



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2022

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 2022.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Harry Johnson', with a stylized, cursive script.

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 David Kirkpatrick	July 2020	Auckland
<i>Environment Court Judges</i>		
Judge Jeff Smith	May 2000	Auckland
Judge Jane Borthwick	Nov 2008	Christchurch
Judge John Hassan	Nov 2013	Christchurch
Judge Melinda Dickey	Nov 2018	Auckland
Judge Pru Steven QC	Feb 2021	Christchurch
<i>Alternate Environment Court Judges</i>		
District Court Judge Colin Doherty	Aug 2008	Christchurch
Maori Land Court Deputy Chief Judge Careen Fox	Sept 2009	Gisborne
District Court Judge Stephen Clark	July 2009	Hamilton
District Court Judge Jan Kelly	Sept 2009	Wellington
District Court Judge Peter Kellar	Sept 2009	Christchurch
District Court Judge Greg Davis	April 2011	Whangarei
District Court Judge Stephen O'Driscoll	May 2013	Christchurch
Maori Land Court Judge Michael Doogan	Oct 2018	Wellington
Environment Court Judge Craig Thompson (retired)	Oct 2018	Wellington
Environment Court Judge Brian Dwyer (retired)	Dec 2021	Wellington
Environment Court Judge Laurie Newhook (retired)	July 2020	Auckland
Maori Land Court Judge Te Kani Williams	June 2022	Whangarei
Maori Land Court Judge Aiden Warren	June 2022	Hamilton
Maori Land Court Judge Terena Wara	June 2022	Rotorua
Maori Land Court Judge Stephanie Milroy	June 2022	Hamilton

Title	First appointed	Re-appointed	Residence
<i>Environment Court Commissioners</i>			
Mr Kevin Prime	March 2003	August 2020	Bay of Islands
Ms Kathryn Edmonds	Jan 2005	July 2020	Wellington
Mr David Bunting	Aug 2007	May 2018	Wellington
Ms Anne Leijnen	Jan 2011	Aug 2021	Auckland
Mr Ian Buchanan	Jan 2013	April 2018	Wellington
Mr Jim Hodges	June 2013	June 2018	Auckland
Hon Kate Wilkinson	May 2015	July 2020	Christchurch
Ms Ruth Bartlett	June 2017	April 2018	Auckland
Mr James Baines	April 2019		Christchurch
Mr Andrew Gysberts	April 2019		Auckland
Dr Mark Mabin	April 2019		Christchurch
Ms Shona Myers	July 2020		Auckland

<i>Deputy Commissioners</i> <i>Commissioners</i> Mr David Kernohan Ms Glenice Paine Ms Miria Pomare Mr Ross Dunlop	Aug 2007 Dec 2016 June 2017 April 2021	April 2018 July 2020 July 2020	Wellington Marlborough Porirua Auckland
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1.2 Judicial appointments and retirements

Environment Court Judges

Alternate Environment Court Judge Brian Dwyer was reappointed an alternate Environment Judge from 6 December 2021. The Court is pleased to retain Judge Dwyer as an alternate Environment Court Judge for a further period of two years.

Section 249 (2) of the Resource Management Act 1991 (RMA) sets out eligibility for a Judge of the Maori Land Court, to be appointed an alternate Environment Judge. As part of case management, the Court will endeavour to recognise tikanga in every case by consulting parties during conferences and would include consideration of whether a particular proceeding would be assisted by a Judge of the Maori Land Court presiding as a member of the hearing panel.

In June 2022, Maori Land Court Judges Te Kani Williams, Aiden Warren, Terena Wara and Stephanie Milroy were appointed alternate Judges of the Environment Court. These four appointments add to two existing Maori Land Court Judge appointments as alternate Judges of the Environment Court.

Environment Commissioners

There were no new Environment Commissioner appointments over the 2021/22 year. Commissioner Anne Leijnen was reappointed for a term of five years from August 2021. The Court is pleased to retain the services of Commissioner Leijnen.

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 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 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 21 (inc.15 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 basis. Deputy Commissioners sit as required usually based on their specific expertise and undertake mediation and expert witness conferencing.

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 2021/22

2.1 COVID-19

The Court’s ability to conduct mediations and hearings during the pandemic in court centres faced similar problems to those faced by other courts. The RMA requires the Court to “conduct any conference or hearing at a place as near to the locality of the subject matter to which the proceedings relate as the court considers convenient unless the parties otherwise agree.” That means that we have routinely conducted hearings in a wide range of places, many at venues such as marae, town halls, council chambers and community centres. That flexibility was severely restricted by protocols during the pandemic. Tangata whenua expressed concern that matters could not be heard kanohe ki te kanohe.

Environment Commissioners remain concerned that remote processes are generally unsuitable for mediations, especially where parties have no prior relationship with or knowledge of one another on which to base their dialogue.

Remote processes involving people in locations with limited or poor connections have been difficult. In some cases, large numbers of submitters wish to observe the proceedings without seeking to actively participate in them. The arrangements that need to be made to facilitate such observation have been assisted by the use of the Microsoft Teams platform and the Virtual Meeting Rooms, both supported by the Ministry of Justice.

2.2 Direct referrals

The direct referral process allows resource consent or other applications or a requiring authority and heritage protection authority requirements to be considered directly by the Environment Court. Consequently, it allows 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 2021/22, five matters were referred to the Court directly pursuant to sections 87G of the RMA:

- City Rail Link – Notice of Requirement to alter a Designation.
- Port of Tauranga – applications for resource consents to authorise a wharf extension and some reclamation.
- Waka Kotahi NZ Transport Agency and others – applications for resource consents and notices of requirement – Riverlink Project
- Waka Kotahi NZ Transport Agency – applications for resource consents and notices of requirement to alter designations for activities associated with SH1/SH29 intersection upgrade project.
- Waikanae Land Company Limited – application for subdivision and land use at Barrett Drive, Waikanae.

2.3 Online Court

During periods of COVID-19 disruption the Court increased use of remote participation technology which allowed for the Courts operations to continue whilst protecting the health and safety of all Court users.

The Court actively looks for ways 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 as well as case evidence and transcription. During the pandemic, case parties were able to file documents and pay court fees on the Ministry of Justice on-line File and Pay system and these arrangements will continue in future as business as usual.

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. The Chief Judge has through 2021/22 been consulting with the professions on updates to the Court's Practice Note. The revised Practice Note will take effect from 1 January 2023.

2.5 Judicial education

The Court has a commitment to continuing professional development amongst its judicial members. This is achieved through the attendance at seminars, conferences, workshops, and webinars. The Court's annual conference is usually an opportunity to update and develop skills and knowledge however, due to the pandemic, the Court was unable to hold its annual judicial conference over 2021/2022.

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 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.

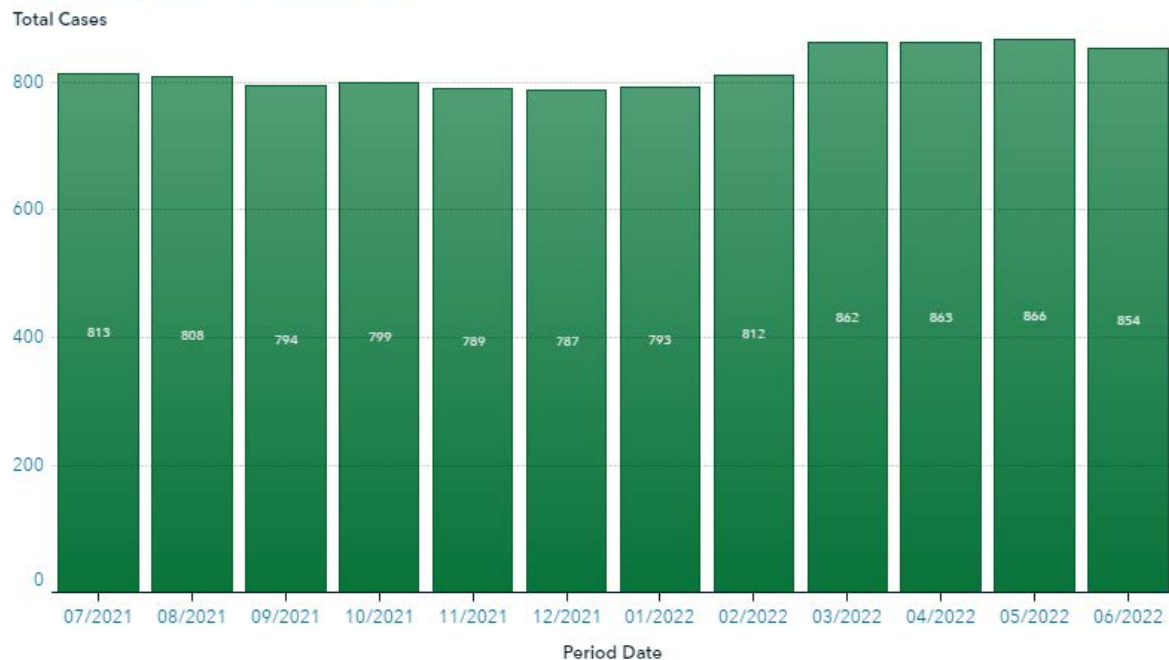
3.2 Case statistics

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 fluctuate as planning instruments undergo change, the volume of resource consent appeals and other matters remain stable. There was no significant backlog of work generated because of the Covid-19 lockdowns albeit some hearings and mediation events did need to be rescheduled and or moved to an online virtual platform.

Over 2021/22 the Court received a total of 345 new lodgments (including 33 objections to valuations matters before Land Valuation Tribunal) and determined 302 lodgments. Lodgments determined include those settled through consent order (and endorsed by the Court) or withdrawn by parties and those finalised by a written decision of the Court. Written decisions provide a valuable contribution to the planning and environmental jurisprudence and enable transparency in the Court's decision making.

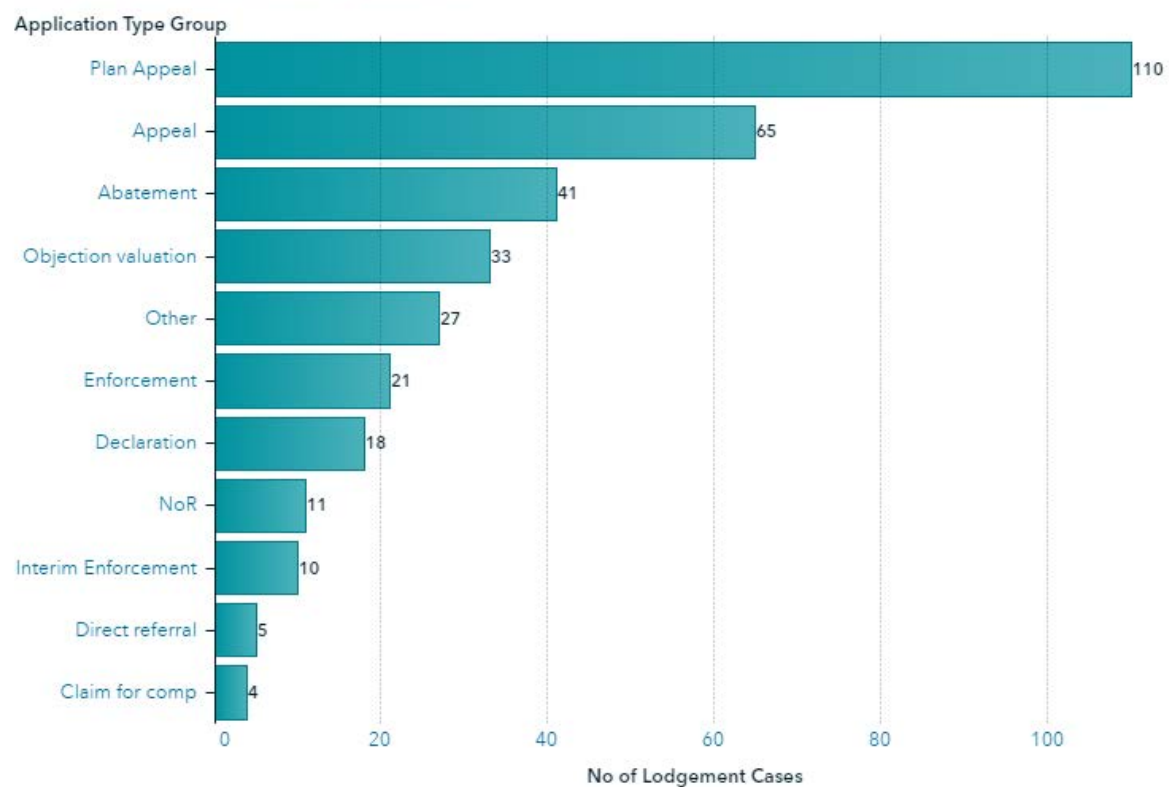
While case numbers are an indicator of the demand placed on Court resources, they are not the only indicator. Other factors such as case size, number of parties, topics and complexity, influence the level of judicial intervention through case management, mediation, expert witness conferencing and ultimately any hearing that may be required.

Lodgement Workload at End of Month

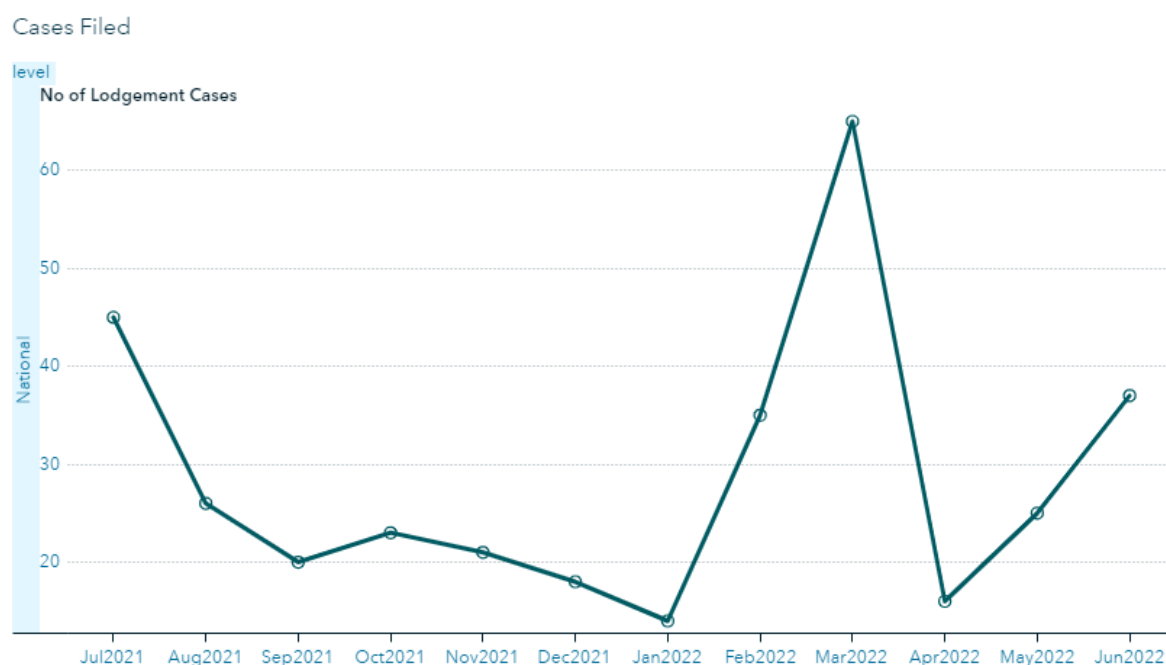


As at the end of June 2022, there was a total of 854 case lodgments outstanding.

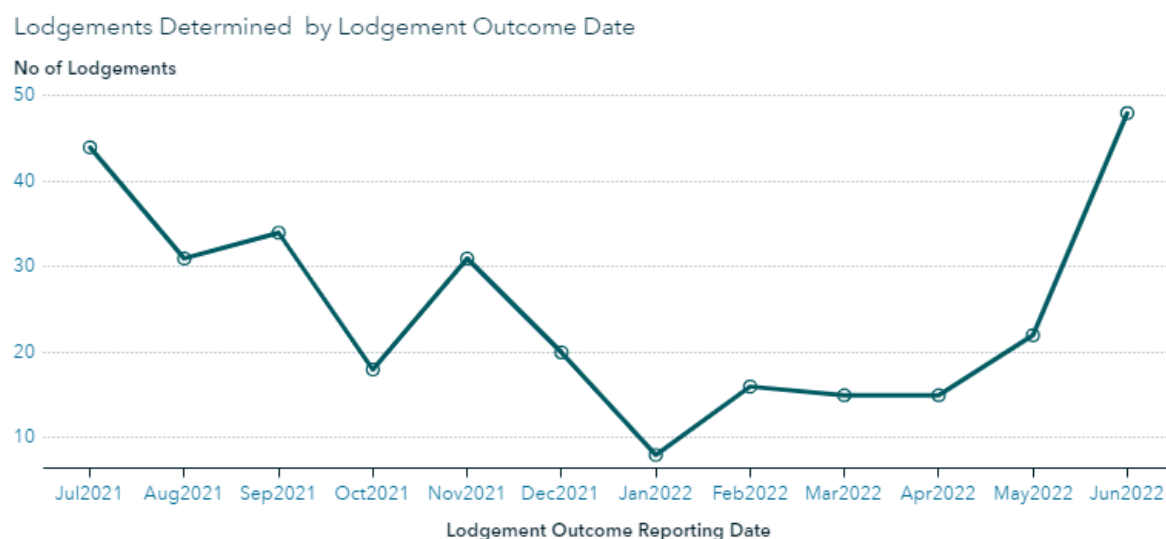
Cases Filed by Application Type Groups



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).

The RMA recognises the important role of mediation in the Court's resolution of disputes and enables 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.

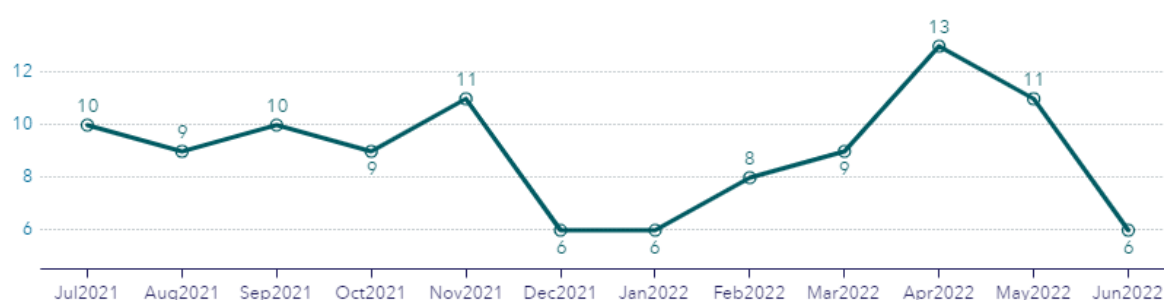
More broadly, mediation enables settlements in circumstances where informal negotiations have not been successful. It also allows issues to be narrowed which can in turn shorten hearings, even if settlement cannot be reached.

As highlighted earlier in the report, throughout the period of COVID-19 Pandemic and lockdowns, the Court was restricted from conducting its services in the usual face to face way and adapted, where possible, its mediation service to an online model using Microsoft Teams or a combination of face to face and virtual appearances.

Court-annexed mediation volumes and outcomes

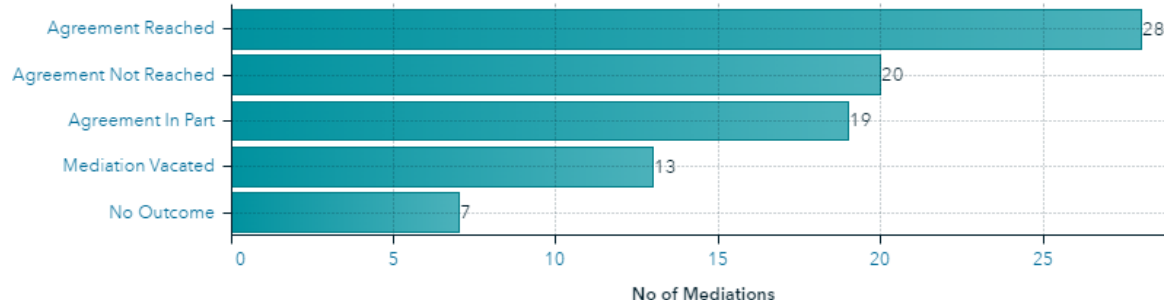
No of Mediations by Event date

No of Mediations



No of Mediations by Outcome

Outcome



**Some mediation topics/events that occurred over 2021/22 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.¹

6.0 Expenditure and revenue

Expenditure and revenue of the Court and registry during the 2021/22 fiscal year was:

Expenditure	
Judges' remuneration and allowances	3,707,108
Commissioners' fees	2,040,747
Staff remuneration and other personnel costs	2,085,706
Judges' and Commissioners' travel costs	154,627
Staff travel costs	70,934
Hire of venues for sittings and mediations	109,208
Specialist services for hearings	69,782
Telecommunications	31,978
Library and information services	2,855
Printing and stationery and postage	31,653
	8,304,598

Revenue	
Fees for services	206,461
Miscellaneous revenue	987,469
	1,193,930

¹<https://www.environmentcourt.govt.nz/decisions-publications/protocol-judgment-delivery-expectations/>