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Report of the

## Registrar of the Environment Court

For the 12 months  
ended 30 June 2018

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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 2018.

Yours faithfully,

Harry Johnson,  
Registrar  
Environment Court.

## 1.0 Profile of the Environment Court

### 1.1 Members of the Court

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

Title	First appointed	Re-appointed	Residence
Environment Commissioners			
Mr R Dunlop	March 2003	June 2016	Auckland
Mr K Prime	March 2003	August 2018	Bay of Islands
Ms K A Edmonds	Jan 2005	May 2015	Wellington
Mr D Bunting	Aug 2007	May 2018	Wellington
Ms A Leijnen	Jan 2011	June 2016	Auckland
Mr I Buchanan	Jan 2013		Wellington
Mr J Hodges	June 2013	June 2018	Auckland
Hon Kate Wilkinson	May 2015		Christchurch
Ms Ruth Bartlett	June 2017		Auckland
Deputy Environment Commissioners			
Mr D Kernohan	Aug 2007	April 2018	Wellington
Mr J Baines	Dec 2016		Christchurch
Ms G Paine	Dec 2016		Marlborough
Ms M Pomare	June 2017		Porirua

## *1.2 Judicial Resources*

### Environment Judges

There were no appointments or retirement of Environment Judges.

### Environment Commissioners

During this reporting year, Jim Hodges, David Bunting and David Kernohan were reappointed to further five-year terms and Kevin Prime for a further three years.

Environment Commissioners John Mills, Russell Howie, Eileen von Dadelzen and John Illingsworth, retired from sitting with the court. Their contribution to the work of the court is valued and appreciated.

## *1.3 The Registry*

The Environment Court Unit falls within the Operations Service Delivery Group of the Ministry of Justice. The Manager Justice Services for the Environment Court, Employment Court and the Coronial Services Unit holds the position of Registrar of the Environment Court and has reporting and budgetary responsibilities to the Regional Manager Northern, within the Operations and Service Delivery Group.

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 court maintains registries in Auckland, Wellington and Christchurch. Each registry is led by a Service Manager (each of whom are Deputy Registrars and have all the powers, functions and duties of the Registrar of the Environment Court). 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 13 Commissioners (inc.4 deputies). Commissioners are appointed for a term of up to 5 years on either a full or

part time (75%) basis. Deputy Commissioners sit as required usually based on their specific 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 Environment 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 2017/18**

### *2.1 Annual Review 2017*

The Principal Environment Judge, on behalf of members of the court, causes to publish a calendar year review of the work of the Environment Court. The Annual Review is complimentary to this report. The latest review spans the 2017 calendar year and provides commentary beyond the largely statistical focus of this report and can be found on the court's web pages at [www.environmentcourt.govt.nz/decisions-publications/annual-reports/](http://www.environmentcourt.govt.nz/decisions-publications/annual-reports/)

### *2.2 Direct Referral Process*

The direct referral process allows resource consent applications, requiring authority and heritage protection authority requirements to be considered directly by the Environment court. This fast-tracking process was included in the 2009 amendments to the RMA and was designed to allow some significant projects to be commence quicker than they might have otherwise by avoiding the need for a council hearing prior to an appeal to the court.

Over 2017/18, five matters were referred to the court directly pursuant to sections 87G and or 198E provisions of the RMA:

- Minister of Corrections – notice of requirement to alter designation to allow for expansion to Waikeria Prison.
- Pan Pac Forest Products Limited – an application for resource consents to continue an established pulp mill operation at Whirinake – Hawkes Bay.
- Blue Lake Investments - an application for resource consent for development of a private lodge at Lake Pukaki – Mackenzie District.
- Skyline Enterprises Limited – an application for resource consent to construct a multi-story car park building. This application joined an existing directly referred application for consent to upgrade an existing gondola in Queenstown.

- Lindis Catchment Group Inc – an application for resource consents in relation to the replacement of water permits required to implement an alternative regime within the Lindis catchment. This direct referral joined an existing plan appeal that relates to a related Plan Change to Otago Regional Water Plan.

### *Land Valuation Proceedings*

As recorded in the 2016/17 Registrar's Report, in March 2017, the Environment Court registries assumed responsibility for the proceeding of the Land Valuation Tribunal (LVT). This initiative occurred following consultation between the Chief District Court Judge and the Principal Environment Judge. The decision to transfer case management responsibility to Environment Court staff and Judges (and designate Judges of the Environment Court as chairs of the various Land Valuation Tribunals) was designed to build on synergies between the work of both the court and the Land Valuation Tribunal and manage the work of the tribunal more proactively. From March 2017 through to June 2018, court staff and Judges progressively assumed responsibility for 58 active LVT proceedings that included 13 claims for compensation under section 84 of the Public Works Act 1981 and 45 objections to valuations filed pursuant to section 36 of the Ratings Valuation Act 1998.

Prior to the Environment Court registries taking responsibility for the administration of LVT proceedings, there was no central register of LVT matters filed nationally with the Tribunal in the District Court and no means of measuring, monitoring and reporting on the caseload. Subsequently, LVT proceedings are now filed directly in the Environment Court's registries and are recorded on the court's central case management system and are essentially case managed as Environment Court matters. Delays that were being experienced in some of the tribunals prior to the transfer of the administration to the court, have now been resolved.

Over 2017/18, the tribunals collectively received 117 matters: 115 objections under the section 36 of the Rating Valuations Act, 1 section 62 assessment of compensation and 1 section 86 claim for compensation under the Public Works Act 1981.

There is some inflexibility around the operation of the Tribunal that would benefit from a review. Unlike matters before the Environment Court where any judge and any commissioner (subject to any conflicts and the oversight of the Principal Environment Judge) can adjudicate on any matter filed to be heard in the court, the process of appointment to the Tribunal currently appoints individual tribunal chairs and members one of 18 tribunals and doesn't therefore offer the same flexibility of rostering judicial resources to the work of the tribunal nationally. We have, to some extent, been able to work with this restriction by the appointment of the Principal Environment Judge as a deputy chair of all 18 tribunals.

### *Courts Case Portal and an electronic case book*

Two initiatives have been brought together this reporting year that have added to the court's interest in trialing innovative ways of efficiently managing the work of the court and improving access to the public to the court's services. Work toward an online case portal (for filing court documents and paying court fees) and an electronic casebook (designed to support paperless hearings) are in development and/or are in the process of evaluation.

### *2.3 Involvement with Community*

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.

Details of members of the courts participation in community and international forum can be found in the afore-mentioned Annual Review 2017.

#### *2.4 Judicial Education Conferences*

The court held its annual judicial conference in Nelson in November 2017. Included on the conference programme were presentations from Eric Verstappen, Resource Scientist, Rivers and Coast, on the Tasman coastal and marine environment, and Environment Commissioner Jim Hodges on the noise evaluation.

The court has a commitment to continuing professional development amongst its members and in May 2018, Environment Commissioners, the assistance of the Principal Environment Judge, convened to discuss the facilitation and management by Environment Commissioners of expert witness conferencing.

#### *2.5 Overseas Delegations*

There has been for some years now a growing interest from overseas jurisdictions in New Zealand's Environment Court and a demand for sharing of knowledge within the international legal and judicial communities. An increasing international focus in improving environmental courts and tribunals is apparent and the court has a high reputation as a leading specialist environment court. In this regard, the court has hosted many delegations from officials and members of foreign jurisdictions interested to understand the court's role in environmental decision making and compliance. It's clear from these visits, that the court has much to offer in terms of examples of best practice and procedure.

### **3.0 Court's Performance**

#### *3.1 Case Management*

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 court's principal methods of case management are:

(a) Cases that do not require priority attention are assigned to a Standard Track, under which the court issues standard directions for the management of each case. The directions may include that the case be managed through processes such as the timetabling of procedural steps; progress reporting to the court; judicial conferences; and formal pre-hearing directions or rulings.



(b) Cases that the court agrees require priority attention are assigned to a Priority Track and case-managed by the court in accordance with steps expressly designed to produce an early result. Also, applications referred directly to the court will usually be placed on this track, because of the intense management that will be required.

(c) Subject to the court's agreement and for good cause, cases in which the parties agree that management might be deferred for a defined period are placed on a Parties' Hold Track, with case management being resumed (failing settlement or withdrawal of the proceedings) at the parties' request, or at the expiry of the deferral period, or otherwise at the court's direction.

(d) All cases, when lodged, are assigned by a Judge or the Registrar to one of the case tracks, and the parties are notified of the assigned track.

(e) Cases may be transferred from one track to another where circumstances warrant, at the court's initiative, or on the application of a party. Proceedings which the court decides require priority attention, including urgent applications for enforcement orders and declarations, will usually be placed in, or moved to, the Priority Track.

In summary, the Standard Track is for relatively straightforward cases, the Priority Track is for more urgent cases such as enforcement proceedings and cases where the court directs priority resolution; the Parties' Hold Track is used when parties are not actively seeking a hearing, for example to allow an opportunity to negotiate or mediate, or when a fresh plan variation or change needs to be promoted by a local authority to meet an issue raised in an appeal. Such cases are regularly reviewed by a Judge to assess whether they need to move to another track and be actively progressed.

### 3.2 Case Statistics

Overall the total number of appeals and applications filed appear to have stabilized over recent years at a level the court can manage efficiently and maintain clearance rates that prevent unnecessary delay.

The volume of resource consent appeals is closely linked to the volume of notified applications being processed by the local authorities, and plan appeal numbers fluctuate as planning instruments undergo change.

#### *Cases Filed and Disposed 2006 - 2018*

Year	Plans Appeals	Resource Consents	Direct Referrals	Misc.	Total Filed	Total Disposed
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
2015 / 2016	203	103	2	120	428	422
2016 / 2017	101	112	4	268	485	453
2017/ 2018	196	104	5	278	583	423

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.

Overall the court received 485 new registrations and disposed of 453. The overall clearance rate for 2017/18 was 93%. 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 2017/18*

<b>CASES FILED</b>		<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>
Consent Appeals	104	13	11	7	10	5	6	5	9	11	6	4	17
Miscellaneous	283	24	20	19	21	18	14	12	7	16	25	33	74
Plan Appeals	196	1	0	18	2	2	0	18	14	8	1	28	104
<b>Total</b>	<b>583</b>	<b>38</b>	<b>31</b>	<b>44</b>	<b>33</b>	<b>25</b>	<b>20</b>	<b>35</b>	<b>30</b>	<b>35</b>	<b>32</b>	<b>65</b>	<b>195</b>

<b>CASES DETERMINED</b>		<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>
Consent Appeals	110	4	13	16	10	5	15	4	4	13	7	9	10
Miscellaneous	212	19	27	29	17	20	11	3	13	17	22	14	20
Plan Appeal	101	3	27	8	4	13	8	2	6	5	10	11	4
<b>Total</b>	<b>423</b>	<b>26</b>	<b>67</b>	<b>53</b>	<b>31</b>	<b>38</b>	<b>34</b>	<b>9</b>	<b>23</b>	<b>35</b>	<b>39</b>	<b>34</b>	<b>34</b>

<b>CASES OUTSTANDING</b>		<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>
Consent Appeals	80	89	87	79	79	79	70	71	76	74	73	68	75
Miscellaneous	154	160	153	144	148	146	149	158	152	151	154	173	227
Plan Appeals	207	205	178	188	186	176	168	184	192	195	186	203	303
<b>Total</b>	<b>441</b>	<b>454</b>	<b>418</b>	<b>411</b>	<b>413</b>	<b>401</b>	<b>387</b>	<b>413</b>	<b>420</b>	<b>420</b>	<b>413</b>	<b>444</b>	<b>605</b>

### *Plan & Policy Statement Appeals*

At 30 June 2018, the number of plan appeals outstanding was 303. Over the preceding year, the number of plan appeals filed was 196 with the court determining 101 matters. The clearance rate for plan and policy statement appeals was 51%. The clearance rate for plan appeals was impacted by the filing in June 2018 of many appeals arising out stage one of the proposed Queenstown Lake District Plan.

### *Resource Consent Appeals*

At 30 June 2018, the Court had 75 resource consent appeals outstanding. Over the preceding year, the number of resource consent appeals filed was 104 with the court determining 110 matters. Accordingly, the clearance rate for resource consent appeals was 106%.

### *Miscellaneous Matters*

As at 30 June 2018, the court had 227 miscellaneous matters outstanding. Over the preceding year, 283 matters were filed and 212 matters determined. The clearance rate for miscellaneous matters was 75%.

For 2017/18, miscellaneous also includes those appeals that arose out of the Proposed Auckland Unitary Plan process. This year's report also includes land valuation proceedings i.e. 13 claims for compensation under section 84 of the Public Works Act and, 45 objections to valuations under s 36 of the Ratings Valuation Act 1998. Miscellaneous also includes designation, enforcement and declaratory applications, appeals against abatement notices and other matters filed under statutes other than the RMA.

## **4.0 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 most 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. To encourage 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.

More broadly, mediation enables 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.

### *Court-annexed Mediation Volumes and Outcomes*

Outcomes*	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13	2011/12
Total number of mediation events	182	244	232	164	165	267	283
Agreement reached in full	80	103	69	63	68	134	104
Agreement reached in part	49	72	84	49	39	72	100
Agreement not reached	42	48	53	42	44	31	57
Mediation vacated	7	21	26	10	14	30	22

\*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 because 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 2017/18 fiscal year and in the previous year was:

	<u>2017/18</u>	<u>2016/17</u>
<i>Expenditure</i>		
Judges' Remuneration and Allowances	3,108,000	3,073,300
Commissioners' Remuneration and Sitting Fees	1,616,218	1,503,479
Staff Remuneration and other Personnel Costs	1,273,997	1,522,227
Judges' and Commissioners' travel costs	386,362	363,223
Staff travel costs	72,888	43,841
Commissioner training	9,566	58,768
Hire of venues for sittings and mediations	70,821	127,298
Telecommunications	42,227	44,160
Stores and stationery	27,199	20,572
Library and Information Services	3,960	24,446
Occupancy Costs, Utilities, Furniture and Equipment	1,729,427	1,718,127
Miscellaneous overheads	21,389	2,910
	<u>8,362,054</u>	<u>8,502,351</u>
<i>Revenue</i>		
Sale of document	4,912	3,624
Appeal and application fees	163,055	140,837
Scheduling fees	2,739	14,474
Hearing fees	2,130	158,935
Direct referral fees	13,708	
Board of Inquiry	48,255	
Miscellaneous	844	
	<u>235,643</u>	

