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Report of the

## Registrar of the Environment Court

For the 12 months  
ended 30 June 2015

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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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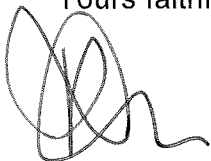
INTRODUCTION

**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 2015.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Harry Johnson', written in a cursive style.

Harry Johnson,  
Registrar  
Environment Court.

## 1.0 Profile of the Environment Court

### 1.1 Members of the Court

| Title  | Appointed  | Residence  |
|--|--|--|
| Principal Environment Judge (PEJ)<br>Environment Judge L J Newhook   | Aug 2001<br>Feb 2014 (PEJ)   | Auckland   |
| Environment Judges<br>Judge J R Jackson<br>Judge J A Smith<br>Judge C J Thompson<br>Judge B P Dwyer<br>Judge J E Borthwick<br>Judge M Harland<br>Judge J Hassan<br>Judge D A Kirkpatrick | Sept 1996<br>May 2000<br>Sept 2001<br>Sept 2006<br>Nov 2008<br>Sept 2009<br>Nov 2013<br>Dec 2013   | Christchurch<br>Auckland<br>Wellington<br>Wellington<br>Christchurch<br>Auckland<br>Auckland<br>Christchurch |
| Alternate Environment Judges<br>Judge C Doherty<br>Judge C Fox<br>Judge S Clark<br>Judge J Kelly<br>Judge P Kellar<br>Judge R Wolff<br>Judge G Rea<br>Judge G Davis                      | Aug 2008<br>July 2009<br>July 2009<br>July 2009<br>July 2009<br>Feb 2011<br>Feb 2011<br>April 2011 | Christchurch<br>Gisborne<br>Hamilton<br>Wellington<br>Dunedin<br>Hamilton<br>Napier<br>Whangarei             |

| Title  | First appointed  | Re-appointed   | Residence  |
|--|--|--|--|
| Environment Commissioners<br>Mr J R Mills<br>Mr W R Howie<br>Mr R Dunlop<br>Mr K Prime<br>Ms M P Oliver<br>Ms K A Edmonds<br>Dr A J Sutherland<br>Mr D Bunting<br>Ms A Leijnen<br>Mr I Buchanan<br>Ms E von Dadelszen<br>Mr J Hodges<br>Hon Kate Wilkinson | July 1999<br>June 2001<br>March 2003<br>March 2003<br>April 2004<br>Jan 2005<br>Jan 2005<br>Aug 2007<br>Jan 2011<br>Jan 2013<br>June 2013<br>June 2013<br>May 2015 | Sept 2009<br>June 2013<br>June 2013<br>June 2013<br>March 2009<br>May 2015<br>Jan 2010<br>Aug 2012 | Wellington<br>Wellington<br>Auckland<br>Bay of Islands<br>Auckland<br>Wellington<br>Christchurch<br>Wellington<br>Auckland<br>Wellington<br>Havelock North<br>Auckland<br>Christchurch |
| Deputy Environment Commissioners<br>Mr O A Borlase<br>Mr D Kernohan<br>Ms C Blom<br>Mr J Illingsworth<br>Dr B Maunder  | March 2003<br>Aug 2007<br>Nov 2010<br>June 2013<br>May 2013  | Aug 2011<br>Aug 2012   | Dunedin<br>Wellington<br>Auckland<br>Cambridge<br>Auckland   |

## 1.2 Judicial Resources

### Environment Judges

There were no appointments or retirement of Environment Judges. The number of permanent Environment Judges remains at 9 albeit two Judges, Judge David Kirkpatrick and Judge John Hassan, have for the duration of the report, been seconded onto independent hearing panels, the Christchurch Replacement District Plan and the Auckland Unitary Plan respectively. Both have full time commitments.

### Environment Commissioners

From May 2015, the Honourable Kate Wilkinson joined the Court as a Commissioner and is based at the Christchurch Court.

## 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 18 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 2014/15**

### *2.1 Annual Review 2014*

Pursuant to section 264 of the RMA, this annual report of the Registrar is usually focussed on caseloads, administration and resources. At the outset of 2015, the Principal Environment Judge published the Court's first Annual Review. The Annual Review is prepared by the Court's Judges and Commissioners and will be published on a calendar year basis and is intended to complement this Registrar's Report to Parliament. The 2014 Annual Review can be found on the Court's web pages at <http://www.justice.govt.nz/courts/environment-court/documents/2014-annual-review>.

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 cases 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.

The Annual Review highlights the lack of robust research and evaluation of the Court's performance across a range of relevant indicators and attention is being given to the development of new evaluation criteria that better reflects the Court's overall performance.

## *2.2 Use of electronic tools*

The ongoing use of tablet computers equips the Court to better manage case information and review evidence in a digital form. 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 continues to look for opportunities to adopt a paperless case management system and increasingly in the more significant cases; the Court will seek to use the Court's web-pages to host case information as means of evidence exchange for the convenience of the parties.

## *2.3 Environment Court's Practice Note 2015*

On 1 December 2014, the Principal Environment Judge released 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.

## *2.4 Consistency in approach to case and hearing management*

The Environment Court has a relatively small bench and those who appear before the Court are mostly specialists in environmental law including the pool of experts in many disciplines who appear as witnesses. Counsel and the expert witnesses are, as a consequence, regularly appearing before several divisions of the Court. Feedback from the Resource Management Law Association has indicated that at times there is variability in the Court's approach to the nature of preparation undertaken for hearing by case parties, which could impact on efficiency. The Principal Environment Judge has therefore instigated an exercise to identifying examples of good process used by different judges that will be helpful in ensuring a consistent approach by members of the Court.

## *2.5 Responsiveness to the needs of users*

The Principal Environment Judge (and other members of the Court) meets 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.

In 2014, the Court's registry sought feedback from users 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 the service the Registry provides. The Registrar has however commenced a review of the Court's web pages with a view to improving the information available. In particular the design of the pages that inform the self-represented and provide them with a better understanding the Court's procedures will be updated and improved. A redesigned web site is programmed to go live at the end of 2015.

## *2.6 Community Education*

The Court facilitates 'moot' and 'mock' courtroom sessions and has more recently held an open day. Each is designed to assist inexperienced RMA practitioners and lay persons gain a better understanding of the Court process.

## *2.7 Court Conference*

The Court held its annual judicial conference at Waitangi in August 2014. Included on the conference programme were presentations from NIWA scientist Dr Andrew Tait and Victoria University NZ Climate Change Research Institute's Judy Lawrence (research associate), on the topic of climate change and a presentation from Tui Sutherland covering Iwi Management Plans and their interface with other statutory planning documents.

## **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.

The Registrar's Report for 2013/14 outlined improvement over the last decade that have seen significant development and refinement of the Court's case management and dispute resolution techniques.

The table below indicates the trend in filings since 2006/7 when 1141 cases were lodged. In contrast 392 new filings occurred in 2014/15. The court case load is very difficult to forecast. The volume of cases have overall reduced and over the past 3 to 4 years the number of appeal filings appears to be stabilising and the reducing number of disposals reflect an overall lower case load.



The volume of Resource Consent appeals are closely linked to the volume of notified applications being processed by the local authorities, and plan appeal numbers will remain volatile as planning instruments undergo review.

*Cases filed and disposed 2006 - 2015*

| Year        | Plans Appeals | Resource Consents | Direct Referrals | Misc. | Total Filed | Total Disposed |
|-------------|---------------|-------------------|------------------|-------|-------------|----------------|
| 2006 / 2007 | 434           | 485               |                  | 222   | 1141        | 1073           |
| 2007 / 2008 | 404           | 558               |                  | 187   | 1149        | 1051           |
| 2008 / 2009 | 268           | 556               |                  | 237   | 1061        | 1073           |
| 2009 / 2010 | 324           | 325               | 3                | 175   | 827         | 1006           |
| 2010 / 2011 | 210           | 223               | 3                | 171   | 607         | 917            |
| 2011 / 2012 | 163           | 192               | 7                | 137   | 499         | 801            |
| 2012 / 2013 | 228           | 140               | 5                | 123   | 496         | 662            |
| 2013 / 2014 | 94            | 112               | 5                | 122   | 333         | 694            |
| 2014 / 2015 | 153           | 113               | 2                | 124   | 392         | 415            |

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 conferencing and ultimately any hearing that may be required.

### *3.2 Matters referred directly to the Court*

Over this reporting year, two matters were referred directly to the Court:

- Eldamos Investments Ltd (the Warehouse) – consent to establish a retail facility at Lunn Avenue, Mount Wellington.
- Site 10 Redevelopment Limited – consent for a proposed new building at North Kumutoto (Wellington Waterfront).

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

### 4.1 Overall case load

Overall the court received 392 new registrations and disposed of 415. The overall clearance rate for 2014/15 was 106%. 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.

#### Case Statistics

| CASES FILED     |            | Jul       | Aug       | Sep       | Oct       | Nov       | Dec       | Jan       | Feb       | Mar       | Apr       | May       | Jun       |
|-----------------|------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Consent Appeals | 113        | 13        | 7         | 6         | 5         | 9         | 12        | 7         | 17        | 9         | 6         | 12        | 10        |
| Others          | 126        | 9         | 15        | 4         | 11        | 5         | 22        | 4         | 10        | 16        | 8         | 13        | 9         |
| Plan Appeals    | 153        | 33        | 48        | 3         | 7         | 10        | 3         | 32        | 8         | 1         | 5         | 0         | 3         |
| <b>Total</b>    | <b>392</b> | <b>55</b> | <b>70</b> | <b>13</b> | <b>23</b> | <b>24</b> | <b>37</b> | <b>43</b> | <b>35</b> | <b>26</b> | <b>19</b> | <b>25</b> | <b>22</b> |

| CASES DETERMINED |            | Jul       | Aug       | Sep       | Oct       | Nov       | Dec       | Jan       | Feb       | Mar       | Apr       | May       | Jun       |
|------------------|------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Consent Appeals  | 133        | 14        | 12        | 10        | 19        | 10        | 14        | 5         | 5         | 17        | 10        | 13        | 4         |
| Others           | 132        | 10        | 9         | 9         | 6         | 5         | 12        | 6         | 15        | 30        | 17        | 4         | 9         |
| Plan Appeal      | 150        | 15        | 15        | 28        | 3         | 11        | 6         | 10        | 11        | 13        | 6         | 17        | 15        |
| <b>Total</b>     | <b>415</b> | <b>39</b> | <b>36</b> | <b>47</b> | <b>28</b> | <b>26</b> | <b>32</b> | <b>21</b> | <b>31</b> | <b>60</b> | <b>33</b> | <b>34</b> | <b>28</b> |

| CASES OUTSTANDING |            | Jul        | Aug        | Sep        | Oct        | Nov        | Dec        | Jan        | Feb        | Mar        | Apr        | May        | Jun        |
|-------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Consent Appeals   | 127        | 126        | 121        | 117        | 104        | 103        | 101        | 103        | 115        | 107        | 103        | 102        | 108        |
| Others            | 83         | 82         | 88         | 83         | 89         | 89         | 99         | 97         | 92         | 78         | 69         | 78         | 78         |
| Plan Appeals      | 194        | 212        | 245        | 221        | 225        | 224        | 221        | 243        | 240        | 228        | 227        | 210        | 198        |
| <b>Total</b>      | <b>404</b> | <b>420</b> | <b>454</b> | <b>421</b> | <b>418</b> | <b>416</b> | <b>421</b> | <b>443</b> | <b>447</b> | <b>413</b> | <b>399</b> | <b>390</b> | <b>384</b> |

#### Plan & Policy Statement Appeals

At 30 June 2015, the number of plan appeals outstanding was 198. Over 2014/15 the number of plan appeals filed was 153 with the Court determining 150 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 98%.

#### Resource Consent Appeals

At 30 June 2015, the Court had 108 resource consent appeals outstanding. Over 2014/15, the number of resource consent appeals filed was 113 with the Court determining 133 matters. Accordingly the clearance rate for resource consent appeals was 118%.

#### 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 2014/15, 126 miscellaneous matters were filed and 132 matters determined in the same category. As at 30 June 2015, there were 78 miscellaneous matters outstanding. The clearance rate for miscellaneous matters was 105%.

#### *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 settlement 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*                        | 2014/15 | 2013/14 | 2012/13 | 2011/12 | 2010/11 | 2009/10 | 2008/09 |
|----------------------------------|---------|---------|---------|---------|---------|---------|---------|
| Total number of mediation events | 166     | 166     | 267     | 283     | 362     | 517     | 513     |
| Agreement reached in full        | 61      | 67      | 134     | 104     | 155     | 241     | 265     |
| Agreement reached in part        | 45      | 36      | 72      | 100     | 110     | 174     | 121     |
| Agreement not reached            | 41      | 44      | 31      | 57      | 65      | 65      | 63      |
| Mediation vacated                | 9       | 14      | 30      | 22      | 32      | 37      | 64      |

\*Some mediation topics/events 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 2014/15 financial year and in the previous year was:

|   | <u>2014/15</u> | <u>2012/13</u> |
|---|----------------|----------------|
| <i>Expenditure</i>                                  |                |                |
| Judges' Remuneration and Allowances                 | 2,964,300      | 2,536,700      |
| Commissioners' Remuneration and Sitting Fees        | 1,682,832      | 1,549,489      |
| Staff Remuneration and other Personnel Costs        | 1,729,591      | 1,852,788      |
| Judges' and Commissioners' travel costs             | 356,849        | 463,798        |
| Digital Audio Recording and Transcription           | 1,948          | 3,788          |
| Staff travel costs                                  | 58,519         | 97,901         |
| Staff and Commissioner training                     | 75,753         | 55,915         |
| Hire of venues for sittings and mediations          | 95,975         | 84,616         |
| Telephone, postage and courier costs                | 41,261         | 60,714         |
| Stores and stationery                               | 17,949         | 33,825         |
| Library and Information Services                    | 23,859         | 24,874         |
| Occupancy Costs, Utilities, Furniture and Equipment | 1,636,930      | 1,723,928      |
| Miscellaneous overheads                             | <u>3,171</u>   | <u>20,041</u>  |
|   | 8,688,937      | 8,508,377      |
| <i>Revenue</i>                                      |                |                |
| Sale of copies of Court decisions                   | 815            | 2,589          |
| Appeal and Application Lodgement Fees               | 130,864        | 102,640        |
| Direct Referral Cost Recovery                       | <u>383,150</u> | <u>580,837</u> |
|   | 514,829        | 686,066        |