

# Environmental Justice - The New Zealand Model



WITH FOCUS ON THE ENVIRONMENT COURT  
OF NEW ZEALAND

PRINCIPAL ENVIRONMENT JUDGE LAURENCE NEWHOOK (NZ)

# Main Topics



- (a) The New Zealand model of environmental jurisdiction, and relevant procedural aspects
- (b) Statistics about the cases processed in the Court
- (c) Competencies of the Court (matters, actions and standing)
- (d) Leading cases
- (e) Positive and negative aspects, especially in relation to environmental protection and access to justice

# Background – The Legislative Context



- New Zealand's **Resource Management Act 1991 ('RMA')**
  - *a kind of sophisticated planning regime*
  - *environmental management of land, air, water, soil, and eco-systems throughout New Zealand's land mass, and its territorial sea [out to 12 miles from the coast]*
- The purpose and principles of the RMA
  - *"promote the sustainable management of natural and physical resources"*
- An overview of New Zealand's environmental management mechanisms: plans, consents, and enforcement
  - Forward planning – **hierarchy** of policy statements and plans
  - Applications for consent
  - Enforcement

# The Structure and Jurisdiction of the Environment Court of New Zealand



- Court of record – s 247 RMA
- Environment Judges
  - Up to 10 full-time Environment Judges – presently 9
  - Some alternate Environment Judges
- Environment Commissioners
  - Presently 12 Environment Commissioners and 5 Deputy Environment Commissioners with backgrounds in:
    - ✦ *Economic, commercial and business affairs, local government and community affairs.*
    - ✦ *Planning, resource management and heritage protection.*
    - ✦ *Environmental science, including the physical and social sciences.*
    - ✦ *Architecture, engineering, surveying, minerals technology, and building construction.*
    - ✦ *Alternative dispute resolution processes.*
    - ✦ *Māori cultural matters*
- Locations
  - Auckland
  - Wellington
  - Christchurch
  - Circuit Court – in and out of courthouses

# Hearing Room in Auckland



# The Pre-Hearing and Hearing Processes of the Court



## Types of cases filed in the Environment Court:

- Appeals against decisions of councils
- Originating cases – interpretation of the RMA, national or local plans
- Direct Referral – “first instance jurisdiction”

## Other types of hearings:

- Civil enforcement
- Criminal prosecutions

## The key!

- Extremely wide powers of procedure outlined in s 269 RMA  
= efficiency and offers access to justice



# The Pre-Hearing and Hearing Processes of the Court



- **Parties in the cases**
  - Person or body that made an application to a council or sought a plan change
  - The Council itself
  - Others who were submitters to the Council or have a special interest
- **The Environment Court Practice Note**
  - A guide, not a set of inflexible rules
- **Case management by the Judges**
  - Enables prompt and efficient resolution of cases, and cost efficiency
- **Case management tracks**
  - Standard Track
  - Priority Track
  - Parties' Hold Track

# The Pre-Hearing and Hearing Processes of the Court



- **Judicial conferences**
  - Usually via telephone at an appointed time to keep proceedings moving fairly and efficiently.
- **Alternative Dispute Resolution in the Environment Court (including Mediation)**
  - Mediation authorised by s 268 RMA
  - Conducted by Environment Court Commissioners very early in the life of most cases
  - Resolution rate of approximately 75%
  - Voluntary, confidential, cost effective
  - Consent Memorandum/Consent Order
- **The role of expert witnesses**
  - Overriding duty to assist the Court impartially, free from direction from their client
  - Involved in “expert conferencing” in the mediation or other ADR processes early in the life of cases



# Auckland, New Zealand



# Statistics About the Resolution of Cases



## Cases Filed and Disposed 2006 - 2016

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
2015 / 2016	203	103	2	120	428	422

# Statistics About the Resolution of Cases

(1 July 2015 – 30 June 2016)



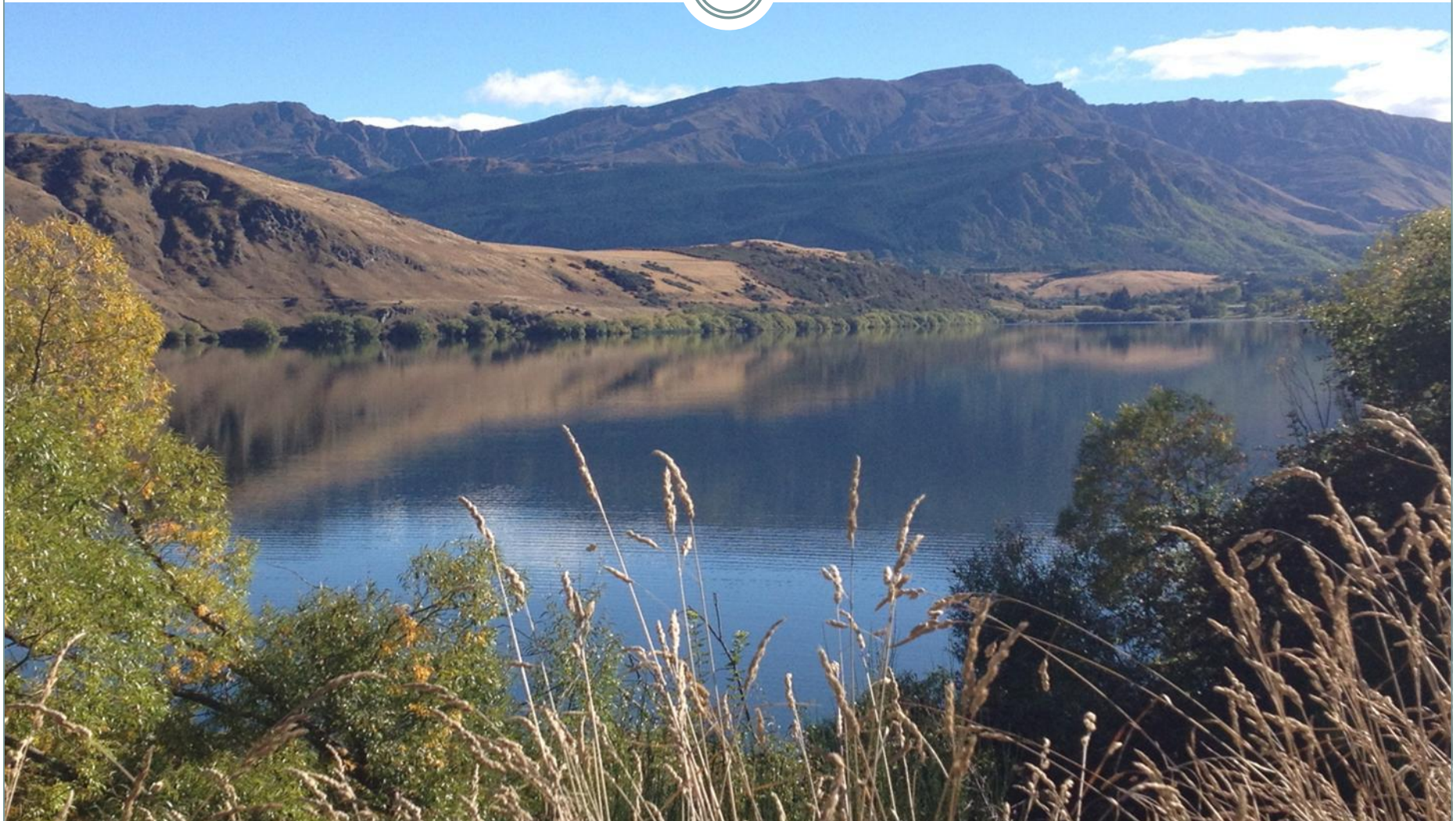
<b>CASES FILED</b>		<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>
Consent Appeals	103	14	6	4	7	8	9	6	9	14	10	9	7
Others	122	11	11	14	8	7	11	10	12	10	7	15	6
Plan Appeals	203	12	13	6	59	3	4	3	12	2	11	1	77
<b>Total</b>	<b>428</b>	<b>37</b>	<b>30</b>	<b>24</b>	<b>74</b>	<b>18</b>	<b>24</b>	<b>19</b>	<b>33</b>	<b>26</b>	<b>28</b>	<b>25</b>	<b>90</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	119	10	13	6	7	14	3	4	8	19	13	9	13
Others	126	9	6	14	13	13	12	6	17	14	5	8	9
Plan Appeal	177	22	17	11	4	27	15	6	14	24	9	20	8
<b>Total</b>	<b>422</b>	<b>41</b>	<b>36</b>	<b>31</b>	<b>24</b>	<b>54</b>	<b>30</b>	<b>16</b>	<b>39</b>	<b>57</b>	<b>27</b>	<b>37</b>	<b>30</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	108	112	105	103	103	107	113	115	116	111	108	108	102
Others	78	80	85	86	81	76	75	79	74	70	72	79	76
Plan Appeals	198	188	184	179	234	210	199	196	194	172	176	157	226
<b>Total</b>	<b>384</b>	<b>380</b>	<b>374</b>	<b>368</b>	<b>418</b>	<b>393</b>	<b>387</b>	<b>390</b>	<b>384</b>	<b>353</b>	<b>356</b>	<b>344</b>	<b>404</b>



# Lake Hayes, South Island, New Zealand



# Recent Innovations in the Court



- Process advisors
- Electronic systems
- iPads
- Interactive use of the Court's Website
- Electronic filing pilot

# Positive and Negative Aspects of the New Zealand Model



- **Positive**

- Accessibility, efficiency and promptness of case clearance
- Cost effectiveness
- Range of jurisdictions

- **Negative**

- Other land-related legislation scattered in other Acts = separate proceedings in other courts and tribunals
- Judicial Review awaiting to be triggered by the passing of a Regulation
- Expensive (but the Court is tackling this in many ways)
- Amendments to the RMA have chipped away at the jurisdiction of the Environment Court
- Lack of partnership and good quality communication between the Judiciary and the Executive

# Conclusion



- New Zealand's **Resource Management System** is acknowledged as a regime for governance of planning for...
  - Land
  - Water
  - Air

... based on the principle of **sustainable management** of natural and physical resources for the future
- **Environment Court**
  - Specialist Court that has prepared its own detailed rules found in the **Practice Note**
  - Relative informality = prompt resolution of the litigation
  - Accessible, user-friendly and efficient