



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2017

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

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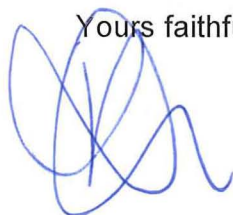
INTRODUCTION

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 2017.

Yours faithfully,

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

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 D Kernohan	Aug 2007	Aug 2012	Wellington
Mr J Illingsworth	June 2013		Cambridge
Mr J Baines	Dec 2016		Christchurch
Ms Ruth Bartlett	Dec 2016		Auckland
Ms G Paine	June 2017		Marlborough
Ms M Pomare	June 2017		Porirua

1.2 Judicial Resources

Environment Judges

There were no appointments or retirement of Environment Judges.

Environment Commissioners

Appointments

In December 2016, Ms Ruth Barlett and Mr James Baines were appointed Deputy Commissioners, both with terms of three years. In June 2017, Ms Glenice Paine and Ms Miria Pomare were also appointed Deputy Commissioners, both with terms of three years.

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 17 Commissioners (inc. 6 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 2016/17

2.1 Annual Review 2016

The Principal Environment Judge, on behalf of members of the Court, causes to publish a calendar year review of the work of the Environment Court. The Annual Review is complimentary to this report. The latest review spans the 2016 calendar year and 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, requiring authority and heritage protection authority requirements 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 commence quicker than they might have otherwise by avoiding the need for a council hearing prior to an appeal to the Court.

Over 2016/17, four matters were referred to the Court directly pursuant to the s87G and or s 198E provisions of the RMA:

- Wellington International Airport Limited – an application for resource consents relating to a proposed extension to the airport's runway.

- Skyline Enterprises Limited – an application for resource consents to undertake redevelopment of a Gondola and associated facilities at Bob’s Peak, Queenstown.
- 3rd Fairway Developments Limited – an application for resource consent for development of a residential subdivision at 84 Laurel Oak Drive Albany.
- Auckland Transport & KiwiRail Holdings Limited – an application for an alteration of the Auckland City Rail Link designation North Auckland Line.

Land Valuation Proceedings

In March 2017, the Chief District Court Judge, in consultation with the Principal Environment Judge, agreed, pending any future legislative change, that all current and future land valuation proceedings filed with the District Court would be case managed and determined by the Environment Court. Environment Judges have subsequently been appointed to chair land valuation proceedings hearings. The advantage of this change in case management approach, was to increase efficiency and speed up the resolution of Land Valuation Tribunal matters.

Occasionally disputes arise in circumstances whereby land is proposed to be taken for the purposes of public work (under the Public Work Act 1981) and the land owner may choose to both dispute the taking of the land from a compensation perspective before the Land Valuation Tribunal and also file an objection to the intention to take the land in the Environment Court. With the consolidation of the land valuation work to the work of the Environment Court, both issues can now managed and resolved by the Environment Court/Land Valuation Tribunals and will enable both matters to be case managed and resolved together.

Auckland Unitary Plan Appeals

In anticipation of appeals arising out of the Auckland Unitary Plan process, the Court issued special directions to enable service of appeals via electronic lodgement on to the Court’s web pages.

In late 2016, the Court received 67 plan appeals and 8 designation appeals on the proposed Auckland Unitary Plan. Consistent with how the Court approaches all plan and policy statement appeals, the Court developed a tailored case management programme that at the outset involved court-assisted mediation. Initially however, approximately 40% of the appeals had to be placed on hold awaiting the outcome of certain challenges in the High Court to “scope”. Those challenges were determined by March 2017 by which point approximately 38 appeals had already been disposed of through settlement or withdrawal following mediation. All 8 designation appeals settled or were withdrawn.

The Court anticipates that no more than a handful of cases will need hearing time, and plans are being made for that work to proceed promptly as cases are identified.

2.3 Involvement with Community

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.

Details of members of the Courts participation in community and international forum can be found in the afore-mentioned Annual Review 2016.

2.4 Judicial Education Conferences

The Court held its annual judicial conference at Rotorua in September 2016. Included on the conference programme were presentations from Sarah Dawson (Planning Consultant) on the use of the Overseer model for nutrient management on farms and, from Sue Yerex from the Lake Taupo Protection Trust, on the trust's role in protecting Lake Taupo's water quality.

The Court has a commitment to continuing professional development amongst its members and in May 2017, the Principal Judge led a session for Commissioners to discuss the management of proceedings in the courtroom and in particular, the approach court members should take to questioning witnesses and in that regard, the respective roles of counsel and members of the court.

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.

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 - 2017

Year	Plans Appeals	Resource Consents	Direct Referrals	Misc.	Total Filed	Total Disposed
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
2016 / 2017	101	112	4	268	485	453

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 485 new registrations and disposed of 453. The overall clearance rate for 2016/17 was 93%. 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 2016/17

CASES FILED		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Consent Appeals	112	10	12	11	9	4	8	10	14	10	7	8	9
Miscellaneous	272	9	13	73	6	19	22	9	4	45	16	32	24
Plan Appeals	101	1	3	1	16	10	51	1	8	2	0	4	4
Total	485	20	28	85	31	33	81	20	26	57	23	44	37

CASES DETERMINED		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Consent Appeals	135	5	28	12	18	8	10	5	8	15	5	7	14
Miscellaneous	197	12	17	12	14	14	13	2	11	42	15	29	16
Plan Appeal	121	2	5	15	19	12	11	1	6	19	6	19	6
Total	453	19	50	39	51	34	34	8	25	76	26	55	36

CASES OUTSTANDING		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Consent Appeals	102	107	91	90	81	77	75	80	86	81	83	84	80
Miscellaneous	76	73	69	130	122	127	137	145	139	142	143	146	154
Plan Appeals	226	226	224	210	207	205	245	245	247	230	224	209	207
Total	404	406	384	430	410	409	457	470	472	453	450	439	441

Plan & Policy Statement Appeals

At 30 June 2017, the number of plan appeals outstanding was 207. Over the preceding year, the number of plan appeals filed was 101 with the Court determining 121 matters. The clearance rate for plan and policy statement appeals was 120%.

Resource Consent Appeals

At 30 June 2017, the Court had 80 resource consent appeals outstanding. Over the preceding year, the number of resource consent appeals filed was 112 with the Court determining 135 matters. Accordingly, the clearance rate for resource consent appeals was 120%.

Miscellaneous Matters

As at 30 June 2017, the Court had 154 miscellaneous matters outstanding. Over the preceding year, 272 matters were filed and 197 matters determined. The clearance rate for miscellaneous matters was 72%.

For 2016/17, miscellaneous also includes those appeals that arose out of the Proposed Auckland Unitary Plan process. This year's report also includes land valuation

proceedings i.e. 13 claims for compensation under section 84 of the Public Works Act and, 45 objections to valuations under s 36 of the Ratings Valuation Act 1998. Miscellaneous also includes designation, enforcement and declaratory applications, appeals against abatement notices and other matters filed under statutes other than the RMA.

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.

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*	2016/17	2015/16	2014/15	2013/14	2012/13	2011/12	2010/11
Total number of mediation events	244	232	164	165	267	283	362
Agreement reached in full	103	69	63	68	134	104	155
Agreement reached in part	65	84	49	39	72	100	110
Agreement not reached	48	53	42	44	31	57	65
Mediation vacated	21	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 2016/17 financial year and in the previous year was:

	<u>2016/17</u>	<u>2015/16</u>
<i>Expenditure</i>		
Judges' Remuneration and Allowances	3,073,300	3,023,300
Commissioners' Remuneration and Sitting Fees	1,503,479	1,678,462
Staff Remuneration and other Personnel Costs	1,522,227	1,616,045
Judges' and Commissioners' travel costs	363,223	374,467
Digital Audio Recording and Transcription	0	6,617
Staff travel costs	43,841	49,344
Staff and Commissioner training	58,768	49,017
Hire of venues for sittings and mediations	127,298	108,358
Telephone, postage and courier costs	44,160	45,286
Stores and stationery	20,572	17,617
Library and Information Services	24,446	25,081
Occupancy Costs, Utilities, Furniture and Equipment	1,718,127	1,688,430
Miscellaneous overheads	<u>2,910</u>	<u>2,561</u>
	8,502,351	8,684,585
<i>Revenue</i>		
Sale of copies of Court decisions	3,624	690
Appeal and Application Lodgement Fees	140,837	153,474
Direct Referral Cost Recovery	<u>14,474</u>	<u>162,964</u>
	158,935	317,129