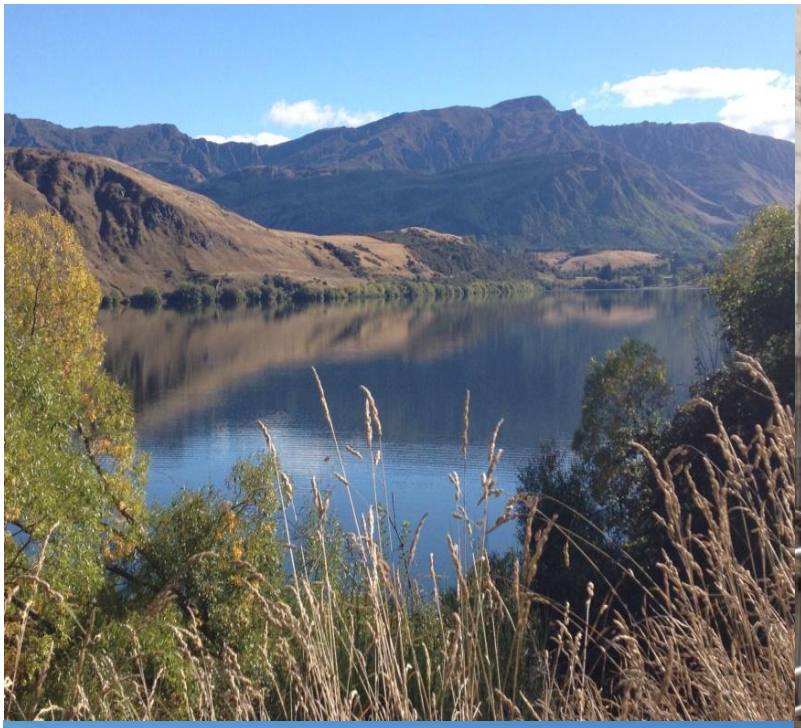
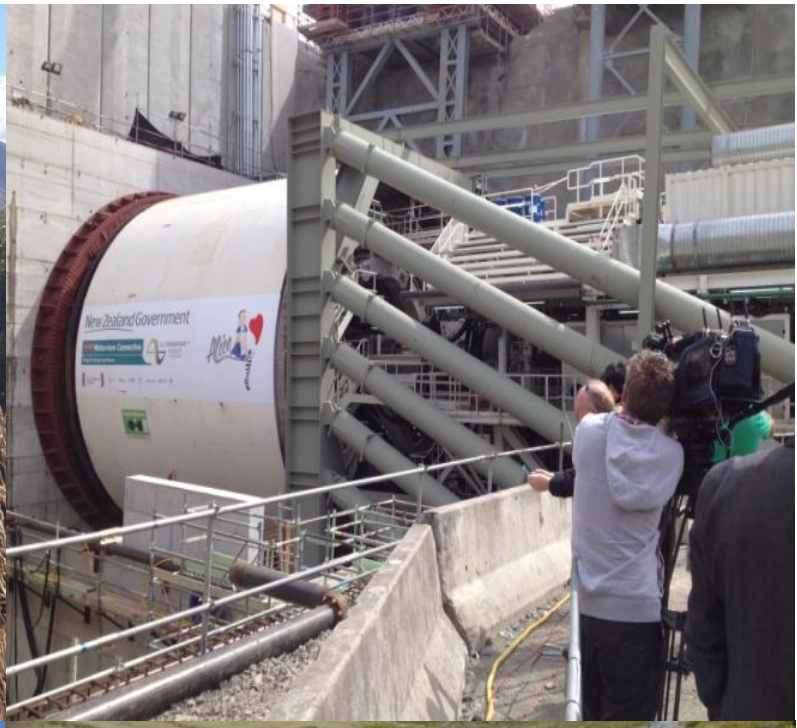
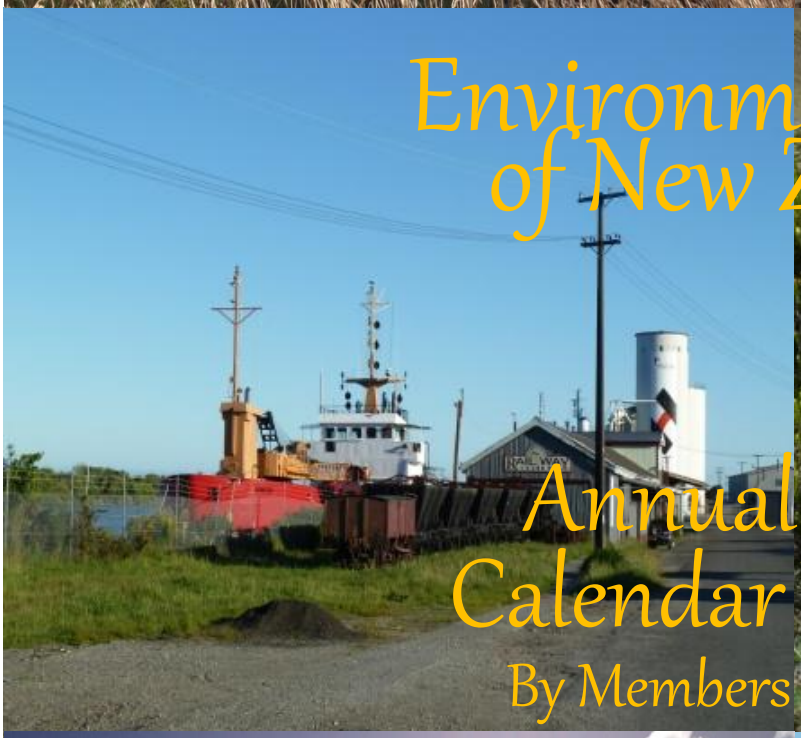




Environment Court of New Zealand



Annual Review
Calendar Year 2015

By Members of the Court

PUBLISHED MAY 2016 CONCERNING CALENDAR YEAR 2015

In this review

Calendar year 2015: an overview by Principal Environment Judge ("PEJ")

- This is the second Annual Review of the Environment Court, prepared by its Judges and Commissioners, and covering the calendar year 2015. It is intended to complement the Annual Report to Parliament by the Registrar that covers each Government reporting year (most recently to 30 June 2015) and provides commentary beyond the statistical focus of that Report.

- An appendix to the Review describes the place of the Environment Court in the New Zealand Court system and its place in the resource management system. These pieces of information can be used as background and context for much of the material set out in the body of this document.

- The Review describes progress of the Court in 2015, drawing partly from statistical information in the Registrar's Report to Parliament. The Court achieved a high clearance rate for all types of cases, including plan appeals. Factors likely to have been driving these results include increasing use of robust individualised case management, alternative dispute resolution, streamlined hearing techniques, and use of modern technology.

- A section of the Review describes the nature of the work of the Court in 2015 including alternative dispute resolution, varied case management techniques, and the management and resolution of direct referral cases.

- Advantages and potential pitfalls of direct referrals are described and a general description offered of the usually conservative level of user-pays cost recovery administered by the Registrar. There is a description of the high-levels of resolution of direct referrals and other significant cases through robust mediation and expert conferencing.

- The Court acknowledges the strong and willing support of the Registrar, Deputy-Registrars, Judicial Resources Manager, and registry staff, many of whom are legally trained. Surveys of parties and their representatives in 2014 indicated a very high level of satisfaction in this area.

- We offer a description of an ongoing study between the PEJ and the Registrar into better definition of key performance measures and avoiding the capture and dissemination of inaccurate or inappropriate data that can have unintended and potentially counter-productive results.

- There is a section addressing some inaccurate public reporting of the performance of the Court, particularly as to timeliness.

- We discuss the Court's progress in the disposal of multiple appeals on policy statements, plan reviews and plan changes as well as the improvement in the quality of planning instruments which emerge from this process. As noted by the

NZ Productivity Commission, practices have changed significantly in the last few years, (particularly so in 2014 and 15, after the Commission issued its report); mediation is substantially resolving many of these appeals in under a year.

- The Review describes the continuing advances with electronic developments during 2015, in the main Judge-led. Included are the use of iPads for hearing work, improvements in processes for uploading to and backing up iPads, installation of Wi-Fi in Court premises, and the interactive use of the Court's website for the exchange of evidence amongst large numbers of parties in big cases, and dissemination of materials to and amongst them. A description is offered of the ultimate goal of across-the-board electronic working methods.

- A description is offered of the considerable community involvement and education initiatives of the Judges and Commissioners during 2015, and commencement of preparation for subsequent ones. The work of the Court's education committee is described, as are processes in place by the PEJ for consultation with Court users.

- Formal events held during 2015 are recorded as is a continuing initiative to enable greater consistency of process amongst presiding Judges in future.

- Acknowledgement is made of the hearing work of the 2 Alternate Environment Judges who are Judges of the Maori Land Court and who assist the Court with resolution of important Maori issues using their specialist knowledge and cultural awareness.

- A description of current and future working premises in Christchurch is offered.

- Some significant decisions of the Court during 2015, are noted and summarised in Appendix 2 of this review.

Laurie Newhook, Principal Environment Judge.

Profile of the Court

The Court is constituted by s247 of the Resource Management Act 1991 (RMA), as the successor to the former Planning Tribunal established under previous Acts.

As a specialist Court of Record, it has a particular place in New Zealand's Court system, and in the resource management system.

The Court's place in the New Zealand Court system

Please refer to Appendix 1 to this Review for information about the place of the Environment Court in the New Zealand Court system, as background and context for many of the issues discussed in this document.

The Court's place in the resource management system

Please also refer to Appendix 1 for information about the place of the Environment Court in the resource management system, as background and context to many of the issues discussed in this document.

Progress of the Court in 2015

Reference may be made to the Report of the Registrar to 30 June 2015 for detail, but it is appropriate to record in this Review that the clearance rate of cases in the Court remained at a good level during 2015. In the Ministry's reporting year to 30 June 2015 there were 392 registrations of new cases and the Court disposed of 415. Tabular evidence is provided in the Registrar's Report.

The clearance rate was lower than the previous few years, reflecting a lower rate of lodgements and what may be something of a trend to cases of greater complexity and greater number of parties and issues. As noted by the Registrar in his latest Annual Report, the Court's case load can be difficult to forecast. The factors causing this difficulty include societal factors in diminishing quantities of work flowing to the Court and the Court's approach to disposal of its work.

Robust case management, alternative dispute resolution ("ADR") activities, and streamlined hearing techniques, together with increasing use of modern technology, (all as described in more detail elsewhere in this Review), have had a significant impact.

Societal factors are agreed to have included:

- Plan appeal numbers have fallen overall in recent years, particularly as there has been no large "second wave" of plan reviews, and rolling plan reviews and plan changes have become more common;
- The costs (legal and expert witness) of mounting a cogent case to the Court discourage many people from participating in Court processes;
- There has, since 2009, been a statutory regime of considerably more limited public notification of applications for consent and other legislative modifications to the extent of the Court's jurisdiction in some areas;
- Resource consent activities in the overall resource management system are likely to have been impacted by times of some fiscal austerity. (It has been calculated that appeal numbers generally equate to about 1% of the total applications processed by consent authorities.);
- Introduction of a robust system of call-ins of matters of national significance, albeit that Environment Judges and Commissioners are often seconded to form part of the hearing panels for those cases.

The nature of the Court's work in 2015

Types of case resolution as described in the Practice Note 2014

The latest revision of the Environment Court Practice Note was published during 2014 and came into effect on 1 December that year, replacing all earlier Practice Notes. Its introductory provisions record that it is not a set of inflexible rules. There was detailed discussion of it offered in the previous (2014) Annual Review, and the practice note itself can be found at www.justice.govt.nz/courts/environment-court/practice-note.

Case management tracks

As will be seen from the Practice Note, the Court operates three tracks for case management. 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; and there is a Parties' Hold Track. The latter 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.

Progress through any of the Tracks is overseen by the use of proactive case management methodology. Each Judge on the Court is allocated a geographic area to oversee, and robust case management is at the heart of the work of the Court.

The Court has in recent years been successful in reducing the life of cases to the point where there is now no backlog of cases awaiting either mediation or, where necessary, hearing, or other court time. The Court continues to dispose of more cases than are being filed year on year. This is due in no small measure to a highly co-operative process between the judiciary on the one hand and the specialist registry staff on the other, driving efficiency and timeliness to earlier and less costly resolution of cases. Other factors at play are described elsewhere in this Review.

Adjudication by hearing

In the relatively small number of cases that do not settle at mediation or get withdrawn (about 5%), considerable emphasis is placed on pre-hearing case management activity by Judges, and preparation for hearing by parties and members of the Court. A strong focus by the Court is brought on pre-hearing conferences, the setting of timetables, and monitoring of progress of the parties. The purpose of these conferences is to ensure proper preparation for the fair and efficient hearing of cases. Directions may be given about the resolution of preliminary questions, timetables for the exchange of evidence, and the date and duration of the hearing. Reliable estimates of hearing time are required from counsel and parties. All parties are to attend or be represented at the conferences by someone thoroughly familiar with their position and the submissions and evidence to be given. Many such conferences are conducted by telephone, but some occur in Court for logistical reasons such as sheer numbers of parties.

There is a particular focus in the Practice Note on cooperation in the preparation of evidence, to ensure that proceedings are dealt with in a focussed way. Parties are commonly required to supply statements of agreed issues of relevance and importance to the case and a statement of agreed facts. They are also required to provide an agreed dossier of copies of relevant provisions of planning documents and any other documents common to the parties' cases. The Court stresses succinctness and the avoidance of repetition, aided by efficient cross-referencing, tabulation, and indexing.

The Practice Note contains detailed provisions about preparation of statements of evidence, again stressing succinctness, focus, relevance and the avoidance of repetition.

It is the almost unvarying practice of the Court in recent times that the Judges and Commissioners rostered to hear a case will read all the evidence and other materials ahead of the commencement of the hearing. It is now most unusual for any evidence to be read out in court. The length (and therefore also cost) of hearings has been very substantially cut by the use of this approach.

Use of electronic media, both in preparation for hearings, and during hearings themselves, is described elsewhere in this Review. The use of the Court's website for interactive exchange of evidence, and the use of electronic tablets for accessing case materials before, during and after hearings, has further considerably streamlined the progress of cases and caused substantial reduction in volumes of paper materials.

A feature of the Court's work is the high degree of involvement of self-represented parties which can raise a tension between efficiency/speed of disposal of cases, and ensuring that such parties (and indeed all parties) are treated fairly. The Court finds it helpful to guide self-represented parties on matters of process to some degree in the interests of keeping cases moving, but fairness to other parties requires that the Court stop short of offering self-represented parties legal and other substantive advice. More information on how the Court endeavours to meet the needs of such

parties will be found in the sections of this Review on Direct Referral cases and electronic initiatives.

Direct referrals

The 2009 Amendment to the RMA introduced sections 87C to 87 I, making provision for applicants for resource consent to request from councils a decision to refer the matter directly by the Environment Court without first being decided by the council.

Applicants commenced using this process from the beginning of 2010, and a relatively small but steady number of cases have been lodged in the Court since then. The cases tend to comprise proposals for larger commercial or infrastructural activities, and accordingly have been treated by the Court as requiring a reasonably high degree of priority to process, hear and determine.

Consent authorities presently have discretion under s87E RMA, to refer a case directly to the Environment Court. In 2013 an amendment was made to s87E RMA for the purpose of limiting councils' discretion to refer cases, but the provision was not to take effect until after Regulations had been promulgated. The Ministry for the Environment has subsequently sought and received submissions on the topic, but s87E seems awkwardly constructed and Regulations have not yet been promulgated. Members of the Court consider that in its current situation the Court and parties would not be overwhelmed if the limitation involving a need for Regulations to be passed was removed in any new amending legislation.

In 2015, two Direct Referral applications were lodged, the first in April and the second in July. Both were the subject of decisions issued by the Court within six months, one ultimately "by consent" (agreement of the parties) after hearing. In both cases mediation and expert witness conferencing resolved many of the issues. Section 87G RMA appears to require a "hearing" of cases directly referred, but in cases where alternative dispute resolution has secured complete agreement amongst the parties, the hearing is necessarily something of a formality. The policy reason for this appears to be that the proceeding is one at first instance, but the true need is a little difficult to gauge.

Difficult issues can arise in Direct Referral cases as in any case, so that even if the Court commences a hearing at a reasonably early time, processes may come into play that have the effect of prolonging the life of the case. A recent example is an application for consent to a boat marina at Waiheke Island near Auckland, lodged at

the end of 2013, the hearing for which commenced in October 2014, and where the applicant applied to significantly alter the proposal at the end of the three-week hearing. (Mediation had been declined at all stages by all parties). Directions were issued for determination of whether the proposed changes were, as a matter of law, within the scope of the proceedings. The Court found that they were not. The applicant then reverted to its original proposal but reduced in scale and with some other modifications. Directions were issued for preparation for a new hearing which was conducted in the third quarter of 2014 and a decision declining consent issued before year's end. Due process had to be followed, and the life of these proceedings became extended accordingly.

Costs in direct referral cases

The Court may order a party to direct referral cases to pay to the Crown all or any of the Court's costs and expenses. For the guidance of parties, the Registrar maintains an informal scale of such costs that are discussed with applicants from time to time. Bearing in mind that the discretion to award costs is ultimately that of the Court under s285(3) RMA, the pattern in the direct referral cases concluded in the last four years has been that agreement has generally been reached between an applicant and the Registrar at a relatively conservative level, and subsequently approved by a Judge.

A notable exception was the Waiheke Marina case just described. Applications for costs were made by the large community group which was the principal party in opposition, Auckland Council, another opposing party, and the Registrar of the Court. Meantime the officers of the applicant company had placed it into liquidation. The liquidator expressly took no part in the costs debate. In the absence of effective opposition the Court was obliged to weigh the claims most carefully.

Higher than normal costs were awarded (50% of moneys expended) to the community group, largely because of the difficulties repeatedly created by the applicant, in what the Court described in its decision as a "lengthy, tortuous and complex case". The Court held that the council in the direct referral case could be entitled to an award of 100% of its costs, and confirmed such award in its decision. The claim by the Crown was treated similarly. The total of all costs awarded was notably high; over $1 million. Recoverability is not within the jurisdiction of this Court.

The direct referral process can provide an avenue for speedy determination of complex cases, but it is considered that applicants need to have their cases

extremely well prepared if they are to avoid "road blocks" and high costs along the way, because they will not have the usual benefit of a first instance hearing before a council or hearing commissioners as a "filter" of issues.

The Court has developed techniques for managing extremely large numbers of parties in these cases, particularly including the appointment by the Court of process advisors to submitters to enable the proceeding to move forward quickly without at the same time inappropriately disadvantaging parties. An example again was the Waiheke Marina case, where the great majority of 310 submitters were encouraged to coalesce their interests under the umbrella of a community organisation formed to oppose the application. The Court has also developed electronic processes to assist it and the parties to manage what could otherwise be tremendous quantities of paper materials. This is discussed in greater detail in the section on electronic developments in this Review.

Mediation

Section 268 RMA contains a broad power for the Environment Court to initiate, "*for the purpose of encouraging settlement*", mediation, conciliation, or other procedures designed to facilitate resolution before or at any time during the course of a hearing. The Court makes significant, and increasing, use of these powers.

The section has a "voluntary" flavour about it, recording that ADR may be carried out "*with the consent of the parties and of its own motion or upon request…*"

However, litigation in the Environment Court is not just about resolving private disputes. Almost all cases are laced with significant public interest issues as well. Not only does this factor drive the Court to ensure early resolution of proceedings, but it colours its approach along the "voluntary" to "compulsory" mediation spectrum, to offer very strong encouragement.

Other alternative dispute resolution

The Practice Note records that the Court actively encourages ADR, and in addition to mediation will offer conciliation, conferences of expert witnesses, expert determination, and judicial settlement conferences. While the ADR work of the Court is mainly conducted by its Commissioners who are specially trained in the process for resource management cases, Judges do run settlement conferences, and there is provision for outside specialists to be engaged as well.

The Practice Note advises that ADR techniques are often highly cost-effective compared to proceeding to a full hearing before the Court, and that outcomes may also be reached which would be beyond the jurisdiction of the Court in a hearing. These can be achieved by way of "side agreements" that will not become part of any order ultimately issued by the Court.

In recent years Commissioners have been trained and have developed experience in facilitating, on a fully independent basis, conferences of expert witnesses. The emphasis in such work is not to foster compromise, but to have experts in their appropriate groups debate objectively and scientifically, differences amongst them, for the purpose of reaching agreements and/or clarifying issues on which they do not agree. These conferences are conducted in the absence of influence by parties, although counsel are assigned particular obligations in readying the witnesses for the conference, explaining the procedures to them including their duties of independence and objectivity, and assisting their clients to understand the process. Increasingly, these conferences are successful in resolving significant numbers of issues canvassed in expert evidence in cases, with resulting savings in hearing time, and therefore also the cost of litigation. Good preparation by those involved is crucial to good outcomes, and the Court stresses this in the course of case management.

The Judges have developed techniques to further assist cost-effective resolution of cases in some instances where mediation and/or expert conferencing has got stuck over particular issues.

For instance, a presiding Judge will occasionally direct the giving of concurrent evidence by a group of expert witnesses for whom an issue is relevant (in Australia called "hot-tubbing"). This occurs during the course of a hearing, and can be seen as an extension of expert conferencing. The focus is on gaining accurate and objective scientific answers.

Civil enforcement cases and criminal prosecutions

The Environment Court undertakes civil enforcement cases under Part 12 of the RMA. Also undertaken under Part 12 are declaration proceedings and appeals against abatement notices issued by councils. These cases comprise a fairly significant part of the work of the Court.

Enforcement orders operate like injunctions in the general civil courts.

On average, approximately 40 such cases are brought to the Court each year, but in 2015 there were 29.

In the last five years, 62 percent of enforcement cases have been brought by councils, and 38 percent by individuals. The split was 79 percent by councils and 21 percent by individuals in the 2015 year.

In 2015, 57% of applications were allowed, 36% were withdrawn, and 7% declined. These percentages are generally representative of the pattern in most years.

Appeals against abatement notices issued by councils attain similar numbers. In 2015 there were 35 such proceedings.

A regular outcome of this class of proceeding is that the parties arrive at a settlement either courtesy of the Court's mediation service, or by negotiation. Almost 70% of the abatement notice cases were withdrawn in each of the last five years. Small percentages are variously struck out, dismissed, allowed, or made the subject of a Consent Order.

Prosecutions are not heard in the Environment Court, but instead by Judges of the District Court, who also hold Environment Court warrants. There currently exists a Protocol between the Heads of the District and Environment Courts, whereby full warranted Environment Judges will hear all prosecutions, save in cases of urgency when Alternate Environment Judges (full time District Court Judges holding an Alternate Environment warrant) may sit.

Because the work is carried out in the District Court, statistical analysis of the cases and outcomes are not the province of the Environment Court.

From time to time there can be a somewhat awkward interface between prosecutions and civil enforcement orders carried out in the respective courts. (It is often desirable for enforcement orders to be made alongside the entry of convictions and the entering of sentences, in prosecutions).

Supporting the Court: the Registries

The Ministry of Justice operates a unit called the Environment Court Unit, which falls within the Specialist Courts Group. The Unit is headed by a National Operations Manager, who is also the Registrar of the Court. The position is held by Harry

Johnson, who has held the post of Registrar and senior management roles in the Court, for a number of years.

The Court maintains registries in Auckland, Wellington and Christchurch. Each registry is led by a Regional Manager, each of whom are designated as Deputy Registrars, and who hold the powers, functions and duties of the Registrar under delegation, pursuant to s260(2A) RMA.

The Registrar and Deputy Registrars exercise quasi-judicial powers such as the consideration of certain waiver applications; and when directed to do so by an Environment Judge, perform functions preliminary or incidental to matters before the Court.

Each registry provides services to parties, and administrative support to the Judges and Commissioners. These functions are largely carried out by case, hearing and mediation managers together with legal and research support through in-house counsel. Many of the case and hearing managers are legally qualified graduates with particular skills and interest in environmental law.

The Court has a very capable Judicial Resources Manager who coordinates the court's sitting programme under direction from the Principal Environment Judge exercising administrative functions under s251(2) RMA.

Surveys of parties and their representatives are regularly conducted by the Ministry concerning the quality of service offered by registry staff. The results in recent years, the last of which was in 2014, have indicated a very high level of satisfaction. This is much appreciated by the Judges and Commissioners, who find they can place great reliance on the registry staff offering a reliable and user-friendly service to parties and their representatives, particularly during periods of case management of court business.

Study of key performance measures

The Registrar's Annual Report to Parliament is compiled in discussion with the PEJ. While the statistics included in the Report have the appearance of clarity on the surface, they do not tell the whole story about the work of the Court.

The Report is presently constructed with five sections:

1. Cases received:

- Total cases received;
- Percentage of pending plan and policy statement appeals under 12 months old;
- Resource consent appeals and other matters under 6 months old;
- Cases on hand;
- Median age of active cases.

2. Cases disposed of:
    - Total cases disposed of;
    - Cases determined (clearance rate) – plan and policy statement appeals;
    - Cases determined (clearance rate) – resource consent appeals;
    - Cases determined (clearance rate) – other matters;
    - Median age of cases cleared.
3. Number of Environment Court sitting days supported.
4. Case clearance rate.
5. Judicial satisfaction (as to Registry case management and file preparation and presentation; and courtroom hearing and mediation support).

The approach taken is broadly similar to that taken by the Ministry in other jurisdictions, with of course differences in description of case types – eg “resource consent appeals”, etc.

The issues under discussion between the Judiciary and the Registrar derive from the separate roles played in the Court system by the Judicial and the Executive arms of Government. In the present instance, there is pressure on Registry staff to improve performance in areas over which they have no control; and the reported information may be used as an overall indicator of Court performance (ie performance of Judges and Commissioners in undertaking their judicial roles), which is not seen as appropriate on the part of the Executive.

Some “measures” are simply facts or data with no particularly clear purpose; and the system is not designed to capture some aspects that are important to the planning of resource needs. There is a risk that the information may be used and interpreted in ways that are unintended and potentially counter-productive. The Ministry is interested in addressing these issues through business plans it prepares concerning the Environment Court amongst other Specialist Courts.

Some issues of concern to both the Judiciary and the Ministry include:

- Some data is presented as targets, despite being beyond the control of the Judiciary and the Ministry (eg numbers of cases lodged);
- Activities of judicial officers and support staff not captured in connection with some kinds of activity, for instance membership and work to support of Boards of Inquiry and prosecutions;
- Lack of differentiation between first generation plans and subsequent plan appeal work;
- Lack of adequate reporting on cases directly referred by councils;
- Treatment of median age of cases inappropriately includes cases expressly placed on hold awaiting actions by third parties and the like;
- Judicial satisfaction may not be measured so as to capture all matters of importance to Judges and Commissioners.

The reporting of facts and data is currently inadequate to develop good performance measures from both the registry and judicial perspectives. Business planning by the Ministry is contemplating: reporting on activities with other agencies to identify workload requirements and drivers; (in)efficiencies in back office processes; improving judicial access to information; and improvements in dissemination of information, particularly electronic (for instance through use of websites). Ideally, reporting would also tackle the vexed question of the relative complexity of cases rather than lumping together all cases, simple and complex (the latter often multi-party and multi-issue and requiring not only special arrangements to timetable them for hearing, but also strong case management to identify true issues, identify parties interested in the various issues, conference the experts in relation to each of those, and martial the parties to address each issue in an efficient manner).

Better reporting of data to take account of cases suspended for good reason in the "parties on hold track", would also be desirable.

Reporting of sitting time would ideally be revamped to include the important modern activities of preparation by Commissioners for mediation, and pre-reading of cases by members of the Court before hearings.

The PEJ and the Registrar are preparing a survey of regular Court users to gain a better idea than is currently available, of attitudes to current Court practices including timeliness, and suggestions for improvement in processes. Meantime the PEJ maintains formal and informal contact with relevant professional groups seeking ideas and submissions on practices that can enhance efficiency and access to justice.

Concerns about some reporting of the Court's performance

This Review has identified the limitations of the New Zealand Courts' electronic database in measuring and reporting the performance of the Environment Court. In summary, the database (CMS) is not a business management tool and is programmed to offer only limited statistical information about the progress of cases. Furthermore, it offers only quantitative, not qualitative, information. As a result, in managing the workload of the Court the PEJ, Registrar, and Judicial Resources Manager need to bring to bear human qualitative assessments of the work on hand.

Inadequacy of quality official information can give rise to an external problem when persons, usually possessed only of anecdotal information, (sometimes manipulated for some particular purpose), make public claims about shortcomings in the timeliness of the work of the Court. Such claims are often also bound up with inaccurate statements about substantive outcomes in some cases, based on inaccurate or non-reading of decisions of the Court.

The Court is limited in public comments it can make in these circumstances because of the judicial convention that Courts generally speak through their decisions and case materials such as Minutes. This limitation comes as a surprise to many people.

In last year's Review we discussed some examples from 2013 and 2014 of inaccurate commentating. We are pleased to note that there were no similar occurrences in 2015, barring some submissions made by some councils to the NZ Productivity Commission alleging that Environment Court processes delay plan appeals by some years – a matter upon which we commented in last year's Review and which is frankly wrong. We are also pleased that the NZ Productivity

Commission now approaches us in the early stages of pertinent enquiries, seeking factual input from source.

Appeals about policy statements, plan reviews and plan changes

It is notable that alternative dispute resolution in the Environment Court has, with the full support of the judges, been lifted to another level so as to ensure greater robustness of process. This is because, unlike private civil disputes, environmental disputes invariably have an element of public interest in them that calls for promptness of resolution. Members of the Court consider that the concepts of access to justice and efficiency do not collide in this respect; in fact they coincide remarkably well. ADR provides a far more cost-effective way of resolving many cases, and the reported results in recent years speak for themselves.

This has been particularly evident concerning the resolution of appeals about plans and policy statements. Gone are the days when a council would be granted a year or two by the Court to endeavour to negotiate solutions, often with no outcome to show for it, and only then to find that much mediation and/or hearing work remained necessary to resolve cases.

In recent sets of such appeals, mediation has been undertaken commencing as soon as all parties have been identified under s274, and brought to a conclusion about 10 or 11 months after the cases have been filed, with a high degree of success. Councils have been enabled to make large parts of the proposed instruments operative in short order if they wish, leaving the Court to move quickly to resolve remaining issues through hearings, facilitated conferences of experts, and pre-hearing and settlement conferences.

This was a feature of the work of the Environment Court commented upon by the NZ Productivity Commission in its 2012/2013 reports. The Commission recorded that it accepted examples provided to it by the PEJ during the submission process, for instance concerning resolution of district plan review appeals in the Western Bay of Plenty District.

This successful pattern continued through 2014 and 2015.

Several sets of plan appeals were commenced in 2014 and 2015, and are currently being followed, with rapid success, in Hamilton City, Waipa District, Otorohanga District, South Waikato District, and Northland Region. It is considered that this is now a feature of the Court's work. There will always be instances where some

cases involve difficult technical or legal issues, but the Environment Court's robust case management system now moves these along to prompt resolution by hearing, (and sometimes settlement prior to a hearing being needed).

It should be recorded that there are cases where delays are requested by parties. Examples are given in another section of this Review that describes the use of the Hold Track.

In its 2013 Final Report the Productivity Commission expressed a view that it might be desirable to consider the feasibility of making the Environment Court's mediation capability available to support local authority plan making processes earlier. This could indeed be desirable, and in fact was used to some extent throughout 2015 in the important and urgent circumstances of the proposed Auckland Unitary Plan and the Christchurch Replacement District Plan.

While obviously desirable, there is an issue of resource. The Environment Court Commissioners constitute a small group of extremely experienced mediators and facilitators of expert witness conferencing. They do this in the context of being highly familiar with the process of resolving appeals, and they approach the task in a principled and skilled fashion, bringing appropriate robustness in order to quickly resolve matters of public interest. There is considerable time required for Commissioners to be trained in this work and gain experience. Hence they presently comprise a rather small pool of practitioners who can produce the good outcomes. Remembering that only about 1% of council decisions are appealed to the Environment Court, then to extend mediations and expert facilitations across all council regulatory hearing processes would require a massive increase in ADR activity beyond that presently undertaken in the Court.

It is considered by members of the Court that there is another benefit to be obtained from the skill brought by its members to these tasks. There have been some notable improvements in quality of instruments brought about as a result of appeal processes (in mediation, expert facilitation and hearing). One example was a Waikato Region plan change concerning the use of geothermal energy in the Taupo area. The document contained numerous drafting difficulties and was considered by many parties to be incapable of efficient application for future consenting purposes. A series of improvements made to the instrument during court processes resulted ultimately in an operative document of sufficient quality that, subsequently, numbers of applications have been processed with relative ease, short timeframes, and reduced cost.

In 2015 the Court commenced an exercise with the Resource Management Law Association of preparing a series of workshops to be held on the subject of plan drafting. While legislation is presently before Parliament to authorise the promulgation of templates for content, format and structure, there are, in the view of members of the Court, many aspects of plan and policy statement writing that could be significantly improved by study and implementation of best practice, just some of which include succinctness, clarity, legality, logical structure, consistency, and approachability. The Court is intent on assisting experienced practitioners in these "arts" to lead workshops that can unlock clear thinking and improvements in practice. This initiative is further discussed in the section of this Review concerning community involvement. While RMLA and the Court had hoped to conduct the workshops in 2015, many practitioners have been somewhat overwhelmed by the Auckland and Christchurch plan hearing processes referred to above. In fairness to those practitioners, and in order to gain the benefit of their experiences, we have deferred the exercise until late 2016 after conclusion of the work of the Auckland and Christchurch hearing panels.

Finally on this topic, it is recorded that one possible factor in the lessening of numbers of plan appeals coming to the Court, might be the greater extent to which National Policy Statements and National Environment Standards have been promulgated by central government in recent years. It has been suggested in some local government quarters that it is inappropriate for "unelected" people, the members of the Court, to "alter" local government policy. We reject the criticism. The policy as first drafted by the council must be in accordance with the purpose and principles of the Act in Part 2, increasingly and more firmly guided by these National Policy Statements and Environmental Standards now being promulgated by Government. The work of the Court on appeal is equally defined and constrained. In any event the independent hearing commissioners on Council hearing panels are as "unelected" as members of the Environment Court.

Initiatives and innovations

Electronic developments

It is trite that we live in an electronic age. Also, that we find ourselves working with "the good and the bad". Unfortunately many platforms and systems assume vast proportions and come at great cost – and, some work and some don't. Many again however are in the "cheap, cheerful and effective" category, and it seems fair to observe that there is an increasing trend worldwide, in tight fiscal times, to explore the latter.

Commenced in recent years, and refined in 2015, the initiatives described below certainly come within the latter category, and have been in the main, Judge-led. We acknowledge the support received from the Special Jurisdictions arm of the Ministry of Justice, but otherwise have had our concerns that simple, cheap solutions that make our work more efficient and cost-effective, take much time and hard work to achieve.

iPads

In the last Annual Review (for the 2014 calendar year), we reported on trials of the use of iPads. Reference may be made to that Review for detail. Surveys of members of the Court and the parties indicated such success that all members of the Court and their Hearing Managers have now been similarly equipped and are regularly conducting hearings using the devices.

Initial difficulties with the uploading of materials and backing up of the iPads were overcome in 2014 and 2015.

Through the Court's Judicial Resources Manager, the Court has undertaken some simple training in the use of iPads and GoodReader for outside participants. The equipment is found by all to be refreshingly intuitive.

There remains an issue around synchronisation and integration with Ministry of Justice systems, including files and folders maintained by judicial officers. We believe this is being worked on in another jurisdiction, and hope to see the fruits of that pilot soon. It is thought that when the time comes for a second generation of tablets to be issued, the most recent iteration of Microsoft Surface tablets might provide some answers.

Wi-Fi

The Court succeeded in 2014/15 in having Wi-Fi services installed in all 3 registries and most judicial and commissioner chambers areas. This has proved most helpful in the uploading of materials to the iPads, for backing them up, and generally for connectivity of mobile devices in our work.

Website

The Environment Court website has a somewhat old-fashioned look and feel (currently being upgraded), but has nevertheless recently been adapted to allow the exchange of evidence amongst parties and to assist lodgement in Court, all to lessen the need to create and manage very large volumes of paper.

In 2014/15 this process was adopted for some of the large direct referral cases discussed elsewhere in this Review, especially the Waiheke Marina case involving 310 parties. The use of the website was expanded in this instance beyond the filing and service of materials, and was used for many other types of communication as well. For instance, Minutes issued during the course of case management, and Memoranda received from parties, were routinely lodged and exchanged electronically.

The Court has been conscious that not all parties are likely to have access to computers, and/or be computer-literate. In the Waiheke Marina case, this disadvantage for a small number of parties was overcome by persuading the Auckland Council to install a computer terminal at its Waiheke Island service centre, and arrange for a member of its staff to assist with its use when called upon.

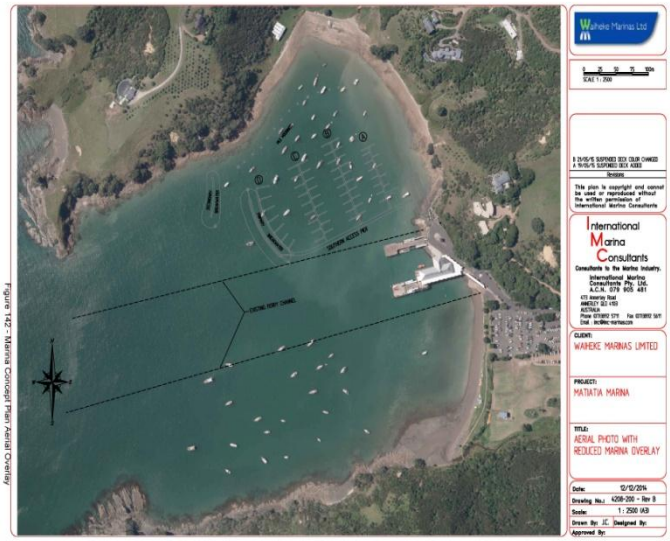


Figure 142 – Marina Concept Plan Aerial Overlay

The RMA gives Environment Judges considerable powers and discretions about process, for instance in relation to such things as waivers. The Waiheke case was accordingly the subject of judicial directions based on these discretions. With the numbers of people involved, the savings in generation of paper can immediately be understood. One need only imagine in contrast a registry process of preparing,

copying, stuffing envelopes and mailing a five page Minute to 310 parties. Then extrapolate to the lodgement and service amongst 310 parties of many lever arch folders-worth of evidence!

Another recent initiative in 2014/15 has been to make greater use of the Court's website to disseminate decisions of the Court that are of greater than normal public interest.

Electronic filing pilot?

In earlier years the Environment Court was twice selected by New Zealand Courts' Heads of Bench and the Ministry of Justice to trial electronic filing systems on behalf of all Civil Courts and Tribunals. Unfortunately, the projects were cancelled for various reasons. The basis of selection of our Court for the project was in part its relatively small size, its agility, and ability to use judicial discretions to govern process. It was also thought helpful that the Court maintains a clear geographical "docket" system for case management, allowing consistency of judicial oversight.

The later of the 2 projects was commenced after we had been introduced to some "cheap and cheerful" examples of the art in Australia. In particular, the Supreme Court of Victoria Australia was running an inexpensive pilot to manage cases bearing some similarity with those of the New Zealand Environment Court (in the Victorian Court's Technology, Engineering and Construction List). In 2014 that pilot, having been very successful, became business-as-usual, and in 2015 was rolled out to a number of Lists (the ultimate intention apparently being, to all of them). The system is now described on the website of that Court as its "electronic case management system for use in all new judge-managed proceedings' in the Commercial, TEC, IP, Corporations and Employment and Industrial Lists". It is stated to be hosted in a secure Cloud-based environment which allows parties to electronically file and manage documents related to their proceeding from any location with access to the internet, 365 days a year. Access to case files is securely limited to appropriate parties. Practitioners can electronically lodge, process and retrieve court documents relating to civil cases through the Court's electronic lodgement service, at a fee.

Unfortunately in our view, the apparent intentions to have the Environment Court commence a similar pilot on behalf of Civil Courts and Tribunals did not carry through. Existing processes in all Court registries are apparently now being studied, and new thinking is apparently being applied to possible electronic systems for the future. These approaches are likely to have a long lead-time, so the Environment

Court will probably need to continue its inexpensive interactive website activities for some years to come.

The ultimate goal

Visitors to the Registries and Judges' chambers are invariably flabbergasted at the quantities of paper that confront them in our premises. There seems to be no disagreement that it is important to wage war on paper, and the visitors take no persuading that there are significant efficiencies to be gained from the use of electronic systems, for instance the saving of many days of hearing time, the ability to avoid lugging mountains of paper around the country, and the copying and transmitting of those mountains of paper that has traditionally taken place.

The ultimate goal in the view of members of this Court is to get the various electronic systems (iPads, website, and e-filing) to "talk to each other" as an integrated system in the quest to become as paperless as possible. Security issues are steadily being overcome – for instance "Box" or other secure FTP (file transfer protocol) technology could be applied across all parts of such system, and/or other security measures taken.

Nevertheless, in the meantime the Environment Court, as a Court of Record, must maintain at least one paper trail. Under present legislation, a move to a paperless environment would require permission from the Chief Archivist under the Public

Records Act 2005. Also as of 2014 and continuing as of now, there is a Judicature Modernisation Bill before Parliament. The Bill in its current form contains a number of provisions which could be helpful in bringing New Zealand Courts more easily into the electronic age.

New information placed on the Court's website

During 2015 we continued to make use of the Environment Court's website to publish some of the speeches and papers presented by members of the Court, copies of Court decisions of particular public interest, pages relating to large direct referral cases (discussed previously in this Review), the Court's Practice Note, and other items of interest. The Environment Court's website can be accessed at http://www.justice.govt.nz/courts/environment-court.

Christchurch premises

The stand alone premises of the Environment Court in central Christchurch were badly damaged in the February 2011 earthquake, and subsequently demolished. Since that time, the Court has variously operated from temporary premises, commercial premises, and more recently the main courthouse where accommodation is tight. There remains difficulty in securing courtrooms for our hearings, these almost invariably being conducted off site in commercial premises.

A new Court and Justice Precinct is being constructed, to be occupied in early 2017. There is some anxiety that while the building will be new, comfortable and stylish, it will essentially be fully occupied on opening day. In particular there will be no greater number of courtrooms than there are presently located in the city. Reliance will apparently be placed on strong management of courtroom scheduling. The needs of Specialist Courts to conduct large complex multi-party cases can severely test such regimes, particularly given the need to roster and schedule their cases between 3 to 6 months in advance, and the priority traditionally accorded to criminal cases due to issues about impacts on victims and delays for incarcerated persons (with which we do not take issue).

Community involvement and Education initiatives

Community involvement

The Judges and Commissioners are regularly active in presenting seminars, conference papers and the like to professional and community groups throughout the

country. They were active again in 2015, presenting to groups of law students, the NZ Planning Institute, the Resource Management Law Association annual conference and seminars, Law Society groups, and other gatherings. Some Judges adjudicated at moots of young law practitioners and student bodies.

Overseas delegations

The Court is increasingly receiving delegations from Courts and justice officials in other countries. Some groups are from existing Environment Courts or Tribunals ("ECTs"), some from general courts conducting or contemplating conducting environment cases, and others again represent government agencies contemplating establishing one or other of those models or something similar.

Some overseas Courts have issued invitations to members of this Court to come to their country and address them for similar purposes.

Guizhou Province Courts, China

In August 2015 we received a delegation from Judges and officials of the Guizhou Province High People's Court, and the Guizhou Province Liupanshua Intermediate People's Court. This group was following up on information that our Principal Environment Judge had delivered to them at a conference of judges and officials in Guizhou province, China, two years earlier. Guizhou province has been establishing Environment Courts (one of them was said to be the first in China). On this occasion they were seeking particular information, and asking pertinent and searching questions.

Wuhan University Study Tour

We received a delegation of senior academics and students from Wuhan University, China, also in August. This group has been instrumental in assisting Judges and officials in various provinces in China in establishing ECTs, and setting up processes. This group was also seeking very specific information, and members of our Court offered detailed presentations concerning the work of expert witnesses, civil remedies, the interface between public and private interests in cases, remedies for environmental damage, and judicial powers.

Malaysian judiciary

We received an invitation asking our PEJ to attend a conference of the Malaysian judiciary on environmental justice in that country, in October. The event was attended by Malaysian Superior Court and Environmental Court judges, prosecutors, enforcement officers from various environmental agencies, and representatives from various NGOs, as an initiative to strengthen capacity building for protection of the environment. Significant environmental justice initiatives were anticipated.

Unfortunately no member of our Court was able to attend. We provided the conference organisers with detailed written materials about our Court.

Abu Dhabi, United Arab Emirates

In November we hosted a delegation of judges, lawyers and officials from Abu Dhabi.

After considerable research into a number of ECTs worldwide, the officials had selected the Environment Court of New Zealand for further study and a visit.

The delegation spent several days in New Zealand meeting with Justice and Environment officials, and members of the Court. We were pleased to hear from members of the delegation at the conclusion of their visit, and subsequently, that they valued the information we were able to impart. We have naturally indicated a willingness to provide whatever further assistance they might desire.

Preparation for IUCNAEL Colloquium 2016 "The Environment in Court"

In 2015 we became aware of the impending 2016 Annual Colloquium of the above large international environmental NGO. The colloquium will examine procedural and substantive aspects of environmental adjudication in national, regional and international courts and tribunals. The PEJ lodged an abstract of a paper which has been accepted, and he will deliver a paper at this event in Oslo, Norway, in June 2016. He also persuaded the conference organisers to allow the holding of a forum of judges and court administrators during the conference, and preparations have for some time been under way led by Environment Court personnel and by academic staff of the University of Otago. It is intended that the initiative lead to international research into the workings and jurisdictions of ECTs, and an electronic portal for studies and collaboration amongst them.

Senior academics in the USA with whom we are working, estimate that presently there are about 1200 ECTs world-wide, up from about 350 in 2009. These writers, Emeritus Professor George (Rock) Pring and Kitty Pring from Colorado, are due to publish a new major work on ECTs throughout the world shortly, to which we have made a contribution and assisted in peer review during late 2015 and early 2016. The book will coincidentally be launched at about the time of the Oslo conference. The PEJ has invited Rock and Kitty Pring to be key note speakers at the Oslo forum.

Conferences and other community activities

Joint conference of Māori Land Court and Environment Court

In May the Māori Land Court and Environment Court held a joint 2-day conference, at which papers were presented by members of both benches, and by senior and respected academics and members of relevant professions. The conference was opened with a paper presented by the Chief Justice, the Honourable Dame Sian Elias. The several papers concerned a great many topics of common interest to both benches. This Court values its links with the Māori Land Court, two of whose members hold warrants as Alternate Environment Judges to assist by sitting with us in cases involving complex Māori cultural issues.

The Chief Justice gently questioned the claim in our 2014 Annual Review, that while ADR as provided for in s 268 RMA has a voluntary flavour about it, litigation in the Environment Court is not just about resolving private disputes, but involves significant public interest issues as well, as a result of which the Court tends to be quite directory in sending cases to mediation. One of the concerns of the Chief Justice was that Courts should operate to hear and determine disputes, and create case law (jurisprudence) to guide future disputes. It is our view that under current legislation the Court will continue to issue large numbers of decisions each year, and we feel confident that the jurisprudence will thereby be maintained. We nevertheless respectfully hold to the view that the public interest element in the cases is important, and that ADR processes (including mediation and judicial settlement conference work) should, at the very least, be strongly encouraged. There is no absolute

compulsion to mediate in case management directions issued by the Judges, but parties are strongly encouraged to do so. It is well known that the cost of resolving litigation by such processes is usually considerably less than proceeding to hearing. We do, however, recognise that some disputes may not be suited to mediation, and the Waiheke marina case discussed elsewhere in this Review, proved to be a case in point.

AMINZ Annual Conference

In July the Arbitrators and Mediators Institute of New Zealand (AMINZ) held its annual conference in Wellington. The PEJ and Environment Commissioner Marlene Oliver presented papers at the plenary session of the conference, describing and explaining the many kinds of alternative dispute resolution employed in litigation before the Environment Court.

University lectures

Several Judges gave lectures to classes at universities around the country. For instance, Judge Harland gave 2 lectures to Waikato University Environmental Planning students, and the PEJ provided a lecture to undergraduate students at Auckland University Law School.

Environmental Legal Assistance Fund Annual Workshop

In July the PEJ addressed the members of the Environmental Legal Assistance Fund and officials from the Ministry for the Environment. The presentation focussed particularly on the use of alternative dispute resolution to resolve cases before the Environment Court, the contents of the new 2014 Practice Note, the nature of direct referral cases, the use of “process advisors to submitters” in large cases, promptness of process, and appreciation to members of the Fund for rapid processing of applications made to it by community groups for participation in cases before the Environment Court. The chairman of the Fund, Royden Somerville QC, in turn expressed his gratitude to the Court for updating it on the work of the Court to assist it with an understanding of the needs of the Court’s processes, and the pressures on community groups seeking legal aid assistance.

AIJA conference "Justice without Barriers", Brisbane

In May the PEJ addressed a conference of the Australasian Institute of Judicial Administration Inc. The conference was called "*Justice without Barriers: Technology for Greater Access to Justice*". It was held in Brisbane, Queensland. Our address concerned recent electronic initiatives in the New Zealand Environment Court, generally along the lines described elsewhere in this Review.

Employers and Manufacturers Association (Northern)

In August the PEJ addressed the Executive committee of EMA (Northern) concerning access to justice, and efficiency in today's operation of the Environment Court. The paper described the various kinds of case resolution, promptness of process, the contents of the new Practice Note, case management techniques, alternative dispute resolution, and methods employed in adjudication by hearing.

Consultation with Court users

Members of the Court meet and communicate regularly with professional bodies such as the Resource Management Law Association Inc, and the Environment Law committees of the NZ Law Society and the Auckland District Law Society Inc. The PEJ regularly conducts open discussions with members of the RMLA at the conclusion of regional seminars and roadshows, for the purpose of gaining input and ideas for improving the efficiency and timeliness of Environment Court processes. He also consults quite widely and regularly with senior members of professions engaged before the Court, and retired members of the Court, about such matters.

As mentioned in the section of this Review about key performance measures, the PEJ and the Registrar are contemplating designing a survey of regular Court users to gain a better idea than is currently available, of attitudes to current Court practices including timeliness, and suggestions for improvement in processes.

Other events

A formal sitting of the Court occurred towards the end of 2015 to mark the retirement from full time university teaching after 47 years, of Associate Professor Kenneth Palmer of the Auckland University Law School. We were joined by Judges of the Court of Appeal, High Court and Employment Court, and our large Auckland

courtroom was filled to overflowing by professional colleagues and friends of the Professor.

During 2015 we ran an initiative, led by Retired Judge Gordon Whiting, to promote consistency in courtroom hearing work by members of the Court. It had been recognised that while Commissioners move amongst Divisions and have the benefit of experiencing the manner of conducting hearings by all judicial officers, it is rare for the Judges to work together in that way; rather, they tend to work in some isolation. Judge Whiting observed proceedings around the country, and provided the benefit of his observations and his own considerable experience to the Judges. The exercise remains ongoing.

Education

The Court has an Education Committee comprising Judges, Commissioners, and the National Manager. Its purpose is to oversee the education needs of all members of the Court and provide a prime point of contact with the Ministry for the gaining of resources for the purpose.

In 2015 the committee undertook a number of activities, in particular coordinating seminars on topics of particular relevance to the work of the Court. It continued to work with the PEJ on electronic initiatives to assist education, including making available to a greater extent on the Court's website, decisions of the Court of public interest.

Members of the Court

TITLE	NAME	APPOINTED	DOMICILE
Environment Judge Acting Principal Environment Judge Principal Environment Judge	L J Newhook	August 2001 August 2011 February 2014	Auckland
Environment Judges:	JR Jackson	September 1996	Christchurch
	JA Smith	May 2000	Auckland
	CJ Thompson	August 2003	Wellington
	BP Dwyer	September 2006	Wellington
	JE Borthwick	November 2008	Christchurch
	M Harland	September 2009	Auckland
	JJM Hassan	January 2014	Christchurch
	DA Kirkpatrick	February 2014	Auckland
Alternate Environment Judges:	C J Doherty	August 2008	Christchurch
	C L Fox	July 2009	Gisborne
	S R Clark	July 2009	Hamilton
	J M Kelly	July 2009	Wellington
	P R Kellar	July 2009	Dunedin
	R P Wolff	February 2011	Hamilton
	G A Rea	February 2011	Napier
	G Davis	April 2011	Whangarei

Environment Commissioners	APPOINTED	RE-APPOINTED	DOMICILE
Mr JR Mills	July 1999	March 2016	Wellington
Mr WR Howie	June 2001	June 2013	Wellington
Mr RM Dunlop	March 2003	June 2013	Auckland
Mr K Prime	March 2003	June 2013	Bay of Islands
Ms MP Oliver	April 2004	March 2009	Auckland
Ms KA Edmonds	January 2005	May 2015	Wellington
Dr AJ Sutherland	January 2005	January 2010	Christchurch
Mr D Bunting	August 2007	August 2012	Wellington
Ms A Leijnen	January 2011		Auckland
Mr IM Buchanan	January 2013		Wellington
Ms E von Dadelszen	January 2013		Napier
Mr J Hodges	June 2013		Auckland
Ms C (K) J Wilkinson	May 2015		Christchurch
Deputy Environment Commissioners:			
Mr OA Borlase	March 2003	August 2011	Dunedin
Mr D Kernohan	August 2007	August 2012	Wellington
Ms C Blom	November 2010		Auckland
Mr J Illingsworth	June 2013		Cambridge
Dr B Maunder	May 2013		Auckland

Appointments, retirements, and interim status

Commissioners M Oliver and A Sutherland left office at the end of 2015.

On 2 May 2015 Commissioner K Edmonds was reappointed for a term of 5 years.

In May 2015 Governor-General appointed the Honourable K Wilkinson as a Commissioner for a term of 5years.

One Deputy Commissioner, Ms C Blom, came to the end of her five-year appointment term during the year. She continued in office under section 254(4) RMA as at the end of 2015 pending either re-appointment, or appointment of a successor pursuant to processes under subsections (1) and (2) of section 254.

Two of the Alternate Environment Judges are Judges of the Maori Land Court – Deputy Chief Judge C L Fox who is based in Wellington and Gisborne, and Judge S R Clark who is based in Hamilton. They were appointed under sections 249 and 250 RMA in mid 2009, and sit as members of our Court to provide their specialist knowledge and cultural awareness in cases which have a high focus on matters of particular concern to Maori. Notably, Principles found in Part 2 of the Act include a requirement that decision-makers (including the Court) take into account the principles of the Treaty of Waitangi, and to recognise and provide for, as a matter of national importance…*the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;* also to have particular regard to…Kaitiakitanga. The contribution of both Alternate Judges in our hearing work is much appreciated and valued.

Six of the eight Alternate Environment Judges are fulltime District Court judges who at varying times received the Alternate Environment Judge Warrants in order to assist with resource management prosecution work in the District Court. Upon the appointment in early 2014 of two new Environment Judges, the Principal Environment Judge and the Chief District Court Judge signed a Memorandum of Understanding that Environment Judges would, as a matter of priority, hear and determine the prosecution and sentencing matters under the RMA in the District Court, and that the Alternate Environment Judges would be called upon only in cases of urgent need. The memorandum remains current.

APPENDIX 1

The place of the Environment Court in the New Zealand Court system

The Court is a standalone specialist Court which has all the powers inherent in a Court of Record. The Court is not a division of the District Court, but the Environment Judges are required also to hold warrants as District Court Judges. They exercise the latter warrant when sitting, as provided by the Act, in the District Court, to hear prosecutions under the RMA.

Environment Court decisions are subject to appeal in the High Court on points of law only; that is, there is no right of appeal on findings or assessments of factual issues and findings on matters of expert (eg scientific) opinion. There are provisions in the Act for appeals above the High Court, to the Court of Appeal and ultimately the Supreme Court, all subject to leave being granted. All of this comprises a significant number of layers of appeal, albeit limited in substance and subject to leave above the High Court.

The place of the Environment Court in the Resource Management system

Most cases filed in the Environment Court are **appeals** against decisions of councils. In limited numbers of cases there are requests for interpretation of the RMA or national, regional or local plans. The Court has wide powers in all these respects.

The Environment Court also has enforcement powers.

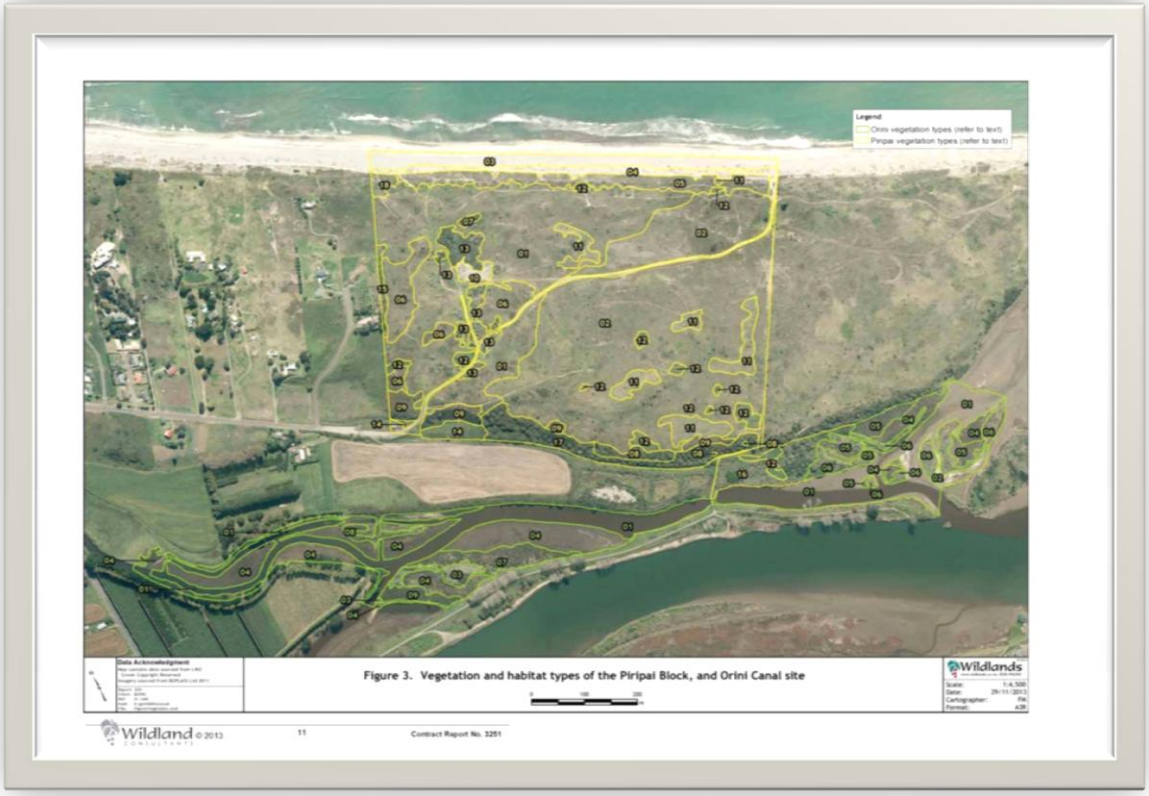
The Court's jurisdiction can be broadly divided into the following categories:

- Appeals from the decisions of councils in respect of resource consents and designations;
- Appeals concerning the content of regional and district planning instruments, including Regional Policy Statements;
- Appeals against the issue by councils of Abatement Notices;
- Applications for Enforcement Orders;
- Applications for Declarations about the application and interpretation of resource management law, the functions, powers, rights, and duties of parties, and the legality of acts or omissions.

In exercising most of its functions, the Court is a judicial body exercising appellate jurisdiction over decisions of regional and district councils. It is not a planning authority.

Besides the Resource Management Act, the Environment Court has jurisdiction under some other Acts, for instance the Biosecurity Act 1993, the Crown Minerals Act 1991, the Electricity Act 1992, the Forests Act 1949, the Heritage New Zealand Pouhere Taonga Act 2014, the Local Government Act 1974, the Public Works Act 1981, the Government Roading Powers Act 1989, the Summit Road (Canterbury) Protection Act 2001, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, the Local Government (Auckland Transitional Provisions) Act 2010, the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, the Affordable Housing: Enabling Territorial Authorities Act 2008, the Housing Accords and Special Housing Areas Act 2013, and the Land Transport Management Act 2003.

These pieces of legislation stand separate from the RMA, but proceedings under them will sometimes overlap with resource management appeals. One example is the Heritage New Zealand Pouhere Taonga Act 2014.



APPENDIX 2

Significant Decisions of 2015

Environment Court Decisions

Appealing Wanaka Inc v Queenstown Lakes District Council [2015] NZEnvC 139

Judge Jackson, Commissioner Mills and Leijnen

This interim decision involved Plan Change 45 to the Queenstown Lakes District Plan. Plan Change 45 was a private plan change that proposed the residential development of a large area between Wanaka and the Clutha River.

Part of the purpose of the Plan Change was to provide for residential development with a range of medium to low density and larger lots in close proximity to the wider Wanaka amenities. Other features of the Plan Change put forward were that 20 sections would be offered in the first development phase, at a cost of no more than $160,000 each, to the Queenstown Community Trust as affordable housing.

The question before the Court was to decide whether to confirm the Plan Change and rezone the land for both residential development and protection of special areas of landscape and ecological value or to cancel the decision of the Council.

The Court concluded that, provided that some specified minor changes were made, the Plan Change was the most appropriate method of achieving the relevant objectives and policies of the plan and that it would achieve the integrated management of the resources of Wanaka.

In considering the Plan Change the Court considered the impact of the decision *Environmental Defence Society Inc v New Zealand King Salmon Co Limited* [2014] 1 NZLR 593, (2014) 17 ELRNZ.

The Court considered that before *King Salmon* territorial authorities had the onerous and wide ranging task of traversing all the higher order objectives and policies in the hierarchy of superior documents that sit above the district plan, including the principles in Part 2 of the Act under ss 74 and 75 of the Act.

The Court discussed the effect of *King Salmon* and said that if higher order documents in the statutory hierarchy existed when the plan was prepared then each of those statutory documents is particularised in the lower documents (such as the Queenstown Lakes District Plan). E.g. There is a rebuttable presumption that each higher document has been given effect to or been had regard to. On this basis, the Court said that there is no necessity to refer back to any higher document when determining a plan change provided that the plan is sufficiently certain, and neither incomplete or invalid.

The Court summarised the method of applying the list of documents referred to in ss 75 and 76 of the Act since *King Salmon* as follows:

First, if there are certain documents in the hierarchy of statutory documents with the first being Part 2 of the Act and the last being the operative district plan which is proposed to be changed – then the effect of *King Salmon* is that the only principles, objectives and policies which normally have to be considered on a plan change are the relevant higher order objectives and policies in the plan.

Secondly, only if there is some uncertainty, incompleteness or illegality in the objectives and policies of the applicable document does the next higher relevant document have to be considered (and so on up the chain if necessary).

Thirdly, if, since a district plan became operative, a new statutory document in any of the lists identified in s 74(2) and (2A) and s 75(3) and (4) has come into force, that must also be considered under the applicable test.

While the simplicity of this process may sometimes be more theoretical than real, since in practice plans may be uncertain, incomplete or even partly invalid, it is easier than the exhaustive and repetitive process followed before the Supreme Court decided *King Salmon*.

Bellfield Land Company Ltd v Canterbury Regional Council [2015] NZEnvC 88

Judge Borthwick

The parties filed consent documentation in relation to this matter under s 279 of the Act. The consents sought were to divert, take, use and store water for irrigation of crops.

When reading the consent documentation the Court was troubled by the apparent increase in nitrogen and phosphorus in the consent conditions (as proposed to be amended by the parties).

The conditions in question concerned the use of the Overseer model. During mediation, the parties agreed to change the purpose for which the Overseer model was used and amend the conditions accordingly. However, the Court considered that, contrary to good practice when filing consent documentation, the parties had not alerted the Court to the reasons for the change.

The Court considered its approach to consent orders, noting cl 4.12(b) of the Environment Court of New Zealand Practice Note 2014 which says a Judge may not be able to approve the terms sought by the parties if they meet any "legitimate concern". In this case the Court stated that a "legitimate concern" included the requirement that the conditions on a resource consent be clear, certain and enforceable, written in plain English and capable of being understood by the consent holder.

Based on the further information provided by the parties and an amendment to the penultimate advisory note, the Court was satisfied that the amended consent conditions were certain and enforceable. Accordingly, the Court ordered that the appeal was allowed by consent subject to the conditions.

Horowhenua District Council [2015] NZEnvC 45
Judge Dwyer, Commissioners Mills and Hodges

The Shannon Wastewater Treatment Plant (SWTP) serves the communities of Shannon and Mangaore. It first became operational in the early 1970s, with plant improvements completed in 2009. The wastewater is discharged to Otauru Stream which flows to the Mangaore Stream and a further 1 km downstream into the Manawatu River. The applications seek to enable ongoing operation of the discharge systems servicing the SWTP.

The Court addressed issues which included the irrigation of treated wastewater, effects of treated wastewater discharges on the environment, the practicability of irrigating all treated wastewater to land, the management of storage of treated wastewater and of infiltration and inflow to sewers and the management of effects on cultural values.

The Court was satisfied that the adverse effects of contaminants in the irrigated wastewater on soil health under the terms of the proposal would be minimal. The system of disposal of treated wastewater to land for approximately 80 per cent of the time and discharge by way of pipe to the River at other times represented the best practicable solution to the management of discharges from the Plant and that effects on the environment would be no more than minor. The Court concluded that the irrigation of all wastewater to land would not meet the overall purpose of the Act and would not be in the best interests of the community.

Appropriate mechanisms were put in place to provide for the ongoing involvement of Tangata Whenua in monitoring the proposal and contribution to any future decision making. Accordingly, the Court was satisfied that the proposal achieved the purpose of the Act and that the consents should be granted.

Ngati Kahungunu Iwi Incorporated v Hawkes Bay Regional Council [2015] NZEnvC 50

Judge Thompson, Commissioners Leijnen and Prime

This appeal related to Proposed Change 5 ("PC5") to the Hawke's Bay Regional Resource Management Plan – Land Use and Freshwater Management ("the RRMP").

PC5 proposed to delete an objective requiring "no degradation" of existing water quality in aquifers in the Heretaunga Plains and Ruataniwha Plains aquifers" and replacing it with an objective which provided that the groundwater quality in such aquifers "is suitable for human consumption and irrigation without treatment".

The words "maintenance or enhancement of groundwater quality" in order for it to be suitable for human consumption and irrigation without treatment was also removed and replaced with a requirement to maintain the "overall quality" of freshwater within the region.

The appellant argued that the changes allowed for degradation of water quality, when the equivalent operative RPS provisions required maintenance. The Council argued that the operative wording was absolute, which was an impossible aim, and the time lag between cause and effect upon water in aquifers (known as "the load to come") meant it might not be possible to identify a particular cause of water degradation or predict its effects in the future.

The Court concluded that the approach of overall quality was fundamentally flawed and that drafting and/or interpreting PC5 objectives in that way could result in a more degraded and unacceptable water outcome. The Court shared the concerns held by Ngati Kahungunu that PC5 allowed for a lower water quality than that which could be measured now.

Regarding the load to come, the Court stated that lack of precise knowledge of the future effect of water degradation was no reason to refrain from taking steps to try to maintain, and indeed improve, the quality of water in any aquifer. The Court held that the decisions version of PC5 should be set aside, insofar as was relevant to the present appeal, and that the operative objectives be reinstated.

Kawerau Jet Services Holdings Ltd v Queenstown Lakes District Council
[2015] NZEnv 14
Judge Newhook, Commissioners Howie and Buchanan

Queenstown Water Taxis Limited (QWT) applied to the Queenstown Lakes District Council to vary existing consents to allow them to increase the maximum number of passengers and for further consent to operate additional runs further down the Shotover River. Council hearing commissioners had granted consent.

KJet was the sole present commercial jet boat operator on the river and raised a number of issues on appeal, the principal one being that safety on the river would be adversely affected if a greater number of boats were to be allowed.

First, the Court held that as KJet operated a number of commercial jet boats on the river at the present time they were to be considered as part of the existing environment for the present application.

KJet's consent history was then reviewed, and the Court concluded that some of KJet's present consents under which it carried out its operation had lapsed. KJet had a practice of assigning consents to boats on a trip by trip basis, the purpose of which was to demonstrate to the council that all consents were being exercised in the overall operation of multiple boats on the river. The Court found that KJet's rotational practice was a paper exercise only, introduced for no other purpose than to defeat the application of s 125, with no resource management purpose behind it. The Court found that three of KJet's consents had lapsed meaning it now held five consents, authorising 10 boats to use the river for one trip per hour, and only eight boats were allowed on the river at any one time. This was the receiving

environment against which any adverse effects of QWT's application were to be assessed.

Being satisfied that the QWT proposal would have only minor adverse safety effects and that any such could be satisfactorily mitigated, the Court refused the appeal and confirmed the consents. [The aspect of the decision concerning rotation of the several KJet consents, was subsequently upheld on appeal in the High Court].

Waiheke Marinas Ltd [2015] NZEnvC 66
Judge Newhook, Commissioners Howie and Leijnen

This interlocutory decision concerned changes foreshadowed to an application for consent for a marina that had been directly referred to the Court. At the end of the 3 week hearing Waiheke Marinas Limited (WML) sought leave to change the proposal that had been heard, removing the foreshore car park that had been the subject of extensive evidence.

Direction Matiatia Inc ("DMI") contended that the amended proposal was out of scope and beyond the jurisdiction of the Court to consider.

The Court found that the ambit of the change concerning the carpark was not fairly and reasonably within the scope of the application as originally brought and notified. There would be a change of scale, intensity and character. The Court held that the appropriate analysis was not of the holistic kind, as argued by WML, which would give credit for other activities removed and the potential reduction in effects of those. For example, the changed transportation effects might be of interest to some persons not already parties, who might not be the least bit interested in reduced effects of other kinds. WML was also not simply abandoning the carparking part of the proposal, it was tentatively seeking to move it to a site not yet fully determined - the effects of which were speculative.

The Court held that the proposal involving the deletion of the carpark and its prospective replacement at tentatively identified optional sites elsewhere was out of scope of the application as originally notified.

Waiheke Marinas Ltd [2015] NZEnvC 218
Judge Newhook, Commissioners Howie and Leijnen

An application for consents required to establish a marina at Matiatia, Waiheke Island was directly referred to the Environment Court. The proposal was amended

during the course of the appeal and an alternative proposal within the scope of the original application was subsequently put forward. The Court proceeded to consider this reduced proposal, which abandoned some of the consents originally sought and reduces the scale of the marina.

The Court discussed the positive and negative effects of the proposal including in relation to recreation and tourism, fauna, anti-fouling and traffic.

In regards to the efficient CMA use, the Court found that there was no guarantee that the existing swing moorings would move to the marina, the proposal therefore represented increased intensity rather than efficiency. The removal of the proposed boardwalk meant that provisions regarding public access in the CMA there not met.

The adverse landscape effects, particularly in reference to the breakwaters, were significant and unmitigated and therefore contrary to relevant provisions. The Court also found that this would detract from the future enhancement of the environment, as the vegetation in the area matures. The balance between encouraging location in areas of already compromised natural character, and protecting those remaining natural elements was not struck by the proposal.

The Court acknowledged that there were benefits for permanent berth holders of a small marina, an unknown number of visiting short term berth holders, those who would view the bay from the breakwater and potentially the Coastguard. However, the visual/landscape/natural characters elements were found to detract from these benefits.

Overall the Court found that the promotion of sustainable management of natural and physical resources would not be served by granting consent to the marina. Consent was declined.

Figure 176: Tie Point VP 5 High Tide

Federated Farmers of New Zealand v Northland Regional Council [2015] NZEnvC 89

Judge Newhook

This decision concerned the issue of whether there was power under the RMA for regional councils to make provision for control of use of genetically modified organisms ("GMOs") through regional policy statements and plans.

The Court stated that the question was a strictly legal one, involving statutory interpretation, and was whether the regulation of GMOs in New Zealand was undertaken solely under the *Hazardous Substances and New Organisms Act 1996* ("the HSNO") or whether some level of regulation might also be undertaken under the RMA.

Federated Farmers of New Zealand argued that the HSNO was a code for regulation and control of GMOs, citing s 142 of that Act and pointing to the lack of reference in the RMA to GMOs. The Court addressed the question as to whether the two pieces of legislation provided separate codes, or whether consideration of the control of GMOs could be addressed under the comprehensive RMA framework, which included the avoiding, remedying and mitigating of adverse effects on the environment.

The Court found no express exemption for consideration of control of new organisms under the RMA in either statute, which was one factor indicating that the HSNO was not an exclusive code for the regulatory control of GMOs. The Court also found that there was nothing in either Act to prevent the establishment of objectives, policies and methods to achieve integrated management of natural and physical resources in the broad terms directed by the RMA.

The Court held that there was power under the RMA for regional councils to make provision for control and use of GMOs through regional policy statements and plans.

Sustainable Matata Inc v Bay of Plenty Regional Council [2015] NZEnvC 90
Judge Smith, Judge Fox, Commissioners Hodges and Leijnen

This was the Court's decision on a proposal by Whakatane District Council for a Wastewater Treatment Plant on land east of Matata, known as Lot 6A, and a land application field ("the LAF") to be sited on a council reserve on a dune formation. The purpose of the applications was to provide a reticulated sewage and wastewater system for the township of Matata whose population of under 1,000 currently relied on septic tanks. There were three designations relating to Lot 6A for the Treatment Plant, a 20 m buffer and an access road. Bay of Plenty Regional Council issued consents relevant to the LAF including for discharge of wastewater to land, discharge of odour, land use consent for earthworks.

The Court found that selection by the council of Maori land, next to a Maori reserve, for the proposal brought with it the need for a robust and definable selection process, but there was no clear evidence as to any robust or clear consideration of alternative sites prior to the decision to notify the Treatment Plant activity on Lot 6A. Further, at the time of preparation of the application for consent, the council had acknowledged the potential for significant odour issues. The Court held that the review of alternatives was cursory and the site selection was arbitrary.

In the Court's view, if regard had been given to the principles of the Treaty and in particular the duty of active protection of taonga, a fuller process, including the identification of the history of the blocks, would have identified the cultural and Treaty constraints associated with Lot 6A.

The Court concluded that there was potential for odour to have significant impact on the beneficial owners and was not satisfied that the proposal met the Act's purpose. The unanimous conclusion was that the Lot 6A designation for the Treatment Plant should not be granted, and it followed that the related designations for the buffer area and access road served no purpose. The Court accepted that an appropriately designed, operated and sited wastewater treatment system, based on grinder pump reticulation and LAF, was an appropriate system for Matata. However, Lot 6A was not an appropriate site for the Treatment Plant and the LAF had potential indirect adverse effects which had to be addressed. Accordingly, all three designations for the Treatment Plant were cancelled.

Opoutere RRA v Waikato Regional Council [2015] NZEnvC 105
Judge Harland and Commissioners Borlase and Edmonds

Opoutere Ratepayers and Residents' Assn appealed against the decision by Waikato Regional Council relating to provisions in its proposed regional policy statement ("the PRPS") which concerned the area on the Coromandel Peninsula including the settlement of Opoutere, the Wharekawa Harbour and Opoutere Ocean Beach. The council accepted that Opoutere was an area of ecological significance ("AES") requiring protection, but contended that it was not required to be identified by mapping because criteria had been provided for the assessment of such areas in the PRPS and this, together with part of the area being mapped as an area of significant conservation value in the Waikato Regional Coastal Plan was enough to ensure the area's protection. The residents sought that, as well as being included in the PRPS as an AES, Opoutere should be included in the PRPS as an outstanding natural feature and landscape ("ONFL").

The two issues to be determined were whether Opoutere should be included as an AES by mapping and whether it should be included as an ONFL. The Court addressed the first issue, noting that there was no dispute among expert opinion that the specified area was an AES regarding its avian values. The Court found that the council's approach in the PRPS, using the stated criteria, was that the actual identification of an AES was a matter to be taken in the future, through regional and district plans. However, the Court found that Policy 7 of the NZCPS explicitly required councils to identify areas of the coastal environment where particular activities might be inappropriate. This needed to be identified in the PRPS and could not be left to the regional plan. The Court found that the PRPS was required to identify the site in order to give effect to Objective 1 and Policy 7 of the NZCPS, and it had not done so. The Court concluded that it would not be inefficient or ineffective to specifically identify the area as an AES.

Turning to address the second issue of whether Opoutere should be considered as an ONFL, the Court considered extensive expert landscape evidence regarding questions as to whether there was a distinction between outstanding natural features ("ONFs"), outstanding natural landscapes ("ONLs") and ONFLs. The Court examined the basis of the council's assessment of ONFLs in Table 12-2 of the PRPS, and found that the bar, set for the selection of an ONFL in the context of the whole Waikato region, was set very high by the council at a time well before the

finalisation of the NZCPS. The Court was satisfied that there was sufficient evidence to establish that the ocean beach and spit area were significant within the region's coastal environment and to include them in the PRPS as an ONFL would be an important step in recognising and providing for the protection required by s 6(e) of the RMA and Policy 15 of the NZCPS.

Strata Title Admin Body Corporate 176156 v Auckland Council [2015] NZEnvC 125

Judge Harland, Commissioner Hodges

Strata Title Admin Body Corporate 176156 ("the Body Corporate") appealed against the decision of Auckland Council to decline consent to use, for residential purposes, a building at 255 Browns Rd, Manurewa zoned Business 5 in the Auckland District Plan. Consent was granted in 1999 for use of the building as commercial offices. Despite this, most of the units in the building had been used as residences since the early 2000s and accordingly the consent sought was retrospective.

The Court considered the 1999 resource consent, noting that the residential use of the units was, and remained, clearly unlawful. The Court was satisfied that in broad terms the noise levels in the plan could be met in the units. However, the Court noted concerns regarding limited natural light and lack of landscaping, and found overall there was a low level of amenity provided by the units. Further, the Court was not satisfied that the proposal provided appropriately for pedestrian safety for residents of the units, and particularly for children. The Court was satisfied on the evidence that existing business operations expected to be able to continue to operate and extend their operations under the zone. However, the presence of legally authorised residential activities would affect the way a future consent authority would assess any future applications from local businesses for discretionary consent applications. The Court was satisfied there was a real likelihood of reverse sensitivity issues to arise if the proposal was approved, and nothing had been submitted to mitigate such adverse effects.

The Court was not satisfied that the purpose of the RMA would be met by granting consent to the proposal. The appeal was dismissed.

Tram Lease Ltd v Auckland Transport and Auckland Council [2015] NZEnvC 137

Judge Newhook, Commissioners Buchanan and Hodges

This decision concerned an appeal by Tram Lease Ltd ("TLL") against one of six notices of requirement (NOR6) for infrastructural works proposed in Auckland for a 3.4 km underground passenger railway line to connect Britomart Station and the North Auckland Line near Mt Eden Station. NOR6 was the part of the proposed works in the near vicinity of land owned by TLL in Mt Eden. The works required the construction of an access ramp into the TLL site.

The Court stated that the issues concerned effects prior to commencement of works, temporary effects during construction and permanent effects after completion of the works. The Court stated that during the course of the hearing it became clear that the latter two kinds of effect could be sufficiently mitigated by conditions of consent, and the dispute focused on effects prior to commencement of consent. The key issue was whether there were adverse effects so significant that the notice of requirement should be cancelled.

Concerning effects prior to the commencement of works, TLL's concerns came under the umbrella of "planning blight" in the depreciation of existing land value due to the existence of proposals for public works. The Court noted that effects on property values were not generally a relevant consideration and that diminution of property values will generally simply be found to be a measure of adverse effects on amenity values. The Court considered that Parliament had deliberately created a framework for compensation under the RMA and Public Works Act which contemplated that compensation was not available until a taking or works commenced.

The Court stated that negative sentiments expressed by valuation and real estate witnesses called by TLL and CJM Investments, were unduly pessimistic and speculative, and did not persuade the Court that it should cancel the requirement for designation.

The Court stated that its intention was to confirm the Requirement for Designation based on appropriately framed conditions of consent.

P&S Aitchison v Wellington City Council [2015] NZEnvC163
Judge Thompson, Commissioner von Dadelszen

P and S Aitchison applied for declarations relating to the decision of Wellington City Council that a children's play facility ("the structure") was a permitted activity under

the district plan, and that the council erred by issuing a certificate of compliance for the structure. The applicants owned and occupied an apartment at 2/11 Maida Vale Rd in Roseneath, Wellington. The apartment formerly enjoyed expansive harbour views. However, that view had been effectively obscured by the erection of the structure, attached to the concrete retaining wall between the site and the neighbouring property owned by Walmsley Enterprises Ltd ("WAEL") at 1 Carlton Gore Rd. The structure was 11 m long and over 4 m high.

The Court considered whether the correct point from which to make vertical measurement of the structure, in order to see if it complied with the plan specifications, was from the bottom of the retaining wall or the top. The term "ground level at the boundary" was considered and whether "on" the boundary had a different meaning from "at" the boundary for the purposes of the plan measurement of recession control lines, and whether the terms "front" and "top" were, in their plain and ordinary meaning, different. The Court found that the solution was to consider the purpose of the plan provisions. The Court noted that objective 4.2.4 was to ensure that all residential properties had access to reasonable levels of residential amenity and that policy 4.3.4.1 acknowledged that scale and placement of buildings could have significant impact on the amenity of neighbouring properties. The Court stated that amenity issues could be a strong influence in the exercise of interpreting an otherwise ambiguous or unclear set of words in the present context. The very purpose of recession planes, height-to-boundary ratios and similar planning devices was to protect amenity values, as defined in the RMA. The Court concluded that the contextual approach to interpretation pointed overwhelmingly to the bottom or toe of the retaining wall as being the proper point from which to make the vertical measurement.

The Court found that the council had misdirected itself on the definitions in question and made declarations that included that the construction of the structure was not a permitted activity under the plan and that the use of the land by WAEL for the structure contravened s 9 of the RMA.

Site 10 Redevelopment Ltd Partnership [2015] NZEnvC 173
Judge Thompson, Commissioners Edmonds and Howie

This was the Court's interim decision on applications for resource consents, which had been directly referred, for the redevelopment of a site in the North Kumutoto Precinct at North Queens Wharf in Wellington, occupying an area of 9,500 m^2. The proposal was for the construction by Site 10 Redevelopment Limited Partnership of a five-storey commercial building at Site 10 along the Waterloo Quay frontage and for the redevelopment of the open areas on the balance of the site by WCC. As consent authorities, both WCC and WRC favoured the proposal. Parties opposing the proposal did so on grounds including coastal and climate change issues, amenity issues, historic heritage issues, open space issues, traffic issues planning documents and consultation.

The Court did not find the potential suitability of the whole site as open space, or its coastal location, were reasons to decline the building proposal. The proposal was in an urban setting and the district plan provided for a building coverage on the Waterfront overall of 35 per cent. The proposal had many features that would make the area attractive for a range of recreational uses. Further, waterfront access around the building would be enhanced in comparison to that of the present use of Site 10. The Court found that the proposal would allow the public to continue to use and enjoy the coastal marine area and the adjoining open space.

It was also found that the new building would not significantly impact on views of adjacent properties and the building height was compliant with relevant district plan provisions and the building would not cause any significant shading effects. The Court acknowledged that alteration to the wind flow in Wellington caused by new buildings was an effect which required particular consideration, and accepted conditions of consent which dealt with the wind effects on an *Augier* basis.

The Court concluded that overall the proposal would contribute positively to the role of Lambton Harbour Area as the primary open space on the waterfront, in terms of the integrated design of the proposed building and associated open space.

The Court stated it was not prepared to approve the proposal without a mechanism in the consents to ensure that the building consent could not be implemented

separately from the consent for open space. The Court would require that the two consents were linked. Subject to this, and a final approval of the conditions, the Court considered that the consent should be granted.

District Court Decisions (RMA prosecutions and sentencing)

Dunedin City Council v Grant's Motel Ltd CRI-2013-012-001679
Judge Dwyer

A sentencing decision. Grant's Motel Ltd, the defendant, had illegally planted approximately 280,000 Douglas firs on its property, part of which was a visually prominent Landscape Conservation Area. This offending had significant effects on natural landform and natural plant species and created a high risk of wilding pine spread. The offending was highly deliberate. Starting point $100,000 set.

Remedial actions were undertaken but were not done to an appropriate standard. Given this, the Court did not make any reduction for cost of remedial work already undertaken.

The defendant agreed to the making of an enforcement order directing the removal of the Douglas Fir at an estimated cost of $135,000, with additional remediation cost, which were recognised as representing remorse and cooperation. A deduction of 20% therefore allowed. Prompt guilty plea allowed a further reduction. Fine set at $60,000.

West Coast Regional Council v Rookies Mining Ltd CRI-2014-086-000009
Judge Dwyer

A sentencing decision. Rookies Mining Ltd, the defendant, allowed acid mine drainage and waste rock seepage containing AMD to be discharged to Rudolph Creek, which went from being a healthy stream, to very degraded stream with negligible macro-invertebrate life. The discharge had serious ongoing effects, being the result of the mine overburden left uncovered or inadequately covered. The defendant was conducting a commercial mining operation and the need for

adequate covering of overburden was well known to it. It acknowledged leaving the area uncovered/ inadequately covered, notwithstanding proposals to cover featuring in its own management plan.

The defendant displayed carelessness in its failure to identify readily apparent visual presence of AMD and to accurately identify an appropriate monitoring point to take pH readings in the creek. Belated remediation and cooperation along with an early guilty plea saw a starting point of $80,000 reduced to a fine of $57,600.

Manawatu-Wanganui Regional Council v Ruapehu Alpine Lifts Ltd CRI-2014-067-000070

Judge Dwyer

A sentencing decision. Ruapehu Alpine Lifts Ltd operated a diesel storage and reticulation system. A hose became detached, spilling approximately 19,000 litres of diesel into the environment.

RMA sentencing approach set out: assess starting points for each charge, apply mitigating and aggravating to each and then calculate the end penalty, having regard to totality principle. The Judge noted that there were critical deficiencies in the system, namely the absence of pressure relief valves and use of non-industry approved hose clamps. Environment affected was Tongariro National Park which is a cultural and natural world heritage site, and of immense significance to Maori and to New Zealanders generally.

The damage to that environment's water system was significant, diesel entered the water supply for Raetihi and the water was cut off for 11 days, with drinking water being unavailable for 20 days. The spill went unreported for 5 days; people drank the contaminated water and it was complaints about this that led to investigation by council. Accommodation and food providers had to close and turn away bookings, community organisations carried costs of setup of community facilities.

The response to the original spill was totally inadequate. Mitigating factors included assistance with clean up efforts, co-operation and an early guilty plea. Starting points for RMA offending was $375,000, with a final fine set of $240,000. Charges were also laid and convictions entered under other legislation including Work Safe.

Northland Regional Council v Bird CRI-2012-029-459

Judge Thompson

Sentencing after sentencing indication and guilty pleas. Bird and Beckham, along with their companies were charged with excavation, vegetation clearance and soil disturbance, contrary to regional plan. The offending was characterised as both long term and deliberate. The poor financial positions of companies were considered when setting a starting point and considering sentencing options. Fines of $3215 imposed on each charge ($50,000 global per company). Bird and Beckham both sentenced to community detention for three months, curfew from 8pm to 6am Monday to Sunday inclusive and to 200 hours community work each.