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Report of the

## Registrar of the Environment Court

For the 12 months  
ended 30 June 2012

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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 2012.

Yours faithfully,



Harry Johnson,  
Registrar  
Environment Court.

## 1. Profile of the Environment Court

## 1.1 Members of the Court

Title	Appointed	Residence
Principal Judge (Acting) Environment Judge L J Newhook	Aug 2001	Auckland
Environment Judges		
Judge J R Jackson	Sept 1996	Christchurch
Judge R G Whiting (ret. March 2012)	June 1997	Auckland
Judge J A Smith	May 2000	Auckland
Judge C J Thompson	Sept 2001	Wellington
Judge B P Dwyer	Sept 2006	Wellington
Judge J Borthwick	Nov 2008	Christchurch
Judge M Harland	Sept 2009	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	Wellington
Judge P Kellar	July 2009	Dunedin
Judge J Doogue	February 2011	Auckland
Judge R Wolff	February 2011	Hamilton
Judge G Rea	February 2011	Napier
Judge G Davis	April 2011	Whangarei

Title	First appointed	Re-appointed	Residence
Environment Commissioners			
Mr J R Mills	July 1999	Sept 2009	Wellington
Mr W R Howie	June 2001	June 2006	Wellington
Mr C E Manning	June 2001	June 2006	Christchurch
Ms H A McConachy	June 2001	June 2006	Auckland
Dr D H Menzies	June 2001	June 2006	Christchurch
Mr R Dunlop	March 2003	June 2008	Auckland
Mr K Prime	March 2003	June 2008	Bay of Islands
Ms M P Oliver	April 2004	March 2009	Auckland
Ms K A Edmonds	Jan 2005	Jan 2010	Wellington
Dr A J Sutherland	Jan 2005	Jan 2010	Christchurch
Ms H Beaumont	June 2007	Jan 2010	Wellington
Mr D Bunting	Aug 2007		Wellington
Ms A Leijnen	Jan 2011		Auckland
Deputy Environment Commissioners			
Mr O A Borlase	March 2003	August 2011	Dunedin
Dr B Gollop	March 2003	June 2008	Whangarei
Mr D Kernohan	Aug 2007		Wellington
Mr K Fletcher	Aug 2007		Christchurch
Ms C Blom	Nov 2010		Auckland

## *1.2 Judicial Appointments and Retirements*

### **Environment Judges**

Over 2011/12 the number of permanent Environment Judges reduced to seven. This is a reduction from the eight permanent Judges the Court has had in place since 2002.

Environment Judge RG Whiting retired on 16 March 2012 following a distinguished judicial career. Judge Whiting was appointed an Environment Judge in June 1997 and is highly regarded in both a personal and professional capacity.

Judge Whiting presided over many significant resource management matters mainly in the Waikato and Bay of Plenty regions such as the Hampton Downs landfill, Tongariro Power Development Scheme and Waikato Regional geothermal policy matters. Judge Whiting oversaw the finalisation of the Waikato Regional Policy Statement; case managed the proposed Waikato Regional Plan matters and a number of variations to the Lake Taupo Water Allocation rules. The Court's decisions on geothermal policy have enabled subsequent geothermal projects to be consented smoothly and efficiently.

A special valedictory sitting was held for Judge Whiting in Auckland on 25 May 2012.

Following Environment Judge CJ Thompson's resignation as Principal Environment Judge in June 2011, Environment Judge L J Newhook was subsequently appointed Principal Environment Judge (Acting).

### **Environment Commissioners**

Deputy Commissioner Owen Borlase was re-appointed as a Deputy Environment Commissioner with a term of 5 years effective from 24 August 2011.

Environment Commissioners Diane Menzies and Charles Manning's warrants expired on 27 June 2011. Both Commissioner Menzies and Manning were first appointed to the Court in June 2001. Their contribution to the work of the Court over the 10 years of service is valued and appreciated.

The Court currently has 13 permanent Environment Commissioners and five deputy Commissioners. The number of permanent Commissioners has reduced from fifteen in previous years. Together with the reduction from eight to seven permanent Judges, the reduced Commissioner establishment reflects a change in the Court's caseload and judicial requirements which follow the reduced level of resource consent and plan review appeal activity being experienced by territorial authorities.

## *1.3 The Registry*

The Court Registrar has overall administrative responsibility for the Court. The Registrar, and Deputy Registrars exercise quasi-judicial powers such as the consideration of certain waiver applications.

The Environment Court Unit falls within the Specialist Courts Group of the Ministry of Justice. The Registrar, as Operations Manager, 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 16 (inc. 9 alternate) Judges and 18 Commissioners (inc. 5 deputies). Commissioners are appointed for a term of up to 5 years on either a full or 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, as the Court considers convenient.

## 2.0 Highlights for 2011/12

### 2.1 Improvement Initiatives

#### *Expert Witness Caucusing*

In March 2011, the Court amended its Practice Notes to include guidance on the process of expert conferencing in relation to matters before the Court. Expert conferencing is a process that would normally occur prior to a hearing. Expert witnesses confer and attempt to reach agreement on issues, or at least clearly identify the issues on which they cannot agree, and the reasons for that disagreement leaving that which cannot be agreed to be determined by the Court after hearing the evidence. Like mediation conferencing is a private procedure and, apart from any agreed primary data and the joint statement produced at the conclusion of the conference, what is said or done at the conference cannot be referred to or relied on in any proceeding before the Court. It is a 'without prejudice' discussion, although those participating may report back to the parties engaging them. Either by agreement of the parties, or at the Court's direction, the conference may be facilitated by another expert (who has not been engaged to act by a party to the proceeding), or, more commonly, by an Environment Commissioner.

In June 2012, Acting Principal Environment Judge Newhook and Environment Commissioner Dunlop commenced a road show around the Resource Management Law Association regions to increase the understanding and effectiveness of witness caucusing amongst experts and practitioners.

#### *Judicial Training*

The Judges and Commissioners updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Of particular note was the Resource Management Law Association Conference held in Hamilton in October 2011 and a seminar designed to improve the quality of decision writing. Held in Wellington on 15 September 2011, the decision writing seminar was a follow up to a previous workshop presented by Professor Jim Raymond who is a highly regarded international expert in the field of decision writing.

#### *Paperless Hearings*

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 has commenced a series of pilots to facilitate the filing and management of evidence in an electronic form. The Registry is transferring this evidence onto tablet computers to aid the management and retrieval of evidence during the course of a hearing. This evidence is also posted on the Court's web page which then makes it available for download by other parties. Future filing and exchange of evidence may more conveniently be made through synchronisation with a remote server making the evidence exchange process more convenient and efficient for parties and the Court.

### 2.2 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 and discuss the Court's practices and procedures. 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.

### *Community Education*

During 2011/12 the Court's registry staff presented a series of workshops to educate young Resource Management practitioners on how the Court operates, its practice and procedures. These sessions also provide good feedback on potential areas for registry service improvements. The Court runs mock courts. At these sessions, information is made available on courtroom protocols, how to act in a courtroom, what is involved with the giving of evidence/submissions and in cross examination as well as information about the mediation and expert witness caucusing procedures.

### *Accessibility*

The Environment Court has registries in Auckland, Wellington and Christchurch which provide services to all New Zealanders. To be accessible means ensuring parties and their representatives and witnesses are able to access the Court in geographical terms. The Court therefore travels extensively to hold hearings as close to the subject matter as is convenient. During the year the Court visited twenty five centres throughout New Zealand. The Court also utilised audio visual technology where convenient and where witnesses were at a distance from the court room.

## 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 Consolidated Practice Notes. 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 of parties and issues and are challenging to administer. The key to effective and proactive administration and case management, is the provision of staff who are trained and experienced in the work required of them at all stages of the life of a case.

Various improvements over the last decade have seen significant development and refinement of the Court's case management and dispute resolution techniques. During this time, mediation has become established and refined, the techniques having been instituted in the Court not long before that period commenced. As highlighted earlier in this report, expert witness caucusing has also been introduced into the Court's tool box.

A key focus of the Court and registry is on the Court's management of its caseload. Of particular note over 2011/12 is the continued decrease in the number of appeal matters filed – resource consent and plan and policy appeals. The reduction in appeal numbers is influenced by the correspondingly lower number of resource consent applications being processed through local authorities and the unpredictable nature (volume and



frequency wise) of district plan and/or regional policy reviews that may generate appeals to the Court.

The table below indicates the volume of matters filed over the past six years.

*Cases filed and sitting days 2006 - 2012*

Year	Plans Appeals	Resource Consents	Direct Referrals	Misc.	Total Filed	Sittings Days
2006 / 2007	434	485		222	1141	734
2007 / 2008	404	558		187	1149	688
2008 / 2009	268	556		237	1061	690
2009 / 2010	324	325	3	175	827	746
2010 / 2011	210	223	3	171	607	705
2011 / 2012	163	192	7	137	499	571

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 and complexity influence the level of judicial intervention through case management, mediation, expert witness caucusing and ultimately any hearing that may be required.

The nature of the Court's business has changed significantly in the last two years since the passing of the 2009 Amendment to the Resource Management Act (Part 6 and Part 6AA). Judges and Commissioners of the Court have been appointed to boards of inquiry concerning nationally significant proposals called in by the Minister for the Environment. Over 2011/12 Court resources have been engaged in two boards of inquiry relating to the New Zealand Transport Authority's proposals for Transmission Gully and the Department of Correction's proposal for a comprehensive corrections facility at Wiri in South Auckland.

This amendment also allowed some significant projects to be consented quicker by avoiding the need for a council hearing prior to an appeal to the Court. There has been a steady increase in the number of matters being referred directly to the Court by territorial authorities. The Court received three applications over 2009/10, three over 2010/11. Seven were received for 2011/12:

- Road Metals NZ Ltd: an application to establish and operate a shingle quarry and concrete batching plant at Rolleston, Christchurch.
- Meridian Energy: resource consents to establish and operate a wind farm in Hurunui District.
- Progressive Enterprises Ltd (Hobsonville Development): a proposed Comprehensive Development Plan for Precinct B of Hobsonville Village, Auckland.
- Progressive Enterprises Ltd: related (to above) resource consent application relating to development of a supermarket and other retail within Precinct B.
- Brookby Quarries Limited: a proposal to extend an existing quarry in Manukau City by around 20 hectares.
- Cross Roads Properties Ltd: application for resource consent to establish a Mitre 10 Mega store at Frankton.
- Jackson Street Retail Ltd: a proposal to establish additional retail tenancies at Jackson Street, Petone.

Direct referrals and other complex cases before the Court concerning infrastructure and development do not have to be completed within the same statutory time limit as a board of inquiry (9 months). They are by their nature however accorded high priority, and significant commitment is made by the members of the Court charged with their mediation, expert witness caucusing, and ultimately any 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. Increasingly Commissioners of the Court have been appointed by the presiding judge as "Process Assistants" who will engage directly with submitter parties to assist their understanding of the Court process.

There is provision under the RMA for the Registrar to seek to recover from the applicant, the costs incurred by the Court arising out of a direct referral.

### 3.2 Case statistics

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).

At the end of the 2011/12 year, the overall number of matters outstanding was 905. This compares to 1166 at the close of 2010/11.

#### *Overall case load*

Overall the court received 499 new registrations and disposed of 801. The overall clearance rate for 2011/12 was 160%. 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-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12
On Hand	1166	1123	1062	1049	1012	997	953	960	969	954	951	918
Filed	48	33	43	31	48	41	39	55	36	41	44	40
Determined	92	102	57	72	66	88	36	50	59	47	79	53
Reopened	1	8	1	4	3	4	5	4	8	3	2	1
Reclosed	0	0	0	0	0	1	1	0	0	0	0	1
Caseload	1123	1062	1049	1012	997	953	960	969	954	951	918	905

#### *Plan & Policy Statement Appeals*

At 30 June 2012, the number of plan appeals outstanding was 504. Over 2011/12 the number of plan appeals filed was 163 with the Court determining 381 matters. There was a 28% decrease from year ending 2010/11 in plan appeal matters outstanding. Plan appeals are invariably placed in the complex track where they make steady progress

with the majority settling by consent. The clearance rate for plan and policy statement appeals was 234%.

	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12
On Hand	704	678	642	628	613	606	548	554	561	533	524	513
Filed	19	9	18	6	27	6	14	23	1	9	19	12
Determined	45	47	33	22	35	66	11	17	36	18	31	20
Reopened	0	2	1	1	1	3	3	1	7	0	1	0
Reclosed	0	0	0	0	0	1	0	0	0	0	0	1
Caseload	678	642	628	613	606	548	554	561	533	524	513	504

### *Resource Consent Appeals*

At 30 June 2012, the Court had 254 resource consent appeals outstanding. Over 2011/12, the number of resource consent appeals filed was 192 with the Court determining 260 matters. Accordingly, for such appeals, there was a 9% decrease from year ending 2010/11 in resource consent matters outstanding. The clearance rate for resource consent appeals was 135%.

	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12
On Hand	306	294	277	276	256	247	257	254	241	248	261	252
Filed	17	12	15	11	12	20	15	7	25	24	16	18
Determined	30	34	16	32	23	11	18	22	19	13	26	16
Reopened	1	5	0	1	2	1	0	2	1	2	1	0
Reclosed	0	0	0	0	0	0	0	0	0	0	0	0
Caseload	294	277	276	256	247	257	254	241	248	261	252	254

### *Miscellaneous matters*

Matters such as appeals against requiring authority decisions on designations, declaratory and enforcement applications, objections to stopping of roads and taking of land, are generally categorised as miscellaneous. Over 2011/12, 144 miscellaneous matters were filed and 160 matters determined in the same category. As at 30 June 2012, there were 147 miscellaneous matters outstanding. The clearance rate for miscellaneous matters was 111%.

	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12
On Hand	156	151	143	145	143	144	148	151	166	173	166	153
Filed	12	12	10	14	9	15	10	25	10	8	9	10
Determined	17	21	8	18	8	11	7	11	4	16	22	17
Reopened	0	1	0	2	0	0	1	1	1	1	0	1
Reclosed	0	0	0	0	0	0	1	0	0	0	0	0
Caseload	151	143	145	143	144	148	151	166	173	166	153	147

### 3.3 Alternative Dispute Resolution

Section 268 of the RM 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.

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 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*	2011/12	2010/11	2009/10	2008/09	2007/08	2006/07
Total number of mediation events	282	362	517	513	465	447
Agreement reached in full	97	155	241	265	159	199
Agreement reached in part	72	110	174	121	144	90
Agreement not reached	55	65	65	63	106	103
Mediation vacated	21	32	37	64	56	55

\*Some mediation topics/events for 2011/12 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

### 4.0 Future Case Load

Post implementation of first generation plan and policy instruments under the 1991 Act, the volume of plan and policy appeal filings will continue to be irregular and difficult to forecast. However, over the years, the Court has improved its management of such cases and subject to the size and complexity, develops a case management programme very early on in the process with a view to finalisation and determination of the issues within a pre-determined time frame. Through the case cycle, proactive case management by staff and Judges is applied to ensure opportunities for unnecessary slippage of time frames does not occur.

Consent appeal numbers are assured to continue at the current level for as long as the current economic situation remains and consent applications to councils remain lower than the levels being experienced previously. The number of matters being referred directly to the Court may continue to increase as applicants assess the efficiency and cost effectiveness of those cases that have been referred to the Court over the past 3 years.

The majority of matters before the Court ultimately settle without recourse to a hearing. The Court has finely balanced resources at its disposal and the nature of the Court's work means a significant investment of these resources needs to be applied efficiently to the great many cases that undergo mediation and a minority of cases that require

support through witness caucusing and hearing. Towards the end of the 2011/12 year the Court has “trimmed its sail” in response to the current demand for Court resources but needs to remain alert as to the variability of demand over coming years.

## 5.0 Court Expenditure and Revenue

Expenditure and revenue of the Court and registry during the 2011/12 financial year and in the previous year was:

	<u>2011/12</u>	<u>2010/11</u>
<i>Expenditure</i>		
Judges' Remuneration and Allowances	2,399,200	2,362,700
Commissioners' Remuneration and Sitting Fees	1,810,067	1,589,087
Staff Remuneration and other Personnel Costs	1,968,553	2,079,939
Judges' and Commissioners' travel costs	476,558	551,625
Digital Audio Recording and Transcription	0	214,553
Staff travel costs	83,464	103,912
Staff and Commissioner training	43,994	75,936
Hire of venues for sittings and mediations	88,810	52,794
Telephone, postage and courier costs	117,885	105,501
Stores and stationery	61,951	47,668
Library and Information Services	22,656	12,618
Occupancy Costs, Utilities, Furniture and Equipment	1,560,185	1,147,415
Miscellaneous overheads	<u>5,021</u>	<u>1,071</u>
	8,638,344	8,344,819
<i>Revenue</i>		
Sale of copies of Court decisions	10,848	15,443
Appeal and Application Lodgement Fees	<u>104,858</u>	<u>193,969</u>
	115,706	209,412

Note: Increases in judicial remuneration (Judge and Commissioner) are attributable to increases implemented through the October 2010 Judicial Salaries and Allowances Determination and the review of fees payable to statutory officers under the Cabinet Fees Framework, that took effect from July 2011. Venue hire and courier costs etc are variable year to year and are driven by the location and length of hearings and mediation undertaken by the Court. The increase in occupancy cost is attributable to the total lease and other property costs that currently sit in the Environment Court's operating budget that are associated with the leasing of 2 floors of the Chorus Building in Auckland that together with the Environment Court, now accommodates other Specialist Courts and Tribunals.