



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2016

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

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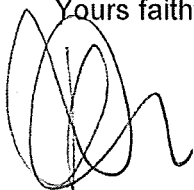
INTRODUCTION

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 2016.

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 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 J R Mills	July 1999	March 2016	Wellington
Mr W R Howie	June 2001	June 2013	Wellington
Mr R Dunlop	March 2003	June 2016	Auckland
Mr K Prime	March 2003	June 2016	Bay of Islands
Ms K A Edmonds	Jan 2005	May 2015	Wellington
Mr D Bunting	Aug 2007	May 2013	Wellington
Ms A Leijnen	Jan 2011	June 2016	Auckland
Mr I Buchanan	Jan 2013		Wellington
Ms E von Dadelszen	June 2013		Havelock North
Mr J Hodges	June 2013		Auckland
Hon Kate Wilkinson	May 2015		Christchurch
Deputy Environment Commissioners			
Mr O A Borlase	March 2003	Aug 2011	Dunedin
Mr D Kernohan	Aug 2007	Aug 2012	Wellington
Ms C Blom	Nov 2010		Auckland
Mr J Illingsworth	June 2013		Cambridge
Dr B Maunder	May 2013		Auckland

1.2 Judicial Resources

Environment Judges

There were no appointments or retirement of Environment Judges. The number of permanent Environment Judges remains at nine albeit two Judges, Judge David Kirkpatrick and Judge John Hassan, have for the duration of this report, continued on secondment to independent hearing panels; the Christchurch Replacement District Plan and the Auckland Unitary Plan respectively. Both are full time commitments.

Environment Commissioners

Re-appointments

In March 2016 Commissioner John Mills was re-appointed for a term of two years. In June 2016, Environment Commissioners Ross Dunlop and Anne Leijnen were re-appointed for terms of five years respectively and Commissioner Kevin Prime re-appointed for a term of two years (all with effect from August 2016).

Commissioner Resource

The current number of permanent Commissioners holding office (11) is the lowest number since 1996. This reduced level of Commissioners holding full and part time appointment, in part, reflects a reduction in caseload over previous years.

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 16 Commissioners (inc. 5 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 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 2015/16

2.1 Annual Review 2015

In May 2016, the Principal Environment Judge released the Court's second Annual Review. The Annual Review is complimentary to this report. The review spans the 2015 calendar year and is prepared by the Court's Judges and Commissioners. The review 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/

2.2 Direct Referral and Fast Tracking of Consenting Process

The direct referral process allows resource consent applications 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 consented quicker than they might have otherwise by avoiding the need for a council hearing prior to an appeal to the Court.

Over 2015/16, two matters were referred to the Court directly pursuant to the s87 provisions of the RMA:

- 3rd Fairway Developments Limited – an application for orders relating to a subdivision in Albany, Auckland.
- Horowhenua District Council – an application for consents for the discharge wastewater from the Foxton Wastewater Treatment Plant.

Court Cost Recovery

Once the Court has taken a decision on the application, the RMA enables the Registrar to recover (for the benefit of the Crown) any part of the Court's costs and expenses in relation to matters referred directly to the Court. In accordance with section 285(5) of the RMA, the actual Court costs and expenses incurred are generally to be recovered from the applicants seeking resource consent.

In line with the approach taken by local authorities to recover actual and reasonable cost, as Registrar of the Environment Court, I have determined that all matters referred directly to the Court be subject to a 100% cost recovery approach (albeit the discretion to award costs to the Crown still rest with the Judge). Cost recovery includes actual cost and time taken to undertake tasks associated with the administration, case management and the final determination of the application and related disbursements.

The 2015 Annual Review highlights some of the issues that can arise in direct referral cases, so that even if the Court commences a hearing at a reasonably early time, processes may come into play that have the effect of prolonging the life of the case.

An example is the application for consent to a boat marina at Waiheke Island near Auckland, lodged at the end of 2013, the hearing for which commenced in October 2014, and where the applicant applied to significantly alter the proposal at the end of the three-week hearing. (Mediation had been declined at all stages by all parties). Directions were issued for determination of whether the proposed changes were, as a matter of law, within the scope of the proceedings. The Court found that they were not. The applicant then reverted to its original proposal but reduced in scale and made other modifications. Directions were issued for preparation for a new hearing which was conducted in the third quarter of 2014 and a decision declining consent issued before year's end. Due process had to be followed, and the life of these proceedings became extended accordingly.

For the Registrar, this case has also highlighted an issue with regard to the Court's ability to recover, on behalf of the Crown, the Court's costs in determining the application.

In December 2015, shortly after the declining of consent by the Court, and before the Court had considered applications for cost, the applicants (Waiheke Marinas Limited), were placed into liquidation by shareholder resolution. In February 2016 a cost judgment was issued awarding costs to the parties including the Auckland Council and a sum that represented costs to the Crown. At the time of writing this report, it's unclear what likelihood there is for recovery of costs by the parties including the Auckland Council and the Crown.

This issue raises questions concerning the current provisions that support cost recovery by the Registrar for directly referred matters. Unlike parties who may have rights to seek security for costs, it not clear the Registrar can seek security for costs in the event there

was any concerns as to an applicant's ability to meet the cost of the proceedings. Unlike local authorities who fix charges payable at the outset by applicants that include the cost of receiving, processing and the ultimate granting or otherwise of consent, and includes an ability to impose further charges during the process, the Registrar must await the conclusion of the proceeding before applying to the Court for an order.

2.3 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.

As part of a Ministry of Justice web development project, at the end of June 2016, the Court's web site was redeveloped to improve usability and in particular assist and inform the self-represented in understanding the Court's procedures. As well as improving content and ensuring it was written for customers using the web site, the project aimed to improve the user interface so information was easier to find and view.

2.4 Conferences and Seminars

The Court held its annual judicial conference at Blenheim in August 2015. Included on the conference programme were presentations from Ian McNab, CEO Port Marlborough. Mr McNab discussed the place of Port Marlborough in New Zealand's Transport System. The Court also heard from Doug Avery, who presented on the topic of Sustainable Farming.

The Court has a commitment to continuing professional development amongst its members and in April 2016, Court members convened in Wellington to discuss decision writing techniques and a consistent approach amongst Judges and Commissioners to the management of proceedings in the courtroom.

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 a number of 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.

In November, a delegation of judges, lawyers and officials from Abu Dhabi visited and spent several days in New Zealand meeting with Justice and Environment officials, and members of the Court. The delegation was interested to hear of the Court's approach to case management, mediation and expert witness conferencing. It was also interested in the Court's enforcement jurisdiction.

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 so as 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 are 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 - 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

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.

Overall the court received 428 new registrations and disposed of 422. The overall clearance rate for 2015/16 was 98%. 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	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
Total	428	37	30	24	74	18	24	19	33	26	28	25	90

CASES DETERMINED		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
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
Total	422	41	36	31	24	54	30	16	39	57	27	37	30

CASES OUTSTANDING		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
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
Total	384	380	374	368	418	393	387	390	384	353	356	344	404

Plan & Policy Statement Appeals

At 30 June 2016, the number of plan appeals outstanding was 226. Over the preceding year, the number of plan appeals filed was 203 with the Court determining 177 matters. The clearance rate for plan and policy statement appeals was 87%.

Resource Consent Appeals

At 30 June 2016, the Court had 102 resource consent appeals outstanding. Over the preceding year, the number of resource consent appeals filed was 103 with the Court determining 119 matters. Accordingly the clearance rate for resource consent appeals was 115%.

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.

As at 30 June 2016, the Court had 76 miscellaneous matters outstanding. Over the preceding year, 122 matters were filed and 126 matters determined. The clearance rate for miscellaneous matters was 103%.

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 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.

By way of example, over 2015/16, the Court undertook the case management of thirty seven appeals from the Rotorua Proposed District Plan, from which 279 appeals points were classified by topics and sub topics. At the outset, the presiding Judge (Judge J Smith) set a target that the appeals would be resolved within a two year time frame, with an exception that over 90% would be resolved within a year. A series of working groups and mediation commenced in April 2015, facilitated by Commissioner Edmonds. By February 2016, all but two appeal points had been agreed (without need for a hearing) and despite concerns that some consent order targets weren't met, the proposed plan

has achieved almost complete resolution of appeals within 12 months of the first call in the Court.

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*	2015/16	2014/15	2013/14	2012/13	2011/12	2010/11
Total number of mediation events	232	164	165	267	283	362
Agreement reached in full	66	63	68	134	104	155
Agreement reached in part	83	49	39	72	100	110
Agreement not reached	49	42	44	31	57	65
Mediation vacated	26	10	14	30	22	32

*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 2015/16 financial year and in the previous year was:

	<u>2015/16</u>	<u>2014/15</u>
<i>Expenditure</i>		
Judges' Remuneration and Allowances	3,023,300	2,964,300
Commissioners' Remuneration and Sitting Fees	1,678,462	1,678,832
Staff Remuneration and other Personnel Costs	1,616,045	1,729,591
Judges' and Commissioners' travel costs	374,467	356,849
Digital Audio Recording and Transcription	6,617	1,948
Staff travel costs	49,344	58,519
Staff and Commissioner training	49,017	75,753
Hire of venues for sittings and mediations	108,358	95,975
Telephone, postage and courier costs	45,286	41,261
Stores and stationery	17,617	17,949
Library and Information Services	25,081	23,859
Occupancy Costs, Utilities, Furniture and Equipment	1,688,430	1,636,930
Miscellaneous overheads	2,561	3,171
	<u>8,684,585</u>	<u>8,688,937</u>
<i>Revenue</i>		
Sale of copies of Court decisions	690	815
Appeal and Application Lodgement Fees	153,474	130,864
Direct Referral Cost Recovery	162,964	383,150
	<u>317,129</u>	<u>514,829</u>