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Report of the

## Registrar of the Environment Court

For the 12 months  
ended 30 June 2014

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*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 2014.

Yours faithfully,

Harry Johnson,  
Registrar  
Environment Court.

**The Honourable the Minister for Courts**

## 1.0 Profile of the Environment Court

*Members of the Court*

Title	Appointed	Residence
Principal Environment Judge (PEJ) Environment Judge L J Newhook	Aug 2001 Feb 2014 (PEJ)	Auckland
Environment Judges Judge J R Jackson Judge J A Smith Judge C J Thompson Judge B P Dwyer Judge J E Borthwick Judge M Harland Judge J Hassan Judge D A Kirkpatrick	Sept 1996 May 2000 Sept 2001 Sept 2006 Nov 2008 Sept 2009 Nov 2013 Dec 2013	Christchurch Auckland Wellington Wellington Christchurch Auckland Auckland Christchurch
Alternate Environment Judges Judge C Doherty Judge C Fox Judge S Clark Judge J Kelly Judge P Kellar Judge R Wolff Judge G Rea Judge G Davis	Aug 2008 July 2009 July 2009 July 2009 July 2009 Feb 2011 Feb 2011 April 2011	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 E von Dadelszen Mr J 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 Napier Auckland
Deputy Environment Commissioners Mr O A Borlase Mr D Kernohan Ms C Blom Mr J 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 Resources*

### Environment Judges

Acting Principal Environment Judge Laurie Newhook was appointed the permanent Principal Environment Judge in February 2014.

The current establishment for permanent Environment Judges is nine. Judge John Hassan was appointed in November 2013. The appointment of Judge Hassan has enabled the Principal Environment Judge to remove reliance on alternate judges, particularly for the determination of resource management prosecution matters heard in the District Court. Judge David Kirkpatrick was appointed in December 2013 and was also appointed to chair the Auckland Unitary Plan hearings panel.

### Environment Commissioners

Over the last few years, the Court has reduced its Commissioner establishment from 15 permanent Commissioners to 12. The Principal Environment Judge has supported this reduction in capacity. The reduced Commissioner establishment reflects a change in the Court's case flow and judicial resource requirements which follow a lower level of resource consent and plan review appeal activity being experienced by territorial authorities.

## *1.3 The Registry*

The Registrar and Deputy Registrars exercise quasi-judicial powers such as the consideration of certain waiver applications and, where directed to do so by an Environment Judge, undertake acts preliminary or incidental to matters before the Court.

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 17 (inc. 8 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 2013/14

Continuous improvement of the Court's performance is an ongoing focus. Both the Principal Environment Judge and the Registrar look 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 regularly appear before the Court as one of the more efficient parts of the Resource Management system. In contrast to previous years, the Court is equipped to intervene in all cases immediately after filing and give appropriate directions to ensure each case or groups of case are determined as efficiently as possible. The Court, through its case management system, applies a pro active approach to case management that is designed to ensure each case is managed through the various case management stages, from mediation (if appropriate) through to the final determination as efficiently as possible.

### 2.1 *Use of Tablets*

Following a successful trial, the use of iPad tablet computers has become a permanent feature in the case management and hearing process. The Ministry of Justice has

supported the Court in its endeavours to operate more efficiently and has made iPads available to all Judges, Commissioners and Hearing Managers.

The use of iPads equips the Court to better manage case information and review evidence in a digital format. 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 and other case information may also be posted on the Court's web page which then makes it available for download/exchange amongst the parties. The Court is also trialling the use of Cloud servers to facilitate the exchange of case information with and amongst the parties, making the evidence exchange process more convenient and efficient for parties and the Court.

## *2.2 Consultation on the Environment Court's Practice Note*

The Principal Environment Judge released, for the purposes of consultation, an update of the Court's Practice Note. The more significant changes to the Practice Note include:

- a new section on Direct Referrals (where Councils resolve that applications for resource consents, designations and heritage orders be referred directly to the Environment Court for first instance hearing);
- cooperation required in the preparation of evidence;
- detailed requirements concerning statements of evidence;
- alternative dispute resolution including mediation (including a requirement that parties be represented at ADR sessions by persons holding authority to settle);
- pre-reading of evidence by the Court and consequent hearing procedures;
- a new appendix concerning lodgement and use of electronic versions of documents;
- an appendix containing an updated Protocol for Court-Assisted Mediation; and
- an appendix containing a Protocol for Expert Witness Conferences, a significant part of which has been informed by workshops conducted nationally by the Court.

An updated Practice Note will be issued over 2014/15 after consideration of the feedback received.

## *2.3 Resource Consent Conditions*

In partnership with the Resource Management Law Association (RMLA), Principal Environment Judge Newhook, Judges Hassan and Kirkpatrick and Environment Commissioner Kathryn Edmonds participated in the delivery of a number of road shows focused on the issue of resource consent conditions and common issues arising in terms of those features that underpin successful consent conditions.

## *2.4 Responsiveness to the needs of users*

The 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.

## 2.5 Customer Service Feedback

During 2013/14 the Court's registry sought feedback from customers of the Court on the levels of satisfaction with the registry service. The survey was focussed on:

- How customers rated their interactions with staff in a range of areas;
- The channels customers prefer to use to communicate with the Court;
- Customers overall satisfaction with the service delivery by staff; and
- Customer suggestions for improvement.

Overall the feedback confirmed a high level of customer satisfaction with customer service being experienced. The Court Registry intends to review the suggestions for improvement feedback with a view to make further improvements, particularly to services and information offered on line.

## 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 Practice Note. 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.

Various improvements over the last decade have seen significant development and refinement of the Court's case management and dispute resolution techniques.

### 3.2 Developments since 1991

Following the enactment of the RMA in 1991, the then Planning Tribunal routinely received around 800-1000 matters filed each year. At June 1993 there were 443 cases outstanding. By the mid 1990s lodgements had increased to around 1200 per year, and by the year 2000, the Court had over 3000 cases outstanding. A large proportion of work flowed from the first generation plan-making process, with consent appeals numbering around 500 per year.

In the early 2000's, a number of initiatives were undertaken by the Court and the Ministry. These included the Court's registry undergoing a structural review with jurisdiction specific case and hearing managers being appointed; an extra Judge and Commissioner were appointed; the Court implemented a case management Practice Note and moved steadily to refine and improve this aspect of the work; a case management database was established (CMS); the mediation service was established and steadily refined; independent facilitation of expert conferencing was introduced and also steadily refined; and evidence transcription technology was introduced.

Today, the Court's case management methodology is robust and proactive. 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).

Over recent years, the Court has been successful in reducing waiting times for mediation or hearing to the point where the fact is there is now no identifiable back log of cases awaiting hearing time or other court time. The Court continues to dispose of more cases than are being filed, and today, the total of cases outstanding stands at just over 400. Any perceived delay in having some cases determined does not arise from inefficiency on the Court's part, rather where they have 'aged' there are due process issues at play. For instance, cases enter the Hold Track by agreement of the parties awaiting the promulgation of further planning instruments by a council. Others require decision-making on a staged approach where further input from parties is desired, especially in management plan and adaptive management consenting. Invariably in such cases, the Court will set a timetable and drive the cases towards conclusion, actively maintaining considerable pressure on the parties to perform.

The Court has been reducing its overall caseload for some years now with a clearance rate that indicates an efficient throughput of cases. The Ministry of Justice has a target to reduce the age of cases across jurisdictions by 20% by December 2014 (the baseline being from April 2013). The Environment Court is making great progress towards achieving that goal. The Auckland Court which carries over half of the national caseload, has reduced the age of consent appeals by 45% and plan appeals by 32%. The aggregate reduction across all matters nationally is currently sitting at 14% (but is skewed by matters on hold). These improvements will continue over 2014/15.

The table below indicates the trend in filings since 2006/7 when 1141 cases were lodged. In contrast 333 new filings occurred in 2013/14. A number of factors are apparent:

- Plan appeal numbers have fallen particularly as there has been no "2nd wave" of plan reviews; councils are no longer required to review entire plans every 10 years, and rolling plan reviews and plan changes have become more common.
- There is now a statutory regime of considerably more limited notification of consents.
- Resource consent activities in the overall resource management system were impacted by global financial crisis – (with appeal numbers generally being about 1% of the total applications processed by consent authorities). It should also be noted that filing appeal fees increased from approximately \$55.00 to \$500.00 in May 2009.
- Introduction of a robust system of call-ins of matters of national significance, albeit that Environment Judges and Commissioners are often seconded to join hearing panels for those cases.

*Cases filed 2006 - 2014*

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

2013 / 2014	94	112	5	122	333
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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, number of parties/ topics and complexity influence the level of judicial intervention through case management, mediation, expert witness caucusing and ultimately any hearing that may be required.

Some careful management responses have been implemented in light of the overall climate of factors. As discussed earlier in this report, the Court has dropped from 15 permanent Commissioners and 6 Deputies to 12 permanents and 5 Deputies. The continued option of access to Deputy Commissioners permits the Court the flexibility it needs to manage the variable workflows albeit their workload currently is quite low. The Principal Environment Judge's plan to seek bolstering of Commissioner numbers in Christchurch and Auckland is on hold despite the short-term added cost of moving Commissioners around the country to attend to South Island mediation, facilitation and hearing work. The Court's registry has used attrition opportunities to shrink its resource to a level commensurate with the workflow.

The nature of the Court work is such that it needs to ensure it has sufficient resource to continue to respond efficiently to some significant matters that come before it, some on quite short notice. Matters being referred directly in particular (see item 3.3 below) can be substantial and, being heard at first instance, can involve a great many parties. (For instance the referral that concerns a proposal to construct a marina at Waiheke Island had 310 party notices of interest).

### *3.3 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:

- Dunedin City Council – notice of requirement to confirm two designations that relates to roads adjacent to the Forsyth Bar Stadium.
- Waiheke Marina Ltd – consent to establish a marina at Matiatia Bay, Waiheke Island.
- Horowhenua District Council – consent relating to the discharge of waste water from Shannon Wastewater Treatment Plant.
- Brookby Quarries Ltd – consents relating to a existing quarry operation.
- P & I Pascoe Ltd – consents for a proposed cleanfill operation.

The majority of matters referred directly to the Court are being determined within 12 months from filing. Those that are not, are usually deferred for a range of issues that require resolution by the parties before the Court can continue to determine the application. Such matters are by their nature 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.

#### 4.0 Case statistics

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 754 to 404
- A reduction in the number of plan appeals outstanding from 454 to 194
- The number of resource consent appeals filed is historically low (140 in 2012/13 – 112 in 2013/14)

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

#### 4.1 Overall case load

Overall the court received 333 new registrations and disposed of 694. The overall clearance rate for 2013/14 was 208%. 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-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14
On Hand	754	734	706	658	618	595	532	526	516	462	427	415
Filed	37	23	17	36	38	26	25	24	26	23	32	26
Determined	57	51	70	77	61	89	31	34	80	59	47	38
Reopened	0	0	5	1	0	0	0	0	0	1	3	1
Caseload	734	706	658	618	595	532	526	516	462	427	415	404

#### *Plan & Policy Statement Appeals*

At 30 June 2014, the number of plan appeals outstanding was 194. Over 2013/14 the number of plan appeals filed was 94 with the Court determining 362 matters. Plan appeals are invariably placed in the complex track where they make steady progress with the majority settling by consent having undergone mediation. The clearance rate for plan and policy statement appeals was 385%.

	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14
On Hand	454	435	407	365	345	335	227	266	251	219	201	194
Filed	17	2	2	14	23	5	1	1	2	6	12	9
Determined	36	30	49	34	33	63	12	16	34	25	20	10
Reopened	0	0	5	0	0	0	0	0	0	1	1	1
Caseload	435	407	365	345	335	277	266	251	219	201	194	194

### *Resource Consent Appeals*

At 30 June 2014, the Court had 127 resource consent appeals outstanding. Over 2013/14, the number of resource consent appeals filed was 112 with the Court determining 176 matters. Accordingly the clearance rate for resource consent appeals was 157%.

	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14
On Hand	188	185	192	194	178	161	150	154	163	153	139	138
Filed	9	16	10	10	2	8	14	15	8	7	6	7
Determined	12	9	8	27	19	19	10	6	18	21	9	18
Reopened	0	0	0	1	0	0	0	0	0	0	2	0
Caseload	185	192	194	178	161	150	154	163	153	139	138	127

### *Miscellaneous matters*

Matters such as appeals against requiring authority decisions on designations, matters referred directly to the Court, declaratory and enforcement applications, objections to stopping of roads and taking of land, are generally categorised as miscellaneous. Over 2013/14, 127 miscellaneous matters were filed and 156 matters determined in the same category. As at 30 June 2014, there were 83 miscellaneous matters outstanding. The clearance rate for miscellaneous matters was 123%.

	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14
On Hand	112	114	107	99	95	99	105	106	102	90	87	83
Filed	11	5	5	12	13	13	10	8	16	10	14	10
Determined	9	12	13	16	9	7	9	12	28	13	18	10
Reopened	0	0	0		0	0	0	0	0	0	0	0
Caseload	114	107	99	95	99	105	106	102	90	87	83	83

## *4.2 Alternative Dispute Resolution*

Section 268 of the RMA 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.

Early intervention through mediation continues to resolve a high number of cases or at the very least narrows the scope for issues in dispute. 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 disputed 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*	2013/14	2012/13	2011/12	2010/11	2009/10	2008/09	2007/08
Total number of mediation events	165	266	283	362	517	513	465
Agreement reached in full	59	133	104	155	241	265	159
Agreement reached in part	32	71	99	110	174	121	144
Agreement not reached	40	31	57	65	65	63	106
Mediation vacated	14	30	22	32	37	64	56

\*Some mediation topics/events for 2013/14 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.

This table does not capture as an outcome those matters that have subsequently settled or have been withdrawn but which settlement or withdrawal did not occur at the conclusion of the mediation. Many cases settle within a few weeks after conclusion of mediation, anecdotally as a result of progress made during the mediation. The Court's case management database, not being a management tool, is not equipped to bring such information into the books. If the additional settlements were to be added to those recorded as settling by the end of the mediation session, the percentage recorded as resolved by mediation, would be higher than shown in the table.

## 5.0 Court Expenditure and Revenue

Expenditure and revenue of the Court and registry during the 2013/14 financial year and in the previous year was:

	<u>2013/14</u>	<u>2012/13</u>
E.49		
<i>Expenditure</i>		
Judges' Remuneration and Allowances	2,536,700	2,155,100
Commissioners' Remuneration and Sitting Fees	1,549,489	1,668,093
Staff Remuneration and other Personnel Costs	1,852,788	1,817,990
Judges' and Commissioners' travel costs	463,798	522,573
Digital Audio Recording and Transcription	3,788	8,565
Staff travel costs	97,901	102,320
Staff and Commissioner training	55,915	34,710
Hire of venues for sittings and mediations	84,616	82,002
Telephone, postage and courier costs	60,714	79,843
Stores and stationery	33,825	29,574
Library and Information Services	24,874	20,937
Occupancy Costs, Utilities, Furniture and Equipment	1,723,928	1,666,834
Miscellaneous overheads	<u>20,041</u>	<u>12,729</u>
	8,508,377	8,201,270
<i>Revenue</i>		
Sale of copies of Court decisions	2,589	4,034
Appeal and Application Lodgement Fees	102,640	160,671
Direct Referral Cost Recovery	<u>580,837</u>	<u>192,336</u>
	686,066	357,041