



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2011

TABLE OF CONTENTS

	Page
INTRODUCTION	3
1. Profile of the Court	4
1.1 Members of the Court	4
1.2 Judicial appointments	5
1.3 The Registry	5
1.4 The Court's jurisdiction	6
2. Highlights for 2010/11	6
2.1 Fast Tracking of Consenting Process	6
2.2 Improvement Initiatives	8
2.3 Responsiveness to Needs of Court Users	8
3. Court's Performance	10
3.1 Overview of 2010/11 performance	10
3.2 Case statistics	10
3.3 Alternative Dispute Resolution	13
4. Future caseload issues	13
5. Court Expenditure and Revenue	14

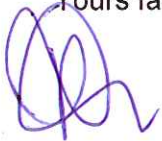
INTRODUCTION

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 2011.

Yours faithfully,



Harry Johnson,
Registrar
Environment Court.

Profile of the Court

1.1 Members of the Court

Title	Appointed	Residence
Principal Judge Environment Judge C J Thompson	Sept 2001	Wellington
Judges		
Environment Judge J R Jackson	Sept 1996	Christchurch
Environment Judge R G Whiting	June 1997	Auckland
Environment Judge J A Smith	May 2000	Auckland
Environment Judge L J Newhook	Aug 2001	Auckland
Environment Judge B P Dwyer	Sept 2006	Wellington
Environment Judge J Borthwick	Nov 2008	Christchurch
Environment Judge M Harland	Sept 2009	Auckland
Alternate Judges		
Alternate Environment Judge F W M McElrea	Sept 2001	Auckland
Alternate Environment Judge D F G Sheppard	April 2007	Auckland
Alternate Environment Judge C Doherty	Aug 2008	Christchurch
Alternate Environment Judge C Fox	July 2009	Gisborne
Alternate Environment Judge S Clark	July 2009	Hamilton
Alternate Environment Judge J Kelly	July 2009	Wellington
Alternate Environment Judge P Kellar	July 2009	Dunedin
Alternate Environment Judge J Doogue	February 2011	Auckland
Alternate Environment Judge R Wolff	February 2011	Hamilton
Alternate Environment Judge G Rea	February 2011	Napier
Alternate Environment Judge G Davis	April 2011	Whangarei

Title	First appointed	Re-appointed	Residence
Environment Commissioners			
Mr P A Catchpole	July 1980	Sept 2009	New Plymouth
Mr J R Mills	July 1999	Sept 2009	Wellington
Mr W R Howie	June 2001	June 2006	Wellington
Mr C E Manning	June 2001	June 2006	Christchurch
Ms H A McConachy	June 2001	June 2006	Auckland
Dr D H Menzies	June 2001	June 2006	Christchurch
Mr R Dunlop	March 2003	June 2008	Auckland
Mr K Prime	March 2003	June 2008	Bay of Islands
Ms M P Oliver	April 2004	March 2009	Auckland
Ms K A Edmonds	Jan 2005	Jan 2010	Wellington
Dr A J Sutherland	Jan 2005	Jan 2010	Christchurch
MS H Beaumont	June 2007	Jan 2010	Wellington
Mr D Bunting	Aug 2007		Wellington
Ms A Leijnen	Jan 2011		Auckland
Deputy Environment Commissioners			
Mr O A Borlase	March 2003	June 2008	Dunedin
Dr B Gollop	March 2003	June 2008	Whangarei
Mr D Kernohan	Aug 2007		Wellington
Mr K Fletcher	Aug 2007		Christchurch
Ms C Blom	Nov 2010		Auckland

1.2 Judicial Appointments

Environment Judge Appointments

The current establishment for permanent Environment Judges is eight. It is noted that the Resource Management (Simplify and Streamlining) Amendment Act 2009 raised the cap on Environment Judge appointment, from eight to ten. This will provide some flexibility should there be an increase in demand for court resource in future.

In order to assist the permanent Environment Judges who are required to preside over prosecution offences under the Resource Management Act 1991 heard in the District Court, District Court Judge J Doogue (Auckland), District Court Judge R Wolff (Hamilton), District Court Judge G Rea (Napier) and District Court Judge G Davis (Whangarei) were also appointed Alternate Environment Judges.

Environment Commissioner Appointments & Retirements

In January 2011, Anne Leijnen was appointed as an Environment Commissioner and Carron Blom as a Deputy Environment Commissioner each with terms of 5 years.

Environment Commissioner Paul Catchpole's warrant expired in June 2011. Commissioner Catchpole did not seek re-appointment. Mr Paul Catchpole was a Registered Surveyor who was first appointed to the Planning Tribunal in 1980 following a 10 year period as a partner in a surveying firm. He served on the Tribunal and subsequently the Environment Court (since 1996) as an Environment Commissioner.

Commissioner Catchpole is highly regarded in both a personal and professional capacity and his dedicated service to the Court for over 30 years is valued and appreciated.

1.3 The Registry

The Court Registrar has overall administrative responsibility for the Court. The Registrar, and Deputy Registrars, exercise quasi-judicial powers such as the consideration of certain waiver applications.

The Environment Court Unit falls within the Special Jurisdictions Group of the Ministry of Justice. The Registrar, as National Manager, has reporting and budgetary responsibilities to the General Manager of Special Jurisdictions.

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

The Court's Judicial Resources Manager co-ordinates the Court's sitting programme. This follows directions from the Principal Environment Judge whom is responsible for ensuring the orderly and expeditious discharge of the business of the Court.

1.4 The Court's Jurisdiction

The Environment Court is established by section 247 of the Resource Management Act 1991 (the Act), as a Court of Record. It is a specialist court that has jurisdiction over environmental and resource management matters. It can be characterised as follows:

- a Judge usually presides at sittings to hear and determine proceedings
- it is required by law to act judicially
- it hears contesting parties to the proceedings before it and gives a determination which is binding upon them

The Court currently comprises 16 (inc. 8 alternate) Judges and 21 Commissioners (inc. 6 deputies). Commissioners are appointed for a term of up to 5 years on either a full or 75% time basis. Deputy Commissioners sit as required usually on the basis of their expertise.

The Court's functions are primarily to determine appeals in respect of resource consents, designations and abatement notices, plan appeals in respect of the content of regional and district planning instruments, applications for enforcement orders, and inquiries in respect of water conservation orders. The Court may also make declarations about the application and interpretation of resource management law. Judges of this Court also hold warrants as District Court Judges, and from time to time sit in the District Court to hear prosecutions laid under the Resource Management Act.

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

2. Highlights for 2010/11

2.1 Fast tracking of consenting process

Direct Referral (Section 87C – 1 RMA)

Direct referral process allows resource consent and changes to consent conditions to be considered directly by the Environment Court. This process was included in the 2009 amendments to the RMA and was designed to allow some significant projects to be consented quicker than they might have otherwise by avoiding the need for a council hearing prior to an appeal to the Court. Whilst there are a wide range of factors that determine how long a particular project takes to consent, over 2010/11 the timeline for those matters finally determined as a direct referral to the Court were as follows:

- The first case to be considered under the direct referral provisions was Progressive Enterprises Limited v Rodney District Council. This was an application for consent to construct and operate a supermarket. Following a 2 day hearing, a decision was issued approximately 5 months following its direct referral to the Court.
- The second matter to be referred to the Court concerned two related applications concerning the proposed Mahia Wastewater Scheme in the Wairoa District. These matters were filed in May 2010, were heard in November 2010 and the Court issued its decision granting consent and approving the designation in December 2010.
- The third direct referral matter determined over 2010/11 concerned an application for resource consent regarding a proposed clean fill rehabilitation project at a Winstone

Aggregate quarry in Three Kings, Auckland. This matter was filed in June 2010, hearings held in March 2011 and decision confirming consent issued in May 2011.

Matters of National Significance

The direct referral process is separate to the call-in or referral process that applies to matters of national significance where an application is made to the Environmental Protection Authority and a recommendation is considered by the Minister for the Environment.

Over 2010/11 Court resources have been engaged in eight matters of "national significance", seven board of inquiry and one direct referral:

Board of Inquiry

- Contact Energy's proposal for a new 180-turbine wind farm, called Hauāuru mā raki', near Raglan in the Waikato.
- Might River Power's proposal for a new 121-turbine wind farm, in the Manawatu-Wanganui Region, Palmerston North City and Tararua District.
- Contact Energy's proposed Tauhara II Geothermal Development Project in Taupo.
- New Zealand Transport Agency's (NZTA) proposal for construction of the Waterview (SH20 to SH16) Connection.
- NZTA's Transmission Gully Plan Change Request.
- Minister of Corrections' Notice of Requirement for alteration of a Designation to provide a men's prison at Wiri.
- Mighty River's Turitea Wind farm proposal.

Direct referral via the EPA

- Queenstown Airport Corporation's Notice of Requirement for alteration of Designation to provide for the expansion of the Aerodrome

Direct Referral Costs

Section 285 of the RMA provides the Court with discretion to award costs in favour of the Crown. The 2009 Amendment Act also includes:

- a) a presumption that costs to the Crown are to be ordered against the Applicant (s285(5)(a)(ii); and
- b) When deciding the amount of any order, have regard to the fact that the proceedings are at first instance (s285(5)(b)).

This amendment anticipates that Applicants will be expected to meet the costs of the Court, possibly the Council and potentially other parties involved in proceedings where they directly are referred to the Court.

Prior to this amendment, the only fee payable (to initiate Court proceedings) was a filing fee (currently \$511.10 for appeals and \$56.10 for other matters). For the Court to recover its actual costs associated with direct referral, the Registrar, other Court officers and the judiciary are currently tasked with keeping a record of time spent in relation to the direct referral. These records then form the basis for an order for cost recovery. Over 2011/12 the Registrar aims to explore more efficient methods to enable the actual cost incurred through the processing, case management and hearing of direct referrals.

2.2. 2010/11 Improvement Initiatives

Evidence Recording and Transcription Service

Over 2010/11 work was completed to include the Environment Court's evidence transcription requirements into the Ministry of Justice's National Transcription Service (NTS). Prior to joining the NTS service, the evidence transcription requirements for the Environment Court were outsourced. Joining NTS has resulted in significant cost savings for the Environment Court and performance improvements for both the Court and NTS.

Amendment to Practice Note – Expert Witness Conferencing

In March 2011, the Court amended its Practice Notes to include guidance on the process of expert conferencing in relation to matters before the Court. Expert conferencing is a process that would in the normal course of events occur prior to a hearing. It is a process by which expert witnesses confer and attempt to reach agreement on issues, or at least clearly identify the issues on which they cannot agree, and the reasons for that disagreement. Like mediation, conferencing is a private procedure and, apart from any agreed primary data, and the joint statement produced at the conclusion of the conference, what is said or done at the conference cannot be referred to or relied on in any proceeding before the Court. In that sense it is a 'without prejudice' discussion, although those participating may report back to the parties engaging them.

Judicial Training

The Judge and Commissioners updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Of particular note was a seminar designed to improve the quality of decision writing. Held in April 2011, this seminar was presented by Professor Jim Raymond who is a highly regarded international expert in the field of decision writing.

2.3 Responsiveness to the needs of users

Access to justice can be facilitated by the Court taking a more user orientated approach. The Court is continuously seeking to be more responsive to the needs and expectations of people who come into contact with the Court. The principal of user orientation implies that special steps should be taken to ensure that the Court takes specific measures both to assist people to understand the way the institution works and to improve facilities and services available to members of the public.

The Principal Environment Judge (and other members of the Court) meet formally and informally with the professions that regularly engage with the Court and give speeches where the Court's practices and procedures have been discussed. Each year, the Judges and Commissioners participate in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

Community Education

The Court has commenced an initiative designed to educate court users on how the Court operates, its practice and procedures. It is aimed at individuals, community groups and professionals who are unfamiliar or new to Environment Court proceedings. The Court will be running mock courts. At these sessions, there will be information made available on courtroom protocols, how to act in a courtroom, what is involved with the giving of evidence/submissions and in cross examination as well as information about the mediation and expert witness caucusing procedures.

Property Improvements

In August 2010 the Environment Court in Auckland relocated from the District Court building to the new Specialist Courts and Tribunals Centre which is adjacent to the District Court building. This initiative forms part of the wider Ministry of Justice Auckland Service Delivery Programme and forms part of a Courts precinct model. Within this new facility, the Environment Court is co-located with the Employment Court. This new facility, equipped with modern technology and quality design represents a significant step in the Court's history and provides a significant improvement in responding to the needs of the Court and its users.

Opportunities for both the Employment Court and the Environment Court to explore the consolidation of processes and share resources leading to improved efficiencies will be advanced over 2011/12.

Decisions on line

Over 2010/11 the Court has continued its collaboration with the New Zealand Legal Information Institute (NZLII) to provide free public online access to decisions of the Court. The NZLII decisions database currently has decisions of the Court dating back to 1996. Over 2011/12 the Court is aiming to have all its decisions (dating back to 1991) to be available online.

Accessibility

The Environment Court has registries in Auckland, Wellington and Christchurch and from these three centres provides services to all of the New Zealand public. Geographical accessibility concerns ensuring parties and their representatives and witnesses are able to access the Court in geographical terms. The Court needs to therefore travel extensively to hold hearings as close to the subject matter as is convenient. During the year the Court sat for 176 weeks in the following centres:

Alexandra	1
Auckland	61
Blenheim	9
Christchurch	28
Dunedin	7
Gisborne	1
Greymouth	1
Hamilton	6
Hastings	5
Invercargill	1
Nelson	9
Oamaru	1
Palmerston North	2
Queenstown	12
Taupo	1
Tauranga	8
Timaru	3
Twizel	16
Wanaka	1
Wellington	3

3. Court's Performance

3.1 Overview of 2010/11 performance

The Court has an overriding duty to ensure the efficient resolution of the matters before the Court. The Resource Management Act 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 Consolidated Practice Notes. The Ministry of Justice supports the Principal Environment Judge in the execution of that strategy through its registry and administrative support services.

On reviewing the performance of the Court, the focus is on the Court's management of its caseload. Of particular significance over 2010/11 is the continued decrease in the number of matters filed. As recorded in the Report of the Registrar for 2009/10 wherein, compared to the previous reporting year, there had been a 40% reduction in appeals filed in relation to resource consents. This drop in consent appeal numbers likely mirrored a corresponding reduction in the level of applications being filed at council level on account of the economic conditions throughout the reporting year. This trend has continued over 2010/11 and economic factors appear again to have had a significant impact on the number of matters filed – again particularly in relation to the number of appeals filed in relation to resource consenting.

3.2 Case statistics

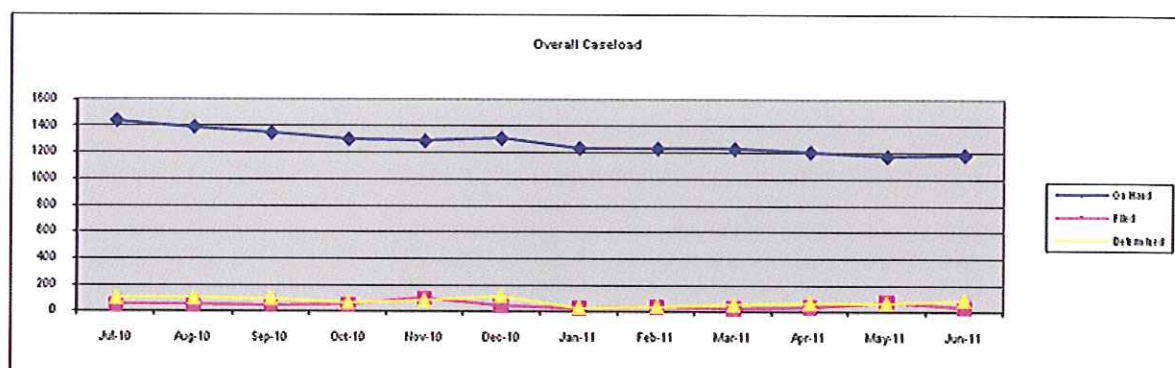
As highlighted in previous reports, the Court operates a case management and tracking system that allocates cases to one of 3 management tracks: complex track (usually for statutory plan appeals and/or appeals concerning major development proposals), standard track (for cases that are not considered complex) and parties on hold track (for use when parties agree case management may be deferred for a period).

At the end of the 2010/11-year, the overall number of matters outstanding was 1130. This compares to 1368 at end of 2009/10. Of the 1130 cases pending as at 30 June 2011, 389 were on hold at the parties' request.

Overall case load

Overall the court received 605 new registrations and disposed of 917.

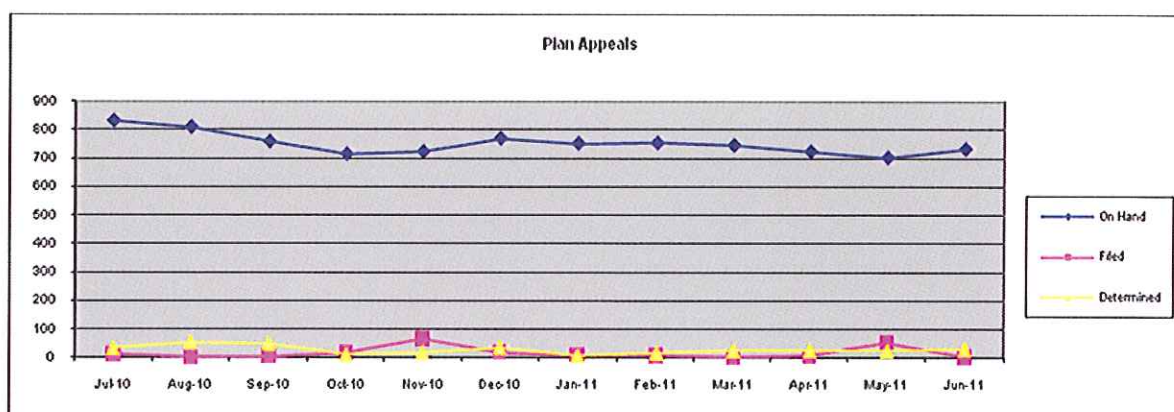
	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
On Hand	1442	1394	1349	1301	1289	1309	1236	1234	1231	1207	1176	1186
Filed	54	58	51	53	102	44	28	38	29	36	79	33
Determined	102	103	99	65	82	117	30	41	53	67	69	89
Caseload	1394	1349	1301	1289	1309	1236	1234	1231	1207	1176	1186	1130



Plan & Policy Statement Appeals

In 2010/11, the number of plan appeals filed was 210 with the Court determining 337 matters. Accordingly, there was a 15% decrease from year ending 2009/10 in plan appeal matters outstanding. Plan appeals are invariably placed in the complex track where they make steady progress with the majority settling by consent. As at 30 June 2011, of the 705 matters outstanding 297 were on hold at the parties' request.

	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
On Hand	832	810	759	715	723	770	752	754	746	724	703	733
Filed	12	3	5	19	66	18	10	8	4	6	55	4
Determined	34	54	49	11	19	36	8	16	26	27	25	32
Caseload	810	759	715	723	676	752	754	746	724	703	733	705



Clearance Rate for Plan and Policy Appeals

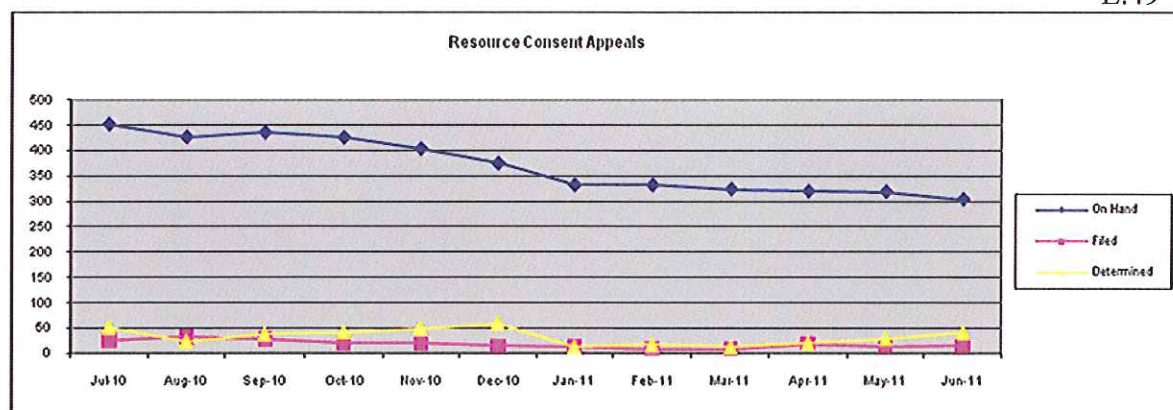
The clearance rate is an output indicator of efficiency. It shows whether the volume of cases determined match the number of cases filed over the same reporting period. It indicates whether the court's pending caseload (for particular case types) have increased or decreased over that period.

Plan/Policy Statement Appeals	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06
Clearance Rate	160%	109%	117%	90%	69%	175%

Resource Consent appeals

The number of resource consent appeals filed was 221 with the Court determining 395 matters. Accordingly, for such appeals, there was a 39% decrease from year ending 2009/10 in resource consent matters outstanding. As at 30 June 2011, of the 278 matters outstanding 72 were on hold at the parties' request.

	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
On Hand	452	427	436	426	404	375	332	332	324	320	319	304
Filed	26	33	28	20	20	15	13	9	9	19	14	15
Determined	51	24	38	42	49	58	13	17	13	20	29	41
Caseload	427	436	426	404	375	332	332	324	320	319	304	278



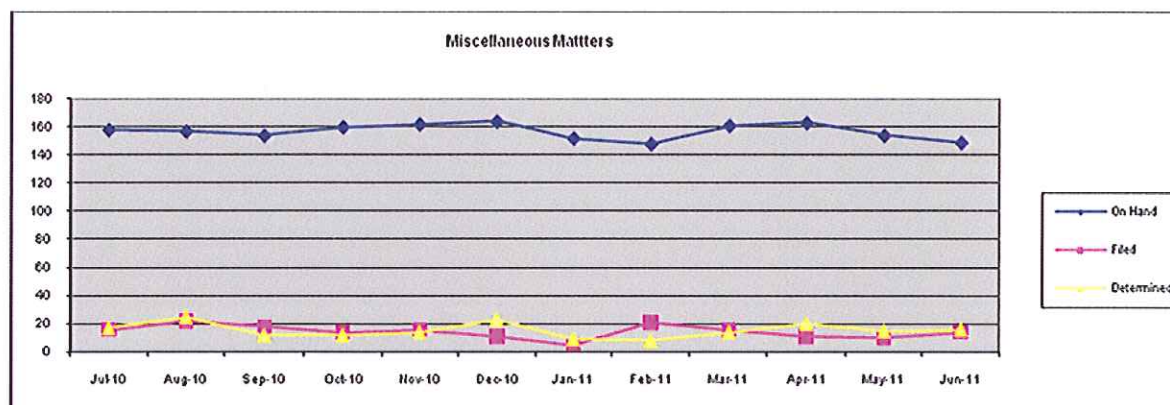
Clearance Rate for Resource Consent appeals¹

Consent appeals	2010/11	2009/10	2008/09
Clearance Rate	179%	148%	92.4%

Miscellaneous Matters

Matters such as appeals against requiring authorities, declaratory and enforcement applications, objections to stopping of roads and taking of land, are generally categorised as miscellaneous matters. Over 2010/11, 174 miscellaneous matters were filed and 185 matters determined. As at 30 June 2011, of the 147 matters outstanding 20 were on hold at the parties' request.

	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
On Hand	158	157	154	160	162	164	152	148	161	163	154	149
Filed	16	22	18	14	16	11	5	21	16	11	10	14
Determined	17	25	12	12	14	23	9	8	14	20	15	16
Caseload	157	154	160	162	164	152	148	161	163	154	149	147



Clearance rate for other matters²

Other matters	2010/11	2009/10	2008/09
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¹ Due to a change in the classification of case type data with the Court's case management database at the end of the 2007/08 year, the actual historical clearance rates for resource consent appeals cannot be accurately assessed beyond the 2008/09 year.

² Due to a change in the classification of case type data with the Court's case management database at the end of the 2007/08 year, the actual historical clearance rates for other matters cannot be accurately assessed beyond the 2008/09 year.

Clearance Rate	100%	98%	100%
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3.3 Alternative Dispute Resolution

Section 268 of the Resource Management Act 1991 empowers the Environment Court to arrange mediation and other forms of alternative dispute resolution. The Court actively encourages mediation and consequently the majority of cases will undergo mediation.

For the purpose of encouraging settlements of cases the Court can authorise its members (Judges or Commissioners) or other persons to conduct those procedures. The Court Commissioners are trained in mediation.

Mediation has enabled 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.

An ability to mediate on or near the subject site and outside office hours is often necessary.

Internal court assisted mediation volumes and outcomes

Outcomes*	2010/11	2009/10	2008/09	2007/08	2006/07
Total number of mediation events	362	516	525	468	449
Agreement reached in full	140	210	236	155	199
Agreement reached in part	98	98	93	142	84
Agreement not reached	47	47	52	104	100
Mediation vacated	24	21	42	55	58

*Some mediation topics/events have yet to record a final outcome

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

4. Future case load issues

Prior to the 2009 amendments, the RMA required Regional Policy Statements, Regional Plans and District Plans to be fully reviewed every 10 years, regardless of how recently a section of a plan had been varied. In the mid to late 1990's and early 2000's this "first generation" process resulted in large volumes of appeals, hearings, and decisions. This in part led to a large backlog of hearing time in the Court due to the volume of plan appeals being filed almost simultaneously. As the "second generation plan review" had not really commenced prior to the 2009 amendment, this will enable a rolling plan review approach that should enable improved management by the Court should any resulting appeals be filed in future years.

Over 2010/11, the impact of 2009 amendments (e.g. fast tracking of matters of national significance and the ability to refer matters direct to the Court) have enabled some projects to be consented quicker than they might have otherwise. Due to economic factors, the decrease in resource consent appeals before the Court has enabled the Court to channel resources on direct referrals and Board of Inquiry. As the economy recovers and should direct referrals to the Court increase in coming years, the workload impact on the Court's judicial and administrative resources may be significant. The use of Environment Judges (and possibly Environment Commissioners) on boards of inquiry needs to be balanced against the Court's own case management demand requirements.

5. Court Expenditure and Revenue

Expenditure and revenue of the court during the 2010/11 financial year and in the year previous was:

	<u>2010/11</u>	<u>2009/10</u>
Expenditureⁱ		
Judges' Remuneration and Allowances	2,362,700	2,305,943
Commissioners' Remuneration and Sitting Fees	1,589,087	1,972,931
Staff Remuneration and other Personnel Costs	2,079,939	2,008,017
Judges' and Commissioners' travel costs	551,625	497,780
Digital Audio Recording and Transcription	214,553	425,067
Staff travel costs	103,912	112,360
Staff and Commissioner training	75,936	60,367
Hire of venues for sittings and mediations	52,794	82,478
Telephone, postage and courier costs	105,501	100,339
Stores and stationery	47,668	50,735
Library and Information Services	12,618	9,813
Occupancy Costs, Utilities, Furniture and Equipment	1,147,415	178,729
Miscellaneous overheads	<u>1,071</u>	<u>1,030</u>
	8,344,819	7,805,589
Revenue		
Sale of copies of Court decisions	15,443	10,325
Appeal and Application Lodgement Fees	<u>193,969</u>	<u>41,950</u>
	209,412	52,275

ⁱ Note the increases in Occupancy Costs are attributed to new lease costs incurred by the relocation of the Environment Court in Auckland to the Specialist Courts and Tribunals Centre.