



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2019

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

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INTRODUCTION

The Honourable Minister for Courts

Minister,

I have the honour to forward in terms of s.264 (1) of the Resource Management Act 1991, my report on the administration, workload and resources of the Environment Court, for the 12 months ended 30 June 2019.

Yours faithfully,

A handwritten signature in blue ink, consisting of a large, stylized 'H' followed by a cursive 'J' and a trailing flourish.

Harry Johnson,
Registrar
Environment Court.

1.0 Profile of the Environment Court

1.1 Members of the Court

Title	Appointed	Residence
Principal Environment L J Newhook	Feb 2014	Auckland
Environment Judges		
Judge J R Jackson	Sept 1996	Christchurch
Judge J A Smith	May 2000	Auckland
Judge B P Dwyer	Sept 2006	Wellington
Judge J E Borthwick	Nov 2008	Christchurch
Judge M Harland	Sept 2009	Auckland
Judge J Hassan	Nov 2013	Christchurch
Judge D A Kirkpatrick	Dec 2013	Auckland
Judge M Dickey	Nov 2018	Auckland
Alternate Environment Judges		
Judge C Doherty	Aug 2008	Christchurch
Judge C Fox	Sept 2009	Gisborne
Judge S Clark	July 2009	Hamilton
Judge J Kelly	Sept 2009	Christchurch
Judge P Kellar	Sept 2009	Dunedin
Judge G Rea	Feb 2011	Napier
Judge G Davis	April 2011	Whangarei
Judge S O'Driscoll	May 2013	Christchurch
Judge M Doogan	Oct 2018	Wellington
Judge L Harvey	Oct 2018	Rotorua
Judge C Thompson	Oct 2018	Wellington

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

1.2 Judicial Resources

Environment Judges

Environment Judge Craig Thompson retired from the Court in October 2018. Judge Thompson was subsequently appointed as an Alternate Environment Judge for a period of two years. Environment Judge Melinda Dickey was appointed to the Court in November 2018.

Environment Commissioners

In April 2019, James Baines, Dr Mark Mabin and Andrew Gysberts joined the Court as Commissioners for 5-year terms.

1.3 The Registry

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

The Registrar and Deputy Registrars exercise quasi-judicial powers such as the consideration of certain waiver applications and, where directed to do so by an Environment Judge, undertake acts preliminary or incidental to matters before the court.

The Court maintains registries in Auckland, Wellington and Christchurch. Each registry is led by a Service Manager (each of whom are Deputy Registrars and have all the powers, functions and duties of the Registrar of the Environment Court). Each registry provides client services and administrative support through case and hearing managers together with legal and research support to resident judges and commissioners to assist them in hearing and determining cases.

The Court's Judicial Resources Manager co-ordinates the court's sitting programme. This follows directions from the Principal Environment Judge who, pursuant to s 251(2) of the Resource Management Act 1991 (RMA), is responsible for ensuring the orderly and expeditious discharge of the business of the court.

1.4 The Court's Jurisdiction

The Environment Court is a specialist court of record established under section 247 of the RMA. It's the primary environmental adjudicative body in New Zealand. It has jurisdiction over environmental and resource management matters. It can be characterised as follows:

- a presiding Judge and two Environment Commissioners sit together to hear and determine proceedings;

- it is required by law to act judicially; and
- it hears contesting parties to the proceedings before it and gives a determination which is binding upon them.

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

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

Judges of the Court also hold warrants as District Court Judges and, sit in the District Court to hear prosecutions laid under the RMA. Judges may also chair boards of inquiry under the RMA and independent hearing panels under special legislation. Environment Commissioners are also occasionally seconded onto board of inquiries and assist with independent hearing panels which includes use of their mediation expertise and as facilitators of expert witness conferencing.

The Court currently comprises 20 (inc.11 alternate) Judges and 15 Commissioners (inc.3 deputies). Commissioners are appointed for a term of up to 5 years on either a full or part time (usually 75%) basis. Deputy Commissioners sit as required usually based on their specific expertise.

For matters heard in the Environment Court, a quorum for the Court is one Environment Judge and one Environment Commissioner, but the Court is most often constituted with one Environment Judge and two Commissioners. The RMA also provides for Judge or Commissioner alone sittings. As required under the RMA, hearings are conducted at a place as near to the locality of the subject matter to which the proceedings relate and as the Court considers convenient.

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

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

2.0 Highlights 2018/19

2.1 Annual Review 2018

The Principal Environment Judge, on behalf of members of the Court, causes to publish a calendar year review of the work of the Environment Court. The Annual Review is complimentary to this report. The latest review spans the 2018 calendar year and provides commentary beyond the largely statistical focus of this report and can be found on the Court's web pages at www.environmentcourt.govt.nz/decisions-publications/annual-reports/

2.2 Direct Referral Process

The direct referral process allows resource consent applications, requiring authority and heritage protection authority requirements to be considered directly by the Environment Court. This fast-tracking process was included in the 2009 amendments to the RMA and was designed to allow some significant projects to be commence quicker than they might have otherwise by avoiding the need for a council hearing prior to an appeal to the court.

Over 2018/19, four matters were referred to the court directly pursuant to sections 87G 198E provisions of the RMA:

- Minister of Children – notice of requirement to alter a designation for placement of young persons in a youth justice care facility at 398 Weymouth Road, Weymouth (Whakatakakapokai).
- Minister of Children – notice of requirement to alter a designation to allow placement of young persons in youth justice care facility at 21-24 Kiwi Tamaki Road (Korowai Manaaki).
- Summerset Villages (Lower Hutt) Limited – application for grant of consent for the construction and operation of a retirement village in Lower Hutt, Hutt City.
- Willis Bond Capital Partners No 3 Limited – application for grant of consent for a proposed new building at Site 9, North Kumutoto, Wellington Waterfront.

Electronic Casebook

Some progress on development of an electronic casebook has been made over 2018/19 and will be accompanied by the implementation of an electronic case file (that will duplicate the Registry's paper file). The purpose of the electronic casebook is to support paperless hearings and the Principal Environment Judge will over 2019/20, consult on a revised Practice Note that will contain guidance and direction from the Court on the use of electronic case files in the Environment Court.

2.3 Involvement with Community

The Principal Environment Judge (and other members of the Court) meet formally and informally with the professions that regularly engage with the Court with a view to identifying areas for improvement in practice and process. Each year, the Judges and Commissioners routinely participate in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

Details of members of the courts participation in community and international forum can be found in the afore-mentioned Annual Review 2018.

2.4 Judicial Education Conferences

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

The Court held its annual judicial conference in Napier in November 2018. Included on the conference programme were sessions on Mediation and Expert Witness Conferencing

and a presentation from Mark Clews from Hasting District Council, on their Coastal Hazard Strategy.

2.5 Overseas Delegations

There has been for some years now a growing interest from overseas jurisdictions in New Zealand's Environment Court and a demand for sharing of knowledge within the international legal and judicial communities. An increasing international focus in improving environmental courts and tribunals is apparent and the Court has a high reputation as a leading specialist environment court. In this regard, the Court has hosted many delegations from officials and members of foreign jurisdictions interested to understand the court's role in environmental decision making and compliance. It's clear from these visits, that the Court has much to offer in terms of examples of best practice and procedure.

3.0 Court's Performance

3.1 Case Management

The Court has an overriding duty to ensure the efficient resolution of the matters before it. The RMA states that the Principal Environment Judge is responsible for the expeditious discharge of the business of the court. Therefore, in conjunction with the other Environment Judges, the Principal Environment Judge determines the day-to-day case-flow management strategy of the court. This strategy is reflected in the Court's Practice Note. The Ministry of Justice supports the Principal Environment Judge in the execution of that strategy through its registry and administrative case management services. Some matters filed under the RMA are substantial in terms of their complexity, range and numbers of parties and issues, and are challenging to administer.

The Court's principal methods of case management are:

- (a) Cases that do not require priority attention are assigned to a Standard Track, under which the court issues standard directions for the management of each case. The directions may include that the case be managed through processes such as the timetabling of procedural steps; progress reporting to the court; judicial conferences; and formal pre-hearing directions or rulings.
- (b) Cases that the Court agrees require priority attention are assigned to a Priority Track and case-managed by the court in accordance with steps expressly designed to produce an early result. Also, applications referred directly to the court will usually be placed on this track, because of the intense management that will be required.
- (c) Subject to the Court's agreement and for good cause, cases in which the parties agree that management might be deferred for a defined period are placed on a Parties' Hold Track, with case management being resumed (failing settlement or withdrawal of the proceedings) at the parties' request, or at the expiry of the deferral period, or otherwise at the court's direction.
- (d) All cases, when lodged, are assigned by a Judge or the Registrar to one of the case tracks, and the parties are notified of the assigned track.

(e) Cases may be transferred from one track to another where circumstances warrant, at the court's initiative, or on the application of a party. Proceedings which the court decides require priority attention, including urgent applications for enforcement orders and declarations, will usually be placed in, or moved to, the Priority Track.

In summary, the Standard Track is for relatively straightforward cases, the Priority Track is for more urgent cases such as enforcement proceedings and cases where the court directs priority resolution; the Parties' Hold Track is used when parties are not actively seeking a hearing, for example to allow an opportunity to negotiate or mediate, or when a fresh plan variation or change needs to be promoted by a local authority to meet an issue raised in an appeal. Such cases are regularly reviewed by a Judge to assess whether they need to move to another track and be actively progressed.

3.2 Case Statistics

The total number of appeals and applications filed in recent years have allowed the Court to maintain a good overall clearance rate. In latter years, the clearance rate has started to reduce as the Court has experienced an increase in matters filed. Whilst plan appeal filings routinely fluctuate as planning instruments undergo changes, the increase in miscellaneous cases is largely attributable to the land valuation matters now filed with the Court and included in its caseload. The volume of resource consent appeals is closely linked to the volume of notified applications being processed by the local authorities and remains stable.

Cases Filed and Disposed 2007 - 2019

Year	Plans Appeals	Resource Consents	Direct Referrals	Misc.	Total Filed	Total Disposed
2007 / 2008	404	558		187	1149	1051
2008 / 2009	268	556		237	1061	1073
2009 / 2010	324	325	3	175	827	1006
2010 / 2011	210	223	3	171	607	917
2011 / 2012	163	192	7	137	499	801
2012 / 2013	228	140	5	123	496	662
2013 / 2014	94	112	5	122	333	694
2014 / 2015	153	113	2	124	392	415
2015 / 2016	203	103	2	120	428	422
2016 / 2017	101	112	4	268	485	453
2017/ 2018	196	104	5	278	583	423
2018/ 2019	237	105	4	397	743	487

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

Overall the Court received 743 new registrations and disposed of 487. The overall clearance rate for 2018/19 was 65.5%. The clearance rate is an output indicator of efficiency. It shows whether the volume of cases determined match the number of cases filed over the same reporting period. It indicates whether the court's pending caseload (for case types) have increased or decreased over that period.

Case Statistics 2018/19

CASES FILED		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Consent Appeals	¹ 105	13	9	9	4	8	10	5	18	5	9	6	6
Miscellaneous	401	25	31	95	39	43	36	15	10	22	56	13	16
Plan Appeals	237	4	3	3	6	14	83	1	0	1	12	88	22
Total	743	42	43	107	49	65	129	21	28	28	77	110	44

CASES DETERMINED		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Consent Appeals	² 92	6	7	5	6	11	5	2	14	12	6	9	9
Miscellaneous	305	27	42	29	19	21	28	23	38	16	20	28	14
Plan Appeal	90	7	12	11	3	10	6	4	10	11	3	10	3
Total	487	40	61	45	28	42	39	29	62	39	29	47	26

CASES OUTSTANDING		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Consent Appeals	³ 75	82	84	88	86	83	88	91	95	88	91	91	88
Miscellaneous	227	225	214	280	300	322	330	322	294	300	336	321	323
Plan Appeals	303	300	291	283	286	290	367	364	354	344	353	431	450
Total	605	607	589	651	672	695	785	777	743	732	780	843	861

Plan & Policy Statement Appeals

At 30 June 2019, the number of plan appeals outstanding was 450. Over the preceding year, the number of plan appeals filed was 237 with the court determining 90 matters. The clearance rate for plan and policy statement appeals was 38%. The clearance rate for plan appeals was impacted by the filing in May 2019 of many appeals arising out stage two of the proposed Queenstown Lake District Plan.

Resource Consent Appeals

At 30 June 2019, the Court had 88 resource consent appeals outstanding. Over the preceding year, the number of resource consent appeals filed was 105 with the Court determining 92 matters. Accordingly, the clearance rate for resource consent appeals was 88%.

Miscellaneous Matters

As at 30 June 2019, the Court had 323 miscellaneous matters outstanding. Over the preceding year, 401 matters were filed, and 305 matters determined. The clearance rate for miscellaneous matters was 76%.

Land Valuation Proceedings

¹ As at end of 2018/19

² As at end of 2018/19

³ As at end of 2018/19

Miscellaneous matters include proceedings brought to the Land Valuation Tribunal. In March 2017, the Environment Court registries assumed responsibility for the proceeding of the Land Valuation Tribunal (LVT). Prior to that, the administration of LVT proceedings sat with the District Court. Land Valuation Tribunal proceedings are now filed directly in the Environment Court and are included as a record on the Court's central case management system. Delays that were being experienced in some of the Tribunals prior to the transfer of the administration to the Court, have now been resolved.

Over 2018/19, the Tribunals collectively received 272 matters that included 266 objections under the section 36 of the Rating Valuations Act.

As recorded in the 2017/18 report, there is some inflexibility around the operation of the Tribunal that would benefit from a review. Unlike matters before the Environment Court, where any Judge and any Commissioner (subject to any conflicts and the oversight of the Principal Environment Judge) can adjudicate on any matter filed to be heard in the Court, the process of appointment to the Tribunal currently appoints individual tribunal chairs and members to one of 18 Tribunals and doesn't therefore offer the same flexibility of rostering judicial resources to the work of the Tribunal nationally. We have, to some extent, been able to work with this restriction by the appointment of the Principal Environment Judge as a deputy chair of all 18 Tribunals.

Miscellaneous also includes designation, enforcement and declaratory applications, appeals against abatement notices and other matters filed under statutes other than the RMA.

4.0 Alternative Dispute Resolution

Section 268 of the RMA empowers the Environment Court to arrange mediation and other forms of Alternative Dispute Resolution (ADR). In 2017 RMA changes recognised the growing role of mediation in the Court and enabled the Court to require attendance at conferences and ADR, which parties must attend unless the Court grants leave otherwise.

Early intervention through mediation continues to resolve a high number of cases or at the very least narrows the scope for issues in dispute. To encourage settlement of cases, the court can authorise its members (judges or commissioners) or other persons to conduct those procedures. Environment Commissioners are trained in mediation. Mediation is a process in which parties to the dispute, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.

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

Court-annexed Mediation Volumes and Outcomes

Outcomes*	2018/19	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13
Total number of mediation events	148	182	244	232	164	165	267
Agreement reached in full	67	80	103	69	63	68	134
Agreement reached in part	42	51	72	84	49	39	72
Agreement not reached	30	44	48	53	42	44	31
Mediation vacated	5	7	21	26	10	14	30

*Some mediation topics/events have yet to record an outcome

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

This table does not capture as an outcome those matters that have subsequently settled or have been withdrawn but which settlement or withdrawal did not occur at the end of the mediation. Many cases settle within a few weeks after conclusion of mediation, anecdotally because of progress made during the mediation. The Court's case management database, not being a management tool, is not equipped to bring such information into the books. If the additional settlements were to be added to those recorded as settling by the end of the mediation session, the percentage recorded as resolved by mediation, would be higher than shown in the table.

5.0 Court Expenditure and Revenue

Expenditure and revenue of the Court and registry during the 2018/19 fiscal year and in the previous year was:

	<u>2018/19</u>	<u>2017/18</u>
<i>Expenditure</i>		
Judges' Remuneration and Allowances	3,223,573	3,108,000
Commissioners' Fees	1,695,687	1,616,218
Staff Remuneration and other Personnel Costs	1,438,526	1,273,997
Judges' and Commissioners' travel costs	331,499	386,362
Staff travel costs	123,570	72,888
Commissioner training	35,696	9,566
Hire of venues for sittings and mediations	125,954	70,821
Telecommunications	22,998	42,227
Stores and stationery	18,590	27,199
Library and Information Services	4,424	3,960
Occupancy Costs, Utilities, Furniture and Equipment	1,762,598	1,729,427
Miscellaneous overheads	11,462	21,389
	<u>8,794,577</u>	<u>8,362,054</u>
<i>Revenue</i>		
Search fees	5,950	0
Sale of documents	1,205	4,912
Appeal and application fees	562,823	163,055
Scheduling fees	3,585	2,739
Hearing fees	7,519	2,130
Direct referral fees	760,053	13,708
Board of Inquiry	0	48,255
Miscellaneous	937	844
	<u>1,342,072</u>	<u>235,643</u>

