in overall case load outstanding from 905 to 754
- A reduction in the number of resource consent appeals filed; from 192 to 140
- A slight increase in the number of plan appeals filed; from 163 to 228

It is reasonable to assume that the continued historically low number of resource consent appeals reflects in part at least, the low level of consent activity being processed by local authorities. The unpredictable nature of district plan and/or regional policy reviews, affect the variability from year to year of these particular appeals to the Court.

The table below indicates the volume of matters filed over the past six years.

Cases filed 2006 - 2013

Year	Plans Appeals	Resource Consents	Direct Referrals	Misc.	Total Filed
2006 / 2007	434	485		222	1141
2007 / 2008	404	558		187	1149
2008 / 2009	268	556		237	1061
2009 / 2010	324	325	3	175	827
2010 / 2011	210	223	3	171	607
2011 / 2012	163	192	7	137	499
2012 / 2013	228	140	5	123	496

Note: Misc. includes designation, enforcement and declaratory applications, appeals against abatement notices and other matters filed under statutes other than the RMA.

While case numbers are an indicator of the demand placed on court resources, they are not the only indicator. Other factors such as case size and complexity influence the level of judicial intervention through case management, mediation, expert witness caucusing and ultimately any hearing that may be required.

3.2 Matters referred directly to the Court

The nature of the Court's business has changed in the last three years since the passing of the 2009 Amendment to the Resource Management Act (Part 6 and Part 6AA). This amendment allowed some significant projects to be consented quicker by avoiding the need for a council hearing prior to an appeal to the Court. Over this reporting year, five matters were referred directly to the Court:

- Te Puna Matauranga O Whanganui and Universal College of Learning – consent to demolish a former Native Land Court building in Whanganui and establish, operate and maintain an iwi institute.
- Skydive Queenstown – consent to operate a commercial parachute operation at Remarkables Station, Queenstown.
- Canterbury Cricket Association – consent to enable development of existing cricket facilities at Hagley Oval, Christchurch.
- Hugo Verseput – consent to operate a log home park at Papamoa
- Te Arai Coastal Lands Ltd – consent to take ground water and undertake earthworks associated with a golf course at Te Arai.

Direct referrals and other complex cases before the Court concerning infrastructure and development do not have to be completed within the same statutory time limit as a board of inquiry (9 months). They are by their nature however accorded high priority, and significant commitment is made by the members of the Court charged with their mediation, expert witness caucusing, and hearing. Having matters at first instance usually means that there are a higher number of unrepresented parties/submitters involved with the Court process. This requires a greater degree of support to be given by the Court's registry staff in order to explain the Court's procedures and ensure an efficient case management process. The Court's Registry is working with Ministry for the Environment officials to publish guidelines for self represented parties engaged in matters referred directly to the Court, to assist their understanding of the Court process.

3.3 Case statistics

The Court operates a case management and tracking system that allocates cases to one of three management tracks: complex track (usually for statutory plan appeals and/or appeals concerning major development proposals), standard track (for cases that are not considered complex) and parties on hold track (for use when parties agree case management may be deferred for a period).

Overall case load

Overall the court received 496 new registrations and disposed of 662. The overall clearance rate for 2012/13 was 133%. The clearance rate is an output indicator of efficiency. It shows whether the volume of cases determined match the number of cases filed over the same reporting period. It indicates whether the Court's pending caseload (for particular case types) have increased or decreased over that period.

	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13
On Hand	905	884	865	825	831	802	810	815	816	793	758	735
Filed	39	38	53	46	31	56	50	29	33	24	42	55
Determined	60	57	93	43	61	48	46	28	59	60	71	36
Reopened	0	0	0	3	1	0	1	0	3	0	6	0
Caseload	884	865	825	831	802	810	815	816	793	758	735	754

Plan & Policy Statement Appeals

At 30 June 2013, the number of plan appeals outstanding was 454. Over 2012/13 the number of plan appeals filed was 228 with the Court determining 282 matters. Plan appeals are invariably placed in the complex track where they make steady progress with the majority settling by consent. The clearance rate for plan and policy statement appeals was 124%.

	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13
On Hand	504	488	488	475	480	459	483	498	497	481	455	442
Filed	8	18	33	24	12	42	29	10	6	2	17	27
Determined	24	18	46	19	33	18	14	11	25	28	31	15
Reopened	0	0	0	0	0	0	0	0	3	0	1	0
Caseload	488	488	475	480	459	483	498	497	481	455	442	454

Resource Consent Appeals

At 30 June 2013, the Court had 188 resource consent appeals outstanding. Over 2012/13, the number of resource consent appeals filed was 140 with the Court determining 212 matters. Accordingly the clearance rate for resource consent appeals was 151%.

	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13
On Hand	254	255	251	231	229	221	206	201	202	189	186	186
Filed	19	14	10	11	6	5	14	10	9	11	17	14
Determined	18	18	30	14	15	20	19	9	22	14	21	12
Reopened	0	0	0	1	1	0	0	0	0	0	4	0
Caseload	255	251	231	229	221	206	201	202	189	186	186	188

Miscellaneous matters

Matters such as appeals against requiring authority decisions on designations, declaratory and enforcement applications, objections to stopping of roads and taking of land, are generally categorised as miscellaneous. Over 2012/13, 128 miscellaneous matters were filed and 168 matters determined in the same category. As at 30 June 2013, there were 112 miscellaneous matters outstanding. The clearance rate for miscellaneous matters was 131%.

	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13
On Hand	147	141	126	119	122	122	121	116	117	123	117	107
Filed	12	6	10	11	13	9	7	9	18	11	8	14
Determined	18	21	17	10	13	10	13	8	12	18	19	9
Reopened	0	0	0	2	0	0	1	0	0	0	1	0
Caseload	141	126	119	122	122	121	116	117	123	117	107	112

3.4 Alternative Dispute Resolution

Section 268 of the RM empowers the Environment Court to arrange mediation and other forms of alternative dispute resolution. The Court actively encourages this and consequently the majority of cases will undergo mediation.

For the purpose of encouraging settlements of cases, the Court can authorise its members (Judges or Commissioners) or other persons to conduct those procedures. Environment Commissioners are trained in mediation. Mediation is a process in which parties to the dispute, identify the disputes issues, develop options, consider alternatives and endeavour to reach an agreement.

Mediation has enabled settlements in circumstances where informal negotiations have not been successful. It also allows issues to be narrowed which can in turn shorten hearings, even if settlement cannot be reached.

An ability to mediate on or near the subject site and outside office hours is often necessary.

Court-annexed mediation volumes and outcomes

Outcomes*	2012/13	2011/12	2010/11	2009/10	2008/09	2007/08
Total number of mediation events	264	282	362	517	513	465
Agreement reached in full	116	103	155	241	265	159
Agreement reached in part	66	87	110	174	121	144
Agreement not reached	28	57	65	65	63	106
Mediation vacated	23	22	32	37	64	56

*Some mediation topics/events for 2012/13 have yet to record a final outcome

*A single mediated topic may form part of a greater number of topics within a single lodgement or appeal

4.0 Future Case Load

Plan and Policy appeals

The volume of plan and policy appeal filings will continue to be irregular and difficult to forecast. Such appeals vary considerably in terms of their size and complexity. In terms of a case management approach, it is clear to the Court that no one size fits all. Over the years the Court has refined its approach and overall adopted a more robust case management style. The Court expects parties to engage early in the process in order to define the topics and issues, undergo mediation and where necessary, prepare for hearings all with a view to finalisation and determination of the issues as efficiently as possible. The Acting Principal Environment Judge stated an overall goal to determine large scale plan review matters within a 2 year frame.

Resource Consent appeals

The currently low numbers of resource consent appeals being filed may increase in tandem with a corresponding increase in applications being filed with councils. The number of matters being referred directly to the Court is currently modest, however, it is noted that the current Resource Management Reform Bill proposes threshold amounts to enable different types of proposals to be referred directly to the Court without requiring the agreement of the local authority. The number of matters referred directly to the Court may as a consequence increase if this reform is enacted.

Ultimately, the majority of matters before the Court settle without recourse to a hearing. The Court has finely balanced resources at its disposal and the nature of the Court's work means a significant investment of these resources needs to be applied efficiently to the great many cases that undergo mediation and a minority of cases that require support through witness caucusing and hearing.

5.0 Court Expenditure and Revenue

Expenditure and revenue of the Court and registry during the 2012/13 financial year and in the previous year was:

	<u>2012/13</u>	<u>2011/12</u>
<i>Expenditure</i>		
Judges' Remuneration and Allowances	2,155,100	2,399,200
Commissioners' Remuneration and Sitting Fees	1,668,093	1,810,067
Staff Remuneration and other Personnel Costs	1,817,990	1,968,553
Judges' and Commissioners' travel costs	522,573	476,558
Digital Audio Recording and Transcription	8,565	0
Staff travel costs	102,320	83,464
Staff and Commissioner training	34,710	43,994
Hire of venues for sittings and mediations	82,002	88,810
Telephone, postage and courier costs	79,843	117,885
Stores and stationery	29,574	61,951
Library and Information Services	20,937	22,656
Occupancy Costs, Utilities, Furniture and Equipment	1,666,834	1,560,185
Miscellaneous overheads	<u>12,729</u>	<u>5,021</u>
	8,201,270	8,638,344
<i>Revenue</i>		
Sale of copies of Court decisions	4,034	10,848
Appeal and Application Lodgement Fees	160,671	104,858
Direct Referral Cost Recovery	<u>192,336</u>	<u>0</u>
	357,041	115,706