



# The Environment Court of New Zealand

Report of the Registrar 2007-2008

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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 2008.

Yours faithfully,

Harry Johnson,  
Registrar  
Environment Court.



## **1.2 Judicial appointments**

### **Environment Judge Appointments**

In order to both keep abreast of the prosecution work in the District Court and meet parties expectations of early future hearing dates in the Environment Court, it is necessary for the Principal Environment Judge to rely heavily on alternate Judges. Judge Melanie Harland was appointed an Alternate Environment Judge in November 2007. Judge Harland's focus on District Court prosecution cases within the Waikato Region releases the other permanent Environment Judges to concentrate on progressing the "civil" Environment Court matters.

Over 2007/08, the Ministry for the Environment consulted with the Principal Environment Judge on current and possible future call-in of matters of national significance that, if called-in, would impact on the Court's judicial resources. In light of these discussions and on review of the Court's current commitments and tenure of existing Alternate Judges (who have no guarantee of future appointment), the Principal Environment Judge considered it appropriate to seek the appointment of an additional permanent Environment Judge. Approval to appoint an additional Environment Judge was received and that appointment process is underway.

It is noted that section 250 of the RMA states that at any one time no more than 8 Environment Judges shall hold office; and any number of alternate Environment Judges shall hold office. The upcoming appointment will mean that the cap on permanent Environment Judge appointments will have been reached and the Ministry of Justice is continuing to progress work reviewing the current cap.

### **Environment Commissioner Appointments**

In June 2008, Environment Commissioners Ross Dunlop, Kevin Prime and Sheila Watson were re-appointed as Commissioners for terms of 5 years, 5 years and 2 years respectively. Additionally, Deputy Commissioners Bruce Gollop and Owen Borlase were re-appointed as deputies for terms of 3 years each.

Helen Beaumont was appointed a Commissioner in August 2007. Ms Beaumont's background is in water quality and she was the Assistant Parliamentary Commissioner for the Environment since 2000. This role has given her a broad background in environmental matters and a thorough grounding in the environmental challenges facing New Zealand and the issues of the day.

David Bunting – Civil Engineer. Mr Bunting was appointed a Commissioner in August 2007 and brings extensive experience in the planning, investigation, design, and project management of physical infrastructure projects in NZ, Australia, Hong Kong the UK and a number of developing countries in the Asia/Pacific region.

David Kernohan – Architect. Mr Kernohan was appointed a Deputy Commissioner in August 2007. Mr Kernohan is a fellow of the NZ Institute of Architects and has been with the School of Architecture at Victoria University since 1977 and continues to teach courses in Building Heritage Conservation and the History of Building

technology. From 2005 to 2006 he was Principal Adviser, Building and Housing Sector in the Policy Department of Building and Housing.

Ken Fletcher – Mediator and Economist. Mr Fletcher was appointed a Deputy Commissioner in August 2007. From 1985 to 2007 Mr Fletcher was with Statistics New Zealand employed as an economist working in National Accounts both at a macro and micro level and held a senior advisory role. Mr Fletcher has had active involvement in dispute resolution through 20 years as the leading PSA delegate within Statistics NZ.

### **1.3 The Registry**

The Court Registrar (and National Manager), Mr Harry Johnson, has overall administrative responsibility for 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 Stuart White the General Manager of Special Jurisdictions.

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

Sandy Butler	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 11 (inc. 4 alternate) Judges and 21 Commissioners (inc. 6 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 2007/08**

### **2.1 Boards of Inquiry**

The 2005 amendment to the Resource Management Act increased the choice of intervention options available to the Minister for the Environment for proposals of national significance. After receiving a request to intervene and after considering any submissions in relation thereto, the Minister has a range of options including call in.

The Minister can call in a matter by making a direction that either:

- a. the matter is referred to a *board of inquiry* upon which the chairperson must be a current, former or retired Environment judge or
- b. the matter is referred to the Environment Court to make the decision.

Should a matter be referred to the Environment Court, and as it is assumed such a call in will concern a major development proposal, the Court will assign the matter to the complex case management track. The matter will then be managed through mechanisms such as timetabling of procedural steps and progress reporting to the Court, judicial conferencing, and formal pre-hearing directions or rulings. To date one matter has been referred directly to the Court and that concerns a proposal for resource consents for a 34-turbine wind farm at Te Waka. The Environment Court had considered a previous Te Waka proposal by the same resource consent applicant.

If a matter is referred to a board of inquiry, then an approach is made by the Minister for the Environment to the Principal Environment Judge to consider the availability of a Judge to chair the board. To date the Court has made available Alternate Environment Judge Sheppard (with Commissioner Prime as a board member), to chair the board inquiring into Transpower's proposal to upgrade the upper North Island grid. Environment Judge Whiting has also been appointed to chair a board

considering a proposed new geothermal power station called Te Mihi (to largely replace Wairakei).

Alternate Environment Judge Kenderdine has also been appointed by the Minister of Conservation to chair a board convened to review the New Zealand Coastal Policy Statement.

## **2.2. Web Site**

Over 2007/08, the Court redeveloped its web pages to provide better information on the Court's jurisdiction and to assist court users with accessing information on filing and appearing before the court. The site also contains details of the Court's sittings and hearing schedules and will contain copies of decisions of wider than usual public interest.

## **2.3 Court Conference**

The Court held a conference in Taupo in August 2007. On the conference agenda was an address by Dr Jan Wright, Parliamentary Commissioner for the Environment, an address by Dr David Grinlinton on environmental law from an academic perspective and a review of changes brought about by the 2005 amendment to the Resource Management Act.

## **3.0 Court's Performance**

### **3.1 Overview of 2007/08 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**

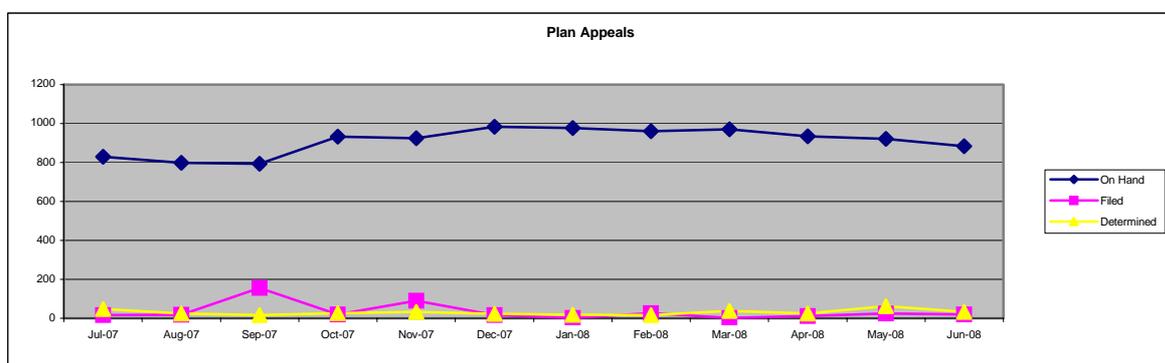
Over 2007/08, there has been a slight increase in the number of cases outstanding. The Court received 1140 new matters and disposed of 1051. The Court's current caseload stands at 1552.

	Jul-07	Aug-07	Sep-07	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08
On Hand	1463	1455	1424	1560	1545	1615	1605	1601	1640	1622	1601	1551
Filed	108	68	199	84	153	70	50	91	61	78	78	100
Determined	116	99	63	99	83	80	54	52	79	99	128	99
Caseload	1455	1424	1560	1545	1615	1605	1601	1640	1622	1601	1551	1552

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, 723 cases were currently on hold.

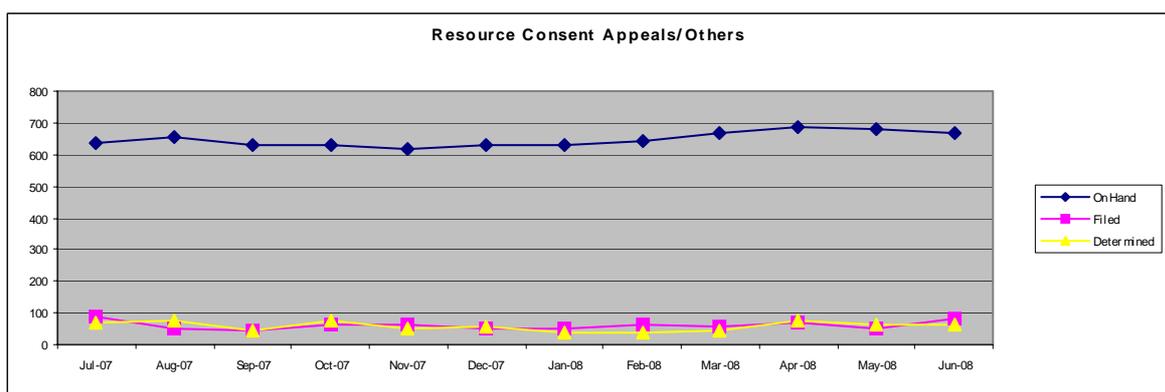
### *Plan Appeals*

In 2007/08, the number of plan appeals filed was 401 with the Court determining 361 matters.



### *Other matters including Resource Consent Appeals*

The number of resource consent appeals and other matters filed (e.g. declaratory, enforcement and other miscellaneous applications) was 739 with the Court determining 690 matters.



## **3.3 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. For the purpose of encouraging settlements of cases it can authorise its members (Judges or

Commissioners) or other persons to conduct those procedures. Where a Court Commissioner conducts the mediation it is of no cost to the parties.

In 2006/07, the Court conducted 468 mediation events. This compares to 449 for the previous year.

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

- Agreement reached in full - 135
- Agreement reached in part - 131
- Agreement not reached - 96

#### **4.0 Future Work Load issues**

Presently the Principal Judge considers that the Court has a manageable caseload. Steps have been taken to add additional judicial and administrative resources to enable the Court to meet future demand arising out of the potential for use of call in provisions of matters of national significance and the second generation of plan reviews.

#### **5.0 Future Initiatives**

Information Technology is a fundamental component of our capability, and will increasingly become a key enabler for the Environment Court going forward.

The Environment Court is a key component within the Resource Management framework. It has made many improvements to its case management processes and system over the last few years to enable it to efficiently manage and determine matters before the Court without adding any undue delay. However the Court can see the opportunities to improve matters further by adding an electronic filing and document handling system.

In this context the Ministry of Justice is enhancing its information technology platform and has undertaken several strands of work from which the Environment Court has benefited. Improvements to the IT infrastructure (network servers, cabling etc) have been made but more directly, the Court has an improved connectivity with the Ministry infrastructure through up to date notepad technology with wireless broadband capability. The Court is also supported by a mobile evidence recording system that enables the transcription of evidence from sittings throughout New Zealand.

Currently electronic filing has limited use within the infringement area of the District Court. In 2007 investigation proceeded into the expansion of electronic filing in Courts. In September 2007, a criterion was developed to identify and establish the most suitable jurisdictions for an e-filing pilot. The Ministry of Justice in conjunction with the Inter-bench IT Committee, developed a scoping paper into the expanding of electronic filing in courts. During assessment of suitability for an e-filing capacity, the Environment Court was selected as a pilot court.

An integrated e-filing / case management system offers the possibility of speeding up registry processes and thus improving case management which will benefit court users, the judiciary and registry staff.

Options for funding the development of a pilot within the Ministry of Justice are being considered for 2009/10.

## 6.0 Court Expenditure And Revenue

Expenditure and revenue of the Court during the 2007/08 financial year and in the year previous was:

	<b>2007/08</b>	<b>2006/07</b>
<b>Expenditure</b>		
Judges' Remuneration and Allowances	2,267,252	2,060,650
Commissioners' Remuneration and Sitting Fees	1,819,769	1,627,972
Staff Remuneration and other Personnel Costs	1,861,676	1,529,952
Judges' and Commissioners' travel costs	562,749	620,501
Digital Audio Recording and Transcription	480,279	592,905
Staff travel costs	190,180	179,225
Staff and Commissioner training	71,448	72,097
Hire of venues for sittings and mediations	76,979	86,894
Telephone, postage and courier costs	113,331	109,919
Stores and stationery	53,504	42,008
Library and Information Services	8,416	15,596
Occupancy Costs, Utilities, Furniture and Equipment (for 2005/06 this account had a separate line item for Utilities)	291,485	180,116
Miscellaneous overheads	<u>3,434</u>	<u>21,568</u>
	<b>7,800,502</b>	<b>7,139,403</b>
<b>Revenue</b>		
Sale of copies of Court decisions	10,282	5,709
Appeal and Application Lodgement Fees	<u>55,554</u>	<u>65,751</u>
	<b>65,836</b>	<b>71,460</b>