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Report of the

# REGISTRAR OF THE ENVIRONMENT COURT

For the 12 months  
ended 30 June 2007

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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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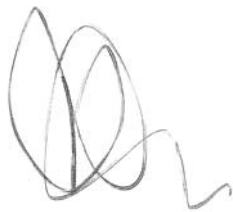
## **INTRODUCTION**

### **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 2007.

Yours faithfully,

A handwritten signature in black ink, consisting of several overlapping loops and a trailing flourish.

Harry Johnson,  
Registrar  
Environment Court.

## 1. Profile of the Court

### 1.1 Members of the Court

Title	Appointed	Residence
<b>Principal Judge</b> Environment Judge R J Bollard	April 1988	Auckland
<b>Judges</b> Environment Judge S E Kenderdine* Environment Judge J R Jackson Environment Judge R G Whiting Environment Judge J A Smith Environment Judge L J Newhook Environment Judge C J Thompson Environment Judge B P Dwyer	July 1990 Sept 1996 June 1997 May 2000 Aug 2001 Sept 2001 Sept 2006	Wellington Christchurch Auckland Christchurch Auckland Wellington Wellington
<b>Alternate Judges</b> Alternate Environment Judge F W M McElrea Alternate Environment Judge D F G Sheppard	Sept 2001 March 2005	Auckland Auckland

\* Judge Kenderdine retired on 6 August 2006 and was appointed as an alternate Environment Judge on 7 August 2006

Title	First appointed	Re-appointed	Residence
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<b>Environment Commissioners</b>			
Mr P A Catchpole	July 1980	Sept 2004	New Plymouth
Ms J D Rowan*	Nov 1991	Nov 2006	Wellington
Mr J R Mills	July 1999	Sept 2004	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		Auckland
Mr K Prime	March 2003		Bay of Islands
Ms S A Watson	March 2003		Christchurch
Ms M P Oliver	April 2004		Auckland
Dr I D Stewart	Nov 2004		Auckland
Ms K A Edmonds	Jan 2005		Wellington
Dr A J Sutherland	Jan 2005		Christchurch
<b>Deputy Environment Commissioners</b>			
Ms R Grigg	Aug 1991	Sept 2004	Christchurch
Mr O A Borlase	March 2003		Dunedin
Dr B Gollop	March 2003		Whangarei
Dr T W Fookes	Nov 2004		Auckland

\*Commissioner Rowan's warrant expired on 29 June 2007.

## 1.2 Retirements and appointments

### Judicial Retirement – Judge S E Kenderdine

Judge Shonagh Kenderdine retired on 6 August 2006 after a distinguished judicial career spanning 16 years. The Court is pleased to retain Judge Kenderdine's services as an alternate Environment Judge.

### Judicial Appointment

Judge Brian Dwyer was appointed a District Court Judge and an Environment Judge. Judge Dwyer was sworn in on 1 September 2006.

### Environment Commissioners

Environment Commissioner Jenny Rowan's warrant expired on 29 June 2007 and she did not seek reappointment. Commissioner Rowan was originally appointed to the Planning Tribunal on 1 November 1991. Commissioner Rowan's significant contribution to the Court's work (particularly her early support for the Court's developing mediation service) is acknowledged.

## 1.3 The Registry

The Court Registrar (and National Manager), Mr Harry Johnson, has overall administrative responsibility for the Court. The Principal Environment Judge directs the Registrar on the day to day running of the Court.

The Court maintains registries in Wellington, Auckland and Christchurch. Each registry is led by a Regional Manager (each of whom have all the powers, functions and duties of the Registrar. Each registry provides administrative support through case and hearing managers 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 whom is responsible for ensuring the orderly and expeditious discharge of the business of the Court.

The Environment Court Unit falls within the Special Jurisdictions Group of the Ministry of Justice. The Registrar, as National Manager, has reporting and budgetary responsibilities to the General Manager of Special Jurisdictions.

#### *Regional Managers (and Deputy Registrars)*

Vacant	Auckland
Rachell Staunton	Wellington
Michael Tinkler	Christchurch

#### *Judicial Resources Manager*

Tracey Chapman	Wellington
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## **1.4 The Court's Jurisdiction**

The Environment Court is established by section 247 of the Resource Management Act 1991 (the Act), 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 10 (inc. 3 alternate) judges and 18 Commissioners (inc. 4 deputies). Commissioners are appointed for a term of up to 5 years on either a full or 75% time basis.

The Court's functions are to determine, among other things, 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 this Court also hold warrants as District Court Judges, and from time to time sit in the District Court to hear prosecutions laid summarily under the Resource Management Act.

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 Act also provides for Judge or Commissioner alone sittings. As required under the Act, 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 2006/07**

### **2.1. Case Management System**

The Court commenced managing cases on the Ministry's Case Management System (CMS) on 10 April 2006. CMS now provides the Court with:

- access to on-line case information within each Court registry;
- automated scheduling of case events;
- automated document production;
- tracking of cases and alerting staff to key upcoming events;
- improved reporting of case management information.

Through CMS, the Court is now able to case manage particular topics within individual appeals. This is particularly desirable for plan appeals where it is common to have a number of decisions under review in any one appeal. In addition to the appeal (or lodgement) number the Court may, where appropriate, provide a unique topic identifying number to each issue under review, which assists the Court and parties to manage multiple topics within a group of appeals.

With an increase in the collation of case data within CMS, the Court is now able to proceed to develop improved reporting of case information. This allows the Court to monitor and report more accurately on its caseload.

### **2.2 Court Conference**

The Court held a conference in Tauranga in August 2006. Conference topics included an address on Environmental compensation by Associate-Professor Emeritus Peter Skelton; an interactive session with the Parliamentary Commissioner for the Environment and a review of Superior Court judgements.

### **2.3 National and International Presentations**

In September 2006, Principal Environment Judge Bollard and Environment Judge Thompson presented addresses at the Australasian Conference of Planning and Environment Courts and Tribunals in Queensland, Australia.

Judges of the Court presented seminars around New Zealand to regional Resource Management Law Associations members on concurrent evidence methods (the practice of taking evidence of more than one witness at the same time).

### **2.4 Review of Environment Commissioner Fees**

In August 2006, the Minister for Courts requested that the Ministry of Justice conduct an independent review of the levels of remuneration payable to various Judicial and Statutory Officers to whom the Ministry of Justice provides administrative support. This was the first of the regular reviews as recommended in the Report of Review 2004 (the "Beresford Report").

Following the 2006 review, the 2007 Budget included funding to support fees increases for Judicial and Statutory Officers including Environment Court Commissioners.

The Ministry is continuing to progress work on transferring responsibility for the setting of fees from the Cabinet Fees Framework to the Remuneration Authority with regard to the Environment Commissioners.

### 3.0 Court's Performance

#### 3.1 Overview of 2006/07 performance

The Court maintains a case tracking system that on filing allocates matters to case management tracks. Cases that are not complex are assigned to a standard track, under which the Court issues directions that are standard in nature for the management of each case. Provided parties comply with the Court's directions in the standard track, the Registry will list the case as ready for hearing, and will endeavour to set a hearing date within six months of the appeal being filed.

More involved cases that require individual management such as statutory plan appeals, appeals concerning major development proposals and matters referred to the Court by the Minister for the Environment, these are assigned to a complex track. The essential feature of the complex track is that cases (or sets of related cases) are managed on an individual programme as set by the managing Judge.

Subject to the Court's agreement, cases in which the parties agree that case management may be deferred for a period, may be placed on a parties' on hold track. Case management is 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.

#### 3.2 Cases filed, managed and disposed

Through the 2006/07 year, the Court has managed to maintain the relatively low case load reported at the end of the 2005/06 year which recorded the lowest number of cases outstanding since June 1995 - 1394<sup>1</sup>. Over 2006/07, the Court received 1142 new registrations and disposed of 1073. The courts current caseload stands at 1463.

	Jul-06	Aug-06	Sep-06	Oct-06	Nov-06	Dec-06	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07
On Hand	1394	1364	1370	1347	1373	1334	1346	1416	1533	1497	1492	1459
Filed	43	115	71	97	69	91	148	185	74	84	91	74
Determined	73	109	94	71	108	79	78	68	110	89	124	70
Caseload	1364	1370	1347	1373	1334	1346	1416	1533	1497	1492	1459	1463

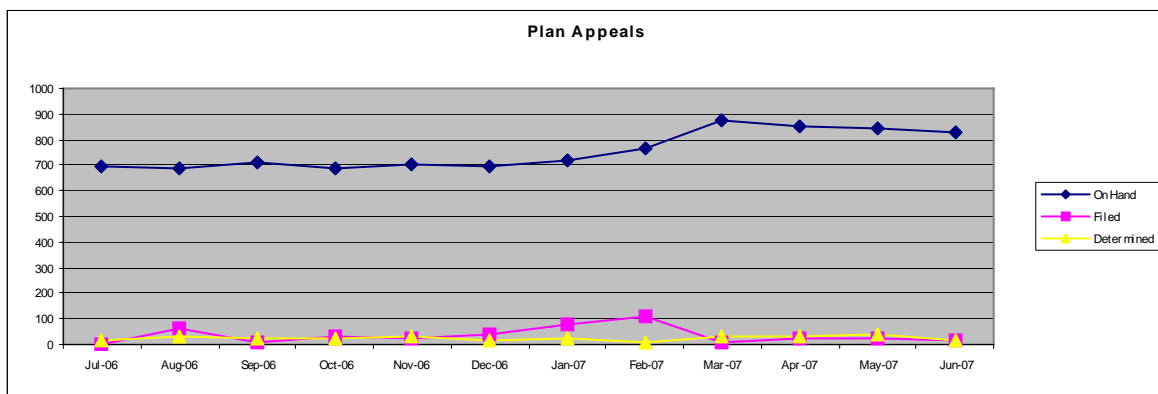
<sup>1</sup> The Report of the Registrar for the 12 months ending 30 June 2006 reported the then caseload at 1374. This reporting error was caused during transition to a new case management database.



As described above, case management of cases by the Court may on application by the parties be deferred for a period and the case placed on the parties' hold track. Of the matters outstanding as at 30 June 2007, 238 cases were on hold.

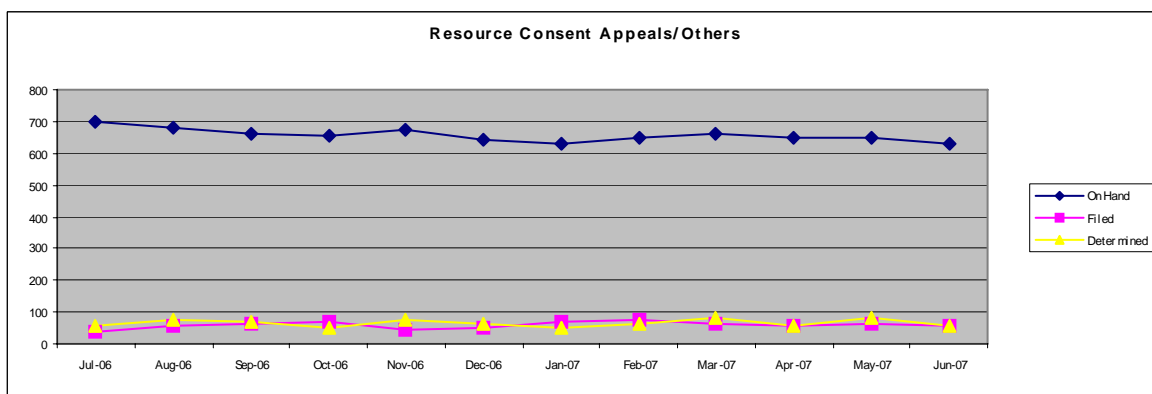
*Plan Appeals*

In 2006/07, the number of new registrations for plan appeals was 430 with the Court determining 297 matters. This compared to 187 and 327 respectively for the previous year.



*Other matters including Resource Consent Appeals*

In 2006/07, the number of new registrations for resource consent appeals and other matters (e.g. declaratory, enforcement and other miscellaneous applications) was 712 with the Court determining 776 matters. This compared to 739 and 812 respectively for the previous year.



**3.3 Time Standards**

The Court has a statutory duty to hear and determine every appeal as soon as practicable after it is lodged unless circumstances warrant otherwise. As detailed earlier, for cases in the standard track, consequent upon compliance by the parties with the Court's directions, the Registrar will seek to list the matter for hearing within six months from filing, on the basis of the parties having failed to settle their differences and with such cases therefore requiring the Court's adjudication.

Complex and urgent cases are individually case managed by the Environment Judges in conjunction with the case managing staff in each registry of the Court, while the Principal Judge maintains a continuing general overview in consultation with Court members, the Registrar and other registry personnel.

### **3.4 Alternative Dispute Resolution**

Section 268 of the Resource Management Act 1991 empowers the Environment Court to arrange mediation and other forms of alternative dispute resolution (ADR). For the purpose of encouraging settlements of cases it can authorise its members (Judges or Commissioners) or other persons to conduct those procedures. The Court's Practice Note on ADR was issued on 31 March 2005. Where a Court Commissioner conducts the mediation it is of no cost to the parties.

In 2006/07, the Court conducted 449 mediation events. This compares to 544 for the previous year.

Those matters that have concluded the mediation process have recorded the following outcomes:

- Agreement reached in full - 180
- Agreement reached in part - 20
- Agreement not reached - 51

### **4.0 Future Initiatives**

The Court's objective of providing accessible and responsive services to litigants, representatives and the community are being pursued through two new initiatives.

The Court is working with the Ministry of Justice and the Ministry for the Environment to review, refresh and update the Environment Court's Internet pages. Information currently available to the public on the Court's services within the Ministry of Justice pages is inadequate. Future pages will also incorporate significantly greater detail of the Court's nature, its history and functions, and will include recent decisions of particular interest.

The Ministry of Justice is also scoping an expansion of e-filing in court registries. If progressed, this would enable the electronic filing of court documents on line. Benefits to the Court could include the Judge being able to review court documents instantly – and from remote locations (particularly so for a circuit court). This could be done at any time and without the exclusion of others (when there is only one paper file). E-filing provides the community with 24 hrs access to filing. It will reduce their costs associated with photocopying, courier and mail. It reduces the time taken to file. It gives them immediate filing access to the Court from all parts of New Zealand and not just where registries are located.

### **5.0 Court Expenditure And Revenue**

Expenditure and revenue of the Court during the 2006/07 financial year and in the year previous was:

	<b>2006/07</b>	<b>2005/06</b>
<b>Expenditure</b>		
Judges' Remuneration and Allowances	2,060,650	1,789,560
Commissioners' Remuneration and Sitting Fees	1,627,972	1,608,237
Staff Remuneration and other Personnel Costs	1,529,952	1,494,925
Judges' and Commissioners' travel costs	620,501	666,157
Digital Audio Recording and Transcription	592,905	757,595
Staff travel costs	179,225	88,019
Staff and Commissioner training	72,097	105,973
Hire of venues for sittings and mediations	86,894	92,221
Telephone, postage and courier costs	109,919	145,931
Stores and stationery	42,008	39,810
Library and Information Services	15,596	18,992
Occupancy Costs, Utilities, Furniture and Equipment (for 2005/06 this account had a separate line item for Utilities)	180,116	161,030
Miscellaneous overheads	<u>21,568</u>	<u>857</u>
	<b>7,139,403</b>	<b>7,058,119</b>
 <b>Revenue</b>		
Sale of copies of Court decisions	5,709	6,756
Appeal and Application Lodgement Fees	<u>65,751</u>	<u>42,699</u>
	<b>71,460</b>	<b>49,455</b>