



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2021

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

Contents

INTRODUCTION.....	3
1.0 Profile of the Environment Court.....	4
1.1 <i>Members of the Court</i>	4
1.2 <i>Judicial appointments and retirements</i>	5
1.3 <i>The Court Registry</i>	6
1.4 <i>The Court's jurisdiction</i>	6
2.0 Highlights 2020/21	7
2.1 <i>COVID-19</i>	7
2.2 <i>Direct referrals</i>	7
2.2 <i>Proposal of national significance</i>	8
2.3 <i>Online Court</i>	8
2.4 <i>Involvement with community</i>	8
2.5 <i>Judicial education conferences</i>	8
3.0 Court's performance	9
3.2 <i>Case management</i>	9
3.2 <i>Case statistics</i>	10
4.0 Alternative Dispute Resolution.....	11
5.0 Inquiries about reserve judgments.....	13
6.0 Expenditure and revenue.....	13

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 2021.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'H. Johnson', with a stylized, looping initial 'H' 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
Chief Environment Court Judge D A Kirkpatrick	July 2020	Auckland
Environment Court Judges		
Judge J A Smith	May 2000	Auckland
Judge J E Borthwick	Nov 2008	Christchurch
Judge M Harland	Sept 2009	Auckland
Judge J Hassan	Nov 2013	Christchurch
Judge M Dickey	Nov 2018	Auckland
Judge P Steven QC	Feb 2021	Christchurch
Alternate Environment Court Judges		
Judge C Doherty	Aug 2008	Christchurch
Judge C Fox	Sept 2009	Gisborne
Judge S Clark	July 2009	Hamilton
Judge J Kelly	Sept 2009	Christchurch
Judge P Kellar	Sept 2009	Dunedin
Judge G Rea	Feb 2011	Napier
Judge G Davis	April 2011	Whangarei
Judge S O'Driscoll	May 2013	Christchurch
Judge M Doogan	Oct 2018	Wellington
Judge L Harvey	Oct 2018	Rotorua
Judge C Thompson	Oct 2018	Wellington
Judge B P Dwyer	Dec 2019	Wellington
Judge L J Newhook	July 2020	Auckland

Title	First appointed	Re-appointed	Residence
Environment Court Commissioners			
Mr K Prime	March 2003	August 2020	Bay of Islands
Ms K A Edmonds	Jan 2005	July 2020	Wellington
Mr D Bunting	Aug 2007	May 2018	Wellington
Ms A Leijnen	Jan 2011	June 2016	Auckland
Mr I Buchanan	Jan 2013	April 2018	Wellington
Mr J Hodges	June 2013	June 2018	Auckland
Hon Kate Wilkinson	May 2015	July 2020	Christchurch
Ms Ruth Bartlett	June 2017	April 2018	Auckland
Mr J Baines	April 2019		Christchurch
Mr A Gysberts	April 2019		Auckland
Dr M Mabin	April 2019		Christchurch
Ms Shona Myers	July 2020		Auckland
Deputy Commissioners			
Commissioners			
Mr D Kernohan	Aug 2007	April 2018	Wellington

Ms G Paine Ms M Pomare Mr Ross Dunlop	Dec 2016 June 2017 April 2021	July 2020 July 2020	Marlborough Porirua Auckland
---	-------------------------------------	------------------------	------------------------------------

1.2 Judicial appointments and retirements

Environment Court Judges

Chief Environment Court Judge Laurie Newhook retired from the Court in July 2020 after completing 20 years of service. Judge Newhook was first appointed to the Court in August 2001 and appointed the then Principal Environment Court Judge in February 2014. Judge Newhook led the Court through several improvement initiatives particularly with the use of technology that added efficiencies to the Court's practice and procedures. The Court is pleased to retain Judge Newhook as an Alternate Environment Court Judge for a period of two years.

Environment Court Judge David Kirkpatrick was appointed the Chief Environment Court Judge in July 2020. Judge Kirkpatrick was first appointed to the Court in February 2014.

Environment Court Judge Jon Jackson retired from the Court in October 2020 after completing 25 year of service. Judge Jackson was first appointed to the Court in November 1996. He arrived at the Court at the onset of the Resource Management Act 1991. The Judge had a heavy case load in the South Island and throughout his years on the bench, he delivered over a thousand decisions many of which were precedent-setting where legal provisions were uncertain.

Environment Court Judge Harland was appointed to the High Court in January 2021 having first been appointed a District Court Judge in May 2007 and then an Environment Court Judge in September 2009.

Environment Commissioners

Persons may be appointed as full-time, part time or Deputy Environment Commissioners for a term not exceeding 5 years. Deputy Commissioners are called on a casual basis to exercise the functions of a Commissioner as the need arises.

In July 2020, Shona Myers was appointed an Environment Commissioner for a term of five years; Commissioners Kathryn Edmonds, Kate Wilkinson were reappointed for further terms of five years and Commissioner Kevin Prime was reappointed for a further term of three years.

In July 2020 Deputy Commissioners Glenice Paine and Mira Pomare were reappointed for a further five years.

In April 2021 Ross Dunlop was appointed as a Deputy Commissioner for a term of three years. The Court was pleased to have Commissioner Dunlop resume his Commissioner appointment. Commissioner Dunlop was first appointed to the Court in March 2003 and is one of the Courts most senior and experienced Commissioners.

1.3 The Court Registry

The Environment Court's registry falls within the Operations Service Delivery Group of the Ministry of Justice. The Manager Justice Services for the Environment Court holds the position of Registrar of the Environment Court and has reporting and budgetary responsibilities to the Regional Manager Northern, within the Operations and Service Delivery Group.

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 Court Judge, undertake acts preliminary or incidental to matters before the Court.

The Court maintains registries in Auckland, Wellington and Christchurch. Each registry is led by a Service Manager (each of whom are Deputy Registrars and have all the powers, functions and duties of the Registrar of the Environment Court). 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 Chief Environment Court 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 a specialist court of record established under section 247 of the RMA. It's the primary environmental adjudicative body in New Zealand. It has jurisdiction over environmental and resource management matters. It can be characterised as follows:

- a presiding Judge and two Environment Court Commissioners sit together to hear and determine proceedings;
- it is required by law to act judicially; and
- it hears contesting parties to the proceedings before it and gives a determination which is binding upon them.

The role of the Court under the RMA is to hear and decide:

- appeals on councils' decisions on proposed plans and policy statements and resource consent applications
- appeals on abatement notices and applications for enforcement orders
- applications for declarations
- inquiries in respect of water conservation orders.
- directly referred resource consent applications or notices of requirement
- proposals of national significance called in and directed to the Court by the Minister for the Environment

Judges of the Court also hold warrants as District Court Judges and sit in the District Court to hear prosecutions laid under the RMA. Judges may also chair boards of inquiry into matters of national significance RMA and independent hearing panels under special legislation. Judges are also appointed chairs of the Land Valuation Tribunals. Environment Commissioners are occasionally seconded onto board of inquiries and assist

with independent hearing panels which includes use of their mediation expertise and as facilitators of expert witness conferencing.

The Court currently comprises 20 (inc.13 alternate) Judges and 16 Commissioners (inc.4 deputies). Commissioners are appointed for a term of up to 5 years on either a full or part time (usually 75%) basis. Deputy Commissioners sit as required usually based on their specific expertise and undertake mediation.

For matters heard in the Environment Court, a quorum for the Court is one Environment Court Judge and one Environment Court Commissioner, but the Court is most often constituted with one Environment Court 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.

Court hearings of appeals on council decisions are *de novo* hearings. This means they are conducted “afresh”, so that the Court will want to receive all the evidence and submissions presented to it.

A decision of the Environment Court can be appealed to the High Court on a point of law and beyond this, to the Court of Appeal and Supreme Court if leave is granted.

2.0 Highlights 2020/21

2.1 COVID-19

The Court experienced some initial disruption to its services because of the COVID-19 Pandemic but following consultation with Court users, and with the support of the Ministry of Justice, the Court issued protocols that ensured ongoing access to the Court’s services. This included increased use of an online file and pay system for new proceedings and lodging of case documents and use of remote participation technology (including audio visual links e.g. Ministry of Justice supported virtual meeting rooms and Microsoft Teams audio visual calls), all of which allowed for the Courts operations to continue whilst protecting the health and safety of all Court users.

During periods of lockdown registry staff, judges and commissioners had access to laptops with remote meeting platforms installed and remote access to the Court’s electronic file folders and case management system.

2.2 Direct referrals

The direct referral process allows resource consent applications, requiring authority and heritage protection authority requirements to be considered directly by the Environment Court. The direct referral 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 2020/21, three matters were referred to the Court directly pursuant to sections 87G of the RMA:

- WST Company Limited– a resource consent application to consolidate and modify existing Equestrian Centre activities.

- Box Property Investments Limited – a resource consent application to construct a 54-unit integrated development at 30-40 Sandspit Road, Cockle Bay, Auckland.
- Kristin School Charitable Trust – an application to cancel a condition of consent in relation to the access to Bass Road for school related vehicles.

2.2 Proposal of national significance

On 23 October 2020, pursuant to s149T of the RMA, the Court accepted for lodgement the call in by the Minister for the Environment to consider proposed Plan Changes 1,7 and 8 to the Otago Regional Water Plan and Waste Plan.

Plan Change 7 proposed provisions to manage the replacement of deemed permits (also known as ‘mining privileges’) expiring in 2021 and any other existing water permits expiring prior to 31 December 2025. The Plan Change also established a requirement for short duration consents for all new water permits¹.

Plan Change 7 was one of two proposed plan changes to the Water Plan that have been referred by the Minister for the Environment to the Environment Court for decision. The other being Plan Change 8. This plan change proposes a range of initiatives each addressing issues that have arisen in relation to water quality.

Together with Plan Change 8, Plan Change 1 to the Waste Plan (also referred together as the “Omnibus Plan Change”) proposes changes to the controls on the use of dust suppressants, particularly waste oil, and introduces minimum standards for new landfills. At the time of writing the hearing of matters relating to Plan Changes 8 and 1 will be held in the first quarter of 2022.

2.3 Online Court

The Court continued to improve access to information on cases considered to have a higher level of public interest. This is done primarily by use of the court’s webpages to host case information. This may include access to audio and visual recorded hearing sessions.

2.4 Involvement with community

The Chief Environment Court 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.

2.5 Judicial education conferences

The court has a commitment to continuing professional development amongst its members and both Judges and Commissioners through the Court’s Education Committee meet to discuss on going professional development needs.

¹ The court issued interim decision on Plan Change 7 on 22 October 2021 ([2021] NZEnvC 164) and a final decision on 17 November 2021([2021] NZEnvC 179).

The Court held its annual judicial conference in Auckland in November 2020. Included on the conference programme were sessions and presentations on Cultural Landscapes, and Water Quality Management and Enforcement.

3.0 Court's performance

3.2 Case management

The Court has an overriding duty to ensure the efficient resolution of the matters before it. The RMA states that the Chief Judge Environment Judge is responsible for the expeditious discharge of the business of the Court. Therefore, in conjunction with the other Environment Court Judges, the Chief Environment Court 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 Chief Environment Court 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 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.

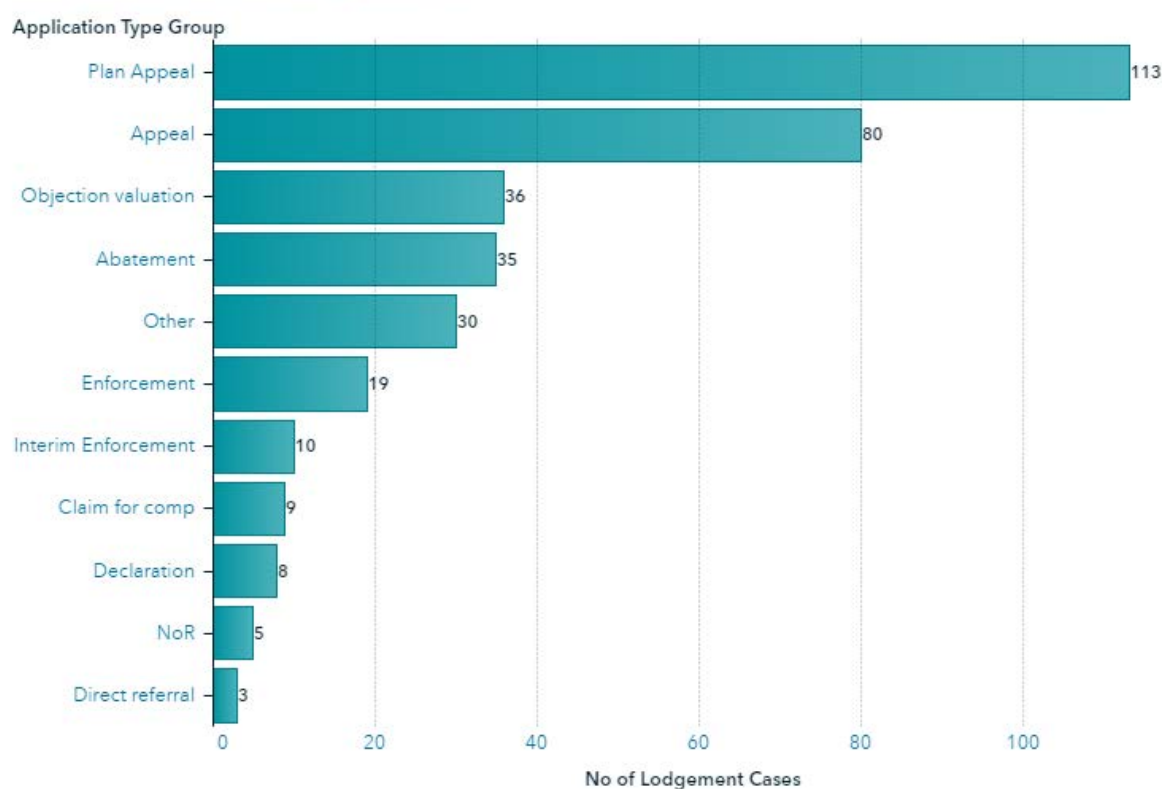
3.2 Case statistics

The total number of lodgments (appeals and applications) filed in recent years have allowed the Court to maintain a good overall clearance rate. Whilst plan appeal filings routinely fluctuate as planning instruments undergo changes, the volume of resource consent appeals and other matters remain stable.

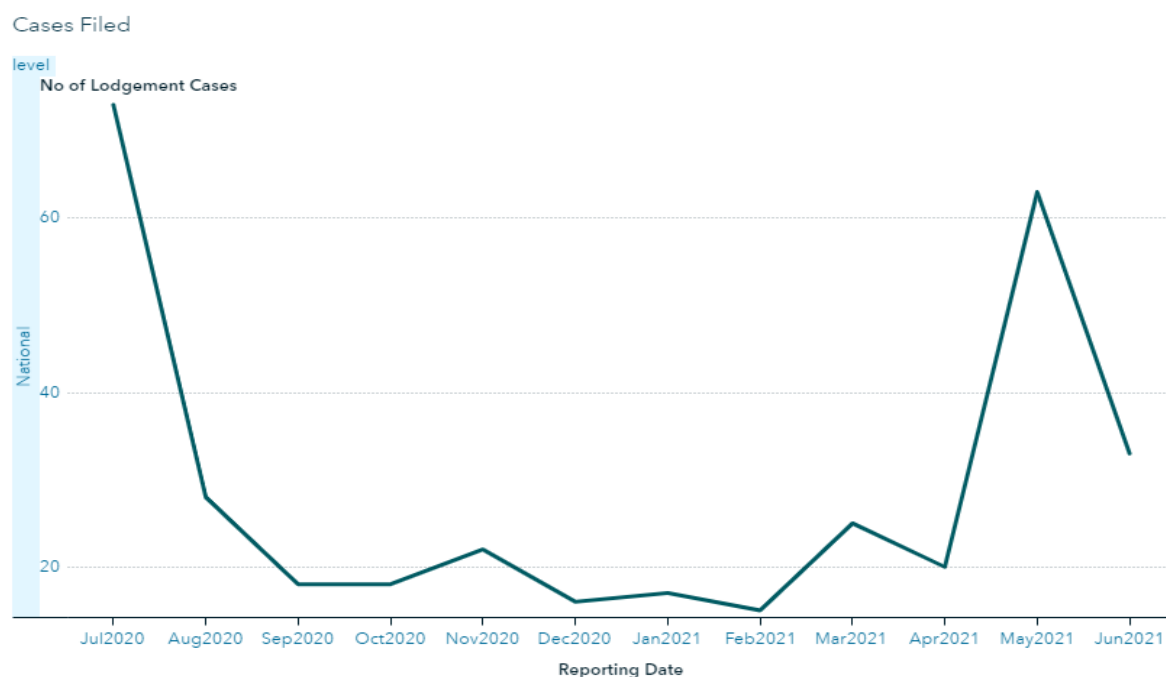
Over 2020/21 the Court received a total of 312 new lodgments (and the Land Valuation Tribunals 36 new lodgments) and determined 369. While case numbers are an indicator of the demand placed on Court resources, they are not the only indicator. Other factors such as case size, number of parties, topics and complexity, influence the level of judicial intervention through case management, mediation, expert witness conferencing and ultimately any hearing that may be required.

As at the end of June 2021, there was a total of 812 case lodgments outstanding.

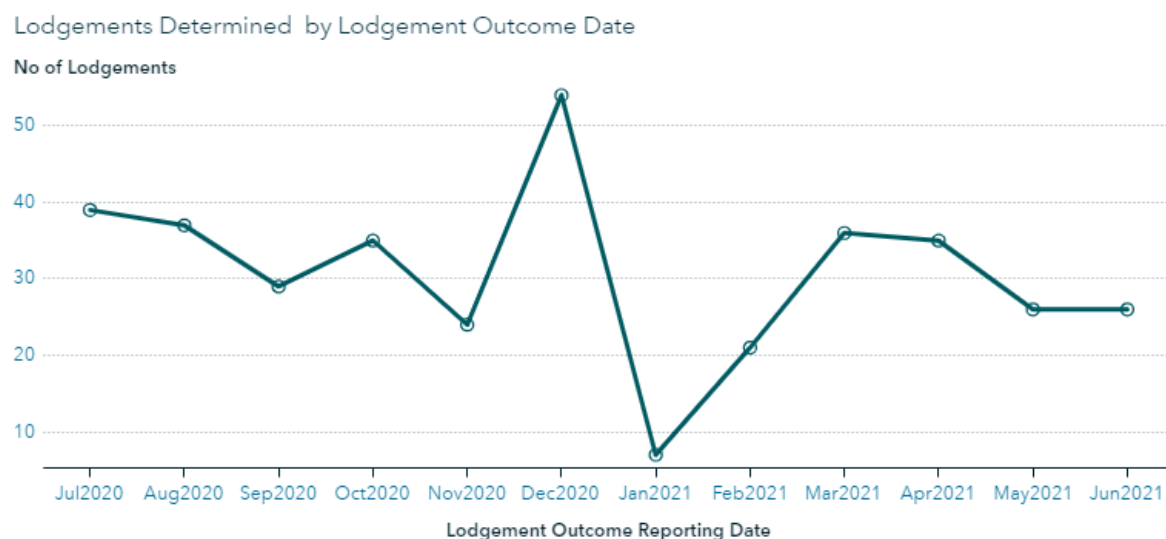
Cases Filed by Application Type Groups



Cases are filed sporadically through the year with peaks being indicative of related plan or policy change appeals.



Equally, case lodgements are disposed at sporadic intervals, particularly so when topics on related plan appeals are determined simultaneously.



4.0 Alternative Dispute Resolution

Section 268 of the RMA empowers the Environment Court to arrange mediation and other forms of Alternative Dispute Resolution (ADR).

In 2017, RMA changes recognised the important role of mediation in the Court's resolution of disputes and enabled the Court to require attendance by parties at conferences and

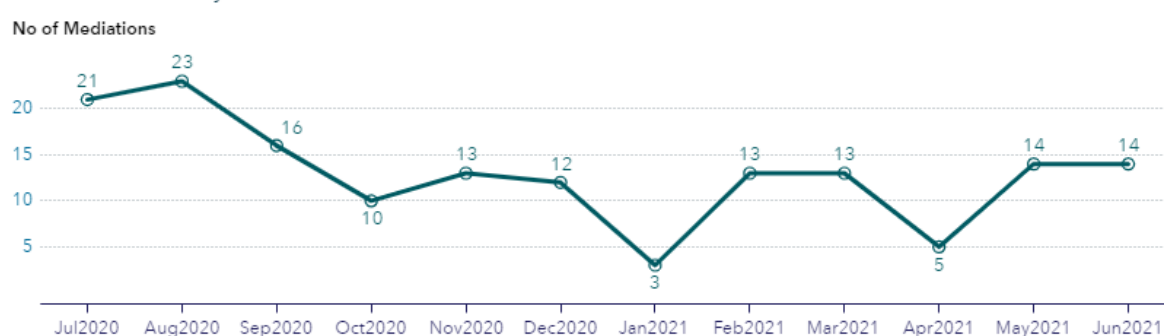
ADR unless the Court grants leave otherwise. The Court provides a mediation service at no cost to the parties.

Early intervention through mediation resolves a high number of cases or at the very least narrows the scope of issues in dispute. To encourage 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.

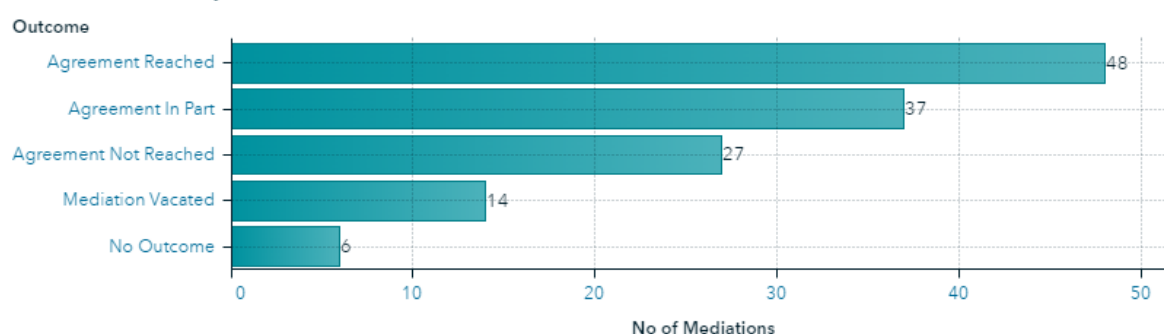
More broadly, mediation enables settlements in circumstances where informal negotiations have not been successful. It also allows issues to be narrowed which can in turn shorten hearings, even if settlement cannot be reached.

Court-annexed mediation volumes and outcomes

No of Mediations by Event date



No of Mediations by Outcome



**Some mediation topics/events that occurred over 2020/21 have yet to record an outcome.*

**A single mediated topic may form part of a greater number of topics within a single lodgement or appeal.*

These tables do 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 end of the mediation. Many cases settle within a few weeks after conclusion of mediation, anecdotally because 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 Inquiries about reserve judgments

A delay in delivering a reserved judgment impedes achievement of the expeditious discharge of the business of the Court.

The Chief Environment Court Judge is required periodically to publish information about the number of judgments considered to be outstanding beyond a reasonable time for delivery, in accordance with s288A Resource Management Act 1991.

The Chief Environment Court Judge has, in consultation with the Chief Justice as required by that provision, established a Protocol as to judgment delivery expectations, which can be viewed on the Court's website. The delivery expectations stated in that protocol are the measure by which this report is constructed.²

6.0 Expenditure and revenue

Expenditure and revenue of the Court and registry during the 2020/21 fiscal year was:

<i>Expenditure</i>	<u>2020/21</u>
Judges' Remuneration and Allowances	3,022,192
Commissioners' Fees	1,894,049
Staff Remuneration and other Personnel Costs	1,244,188
Judges' and Commissioners' travel costs	346,094
Staff travel costs	84,759
Hire of venues for sittings and mediations	199,506
Specialist Services for Hearings	155,366
Telecommunications	26,135
Library and Information Services	1,929
Printing and Stationery and Postage	30,602
Occupancy Costs, Utilities	1,941,512
	<u>8,946,332</u>
 <i>Revenue</i>	
Fees for Services	178,981
Miscellaneous Services	175,490
	<u>354,471</u>

²<https://www.environmentcourt.govt.nz/decisions-publications/protocol-judgment-delivery-expectations/>

