



Report of the

Registrar of the Environment Court

For the 12 months
ended 30 June 2010

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 2009/10	6
2.1 Resource Management (Simplifying and Streamlining) Amendment Act 2009	6
2.2 Performance Improvement Initiatives	7
2.3 Australasian Conference of Planning Environment Courts and Tribunals	8
3. Court's Performance	8
3.1 Overview of 2009/10 performance	8
3.2 Case statistics	10
3.3 Alternative Dispute Resolution	12
4. Future caseload issues	13
4.1 Future resource issues	14
5. Court Expenditure and Revenue	14

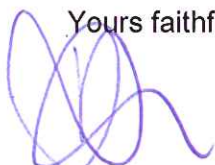
INTRODUCTION

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 2010.

Yours faithfully,



Harry Johnson,
Registrar
Environment Court.

1. 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 Environment Judge R G Whiting Environment Judge J A Smith Environment Judge L J Newhook Environment Judge B P Dwyer Environment Judge J Borthwick Environment Judge M Harland	Sept 1996 June 1997 May 2000 Aug 2001 Sept 2006 Nov 2008 Sept 2009	Christchurch Auckland Auckland Auckland Wellington Christchurch Auckland
Alternate Judges Alternate Environment Judge F W M McElrea Alternate Environment Judge D F G Sheppard Alternate Environment Judge S E Kenderdine Alternate Environment Judge C Doherty Alternate Environment Judge C Fox Alternate Environment Judge S Clark Alternate Environment Judge J Kelly Alternate Environment Judge P Kellar	Sept 2001 April 2007 Aug 2008 Aug 2008 July 2009 July 2009 July 2009 July 2009	Auckland Auckland Wellington Christchurch Gisborne Hamilton Wellington Dunedin

Title	First appointed	Re-appointed	Residence
Environment Commissioners Mr P A Catchpole Mr J R Mills Mr W R Howie Mr C E Manning Ms H A McConachy Dr D H Menzies Mr R Dunlop Mr K Prime Ms S A Watson Ms M P Oliver Dr I D Stewart Ms K A Edmonds Dr A J Sutherland MS H Beaumont Mr D Bunting	July 1980 July 1999 June 2001 June 2001 June 2001 June 2001 March 2003 March 2003 March 2003 April 2004 Nov 2004 Jan 2005 Jan 2005 June 2007 Aug 2007	Sept 2009 Sept 2009 June 2006 June 2006 June 2006 June 2006 June 2006 June 2008 June 2008 June 2008 March 2009 Jan 2010 Jan 2010	New Plymouth Wellington Wellington Christchurch Auckland Christchurch Auckland Bay of Islands Christchurch Auckland Auckland Wellington Christchurch Wellington Wellington
Deputy Environment Commissioners Ms R Grigg Mr O A Borlase Dr B Gollop Dr T W Fookes Mr D Kernohan Mr K Fletcher	Aug 1991 March 2003 March 2003 Nov 2004 Aug 2007 Aug 2007	Sept 2004 June 2008 June 2008	Christchurch Dunedin Whangarei Auckland Wellington Christchurch

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.

Following the death of Judge R J Bollard in April 2009, Judge M Harland was appointed a permanent Judge of the Environment Court in September 2009.

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 Kelly (Wellington) and District Court Judge P Kellar (Dunedin) were also appointed Alternate Environment Judges.

Maori Land Court Judge C Fox and Maori Land Court Judge S Clark have also been appointed Alternate Environment Judges. Such appointments to preside over matters before the Environment Court will particularly assist where the Court has before it matters that included issues relating to tikanga Maori and kaupapa Maori.

Environment Commissioner Appointments

In January 2010, Environment Commissioners Alex Sutherland and Kathryn Edmonds were each re-appointed as Commissioners for a further term of 5 years.

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 2009/10

2.1 Resource Management (Simplifying and Streamlining) Amendment Act 2009

Changes to the Resource Management Act in 2009 included provisions allowing applicants for resource consent and notices of requirement to request that their applications be directly referred to the Environment Court for a decision, provided that the permission of the local authority, that would otherwise have made the decision, is obtained.

The direct referral option is designed for matters that are not considered to be of national significance but may be complex and/or controversial and are likely to be appealed in any event.

Whilst the direct referral of matters to the Court will not necessarily increase case filings, this change has significant potential to increase the demand for court registry services. Compared to matters on appeal, these matters at first instance will likely comprise a greater number of (unrepresented) interested parties who will require a greater level and higher frequency of assistance from court staff.

Any increased demand on court resources brought about by direct referrals could be offset by the ability of the Environment Court to use its discretion to recover its costs and expenses associated with a direct referral. An order for cost recovery would be subject to an application from the Registrar and requires officers of the Court to keep time records. Such costs would normally be recoverable from the applicant.

Subsequent to the Acts amendment in 2009, the Court has received four direct referral applications:

- An application for resource consent to construct and operate a supermarket in the Rodney District
- Two related applications, one for resource consent and one for designation concerning the proposed Mahia Beach Water Scheme in the Wairoa District.
- An application for resource consent regarding a proposed clean fill rehabilitation project at a Winstone Aggregate quarry in Three Kings, Auckland.

The direct referral process is separate to the call-in or referral process that applies to matters of national significance.

The amendment Act also streamlined processes for matters of national significance by providing more clarity and certainty about board of inquiry processes, and by improving the process for consenting nationally significant proposals. If a matter of national significance were to be called in by the Minister for the Environment, the Minister then decides whether to direct that it be referred to a board of inquiry (possibly chaired by an Environment Judge) or direct to the Environment Court.

Over 2009/10 court resources have been engaged in three 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.

Both the board of inquiry process, together with other matters that may seek direct referral at local authority level, have potential to place additional demand on the Court's judicial and administrative resources in future years.

2.2. 2009/10 Performance Improvement Initiatives

Electronic Operating Model (EOM)

The Ministry of Justice and the judiciary have identified moving towards an EOM as a high priority. The Environment Court has been selected by the Ministry of Justice and the Judicial Inter Bench IT Committee as a priority civil jurisdiction for the introduction of electronic filing. Electronic court processes more generally should deliver long-term performance and service delivery improvements. Over 2009/10 work towards a wider EOM for the Environment Court included the development of high level business requirements. Based on Budget 2010 priorities, the Ministry of Justice had to scale back on the overall EOM initiative, and implementation in the criminal summary jurisdiction of the District Court will proceed in the first instance.

Property Improvements

As part of the wider Ministry of Justice Auckland Service Delivery Programme, work progressed towards the relocation of the Auckland Environment Court Registry from its site within the Auckland District Court building to an adjoining facility creating a court precinct. For the Environment Court, this new facility, equipped with modern technology and quality design will represent a significant step in the Court's history and will provide a significant improvement in responding to the needs of the Court and its users.

National Transcription Service

Over 2009/10 work commenced to include the Environment Court's evidence transcription requirements into the Ministry of Justice's National Transcription Service (NTS). The evidence transcription requirements for the Environment Court currently are outsourced. However, the Court's complete requirements will be progressively met by NTS in coming months resulting in significant cost savings for the Environment Court and performance improvements for both the Court and NTS.

2.3 Australasian Conference of Planning Environment Courts and Tribunals (ACPECT)

In August 2009, the New Zealand Environment Court hosted ACPECT in Christchurch. Topics on the conference programme included speakers on Climate Change and Water Management Regimes. In addition to a New Zealand perspective, contributions were received from The Land and Environment Court of New South Wales, The Victorian Civil and Administrative Tribunal, The Planning and Environment Court of Queensland and The South Australian Environment Resources and Development Court.

3. Court's Performance

3.1 Overview of 2009/10 performance

On reviewing the performance of the Court, the focus is on court administration, in particular on the Court's management of its caseload. 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 Note issued in July 2006. The Ministry of Justice supports the Principal Environment Judge in the execution of that strategy through its registry and administrative support services.

Traditionally, court administration performance is evaluated by quantitative output indicators based on the number of matters filed, number of matters disposed and the number of matters outstanding. Future reports from the Registrar will seek to include comment on more qualitative measures and output indicators will be published that will measure performance in that regard. These might include for example measures around affordability, accessibility and responsiveness to the needs of court users:

Affordability

Currently the Court provides a free mediation service and unlike other jurisdictions, there are no other interlocutory or miscellaneous application fees or hearing fees charged. For cases that do proceed to a substantive hearing, the Court provides a free evidence transcription service. Whilst the filing fees for most appeals increased significantly in May 2009 (from \$55.00 to \$500 being the first increase since 1988), the Registrar retains the discretion to waive or vary court fees in cases of hardship or in the public interest. Currently Court filing fees paid by appellants and applicants recover less than 5% of the Court's operating budget. It is noted however that court fees are only part of the costs faced by litigants.

Accessibility

The Court can adopt a number of measures to ensure accessibility including geographical accessibility, access to help and information, access for people with disabilities, access for unrepresented litigants and access to alternative dispute resolution mechanisms.

Geographical accessibility

Geographical accessibility concerns ensuring parties and their representatives and witnesses are able to access the Court in geographical terms. The Environment Court has registries in

Auckland, Wellington and Christchurch and from these three centres provides services to all of the New Zealand public. The Court needs to therefore travel extensively to hold hearings as close to the subject matter as is convenient. Future reports will contain a table showing where hearings were held.

The Court also makes use of telephone conference facilities for interlocutory matters. This type of hearing may be more convenient for parties and cost effective for Court. At the Auckland, Wellington and Christchurch Court, and increasingly in other court houses where the Court may sit, the Court has access to audio visual equipment that facilitates parties or their witnesses appearing by video link.

Access to information about the Court

The Court facilitates public access to information about the Court, its practice and procedure and its services primarily through its web site. The Court also makes available at its public counters printed information about the Court. Registry staff routinely assist the public with answers to questions and provide general information. The provision of such help and information facilitates access to justice and allows the people who use the judicial system to understand it.

Access for persons with disabilities

The Environment Court's web page has information for those who may have special needs.

Access for unrepresented litigants

Whilst registry staff cannot give legal advice, registry staff make a special effort to assist unrepresented litigants. The Courts web site provides information about the Court's jurisdiction, practice and procedure and useful links to other helpful resources.

Access to Alternative Dispute Resolution

For the past 10 years the Court has developed its own court annexed mediation service. The Court actively encourages mediation and consequently the majority of cases will undergo mediation. All the Court's Commissioners are trained mediators and the service is free. The Court web site contains information on the mediation service.

Responsiveness to the needs of court users

The principles of user orientation imply that special steps should be taken to ensure that the Court positions itself and takes specific measures both to assist people understand the way the Court works and to improve facilities and services available to members of the public.

The measures adopted by the Court for ensuring accessibility are designed to enhance access to justice and the Court taking a more user orientated approach. The work underway (and discussed earlier) that may lead to the adoption of a future electronic operating model will require consultation with the various stakeholders including the public, as has occurred as part of the property improvement initiatives in Wellington (in 2009) and Auckland (in 2010).

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.

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).

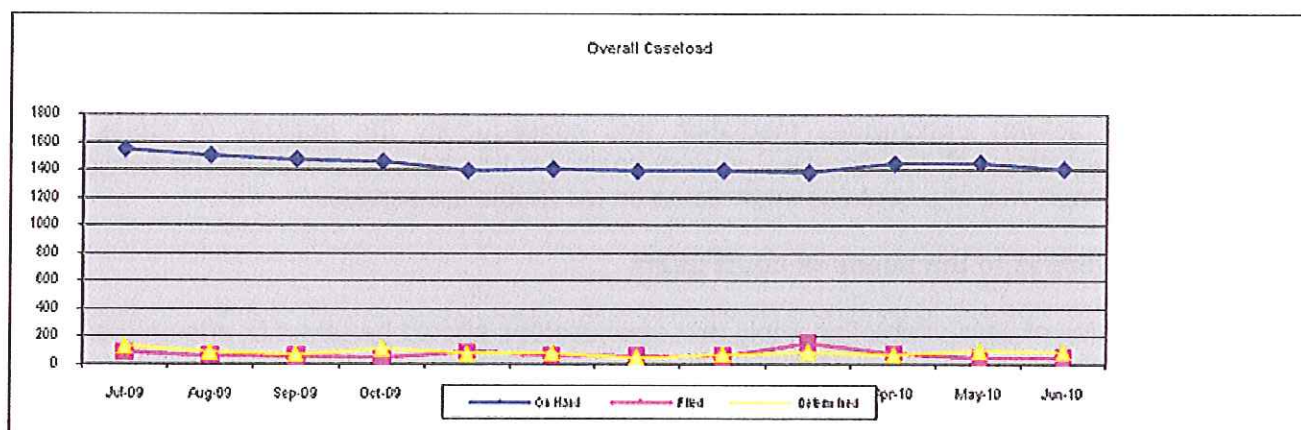
Of particular note over 2009/10, compared to the previous reporting year, there has been a 40% reduction in appeals filed in relation to resource consents. The drop in consent appeal numbers likely mirrors a corresponding reduction in the level of applications being filed at council level on account of the economic conditions throughout the reporting year.

At the end of the 2009/10-year, the overall number of matters outstanding was 1368. This compares to 1548 at end of 2008/9. Of the 1368 cases pending as at 30 June 2009, 474 were on hold at the parties' request.

Overall case load

Overall the court received 826 new registrations (lowest number since 1991/1992 year) and disposed of 1006.

	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10
On Hand	1548	1505	1476	1461	1396	1408	1393	1398	1384	1448	1453	1408
Filed	85	58	56	48	84	63	53	55	154	73	49	48
Determined	128	87	71	113	72	78	48	69	90	68	94	88
Caseload	1505	1476	1461	1396	1408	1393	1398	1384	1448	1453	1408	1368

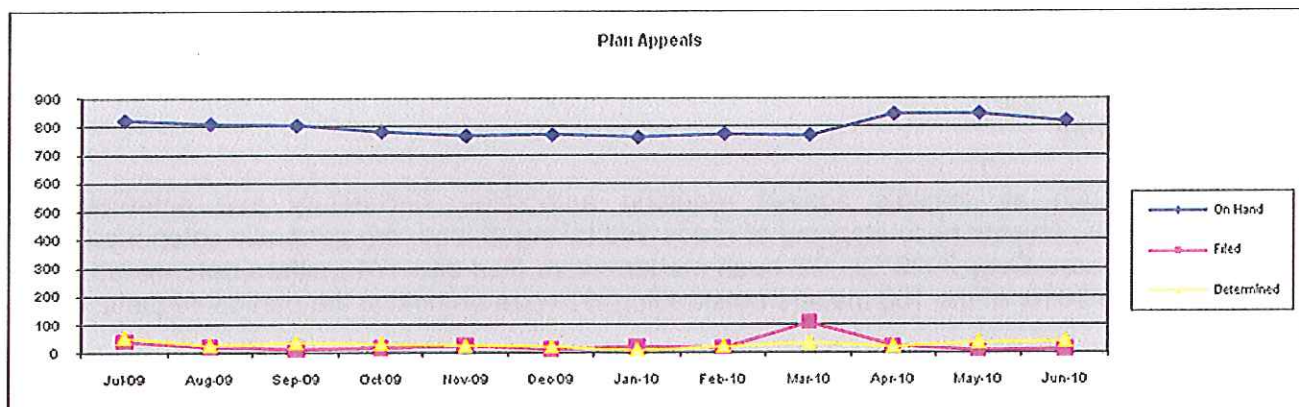


Plan & Policy Statement Appeals

In 2009/10, the number of plan appeals filed was 324 with the Court determining 353 matters. Accordingly, there was a slight decrease from year ending 2008/09 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 2010, of the 792 matters outstanding, 306 were on hold at the parties' request.

	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10
On Hand	822	810	804	782	767	771	762	774	770	845	847	820
Filed	41	21	13	16	28	12	21	18	108	24	10	12

Determined	53	27	34	31	24	21	9	22	33	22	37	40
Caseload	810	804	782	767	771	762	774	770	845	847	820	792



Clearance Rate for Plan and Policy Appeals

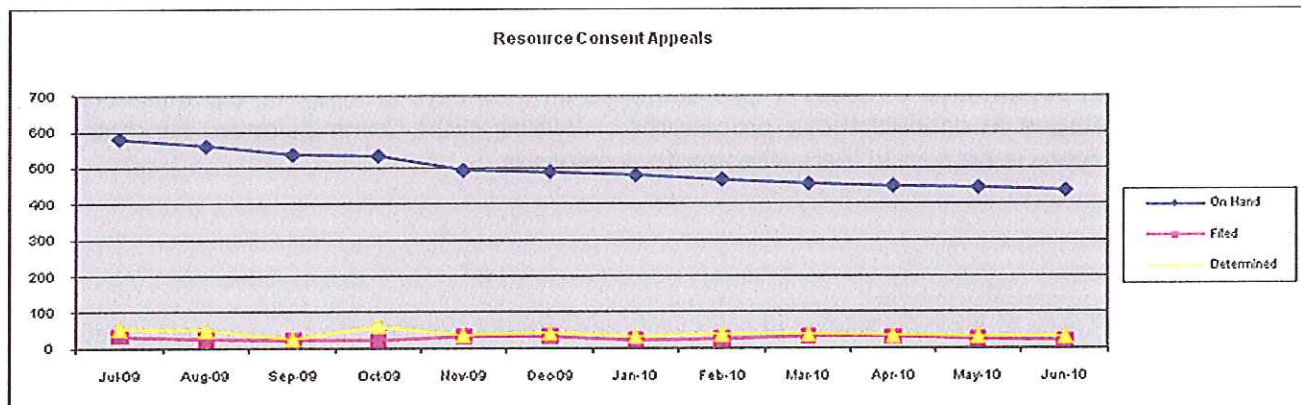
The clearance rate is an output indicator of efficiency. It shows whether the volume of cases determined match the number of cases filed over the same reporting period. It indicates whether the court's pending caseload (for particular case types) have increased or decreased over that period.

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

Resource Consent appeals

The number of resource consent appeals filed was 324 with the Court determining 479 matters. Accordingly, for such appeals, there was a 27% decrease from year ending 2008/09 in resource consent matters outstanding. As at 30 June 2010, of the 426 matters outstanding, 131 were on hold at the parties' request.

	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10
On Hand	580	560	536	533	493	489	479	467	455	449	445	437
Filed	34	25	22	22	32	32	22	26	32	31	25	21
Determined	54	49	26	62	36	42	34	38	38	35	33	32
Caseload	560	536	533	493	489	479	467	455	449	445	437	426



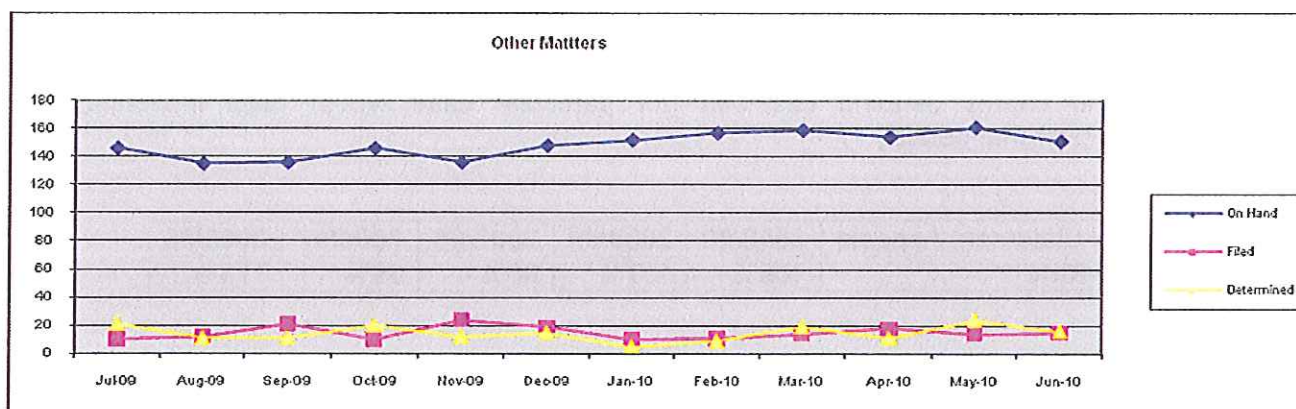
Clearance Rate for Resource Consent appeals¹

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

Other 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 other matters. Over 2009/10, 178 such matters were filed and 174 matters determined. As at 30 June 2010, of the 150 matters outstanding, 37 were on hold at the parties' request.

	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10
On Hand	146	135	136	146	136	148	152	157	159	154	161	151
Filed	10	12	21	10	24	19	10	11	14	18	14	15
Determined	21	11	11	20	12	15	5	9	19	11	24	16
Caseload	135	136	146	136	148	152	157	159	154	161	151	150

*Clearance rate for other matters²*

Other matters	2009/10	2008/09
Clearance Rate	98%	100%

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. For the purpose of encouraging settlements of cases it can authorise its members (Judges or Commissioners) or other persons to conduct those procedures. Where court Commissioners conduct the mediation, there is no cost to the parties for their services.

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.

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*	2009/10	2008/09	2007/08	2006/07
Total number of mediation events	516	525	468	449
Agreement reached in full	210	236	155	199
Agreement reached in part	98	93	142	84
Agreement not reached	47	52	104	100
Mediation vacated	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

There are many variables that impact caseload demand. Both plan and resource consent appeals make up 90% of the Court's workload. With the vast majority of first generation plans being operative, it is unknown as to the extent to which councils will go on to review their plans. It is noted that the Resource Management (Simplifying and Streamlining) Amendment Act 2009, relieved councils of the duty to review plans every 10 years and, with the number of private plan changes and council led changes being variable, the task of predicting the amount of plan appeal work is fraught with difficulty.

The buoyancy of the economy has a strong influence on the level of resource consent activity. Resource Consent appeal filings are demand driven and arise as a percentage of the volume of notified and limited notification applications processed by councils. Appeal numbers filed usually reflect around 1% of the total number of resource consent applications processed through to a decision by councils. It is likely that the 40% reduction in filings over 2009/10 reflects a corresponding reduction in activity at council level and as the economic conditions improve, some increase in appeal activity will follow.

The demand for New Zealand's natural and physical resources will in the main increase over time and as the economy improves, there is likely to be resumed pressure for development

for New Zealand's resources. Ongoing demand for improved infrastructure and services will certainly mean that there will continue to be a series of applications for large-scale infrastructure by the likes of the energy generating sector and the NZ Transport Agency.

As discussed earlier in this report, should direct referrals to the Court increase in coming years, the workload impact on the Court's administration 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.

4.1 Future resource issues

For much of 2009/10, following expiry of warrants and one resignation, the Court's establishment of Commissioners has been reduced by two permanent and one deputy Commissioner. This has placed other Commissioners under greater workload pressure and added some delay in securing mediation dates. Once the Court has its full establishment back in place, the Principal Environment Judge would consider that the Court has sufficient judicial and administrative resources to manage the current caseload. However, should the occurrence of board of inquiry and/or direct referral progressively increase then it may require a review of corresponding judicial and administrative resources.

5. Court Expenditure and Revenue

Expenditure and revenue of the court during the 2009/10 financial year and in the year previous was:

	<u>2009/10</u>	<u>2008/09</u>
Expenditure		
Judges' Remuneration and Allowances	2,305,943	2,118,129
Commissioners' Remuneration and Sitting Fees	1,972,931	1,759,156
Staff Remuneration and other Personnel Costs	2,008,017	2,025,589
Judges' and Commissioners' travel costs	497,780	574,924
Digital Audio Recording and Transcription	425,067	474,880
Staff travel costs	112,360	133,679
Staff and Commissioner training	60,367	56,795
Hire of venues for sittings and mediations	82,478	62,031
Telephone, postage and courier costs	100,339	108,481
Stores and stationery	50,735	48,348
Library and Information Services	9,813	8,705
Occupancy Costs, Utilities, Furniture and Equipment	178,729	255,101
Miscellaneous overheads	<u>1,030</u>	<u>2,838</u>
	7,805,589	7,628,656
Revenue		
Sale of copies of Court decisions	10,325	6,662
Appeal and Application Lodgement Fees ³	<u>341,950</u>	<u>75,399</u>
	352,275	82,061

³ In May 2009, appeal filing fees increased from \$55 to \$500.