

The Land and Environment Court of NSW



Annual Review

2006

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Foreword From Chief Judge

This Review provides information on the Court, its human resources and its performance in the year under review. The focus is on court administration, in particular on the Court's management of its caseload. The objectives of court administration are equity, effectiveness and efficiency. The Review analyses the ways in and the extent to which the Court has achieved these objectives in the year under review.

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. The Court's Annual Reviews in the past have focused solely on these performance indicators. This year's Review continues to include, and indeed has expanded the use of, quantitative performance indicators. Reference to these quantitative performance indicators reveals that the Court has been successful in achieving the objectives of equity, effectiveness and efficiency.

However, these quantitative performance indicators do not give a full picture of the Court's performance. There are other qualitative indicators that assist in gaining

an appreciation of the Court's performance. Hence, this year's Review includes qualitative output indicators of access to justice, including in relation to the affordability of litigation in the Court, the accessibility of the Court and the responsiveness of the Court to the needs of users.

But even the inclusion of these qualitative indicators still leave unevaluated the Court's material contribution to the community represented by the large volume of decisions made. The Court produced 805 substantive written judgments. These judgments are published on the Court's website www.lawlink.nsw.gov.au/lec and elsewhere. They provide a valuable contribution to planning and environmental jurisprudence.

Throughout the year, the Judges, Commissioners and Registrars of the Court have administered the Court and the rule of law with a high degree of independence, impartiality, integrity, equity, effectiveness and efficiency.

The Honourable Justice Brian J Preston
Chief Judge

1 2006: An Overview

Court Performance

The Court has an overriding duty to ensure the just, quick and cheap resolution of the real issues in all civil proceedings in the Court. In most areas of its work, the Court has been able to improve its performance in achieving this overriding objective relative to the results achieved in 2005. Of particular significance are:

- The significant increase in the number of finalisations of matters in nearly all classes of the Court's jurisdiction;
- The significant increase in productivity as measured by the clearance rate;
- The improvements in most classes of the Court's jurisdiction in the timeliness of the case load as measured by the backlog indicator;
- The increase in the use of alternative dispute resolution mechanisms, notably mediation and conciliation.

Chapter 5 Court Performance outlines the indicators, both quantitative and qualitative, for measuring the Court's performance and presents a detailed analysis of the results achieved. These measures include information with respect to the Court's criminal jurisdiction.

Reforms and Developments

The Court has continued to improve its practice and procedure to better enable the just, quick and cheap resolution of civil proceedings. The Court issued two practice directions for the case management of proceedings concerning claims for compensation as a result of the compulsory acquisition of land and for valuation objections. Legislative amendments were made late in 2006 to extend the beneficial facilities of conciliation conferences and on-site hearings to a wider range of civil proceedings.

The Court continued to add value to the merits review function it performs in hearing and determining appeals in Classes 1 and 2 by making six new planning principles.

These developments in the Court's work are discussed in Chapter 4 Reforms and Developments.

Education and Community Involvement

The Judges and Commissioners updated and developed their skills and knowledge during the year by attending conferences, seminars and workshops. Some of the educational activities were tailored specifically to the Court's needs while others targeted the national and international legal community.

The Court has a high national and international reputation as a leading specialist environment court. There is significant demand for the exchange of knowledge and experience within the national and international legal and judicial communities. Judges and Commissioners of the Court have actively participated in capacity building and information exchange by presenting papers and participating as trainers in a variety of conferences, seminars, workshops, giving lectures at educational institutions and presiding at moot courts. The Court has also regularly hosted international and national delegations to the Court.

Chapter 6 Education and Community Involvement details the Court's activities in judicial education and involvement in the community.

Consultation with Court Users

In 2006, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Group. Consultation occurred both formally through the Court Users Group and informally with a variety of legal practitioners and professional bodies. Details of the Court Users Group are in Appendix 1 and the Court's Committees are in Appendix 2.

2 Court Profile

The Court's Jurisdiction

The Land and Environment Court of New South Wales was established on 1 September 1980 by the *Land and Environment Court Act 1979* (the Court Act) as a superior court of record. It is a specialist court that enjoys the benefits of a combined jurisdiction within a single court.

The Court has an appellate and a review jurisdiction in relation to planning, building, environmental and ancillary matters. Jurisdiction is exercised by reference to the subject matter of the proceedings. This may involve matters that have an impact on community interest as well as matters of government policy. The Court has summary criminal jurisdiction and appellate criminal jurisdiction in relation to environmental offences.

Sections 16 to 21B of the Court Act provide for seven classes of jurisdiction in the Court.

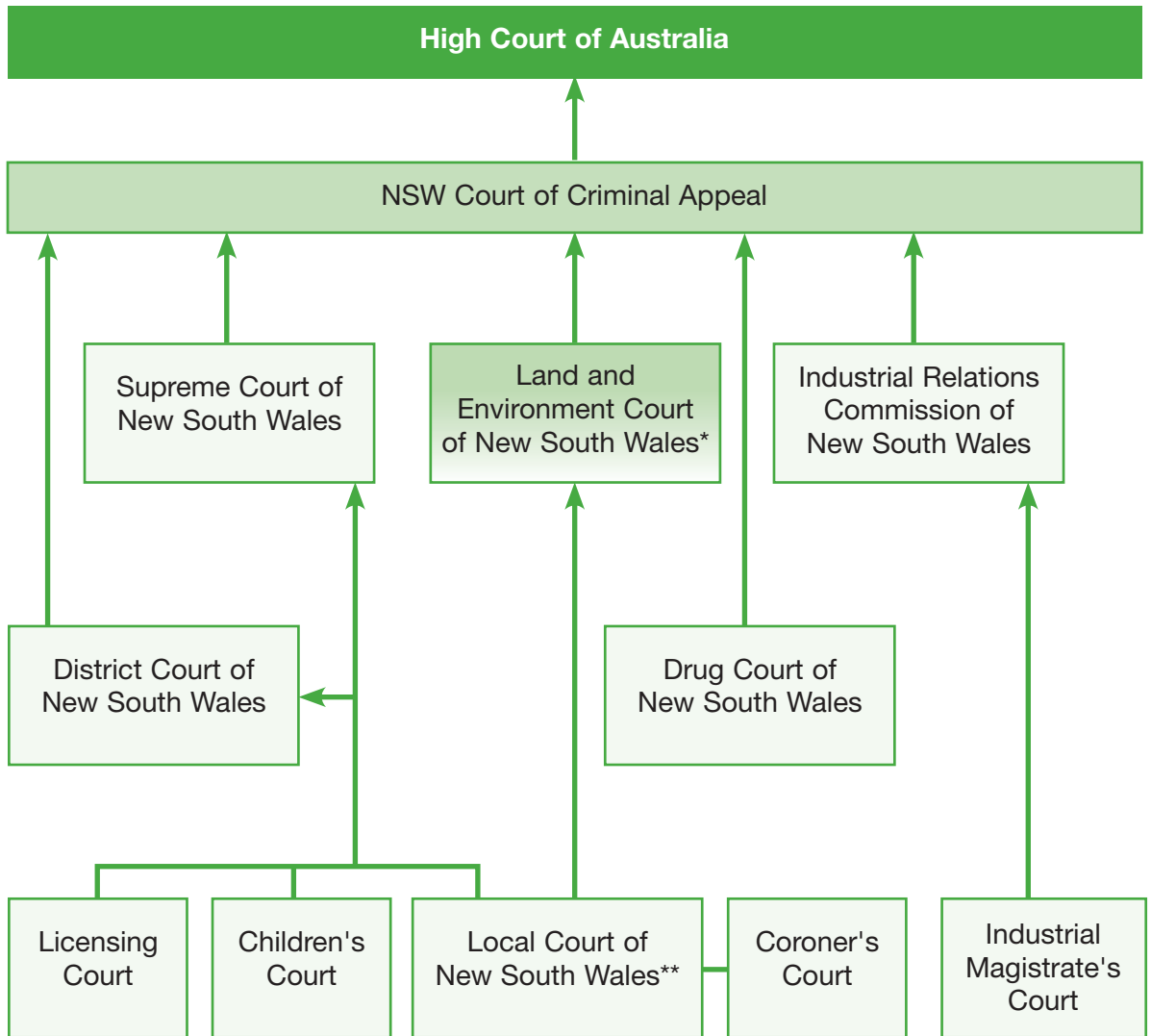
Table 2.1 summarises these seven classes.

Table 2.1 Classes of the Court's Jurisdiction

| | |
|----------------|---|
| Class 1 | environmental planning and protection appeals (merits review appeals) |
| Class 2 | local government, trees and miscellaneous appeals (merits review appeals) |
| Class 3 | land tenure, valuation, rating and compensation matters (merits review appeals) |
| Class 4 | environmental planning and protection (civil enforcement and judicial review) |
| Class 5 | environmental planning and protection (summary criminal enforcement) |
| Class 6 | appeals against convictions or sentences relating to environmental offences (appeals as of right from Magistrates in Local Court prosecutions for environmental offences) |
| Class 7 | appeals against convictions or sentences relating to environmental offences (appeals requiring leave from Magistrates in Local Court prosecutions for environmental offences) |

The Court's place in the New South Wales Court system is shown diagrammatically in Figures 2.1 (criminal jurisdiction) and Figure 2.2 (civil jurisdiction). Special arrangements are made in relation to appeals from the Court's decisions in Class 1, 2 or 3 of the Court's jurisdiction depending on whether the decision was made by a Judge or a Commissioner. Figure 2.3 shows diagrammatically these appellate arrangements.

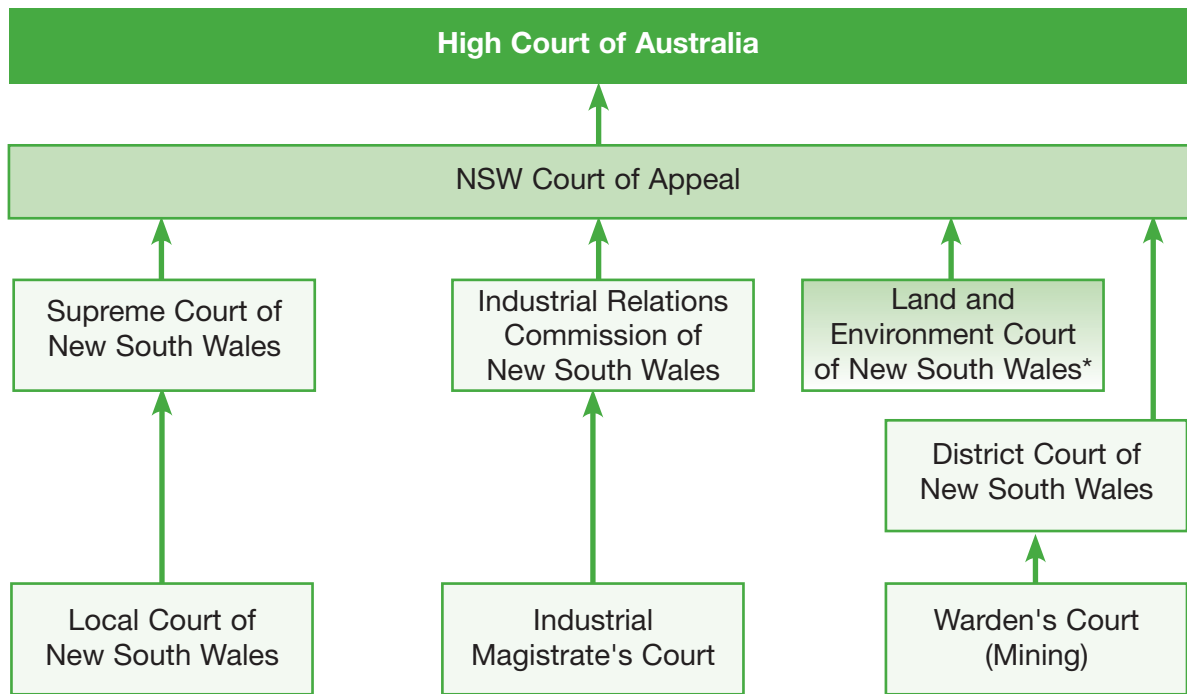
Figure 2.1 New South Wales Court System – Criminal Jurisdiction



* Appeals to the NSW Court of Criminal Appeal are in relation to proceedings in Class 5, 6 or 7 of the Land and Environment Court's jurisdiction.

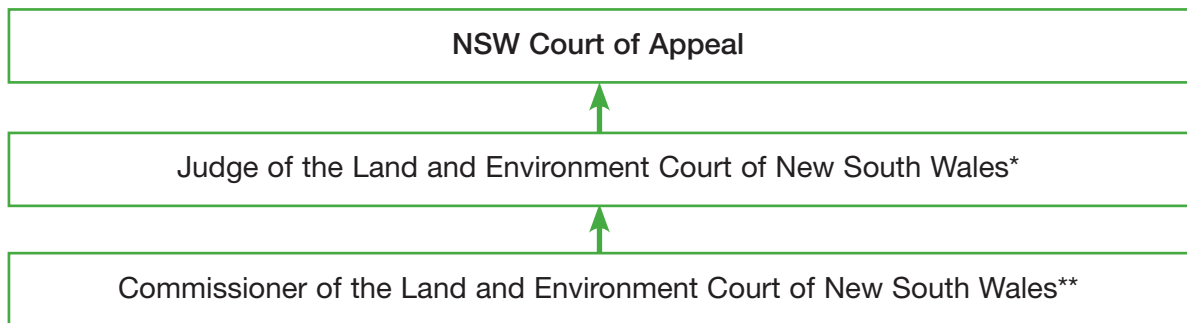
** Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

Figure 2.2 New South Wales Court System – Civil Jurisdiction



* Appeals to the NSW Court of Appeal are in relation to proceedings in Class 1, 2, 3 or 4 of the Land and Environment Court's jurisdiction.

Figure 2.3 Appeals from decisions in Classes 1, 2 and 3 of the Land and Environment Court of New South Wales



* Appeals from a decision of a Judge in Class 1, 2 or 3 of the Land and Environment Court's jurisdiction are to the NSW Court of Appeal on a question of law.

** Appeals from a decision of a Commissioner in Class 1, 2 or 3 of the Land and Environment Court's jurisdiction are to a Judge of the Land and Environment Court on a question of law and any further appeal from the Judge's decision is only by leave of the NSW Court of Appeal.

Who makes the decisions?

The Judges

Judges have the same rank, title and status as the Judges of the Supreme Court of New South Wales. Judges preside over all Class 3 (land tenure and compensation), 4, 5, 6 and 7 matters, and can hear matters in all other Classes of the Court's jurisdiction.

As at 31 December 2006, the Judges, in order of seniority, were as follows:

Chief Judge

The Honourable Justice Brian John Preston

Judges

The Honourable Justice Neal Raymond Bignold

The Honourable Mr Justice David Henry Lloyd

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope Margaret Pain

The Honourable Justice Jayne Margaret Jagot

The Honourable Justice Peter Meldrum Biscoe

Acting Judges

The following person held a commission for and sat during 2006:

The Honourable Robert Neville Talbot (commission effective 31 January to 31 December)

The Commissioners

Suitably qualified persons may be appointed as Commissioners of the Court. The qualifications and experience required for a Commissioner are specified in s 12 of the Court Act and include the areas of:

- local government administration;
- town planning;
- environmental science;
- land valuation;

- architecture, engineering, surveying;
- building construction;
- natural resources management;
- urban design or heritage; and
- land rights for Aborigines or disputes involving Aborigines.

Persons may be appointed as full-time or part-time Commissioners for a term of 7 years. Persons may also be appointed as an Acting Commissioner for a term of up to 12 months. Acting Commissioners are called upon on a casual basis to exercise the functions of a Commissioner as the need arises.

The primary function of Commissioners is to hear and determine merits review appeals in Class 1, 2, and 3 of the Court's jurisdiction. On occasion the Chief Judge may direct that a Commissioner sit with a Judge, or that two or more Commissioners sit together to hear Class 1, 2 and 3 matters.

At 31 December 2006, the Commissioners were as follows:

Senior Commissioner

Dr John Roseth

Commissioners

Mr Stafford J Watts

Mr Trevor A Bly

Mr Robert R Hussey

Mr Kevin G Hoffman

Mr Graham T Brown

Ms Janette S Murrell

Ms Annelise Tuor

Mr Tim Moore

Acting Commissioners

Mr Gregory J Davison

Ms Cherie Imlah

Associate Professor Michael McDaniel

Mullenjaiwakka

Ms Julie Smith

The Registrars

The Court Registrar has the overall administrative responsibility for the Court, as well as exercising quasi-judicial powers such as conducting callovers and mediations.

The Chief Judge directs the Registrar on the day to day running of the Court.

The Court is a business centre within the Attorney General's Department. The Registrar, as Business Centre Manager, has reporting and budgetary responsibilities to the Director General of that department.

As at 31 December 2006, the Registrars were as follows:

Registrar Ms Susan Dixon

Assistant Registrar Ms Margaret Lennan

Appointments and Retirements

Appointments

Jayne Margaret Jagot was appointed a Judge of the Land and Environment Court on 1 February 2006.

Peter Meldrum Biscoe QC was appointed a Judge of the Land and Environment Court on 13 March 2006.

Retirements

The Honourable Justice Robert Neville Talbot retired as a permanent Judge of the Land and Environment Court on 30 January 2006.

The Honourable Justice Dennis Antill Cowdroy OAM retired as a permanent Judge of the Land and Environment Court on 12 March 2006.

Secondments

The Honourable Justice Terence William Sheahan AO continued in 2006 as President of the Workers Compensation Commission whilst retaining his commission as a Judge of the Court.

Supporting the Court: The Registry

The Court Registry comprises the following four sections:

Client Services

This section is the initial contact for Court users and provides services such as procedural assistance, filing and issuing of court process, maintaining of records and exhibits, as well as having responsibilities under the *Public Finance and Audit Act* 1983. It also provides administrative assistance for the Court's eCourt system.

Listings

This section provides listing services, including preparation of the Court's daily and weekly program and publishes the daily Court list to the internet.

Information and Research

This section provides statistical analysis and research to the Registrar and the Chief Judge. It also supports the administration of the Court's website and the CaseLaw judgment database.

Commissioner Support

This section provides word processing and administrative support in the preparation of Commissioners' judgments and orders.

The Court provides copies of its decisions and daily court lists on the Court's website at www.lawlink.nsw.gov.au/lec

Introduction

The Court manages the flow of its cases from inception to completion in a number of ways, and is continually looking to improve its processes and outcomes. The Chief Judge determines the day-to-day caseflow management strategy of the Court. This strategy is reflected in the Land and Environment Court Rules 1996, parts of the Supreme Court Rules 1970 incorporated by reference and the Practice Directions issued by the Chief Judge. The Judges, Commissioners and Registrars work together to ensure cases are resolved in a just, timely and cost-efficient manner.

Overview by Class of Jurisdiction

Caseflow management varies with the type or class of proceeding.

Classes 1 and 2

Proceedings in Classes 1 and 2 involve merits review appeals. The Court in the appeal sits in the place of the original administrative decision-maker and re-exercises the administrative decision-making functions. The decision of the Court is final and binding and becomes that of the original decision-maker.

Appeals are allocated a directions callover date before the Registrar when the appeal is filed with the Court. The callover may take the form of an actual or in court callover, a telephone callover or an eCourt callover (see Types of Callover below).

At the callover, the Registrar will review the matter and make appropriate directions for the orderly, efficient and proper preparation of the matter for resolution by the appropriate dispute resolution mechanism. The appropriate dispute resolution mechanism may be a consensual mechanism such as conciliation (a preliminary conference under s 34 of the Court Act) or mediation or an adjudicative

mechanism by the Court hearing and determining the matter either by an on-site hearing or a court hearing.

If an issue arises that falls outside the specified duties of a Registrar or the Registrar otherwise considers it appropriate, the Registrar may refer the case to a Judge.

Class 3

Proceedings in Class 3 also involve merits review appeals. There is a range of matters including claims for compensation by reason of the compulsory acquisition of land and valuation objections under s 37 of the *Valuation of Land Act* 1916. In 2006, the Court introduced two new practice directions:

- Practice Direction No 1 of 2006 – Class 3 Compensation Claims (commenced 31 March 2006)
- Practice Direction No 2 of 2006 – Class 3 Valuation Objections (commenced 8 May 2006)

These practice directions establish Class 3 Lists for these matters. The Class 3 Lists are managed by the List Judge in Court each Friday. The practice directions specify the callover and directions hearings to be held in preparation for hearing and the directions that will usually be made at these callovers and directions hearing. The purpose of the practice directions is to set out the case management practices for the just, quick and cheap resolution of the proceedings.

Class 4

Proceedings in Class 4 are of two types: civil enforcement, usually by government authorities, of planning or environmental laws to remedy or restrain breaches and judicial review of administrative action under planning or environmental laws.

Class 4 proceedings are case managed in a Class 4 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper preparation for trial. Applications for urgent or interlocutory relief can be dealt with at any time by a Judge of the Court.

Class 5

Proceedings in Class 5 involve summary criminal enforcement proceedings, usually by government authorities prosecuting planning or environmental offences.

Class 5 proceedings are case managed in a Class 5 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper preparation for trial or sentence hearing. One purpose of the directions hearings is to allow the entry of pleas prior to the trial. Such a procedure can minimise the loss of available judicial time that occurs when trials are vacated after they are listed for hearing or when a guilty plea is entered immediately prior to, or on the day of the trial's commencement.

The directions hearing involves legal practitioners of the parties at an early stage of the proceedings. This allows the prosecution and defence to consider a range of issues that may provide an opportunity for an early plea of guilty, or shorten the duration of the trial.

Classes 6 and 7

Proceedings in Classes 6 and 7 involve appeals and applications for leave to appeal from convictions and sentences with respect to environmental offences by a Local Court. The procedure for such appeals and applications for leave to appeal is regulated by the *Crimes (Appeal and Review) Act 2001*.

Proceedings in Classes 6 and 7 are case managed by the List Judge on a Friday.

Types of Callover

The Court offers court users three types of callover:

actual callover

where representatives of the parties attend before the Registrar or a Judge in Court

telephone callover

where representatives of the parties talk with the Registrar or a Judge in a conference call

eCourt callover

where representatives of the parties post electronic requests to the Registrar using the internet

In general, the initial allocations for callover are:

- For Sydney and Metropolitan appeals, the appeal will usually be listed for the first callover as an actual or in court callover at the Land and Environment Court.
- For Country appeals, the appeal will usually be listed for the first callover as a telephone callover.

Once the first callover has been held, the parties may utilise the eCourt callover facility for further callovers.

In 2006, the Court experienced an increase in the use of eCourt callover and recorded in excess of 706 registered eCourt users (up from 500 in 2005). The Court is recognised nationally as a leader in eCourt case management.

Class 1 Hearing Options

The Court Act provides that a variety of Class 1 and Class 2 matters are to be dealt with by the Court as either an on-site hearing or a court hearing. The Registrar determines at callover the appropriate type of hearing having regard to the value of the proposed development, the nature and extent of the likely impacts, the issues in dispute, any unfairness to the parties and the suitability of the site for an on-site hearing.

An on-site hearing is a final determination of a matter conducted at the site the subject of the appeal. Apart from the judgment, an on-site hearing is not recorded.

A court hearing is the final determination of a matter in the Court, and the hearing is recorded.

Alternative Dispute Resolution

The Court encourages Alternative Dispute Resolution (ADR). ADR refers to processes, other than adjudication by the Court, in which an impartial person assists the parties to resolve the issues between them.

The methods of ADR available are:

- Conciliation;
- Mediation; and
- Neutral evaluation.

Conciliation

Conciliation is a process in which the parties to a dispute, with the assistance of an impartial conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for

terms of settlement, give expert advice on likely settlement terms, and may actively encourage the parties to reach agreement.

Conciliation in the Court is undertaken pursuant to s 34 of the Court Act. This provides for a combined or hybrid dispute resolution process involving first, conciliation and then, if the parties agree, adjudication.

The conciliation involves a Commissioner with technical expertise on issues relevant to the case acting as a conciliator in a conference between the parties. The conciliator facilitates negotiation between the parties with a view to their achieving agreement as to the resolution of the dispute.

If the parties are able to reach agreement, the conciliator, being a Commissioner of the Court, is able to dispose of the proceedings in accordance with the parties' agreement. Alternatively, even if the parties are not able to decide the substantive outcome of the dispute, they can nevertheless agree to the Commissioner adjudicating and disposing of the proceedings.

If the parties are not able to agree either about the substantive outcome or that the Commissioner should dispose of the proceedings, the proceedings are referred back to the Court for the purpose of being fixed for a hearing before another Commissioner. In that event, the conciliation Commissioner makes a written report to the Court setting out that fact as well as stating the Commissioner's views as to the issues in dispute between the parties to the proceedings. This is still a useful outcome, as it scopes the issues and often will result in the proceedings being able to be heard and determined expeditiously, in less time and with less cost.

Table 3.1 shows the comparison between the number of conciliation conferences in 2004, 2005 and 2006.

**Table 3.1 s 34 Conciliation Conferences
2004 – 2006**

| | 04 | 05 | 06 |
|------------------|-----------|-----------|-----------|
| s 34 conferences | 39 | 17 | 29 |

The table shows that the considerable fall in the use of conciliation conferences that occurred between 2004 and 2005 was partially corrected in 2006, in part by the Court promoting to parties the existence and usefulness of the facility of conciliation conferences.

However, an impediment was the legislative restrictions on the types of proceedings in which conciliation conferences were available. Conciliation conferences were not available for development appeals in Class 1 required to be dealt with as an on-site hearing or proceedings in Class 3 other than claims for compensation where the parties agreed. As a result, the Court Act was amended, effective from 29 November 2006, to make the facility of conciliation conferences available to all proceedings in Classes 1, 2 and 3. It is expected that the increased availability of conciliation conferences will result in an increase in the utilisation of conciliation conferences in 2007.

Mediation

Mediation is a process in which the parties to a dispute, with the assistance of an impartial mediator, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

The Court may, at the request of the parties or of its own volition, refer proceedings in Classes 1, 2, 3 and 4 to mediation. The Court provides a mediation service at no cost to the parties by referral to the Court's mediator. The Court will also refer proceedings for mediation to an external mediator not associated with the Court and agreed to by the parties.

Table 3.2 provides a comparison between mediations in 2004, 2005 and 2006. Internal mediations are those conducted by the Court mediator. External mediations are those conducted by a mediator not associated with the Court and agreed to by the parties.

Table 3.2 Mediations in 2004 – 2006

| | 04 | 05 | 06 |
|------------------------------|----|----|-----|
| Classes 1 and 2 | | | |
| Total: | 23 | 8 | 15 |
| Internal | 6 | 7 | 5 |
| External | 17 | 1 | 10 |
| Number finalised pre-hearing | 8 | 5 | 13 |
| % finalised pre-hearing | 35 | 63 | 87 |
| Class 3 | | | |
| Total: | 15 | 9 | 30 |
| Internal | 2 | 1 | 1 |
| External | 13 | 8 | 29 |
| Number finalised pre-hearing | 8 | 3 | 26 |
| % finalised pre-hearing | 53 | 33 | 87 |
| Class 4 | | | |
| Total: | 11 | 7 | 7 |
| Internal | 8 | 3 | 3 |
| External | 3 | 4 | 4 |
| Number finalised pre-hearing | 4 | 6 | 7 |
| % finalised pre-hearing | 36 | 86 | 100 |
| All Classes | | | |
| Total: | 49 | 24 | 52 |
| Internal | 16 | 11 | 9 |
| External | 33 | 13 | 43 |
| Number finalised pre-hearing | 20 | 14 | 46 |
| % finalised pre-hearing | 41 | 58 | 88 |

The table shows a significant percentage increase from 2005 to 2006 in the number of mediations as well as in the percentage of matters finalised by or after mediation and before a court hearing. This is in part a response to the commitment by the Court in 2006 to increase the availability and use of ADR, including mediation.

Neutral evaluation

Neutral evaluation is a process of evaluation of a dispute in which an impartial evaluator seeks to identify and reduce the issues of fact and law in dispute. The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of damages.

The Court may refer proceedings in Classes 1, 2, 3 and 4 to neutral evaluation with or without the consent of the parties. In 2006, the Court has referred matters to neutral evaluation by a Commissioner or an external person agreed to by the parties.

4 Reforms and Developments

During 2006, reforms continued with respect to the following areas:

- Compensation Claims and Valuation Objections in Class 3;
- Conciliation conferences; and
- On-site hearings.

Planning principles continued to be developed.

Compensation Claims and Valuation Objections in Class 3

Reforms to the Court's practice and procedure in 2004 and 2005 focused on development appeals in Class 1 and on expert evidence in proceedings in Classes 1, 2, 3 and 4. These changes led to improvements in the case management, hearing and determination of these appeals.

Proceedings in Class 3 were also in need of improvement in case management, hearing and determination. The primary types of proceedings in Class 3 are claims for compensation by reason of the compulsory acquisition of land and objections to valuations under s 37 of the *Valuation of Land Act 1916*.

Practice directions were made in relation to proceedings involving compensation claims and valuation objections (commencing 31 March 2006 and 8 May 2006 respectively). The practice directions establish lists for each type of proceedings, to be administered by a List Judge mainly on a Friday. The practice directions specify the practice and procedure regulating the orderly and efficient preparation of these types of proceedings for hearing. The overriding purpose of the case management procedures specified is the just, quick and cheap resolution of the proceedings.

As is explained in Chapter 5 Court Performance, the practice directions and their implementation by the Court have improved the Court's efficiency in the resolution of these types of proceedings.

Conciliation Conferences

The Court Act was amended by the *Crimes and Courts Legislation Amendment Act 2006*, effective 29 November 2006, to increase the availability of conciliation conferences to all proceedings in Classes 1, 2 and 3.

On-site Hearings

On-site hearings involve a conference presided over by a single Commissioner on the site of the development the subject of the appeal. They are designed to be quicker and cheaper than traditional court hearings.

The facility of an on-site hearing was available only in development appeals under s 97 of the *Environmental Planning and Assessment Act 1979*. The facility of an on-site hearing was extended by the *Crimes and Courts Legislation Amendment Act 2006* to proceedings in Class 1 under ss 96, 96AA, 121ZK and 149F of the *Environmental Planning and Assessment Act 1979* and proceedings in Class 2 under s 7 of the *Trees (Disputes Between Neighbours) Act 2006*.

Planning Principles

To ensure consistency of decision making in merits review appeals, the Chief Judge has encouraged the Judges and Commissioners to develop planning principles in their judgments in appropriate cases or to refine existing planning principles published in earlier judgments of the Court.

A planning principle is a statement of a desirable outcome from, a chain of reasoning aimed at reaching, or a list of appropriate matters to be considered in making, a planning decision. While planning principles are stated in general

terms, they may be applied to particular cases to promote consistency. Planning principles are not legally binding and they do not prevail over environmental planning instruments and development control plans.

Planning principles assist when making a planning decision, including where there is a void in policy, or where policies expressed in qualitative terms allow for more than one interpretation, or where policies lack clarity.

In 2006, the Court published six judgments dealing with planning principles. These judgments are detailed in Table 4.1 below.

Table 4.1 2006 Planning Principles

| Principle | Case |
|---|--|
| <i>Demolition</i> - The extent of demolition – alterations and additions or a new building | Edgar Allan Planning Pty Limited v Woollahra Municipal Council [2006] NSWLEC 681 |
| <i>Ecologically Sustainable Development and the precautionary principle</i> – Explication of the precautionary principle and a framework for its implementation | Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133 |
| <i>Heritage</i> - Demolition of contributory item in conservation area | Helou v Strathfield Municipal Council [2006] NSWLEC 66 |
| <i>Non-statutory regional planning policies</i> - Assessing the role of non-statutory regional planning policies vis-à-vis statutory local plans | Direct Factory Outlets Homebush v Strathfield Municipal Council [2006] NSWLEC 318 |
| <i>Redevelopment</i> - Existing use rights and merit assessment | Stromness Pty Ltd v Woollahra Municipal Council [2006] NSWLEC 587 (commenting on the planning principle in Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71) |
| <i>Subdivision</i> - Solar access for allotments in residential subdivisions | Wallis & Moore Pty Limited v Sutherland Shire Council [2006] NSWLEC 713 |

5 Court Performance

Overall Caseload

The comparative caseload statistics between 2002 and 2006 are summarised in Table 5.1.

Table 5.1 Caseload Statistics

| | 2002 | 2003 | Year 2004 | 2005 | 2006 |
|---------------------|------|------|--------------|------|------|
| Class 1 | | | | | |
| Registrations | 1124 | 1206 | 1211 | 1099 | 874 |
| Restored | 160 | 69 | 112 | 80 | 131 |
| Pre-Trial Disposals | 708 | 635 | 742 | 618 | 675 |
| Disposed by Hearing | 585 | 689 | 563 | 519 | 524 |
| Pending | 637 | 593 | 611 | 653 | 457 |
| Class 2 | | | | | |
| Registrations | 32 | 27 | 32 | 15 | 12 |
| Restored | 5 | 3 | 1 | 1 | 1 |
| Pre-Trial Disposals | 17 | 7 | 13 | 26 | 8 |
| Disposed by Hearing | 11 | 13 | 2 | 3 | 5 |
| Pending | 116 | *5 | 23 | 11 | 7 |
| Class 3 | | | | | |
| Registrations | 113 | 188 | 232 | 288 | 152 |
| Restored | 6 | 2 | 47 | 16 | 18 |
| Pre-Trial Disposals | 105 | 71 | 161 | 113 | 212 |
| Disposed by Hearing | 28 | 63 | 61 | 80 | 115 |
| Pending | 90 | 147 | 204 | 319 | 165 |
| Class 4 | | | | | |
| Registrations | 239 | 251 | 196 | 187 | 244 |
| Restored | 47 | 28 | 43 | 42 | 39 |
| Pre-Trial Disposals | 218 | 127 | 176 | 123 | 180 |
| Disposed by Hearing | 103 | 163 | 96 | 80 | 87 |
| Pending | 153 | 142 | 109 | 142 | 164 |
| Class 5 | | | | | |
| Registrations | 124 | 120 | 77 | 73 | 48 |
| Restored | 4 | 6 | 1 | 14 | 6 |
| Pre-Trial Disposals | 25 | 23 | 30 | 6 | 3 |
| Disposed by Hearing | 125 | 116 | 63 | 67 | 68 |
| Pending | 94 | 81 | 66 | 81 | 63 |
| Class 6 | | | | | |
| Registrations | 1 | 5 | 7 | 14 | 12 |
| Restored | 1 | 0 | 0 | 1 | 0 |
| Pre-Trial Disposals | 0 | 1 | 3 | 3 | 6 |
| Disposed by Hearing | 2 | 4 | 4 | 6 | 12 |
| Pending | 0 | 1 | 2 | 8 | 2 |
| TOTAL | | | | | |
| Registrations | 1632 | 1798 | 1755 | 1676 | 1342 |
| Restored | 223 | 109 | 204 | 154 | 195 |
| Pre-Trial Disposals | 1073 | 868 | 1125 | 889 | 1083 |
| Disposed by Hearing | 854 | 1051 | 789 | 755 | 811 |
| Pending | 1090 | 1086 | 1015 | 1214 | 858 |

Table 5.1 shows the following trends:

- Total registrations decreased in 2006, a trend shown in all classes except for Class 4.
- Total finalisations increased in 2006, a trend shown in all classes but particularly significant increases occurred in Classes 3 and 4.
- As a result of the decrease in registrations and the increase in finalisations, the total pending caseload has decreased in 2006, indeed to its lowest level in five years.
- Merits review proceedings in Classes 1, 2 and 3 comprised 81% of the Court's finalised caseload in 2006.
- Judicial proceedings in Classes 4, 5, 6 and 7 comprised 19% of the Court's finalised caseload in 2006.
- The means of finalisation in 2006 were 57% pre-trial disposals (including by negotiated settlement) and 43% by adjudication by the Court. This proportion has remained reasonably constant over the last five years, as Table 5.2 shows.

Table 5.2 Means of Finalisation – All Matters

| | 02 | 03 | 04 | 05 | 06 |
|---------------------------------------|-----------|-----------|-----------|-----------|-----------|
| Total matters finalised - all classes | 1927 | 1919 | 1914 | 1644 | 1894 |
| Total pre-trial finalisations | 1073 | 868 | 1125 | 889 | 1083 |
| % matters finalised pre-trial | 56 | 45 | 59 | 54 | 57 |

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 conciliation conferences and on-site hearings (mainly for Class 1 proceedings). As Table 5.3 shows, 11.4% of appeals in Classes 1, 2 and 3 were finalised by these means. There were 146 on-site hearings, and 29 section 34 conciliation conferences in 2006.

Table 5.3 Means of Finalisation - Classes 1, 2 & 3

| | 02 | 03 | 04 | 05 | 06 |
|---------------------------------------|-----------|-----------|-----------|-----------|-----------|
| Total matters finalised | 1321 | 1486 | 1541 | 1359 | 1539 |
| s 34 conferences and on-site hearings | 57 | 76 | 226 | 184 | 175 |
| % s 34 and matters finalised on-site | 4.3 | 5.1 | 14.7 | 13.5 | 11.4 |

Court Performance by Class of Jurisdiction

A brief summary of the Court's performance in 2006 for each of the seven classes of jurisdiction is provided.

Class 1

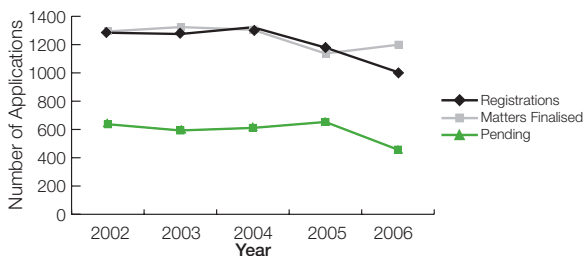
Class 1 matters constitute the bulk of the Court's caseload (65%). 66% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications.

46% of Class 1 registrations were applications where councils had not determined the development application within the statutory time period ("deemed refusals").

Of the remaining matters finalised in 2006, 16% were applications to modify a development consent and 10% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Applications for costs and appeals against the Court's decisions constituted the remaining matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2002 to 2006.

Figure 5.1 Class 1 caseload: annual data 2002 to 2006



Class 2

The number of Class 2 matters before the Court fell and represented in 2006 less than 1% of all registrations.

Class 3

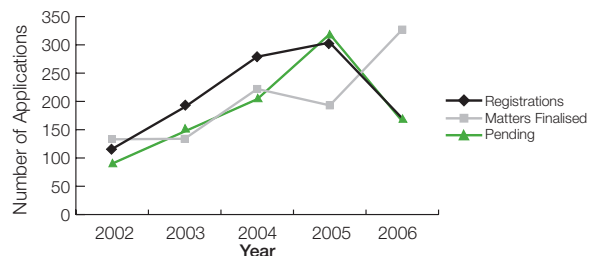
Class 3 of the Court's jurisdiction encompasses a range of proceedings including claims for compensation as a result of the compulsory acquisition of land, valuation and rating appeals and some Aboriginal land rights matters.

Registrations in Class 3 decreased by 44% in 2006. Valuation appeals accounted for 52% of new Class 3 appeals in 2006. While the proportion of resumption of land matters finalised remained steady (24%), 80% more resumption matters were completed in 2006. Aboriginal land rights claims appeals constituted 12% of all Class 3 appeals registered in 2006.

Of the matters finalised in 2006, 58% were valuation or rating appeals, 24% were claims for compensation and 18% were other matters.

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2002 and 2006.

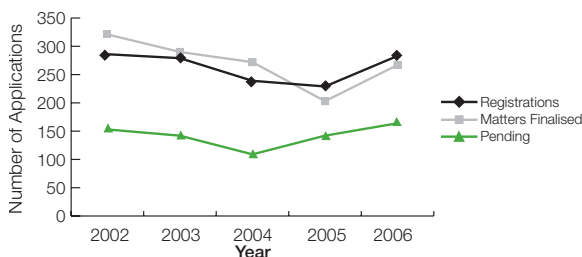
Figure 5.2 Class 3 caseload: annual data 2002 to 2006



Class 4

Class 4 registrations increased by 24% and finalisations increased by 32% in 2006. Of the Class 4 matters finalised in 2006, 55% were initiated by councils. Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2002 and 2006.

Figure 5.3 Class 4 caseload: annual data 2002 to 2006

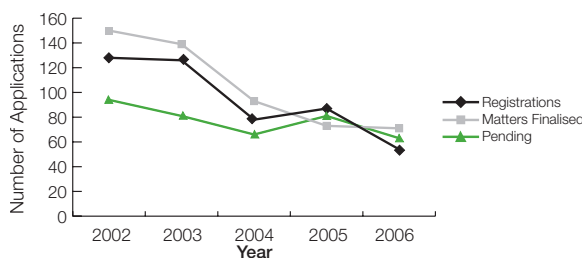


Class 5

New Class 5 registrations fell 34% in 2006. The Environment Protection Authority initiated 27% of all new registrations (down from 51% in 2005). The number of matters initiated by local councils increased to 54%, up from 12% in 2005. Other statutory bodies initiated 19% of all new registrations. Of the 71 matters finalised in 2006, convictions were recorded in 28, 3 were withdrawn, 32 were dismissed and 8 involved costs or extensions of time to comply with other orders. Fines for conviction ranged from \$500 to \$125,000.

Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2002 to 2006.

Figure 5.4 Class 5 caseload: annual data 2002 to 2006



Classes 6 and 7

12 new Class 6 appeals were filed, 10 of which were finalised. There were no Class 7 appeals before the Court in 2006.

Measuring Court Performance

The Court has a statutory duty to facilitate the just, quick and cheap resolution of the real issues in civil proceedings in the Court. The Court's practice and procedure is designed to achieve this overriding purpose. In order to determine whether this purpose is being fulfilled, the Court needs to monitor and measure performance.

The objectives of court administration are equity, effectiveness and efficiency. Various performance indicators can be used to evaluate the Court's achievement of these objectives of court administration.

The objectives of equity and effectiveness involve ensuring access to justice. Access to justice can be evaluated by reference to various criteria, both quantitative and qualitative. These include affordability, accessibility, responsiveness to the needs of users, and timeliness and delay measured by a backlog indicator and compliance with time standards. The objective of efficiency can be evaluated by output indicators including an attendance indicator and a clearance rate indicator.

Output Indicators of Access to Justice

Affordability

Access to justice is facilitated by ensuring affordability of litigation in the Court. One indicator of affordability is the fees paid by applicants. Lower court fees help keep courts accessible to those with less financial means. However, ensuring a high standard of court administration service quality (so as to achieve the objective of effectiveness) requires financial resources. These days, a primary source of revenue to fund court administration is court fees. The Land and Environment Court is no exception. It was necessary in 2006 to increase court fees to be able to balance the Court's

budget and ensure a high standard of court administration service quality (effective 1 July 2006). Notwithstanding the increase, the increased court fees still meet criteria of equity.

First, the court fees differentiate having regard to the nature of applicants and their inherent likely ability to pay. Individuals are likely to have less financial resources than corporations and hence the court fees for individuals are about half of those for corporations.

Second, the court fees vary depending on the nature of the proceedings. For example, the court fees for proceedings concerning a dispute over trees under the *Trees (Disputes Between Neighbours) Act 2006* (which came into force on 2 February 2007) have been set low, equivalent to Local Court fees, reflecting the fact that these proceedings are likely to be between individual neighbours.

Third, in development appeals in Class 1, the quantum of court fees increases in steps with increases in the value of the development (and the likely profit to the developer). Similarly, in compensation claims in Class 3, the court fees increase in steps with the increased amount of compensation claimed.

Fourth, the increased court fees bring about parity with the court fees for equivalent proceedings in other courts. The court fees for tree disputes are equivalent to Local Court fees reflecting the fact that the nature of the dispute is one that the Local Court might entertain. Similarly, proceedings in Class 4 for civil enforcement and judicial review are of the nature of proceedings in, and indeed before the establishment of the Land and Environment Court were conducted in, the Supreme Court. The court fees for these proceedings are comparable to those charged by the Supreme Court.

Finally, the Registrar retains a discretion to waive or vary the court fees in cases of hardship or in the interests of justice.

It is also important to note that court fees are only part of the costs faced by litigants. Legal fees and experts' fees are far more significant costs of litigation. The Court continues to improve its practice and procedure with the intention of reducing these significant costs and hence improve the affordability of litigation in the Court.

Accessibility

The Court has adopted a number of measures to ensure accessibility including geographical accessibility, access for people with disabilities, access to help and information, access for unrepresented litigants, access to alternative dispute resolution mechanisms and facilitating public participation.

Geographical accessibility

Geographical accessibility concerns ensuring parties and their representatives and witnesses are able to access the Court in geographical terms. New South Wales is a large state. The Land and Environment Court is located in Sydney which is a considerable distance from much of the population. To overcome geographical accessibility problems, the Court has adopted a number of measures.

First, the Court regularly holds hearings in country locations. Table 5.4 shows the country hearings from the period 1 July 2005 to 31 December 2006.

Table 5.4 Country Hearings

| Courthouse | Number of Hearings | | | |
|-------------------|---------------------------|----------------|----------------|----------------|
| | Class 1 | Class 3 | Class 4 | Class 5 |
| Albury | 4 | 1 | 1 | |
| Armidale | 2 | | | |
| Ballina | 2 | 1 | 1 | |
| Bathurst | 3 | | | |
| Bega | 1 | | | |
| Bellingen | 2 | | | |
| Belmont | | 1 | | |
| Broken Hill | | | | 1 |
| Byron | 2 | 1 | | |
| Casino | 1 | | | |
| Cessnock | 1 | | | |
| Coffs Harbour | 4 | | | |
| Dubbo | 1 | | | |
| East Maitland | 4 | | | |
| Forster | 2 | | | |
| Gosford | 1 | 1 | | |
| Goulburn | 1 | | | |
| Grafton | 1 | | | |
| Katoomba | 3 | | | |
| Kempsey | 1 | | | |
| Kiama | 3 | | | |
| Kurri Kurri | 3 | | | |
| Lismore | 1 | 2 | | |
| Maitland | 6 | | | |
| Moruya | 1 | | | |
| Moss Vale | 3 | | | |
| Mullumbimby | 1 | | | |
| Murwillumbah | 2 | 1 | | |
| Newcastle | 3 | | | |
| Nowra | 1 | 1 | | |
| Port Macquarie | 2 | 1 | | |
| Queanbeyan | 2 | | | |
| Raymond Terrace | | 1 | | |
| Richmond | 1 | | | |
| Taree | 2 | 1 | | |
| Toronto | 2 | | | |
| Tumut | | 1 | | |
| Tweed Heads | 4 | 1 | | |
| Wagga Wagga | 2 | | | |
| Wollongong | 2 | | | |
| Wyong | 1 | | | |
| TOTAL | 78 | 14 | 2 | 1 |

Second, for attendances before hearings, the Court has established the facility of a telephone callover. This type of callover takes place in a court equipped with conference call equipment where the parties or their representatives can participate in the court attendance whilst remaining in their distant geographical location.

Third, the Court pioneered the use of eCourt callovers. This involves the parties or their representatives posting electronic requests to the Registrar using the internet and the Registrar responding. This also mitigates the tyranny of distance.

Fourth, conduct of the whole or part of a hearing on the site of the dispute also means that the Court comes to the litigants. An official on-site hearing involves conducting the whole hearing on-site. This type of hearing is required where there has been a direction that an appeal under ss 96, 96AA, 97, 121ZK or 149F of the *Environmental Planning and Assessment Act 1979* or s 7 of the *Trees (Disputes Between Neighbours) Act 2006* be conducted as an on-site hearing. The hearing is conducted as a conference presided over by a Commissioner on the site of the development.

However, even for other hearings which may be conducted as a court hearing, it is the Court's standard practice that the hearing commence at 9.30am on site. This enables not only a view of the site and surrounds but also the taking of evidence from residents and other persons on the site. This facilitates participation in the proceedings by witnesses and avoids the necessity for their attendance in the Court in Sydney.

Access for persons with disabilities

The Court has a disability strategic plan that aims to ensure that all members of the community have equal access to the Court's services and programs. The Court

is able to make special arrangements for witnesses with special needs. The Court can be accessed by persons with a disability. The Land and Environment Court website contains a special page outlining the disability services provided by the Court.

Access to help and information

The Court facilitates access to help and provides information to parties about the Court and its organisation, resources and services, the Court's practices and procedures, its forms and fees, court lists and judgments, publications, speeches and media releases, and self-help information, amongst other information. Primarily it does this by its website. However, the Court also has guides and other information available at the counter. Registry staff assist parties and practitioners, answer questions and provide information.

The Local Courts throughout New South Wales also have information on the Land and Environment Court and documents are able to be filed in those Courts, which are passed on to the Land and Environment Court.

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 unrepresented litigants

The Court also makes special efforts to assist unrepresented litigants, through its website and its published information and fact sheets, and by the Registry staff. The Court has a special fact sheet for "Litigants in Person in the Land and Environment Court of New South Wales". The fact sheet contains information on:

- The Court's jurisdiction;
- Legal advice and assistance;
- The Court's schedule of fees;

- How to request a waiver, postponement or remission of fees;
- The availability of interpreters;
- Disability access information;
- User feedback – Land and Environment Court services;
- Information about the Court’s website; and
- Land and Environment Court contact information.

The Court’s website also has a special page on “self-help”. That page provides links to other web pages and to external links dealing with:

- Information sheets on each of the types of proceedings in the Court;
- Contacts in the Court;
- Frequently asked questions;
- A guide to the Court;
- Interpreters and their availability;
- Judgments of the Court;
- The jurisdiction of the Court;
- Languages and translation services;
- Legal advice and assistance;
- Legal research links;
- Litigants in person in Court;
- Mediation;
- Planning principles; and
- Tree dispute applications.

Access to alternative dispute resolution

The Court has been a pioneer in providing alternative dispute resolution services. The availability of alternative dispute resolution mechanisms allows the tailoring of mechanisms to the needs of disputants and the nature of the evidence.

When the Land and Environment Court was established in 1980 there was the facility

for conciliation conferences under s 34 of the Court Act. As noted earlier, these were curtailed in 2002 when on-site hearings were provided for but in 2006 the facility of conciliation conferences was extended to all matters in Classes 1, 2 and 3.

The Court provides mediation services. Currently, the Registrar of the Court is an accredited mediator and can provide in-house mediation for parties. In addition, the Court encourages and will make appropriate arrangements for mediation by external mediators. Informal mechanisms such as case management conferences also encourage negotiation and settlement of matters. The Court’s website contains a page explaining the alternative dispute resolution mechanisms and providing links to other sites explaining ADR methods include mediation.

Facilitating public participation

Access to justice can also be facilitated by the Court ensuring that its practice and procedure promotes and does not impede access by all. This involves careful identification and removal of barriers to participation, including by the public. Procedural law dealing with standing to sue, interlocutory injunctions (particularly undertaking for damages), security for costs, laches and costs of proceedings, to give some examples, can either impede or facilitate public access to justice. The Court’s decisions in these matters have generally been to facilitate public access to the courts.

Responsiveness to the needs of users

Access to justice can also be facilitated by the Court taking a more user orientated approach. The justice system should be more responsive to the needs and expectations of people who come into contact with the system. The principle 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 the facilities and services available to members of the public. These steps require sensitivity to the needs of particular groups.

The measures adopted by the Court for ensuring accessibility (discussed above) also make the Court more responsive to the needs and expectations of people who come into contact with the Court. The Court also consults with court users and the community to assist the Court to be responsive to the needs of users.

The Court has a Court Users Group to maintain communication with and feedback from Court users as to the practice and procedure and the administration of the Court. Information on and membership of the Court Users Group is in Appendix 1. The Court Users Group assists the Court to be responsive to the needs of those who use it.

The Chief Judge has held informal gatherings with practitioners and experts who use the Court and delivered numerous speeches where the Court's practices and procedures have been discussed.

In 2006, the Judges, Commissioners and the Registrar have participated in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

Output Indicators of Effectiveness and Efficiency

The effectiveness and efficiency of the Court is able to be measured by reference to the output indicators of backlog indicator, time standards for delivery of judgments, clearance rate and attendance indicator.

Backlog indicator

The backlog indicator is an output indicator of case processing timeliness. It is derived by comparing the age (in elapsed time from lodgment) of the Court's caseload against time standards. The Court adopted its own standards for the different classes of its jurisdiction in 1996. These are:

- Classes 1, 2 and 3: 95% of applications should be disposed of within 6 months of filing.
- Classes 4, 5, 6 and 7: 95% of applications to be disposed of within 8 months of filing.

These standards are far stricter than the national standards used by the Productivity Commission in its annual *Report on Government Services*. The national standards are:

- No more than 10% of lodgments pending completion are to be more than 12 months old (i.e. 90% disposed of within 12 months)
- No lodgments pending completion are to be more than 24 months old (i.e. 100% disposed of within 24 months)

Performance relative to the timeliness standards indicates effective management of caseloads and court accessibility.

Time taken to process cases is not necessarily due to court administration delay. Some delays are caused by factors other than those related to the workload of the Court. These include delay by parties, unavailability of a witness, other litigation taking precedence, and appeals against interim rulings.

The results of the backlog indicator measured against the Land and Environment Court time standards for 2006 are:

Table 5.5 Backlog Indicator (LEC time standards)

| | Unit | LEC Standards | 2002 | 2003 | 2004 | 2005 | 2006 |
|--------------------|------|---------------|------|------|------|------|------|
| Class 1 | | | | | | | |
| Pending caseload | no. | | 637 | 593 | 611 | 653 | 457 |
| Cases > 6 months | % | 5 | 22.0 | 15.5 | 12.8 | 29.1 | 22.8 |
| Cases > 12 months | % | | 7.0 | 6.9 | 5.4 | 9.6 | 10.1 |
| Class 2 | | | | | | | |
| Pending caseload | no. | | 116 | 5 | 23 | 11 | 7 |
| Cases > 6 months | % | 5 | 84.5 | 20.0 | 82.1 | 45.5 | 28.6 |
| Cases > 12 months | % | | 79.3 | 20.0 | 25.0 | 36.3 | 14.3 |
| Class 3 | | | | | | | |
| Pending caseload | no. | | 90 | 147 | 204 | 319 | 165 |
| Cases > 6 months | % | 5 | 42.0 | 34.7 | 32.0 | 44.8 | 55.2 |
| Cases > 12 months | % | | 26.0 | 16.3 | 17.9 | 25.1 | 38.8 |
| Class 4 | | | | | | | |
| Pending caseload | no. | | 153 | 142 | 109 | 142 | 164 |
| Cases > 8 months | % | 5 | 27.0 | 26.1 | 35.0 | 28.8 | 19.5 |
| Cases > 16 months | % | | 9.2 | 14.1 | 19.7 | 16.4 | 12.2 |
| Class 5 | | | | | | | |
| Pending caseload | no. | | 94 | 81 | 66 | 81 | 63 |
| Cases > 8 months | % | 5 | 30.9 | 30.9 | 52.1 | 29.1 | 55.5 |
| Cases > 16 months | % | | 6.4 | 14.8 | 26.1 | 18.9 | 11.1 |
| Class 6 | | | | | | | |
| Pending caseload | no. | | 0 | 1 | 2 | 8 | 2 |
| Cases > 8 months | % | 5 | 0 | 0 | 0 | 0 | 0 |
| Cases > 16 months | % | | 0 | 0 | 0 | 0 | 0 |
| Class 1- 3 | | | | | | | |
| Pending caseload | no. | | 843 | 861 | 838 | 983 | 629 |
| Cases > 6 months | % | 5 | 32.7 | 31.8 | 25.8 | 34.6 | 31.3 |
| Cases > 12 months | % | | 19 | 19.5 | 11.1 | 15 | 17.6 |
| Class 4 - 7 | | | | | | | |
| Pending caseload | no. | | 247 | 224 | 177 | 231 | 229 |
| Cases > 8 months | % | 5 | 28.5 | 27.6 | 44.0 | 27.9 | 29.3 |
| Cases > 16 months | % | | 8.1 | 14.2 | 22.6 | 16.7 | 11.8 |

These backlog figures need some explanation:

- Class 1: The decrease in the backlog figure in 2006 does not truly reflect the reduction in the number of older cases before the Court. Over 2006 the actual number of matters pending for more than 6 months was almost halved (down 46%). The backlog figure did not fall by the corresponding 46% to 16% as the actual number of pending matters has fallen by 30% (less registrations), so the less than 'actual' reduction is due to the fact that the total pending caseload has fallen as well.
- Class 3: The 2006 backlog figures are higher than for 2005, however, the actual number of files exceeding the 6 months standard decreased by 36% in 2006. The figure is 'higher' as the total pending caseload fell by 48% so that the older files represent proportionately more of the pending caseload. These older files have involved difficulties and complexities in preparation for hearing and the delay is often by and at the request of the parties to enable the proper preparation for hearing.
- Class 4: The decrease in the backlog figure for 2006 is due to a combination of a slight increase in the total pending caseload (15%) and a decrease in the number of older files (25%).
- Class 5: The increase in the backlog figure for 2006 is due to both an increase in the number of older files and a decrease in the total number of matters pending before the Court.

If the national time standards are used, the results of the backlog indicator for the Court in 2006 are:

Table 5.6 Backlog Indicator (national time standards)

| | Unit | National Standards | 2002 | 2003 | 2004 | 2005 | 2006 |
|-------------------|------|--------------------|------|------|------|------|------|
| Class 1 | | | | | | | |
| Pending caseload | no. | | 637 | 593 | 611 | 653 | 457 |
| Cases > 12 months | % | 10 | 7.0 | 6.9 | 5.4 | 9.6 | 10.1 |
| Cases > 24 months | % | 0 | 1.3 | 1.7 | 0.84 | 0.9 | 2.2 |
| Class 2 | | | | | | | |
| Pending caseload | no. | | 116 | 5 | 23 | 11 | 7 |
| Cases > 12 months | % | 10 | 79.3 | 20.0 | 25.0 | 36.3 | 14.3 |
| Cases > 24 months | % | 0 | 51.7 | 0 | 4.3 | 9.1 | 0 |
| Class 3 | | | | | | | |
| Pending caseload | no. | | 90 | 147 | 204 | 319 | 165 |
| Cases > 12 months | % | 10 | 26.0 | 16.3 | 17.9 | 25.1 | 38.8 |
| Cases > 24 months | % | 0 | 15.2 | 7.4 | 6.3 | 8.1 | 10.9 |
| Class 4 | | | | | | | |
| Pending caseload | no. | | 153 | 142 | 109 | 142 | 164 |
| Cases > 12 months | % | 10 | 16.3 | 21.2 | 26.9 | 20.0 | 17.1 |
| Cases > 24 months | % | 0 | 3.9 | 7.5 | 10.1 | 10.8 | 6.7 |
| Class 5 | | | | | | | |
| Pending caseload | no. | | 94 | 81 | 66 | 81 | 63 |
| Cases > 12 months | % | 10 | 15.2 | 23.5 | 38.8 | 19.5 | 42.9 |
| Cases > 24 months | % | 0 | 0 | 7.4 | 3.0 | 9.1 | 4.8 |
| Class 6 | | | | | | | |
| Pending caseload | no. | | 0 | 1 | 2 | 8 | 2 |
| Cases > 12 months | % | 10 | 0 | 0 | 0 | 0 | 0 |
| Cases > 24 months | % | 0 | 0 | 0 | 0 | 0 | 0 |

This table shows that the Court's performance compares favourably, with the national standards, in Classes 1, 2, 4 and 6. The results for Classes 3 and 5 are explicable for the reasons given above in relation to the Court's time standards.

Delivery of reserved judgments

The Court may dispose of proceedings by judgment delivered at the conclusion of the hearing (ex tempore judgment) or at a later date when judgment is reserved by the Court (reserved judgment). An appreciable number of judgments are delivered ex tempore, thereby minimising delay. To minimise delay for reserved judgments the Court has adopted time standards.

The Court's time standard for delivery of reserved judgments is determined from the date of the last day of hearing to the delivery date of the judgment. The current time standards for reserved judgments are as follows:

- 50% of reserved judgments in all classes are to be delivered within 14 days of hearing;
- 75% are to be delivered within 30 days of hearing;
- 100% are to be delivered within 90 days of hearing.

These are strict standards compared to other courts.

As Table 5.7 shows, the number of reserved judgments delivered within 90 days was 80% in 2006.

Table 5.7 Reserved Judgments compliance with time standards

| | Standard | 2002 | 2003 | 2004 | 2005 | 2006 |
|----------------------------|-----------------|-------------|-------------|-------------|-------------|-------------|
| % delivered within 14 days | 50 | 30 | 39 | 42 | 35 | 33 |
| % delivered within 30 days | 75 | 56 | 61 | 64 | 51 | 52 |
| % delivered within 90 days | 100 | 90 | 90 | 88 | 90 | 80 |

Clearance rate

The clearance rate is an output indicator of efficiency. It shows whether the volume of finalisations match the value of lodgments in the same reporting period. It indicates whether the Court's pending caseload has increased or decreased over that period. The clearance rate is derived by dividing the number of finalisations in the reporting period, by the number of lodgments in the same period. The result is multiplied by 100 to convert it to a percentage.

A figure of 100% indicates that during the reporting period the Court finalised as many cases as were lodged and the pending caseload is the same as what it was 12 months earlier. A figure of greater than 100% indicates that, during the reporting period, the Court finalised more cases than

were lodged, and the pending caseload has decreased. A figure less than 100% indicates that during the reporting period, the Court finalised fewer cases than were lodged, and the pending caseload has increased. The clearance rate should be interpreted alongside finalisation data and the backlog indicator. Clearance over time should also be considered.

The clearance rate can be affected by external factors (such as those causing changes in lodgment rates) as well as by changes in the Court's case management practices.

The results of the clearance rate for the Court in each of its classes are shown in Table 5.8.

Table 5.8 Clearance Rate

| | 2002 % | 2003 % | 2004 % | 2005 % | 2006 % |
|--------------|------------------|------------------|------------------|------------------|------------------|
| Class 1 | 101.0 | 103.8 | 98.6 | 96.4 | 119.3 |
| Class 2 | 75.7 | 66.7 | 45.5 | 181.3 | 100.0 |
| Class 3 | 111.8 | 70.5 | 79.8 | 63.5 | 192.4 |
| Class 4 | 112.2 | 103.9 | 113.8 | 88.7 | 94.3 |
| Class 5 | 117.2 | 110.3 | 119.2 | 83.9 | 131.5 |
| Class 6 | 100.0 | 100.0 | 100.0 | 60.0 | 150.0 |
| Classes 1-3 | 101.0 | 98.9 | 94.3 | 90.7 | 129.5 |
| Classes 4-7 | 113.7 | 105.9 | 114.8 | 86.1 | 102.0 |
| Total | 103.9 | 100.6 | 97.7 | 89.8 | 123.4 |

These figures show that the clearance rate in 2006 has dramatically improved. This is a direct consequence of concerted case management cases adopted by the Court in 2006. These include:

- For proceedings in Class 3, the issuing of two new practice directions, one dealing with compensation claims and another with valuation objections, and the establishment of a Class 3 List presided over by a Class 3 List Judge. The combined effect of these initiatives has been to actively case manage proceedings in Class 3, focusing on reducing the number of pre-hearing attendances, making each pre-hearing attendance result in an outcome that progresses the matter to hearing, fuller and earlier disclosure of evidence between parties, better managing expert evidence preparation before and presentation at the hearing, facilitating alternative dispute resolution, and ensuring readiness for trial. The result has been a clearance rate of 192.4%, the highest in five years in the Court.
- For proceedings in Classes 3-7, the establishment of a List, a List Judge and a dedicated date for conducting the List (Friday) for proceedings in these classes. This ensures specific judicial attention is given to case management of these proceedings. Again, the result has been to improve the clearance rate for all Classes 3-7 compared to the previous year (2005) and indeed, other than for Class 4, for the previous four years.
- The re-activation of the use of a duty Commissioner on Fridays. This facility had been available. However, it had fallen into disuse. The re-activation of this facility enables the Registrar conducting callovers and the Class 3 List Judge on Fridays to refer matters to the Duty Commissioner for case management or, if short, for hearing and disposal.

- For proceedings in Class 1, the re-activation of the requirement for amendments to the development application the subject of the appeal to be by notice of motion with supporting affidavit. Amendments to the development application are frequently made in response to the preliminary report of a court appointed expert. Amendments to the Court's Court Appointed Expert Standard Direction No. 1 required an applicant to seek leave, within 10 days of receipt of the preliminary report, by notice of motion and supporting affidavit. The affidavit is to identify, amongst other matters, how granting leave to rely on amended plans would promote the just, quick and cheap resolution of the proceedings. The formality of a motion and affidavit forces parties to carefully consider the amendments and to consolidate amendments (and thereby avoid repetitive applications to amend). It also allows the Court to better control the process and, through its decisions, give guidance on the circumstances in which amendments will and will not be permitted.
- The production for internal court administration purposes of more comprehensive, quarterly results for various performance indicators. Active management depends on timely feedback of monitoring results. Quarterly results enable prompt management attention to impediments to efficient and effective caseload.

Attendance indicator

The attendance indicator is an output indicator of efficiency where court attendances act as a proxy for input costs. The more attendances, the greater the costs both to the parties and to public resources. The number of attendances is the number of times that parties or their representatives

are required to be present in Court to be heard by a judicial officer or mediator (including appointments that are adjourned or rescheduled).

The attendance indicator is presented as the median number of attendances required to reach finalisation for all cases finalised during the year, no matter when the attendance occurred.

Fewer attendances may suggest a more efficient process. However, intensive case management can increase the number of attendances although there may be countervailing benefits. Intensive case management may maximise the prospects of settlement (and thereby reduce the parties' costs, for the number of cases queuing for hearing and the flow of work to appellate courts) or may narrow the issues for hearing (thus shortening hearing time and also reducing costs and queuing time for other cases waiting for hearing). In the Land and Environment Court, increased use of the facilities of conciliation conferences and case management conferences may be means to achieve these benefits.

Table 5.9 below provides the median number of pre-hearing attendances for each class of proceedings completed in 2006.

Table 5.9 Median number of Pre-hearing Attendances by Class (for matters completed in 2006)

| | Median |
|------------------------|---------------|
| Class 1 | 5 |
| Class 2 | 3 |
| Class 3: (all matters) | 4 |
| Compensation claims | 7 |
| Valuation objections | 4 |
| Miscellaneous | 2 |
| Class 4 | 4 |
| Class 5 | 6 |
| Class 6 | 2 |

Appeals

Measuring the number of appeals from a court's decisions and their success are not appropriate or useful indicators of the quality of the decisions or of court administration. Nevertheless, as there are appeal rights from the Court's decisions, the Court should provide statistics on the exercise of the appeal rights in the review year.

There are three types of appeals that can be generated from decisions of the Court (see Figures 2.1, 2.2 and 2.3 in Chapter 2 Court Profile).

First, Commissioner decisions may be appealed to a Judge of the Court pursuant to s 56A of the Court Act. Section 56A appeals are confined to errors of law and do not permit a review of the Commissioner's merit decision. As shown in Table 5.10, in 2006 the Court registered 12 s 56A appeals. Of these, 4 were completed at hearing, 3 were settled pre-hearing and 5 remained pending at 31 December 2006.

Table 5.10 s 56A Appeal Outcomes

| | 2004 | 2005 | 2006 |
|---------------------------|------|------|------|
| Total no. of appeals | 14 | 19 | 12 |
| No. finalised pre-hearing | 5 | 7 | 3 |
| No. of appeals to hearing | 7 | 11 | 4 |
| Outcome: | | | |
| Upheld | 3 | 2 | 2 |
| Dismissed | 4 | 9 | 2 |

Second, appeals from decisions made by Judges in Classes 1 to 4 are heard in the Court of Appeal.

Third, appeals from decisions made by Judges in Class 5 are heard in the Court of Criminal Appeal.

In 2006, 17 appeals with appointment were lodged with the Court of Appeal and 6 appeals were lodged with the Court of Criminal Appeal. The number of appeals to these appellate courts over the past five years is shown below in Table 5.11.

Table 5.11 Appeals to the Appellate Court

| | 2002 | 2003 | 2004 | 2005 | 2006 |
|---------------------------------|-----------|-----------|-----------|-----------|-----------|
| Court of Appeal | | | | | |
| Appeal with appointment | 29 | 27 | 24 | 13 | 17 |
| Appeal without appointment | 25 | 33 | 43 | 12 | 30 |
| Total | 54 | 60 | 67 | 25 | 47 |
| Court of Criminal Appeal | | | | | |
| Conviction and Sentence | 2 | 2 | 1 | 0 | 4 |
| Severity of Sentence | 0 | 0 | 0 | 0 | 0 |
| Sentence only | 0 | 0 | 2 | 0 | 0 |
| Crown Appeals | 0 | 0 | 0 | 1 | 2 |
| Costs | 0 | 0 | 1 | 0 | 0 |
| Stated case, section 5AE | 0 | 0 | 1 | 0 | 2 |
| Total | 2 | 2 | 5 | 1 | 8 |

Judicial Education and Professional Development

The Judges and Commissioners of the Court updated and developed their skills and knowledge by attending conferences, seminars and workshops. Some of these programmes are tailored specifically to the Court's needs, while others target the national or international legal and judicial communities. An overview of some of the educational activities appears below. Specific information for each Judge or Commissioner follows the overview.

Domestic activities

- Three judges attended the National Judicial Orientation Program. The program is jointly organised and run by the National Judicial College of Australia, the Australian Institute of Judicial Administration and the Judicial Commission of New South Wales. The program included sessions on judicial ethics and conduct, contempt, assessing the credibility of witnesses, evidence, judgment writing, cultural awareness, court craft, unrepresented litigants, sentencing, alternative dispute resolution, and psychological and physical health.
- One judge attended the Phoenix Judges Program run by the National Judicial College of Australia. The program provides an orientation program for new judges and a program of professional development, reflection and workshops for experienced judges.
- One judge attended the 9th Biennial Conference of the International Association of Women Judges in Sydney.
- Three judges attended the Superior Courts Judgment Writing Workshop in Sydney with Professor J C Raymond organised by the Judicial Commission of New South Wales. The workshop developed skills in the architecture of decisions, review of writing samples, elements of judicial style and advanced styles of writing.
- Six judges and nine commissioners attended the Land and Environment Court's Annual Conference at Wiseman's Ferry. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference programme included sessions on:
 - practice and procedure update;
 - water resources and water efficiency;
 - BASIX legislation;
 - dealing with difficult litigants; and
 - stress management.
- Three judges and one commissioner attended the Australasian Conference of Planning and Environment Courts and Tribunals, ACPECT 2006 Conference, at Fraser Island, Queensland. Topics addressed at this biennial conference included a keynote by the Honourable Justice Callinan AC of the High Court of Australia, issues in ecotourism, apprehension of bias, global amphibian decline, giving evidence in environmental disputes – an expert's perspective, current heritage issues, expert witnesses – recent development in NSW, and recent developments in each jurisdiction in Australia and New Zealand.

■ In anticipation of the Court's new jurisdiction under the *Trees (Disputes between Neighbours) Act 2006*, the Court arranged for the Commissioners of the Court and Registrar to attend a three day training course in arboriculture conducted by the Ryde College of TAFE (NSW) – Northern Sydney Institute, the largest and most respected college offering arboriculture courses in New South Wales (held 15, 16 and 21 December 2006). Topics covered in the course included the structure and functions of trees, factors in the tree's environment, damage to trees, tree maintenance, pruning and hazard assessment.

International activities

- The Chief Judge is a member of the United Nations Environment Programme (UNEP) Adhoc Advisory Committee of Judges, for UNEP's Judges Programme. UNEP's Judges Programme builds capacity of judges, magistrates and other judicial officers to effectively decide cases relating to environmental law. UNEP has developed a series of environmental law training materials, included an Environmental Law Training Manual, a Judges' Handbook on Environmental Law and selected collections of international and national legislation and judicial cases on environmental law from around the world. The Chief Judge attended two meetings of the UNEP Adhoc Advisory Committee of Judges in Geneva to advise and settle the training materials on environmental law.
- The Chief Judge attended as a lecturer and trainer in two capacity building judicial education programs on environmental law for the judges of the High Court of Kenya. Amongst the number of presentations made by the Chief Judge were papers on the role of the courts in relation to ecologically sustainable development.

■ The Chief Judge attended the IUCN Academy of Environmental Law Colloquium in New York. The Academy is a global legal society that organises an annual international colloquium to critically review aspects of environmental law and suggest improvements in the law. The papers at the conference covered a broad range of topics, grouped under themes. The themes included the role of environmental compliance as an important foundation for the rule of law, good governance and sustainable development; motivating behaviour – compliance and beyond; implementation of multilateral environmental agreements; the public's role in environmental compliance and enforcement; strengthening environmental governance; and governance systems, including the judicial enforcement system. The Chief Judge presented a paper on sentencing for environmental offences.

Education and Participation in the Community

The Court has a high national and international reputation as a leading specialist environment court. There is significant demand for the exchange of knowledge and experience within the national and international legal and judicial communities. Judges and Commissioners of the Court have actively participated in capacity building and information exchange by presenting papers and participating as trainers in a variety of conferences, seminars, workshops, giving lectures at educational institutions and presiding at moot courts. The Court has also regularly hosted international and national delegations to the Court.

The Judges' and Commissioners' activities during 2006 are summarised below:

The Hon. Justice Brian John Preston, Chief Judge

Conferences

| | |
|---|--|
| 10-13 January | First Kenya National Judicial Colloquium on Environmental Law, Mombasa, Kenya |
| 17-20 April | Second Kenya National Judicial Colloquium on Environmental Law, Mombasa, Kenya |
| 15-19 May | National Judicial Orientation Programme, Melbourne |
| 6-7 June 31 August - 1 September | United Nations Environment Program (UNEP), Adhoc Advisory Committee of Judges, UNEP Judges Programme, Geneva, Switzerland |
| 13-16 September | Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT), ACPECT 2006 Conference, Fraser Island, Queensland |
| 22-23 September | Superior Courts Judgment Writing Workshop with Professor J C Raymond, Sydney |
| 16-20 October | 4th IUCN Academy of Environmental Law Colloquium, White Plains, New York, USA |

Speaking Engagements

| | |
|-------------------|---|
| 10 January | <i>The Role of the Judiciary in Promoting Sustainable Development, The Experience of Asia and the Pacific</i> , First Kenya National Judicial Colloquium on Environmental Law, Mombasa, Kenya |
| 11 April | <i>Judicial Review of Illegality and Irrationality of Administrative Decisions</i> National Judges College and Supreme People's Court, Joint Seminar on Legality of Administrative Behaviours and Types of Adjudication, Xi'an and Shanghai, People's Republic of China |
| 12 April | <i>Standing to Sue at Common Law in Australia</i> , National Judges College and Supreme People's Court, Joint Seminar on Legality of Administrative Behaviours and Types of Adjudication, Xi'an and Shanghai, People's Republic of China |
| 17 April | <i>The Role of the Judiciary in Promoting Sustainable Development, The Experience of Asia and the Pacific</i> and <i>Criminal Enforcement of Environmental Law in NSW: A Synopsis</i> , Second Kenya National Judicial Colloquium on Environmental Law, Mombasa, Kenya |
| 21 March | <i>Appointment of Court Appointed Expert Witnesses in the Land and Environment Court</i> , Urban Development Institute of Australia (UDIA) legal luncheon, Sydney |

| | |
|---------------------|---|
| 23 March | <i>Reforms to Practice and Procedure in Class 3 compensation claims and valuation objections</i> , Friends of Frank Egan, Luncheon in Memory of Frank Egan |
| 27 March | Planning NSW, Planning Profession Forum |
| 28 March | Australian Property Institute NSW Division – Associate Professional Certificate in Expert Evidence |
| 1 April | University of Sydney and University of New South Wales, Environmental Law Field Trip, Northern Sydney |
| 26 April | Address to 7th Annual Prizegiving Ceremony for Students in the Division of Law, Macquarie University |
| 1 May | University of Sydney, Faculty of Law, Environmental Dispute Resolution course – Moot Court |
| 4 May | <i>Practice Directions - Class 3 Compensation Claims and Valuation Objections</i> , NSW Bar Association Twilight Seminar |
| 26 May | <i>Principled Sentencing for Environmental Offences</i> , Environmental Defender's Office Annual Conference, Sydney |
| 31 May | <i>Advocacy in the Land and Environment Court</i> , University of Sydney, Faculty of Law, Advocacy Course Lecture |
| 7 June | Australian Property Institute NSW Division – Associate Professional Certificate in Expert Evidence |
| 14 June | <i>Ongoing Reforms of Practice and Procedure</i> , Australian Environmental Business Network conference on NSW's Environmental Laws – State of Play |
| 16 June | <i>Practice and Procedure in the Court</i> , Local Government Lawyers Group luncheon |
| 16 June | Book Launch of B Boer and G Wiffen, <i>Heritage Law in Australia</i> , Oxford University Press, 2006 |
| 11 July | <i>Land and Environment Court – New Practice Directions</i> , Australian Property Institute NSW Division Seminar |
| 14 July | <i>Ongoing Reforms of Practice and Procedure</i> , Marsdens Law Group Seminar |
| 15 July | Official Launch of the Environmental Defender's Office Northern Rivers Office, Kempsey |
| 21 July | <i>Judicial Implementation of the Principles of Ecologically Sustainable Development in Australia and Asia</i> , Law Society of New South Wales Regional Presidents Meeting |
| 18-20 August | Australian National University, ANU College of Law, Environmental Dispute Management Course |
| 22 August | <i>Sentencing for environmental offences</i> , University of Sydney, Faculty of Law, Pollution Law course lecture |

| | |
|-----------------------|---|
| 28 August | <i>Sentencing for Threatened Species Offences</i> , NZ Ecological Society and Ecological Society of Australia, Ecology across the Tasman 2006 Conference, Wellington, New Zealand |
| 28 August | <i>Ecologically Sustainable Development in the Courts in Australia and Asia</i> , Seminar on Environmental Law by Buddle Findlay Lawyers, Wellington, New Zealand |
| 9-12 September | University of Sydney, Faculty of Law, Biodiversity Law course |
| 4 October | <i>Ecologically Sustainable Development in the Courts in Australia and Asia</i> , Law Society of New South Wales, Environmental Planning and Development Law Committee |
| 18 October | <i>Principled Sentencing for Environmental Offences</i> , 4th IUCN Academy of Environmental Law Colloquium, White Plains, New York, USA |
| 23 November | <i>Principles of Ecologically Sustainable Development</i> , National Trust of Australia (NSW) Corporate Breakfast |
| 23 November | <i>Principled Sentencing for Environmental Offences</i> , 3rd Annual Australian Environmental Law Enforcement and Regulators Network (AELERT) Conference, Sydney |
| 23 November | TAFE (NSW) – Northern Institute, Diploma of Arboriculture – Moot Court for expert witnesses |
| 24 November | <i>Principles of Ecologically Sustainable Development</i> , Sparke Helmore Local Government Conference |
| 28 November | Australian Property Institute NSW Division – Associate Professional Certificate in Expert Evidence |
| 16 December | University of Indonesia, Faculty of Law, Jakarta, Indonesia, meeting with Dean |
| 19 December | <i>Environmental Law Justice System and Enforcement: Indonesian and Australian Institutional and Procedural Comparisons</i> , International Seminar on the Development of Indonesian and Australian Environmental Law: A Comparative Perspective, Brawijaya University, Malang, Indonesia |
| 20 December | <i>Methodology in teaching environmental law</i> , Muhammadiyah University of Yogyakarta, Faculty of Law, Yogyakarta, Indonesia |
| 27-28 December | M C Mehta Environmental Foundation, Training program on environmental law and policy for young lawyers from South Asia Countries, Medawala, India |

Delegations and International Assistance

| | |
|--------------------|---|
| 27 February | Visit by members of the United Kingdom Cabinet Office |
| 17 March | Visit by members of the judicial reform delegation of Indonesia |
| 6 April | Visit by members of the Chinese National Judges College |
| 28 November | Visit by members of the Russian judicial delegation |

Publications

“Sentencing for environmental crime”, (2006) 18(6) *Judicial Officers Bulletin*, 41-45

“Judicial review of illegality and irrationality of administrative decisions in Australia” (2006) 28 *Australian Bar Review* 17

“The role of public interest environmental litigation” (2006) 23 *Environmental and Planning Law Journal* 337

“The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific” (2005) 9 (2 & 3) *Asia Pacific Journal of Environmental Law* 109

“Energy Law and the Environment by Rosemary Lyster and Adrian Bradbook (Cambridge University Press, 2006)” (2006) Vol 9(4) *Asia Pacific Journal of Environmental Law* 355

Membership of Legal, Cultural or Benevolent Organisations

Official member, Judicial Commission of New South Wales

Member, Adhoc Advisory Committee of Judges, United Nations Environment Programme (UNEP) Judges Programme

Chair, Environmental Law Standing Committee, Law Association for Asia and the Pacific (LAWASIA)

Member, Australian Centre for Environmental Law (Sydney)

Member, Editorial Board, Local Government Planning and Environment NSW Service

The Hon. Mr Justice David Henry Lloyd

Commissions in Other Courts

October Acting Judge of the Supreme Court of New South Wales (Equity Division)

Conferences

6-8 October Judicial Conference of Australia Colloquium, Canberra

Speaking Engagements

15-19 May Chair, National Judicial Orientation Programme, Melbourne

**31 August -
1 September** Co-presenter with Professor J C Raymond at judgment writing course for judges of the District Court of NSW on behalf of the Judicial Commission of New South Wales

2, 9 September Co-presenter with Professor J C Raymond at judgment writing course for magistrates of the Local Court of NSW on behalf of Judicial Commission of New South Wales

9-13 October Chair, National Judicial Orientation Programme, Sydney and chaired several sessions and presented two workshops on judgment writing and evidence at the National Judicial Orientation Program

Membership of Legal, Cultural or Benevolent Organisations

Member, National Judicial College of Australia Advisory Committee

Member, Standing Advisory Committee on Judicial Education, Judicial Commission of New South Wales

Chair, Steering Committee for the National Judicial Orientation Programme, National Judicial College of Australia

The Hon. Justice Nicola Hope Margaret Pain

Conferences

3-7 May 8th Biennial Conference of the International Association of Women Judges, Sydney

Speaking Engagements

24 May *Conducting Yourself in Court*, Young Lawyers seminar

Membership of Legal, Cultural or Benevolent Organisations

Member, IUCN Commission on Environmental Law

The Hon. Justice Jayne Margaret Jagot

Conferences

6-10 March National Judicial College of Australia Phoenix Judges Program, Canberra

22-23 September Superior Courts Judgment Writing Workshop with Professor J C Raymond, Sydney

9-13 October National Judges Orientation Programme, Sydney

Speaking Engagements

17 August *Expert Witness Procedures at the Land and Environment Court*, Ryde TAFE Arboriculture Diploma

21 October *Recent developments in the Land and Environment Court*, Environment and Planning Law Association (NSW) Inc 2006 Annual Conference

November *Key Planning Cases - 2006*, UNSW Planning Law and Practice Short Course

The Hon. Justice Peter Meldrum Biscoe

Commissions in Other Courts

November - December Acting Judge of the Supreme Court of New South Wales (Equity Division)

Conferences

15-19 May National Judges Orientation Programme, Melbourne

13-16 September Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT), ACPECT 2006 Conference, Fraser Island, Queensland

22-23 September Superior Courts Judgment Writing Workshop with Professor J C Raymond, Sydney

6-8 October Judicial Conference of Australia Colloquium, Canberra

Speaking Engagements

16 September *Expert Witnesses: Recent Developments in NSW*, Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT), ACPECT 2006 Conference, Fraser Island, Queensland

2 December Member of Judicial Panel on Search Orders, College of Law Seminar

Delegations and International Assistance

27 October Visit by Filipino Delegation on Sustainable Public Land Administration

Publications

“Transnational Freezing Orders”, (2006) *27 Australian Bar Review* 133

Membership of Legal, Cultural or Benevolent Organisations

Member, NSW Attorney’s General Working Party on Civil Procedure

Consultant, Chief Justices of Australia and New Zealand’s Harmonisation Committee on Freezing and Searching Orders

The Hon. Acting Justice Robert Neville Talbot

Speaking Engagements

24 May *Land and Environment Court of New South Wales – Checklist for Directions Hearings and Callovers*, New South Wales Young Lawyers CLE Seminar on Perspectives from the Bench

21 October *Practice and Procedure in the Land and Environment Court*, Environment and Planning Law Association (NSW) Inc 2006 Annual Conference – Joint Session with Andrew Pickles and Andrew Darroch

27 October *Rural Issues in the Land and Environment Court*, Law Society of New South Wales Rural Issues Conference

Ms Jan Murrell, Commissioner

Speaking Engagements

31 May Urban Development Institute of Australia – *Women in Development*

3 October Speech to Masters students in planning, University of Sydney

Mr Tim Moore, Commissioner

Speaking Engagements

11 July Australian Property Institute – Practice and Procedure

28 November Australian Property Institute – Associate Professional Certificate

Appendix 1 – Court Users Group

Court Users Group

A Court Users Group was established in 1996 as a consultative committee comprising of representatives from interested organisations. The Group meets 4 times a year and assists with improving Court services by making recommendations to the Chief Judge about:

- improving the functions and services provided by the Court; and
- ensuring services and facilities of the Court are adapted to the needs of litigants and their representatives.

The Group has an advisory role and has no authority to require any action or change. However its deliberations have been a catalyst for a number of initiatives, such as the 1999 Pre-Hearing Practice Direction and a survey of electronic callover users resulting in significant improvements to callover procedures.

Members during 2006

| | |
|--|---|
| The Hon. Justice Brian Preston, Chief Judge (Chairperson) | Land and Environment Court |
| The Hon. Justice Jayne Jagot | Land and Environment Court |
| Dr John Roseth, Senior Commissioner | Land and Environment Court |
| Mr Stafford J Watts, Commissioner | Land and Environment Court |
| Ms Susan Dixon, Registrar | Land and Environment Court |
| Mr Dermot Armstrong | Department of Natural Resources |
| Mr Terry Byrnes | Environment and Planning Law Association |
| Mr Grant Christmas | Principal Solicitor, Marrickville Council |
| Dr Nicholas Brunton | Partner, Henry Davis York |
| Ms Isabella Ferguson | Gadens Lawyers |
| Ms Rachel Fitzhardinge | Planning NSW |
| Ms Katherine Gardner | The Law Society of New South Wales |
| Mr Chris Hallam | Institution of Engineers |
| Mr Ian Hemmings | Environment and Planning Law Association |
| Mr Brian Hones | Hones Lawyers |
| Dr Jeff Kildea | The Bar Association of NSW |
| Mr Ian Lacey | Ethnic Communities' Council of NSW Inc |
| Mr Paul Lalich | NSW Urban Taskforce |
| Mr Craig Leggatt | Nature Conservation Council of NSW Inc |
| Ms Louise McAndrew | Planning NSW |
| Mr Tony McGlynn | Department of Natural Resources |
| Ms Ilona Miller | Environmental Defenders Office |

| | |
|----------------------|--|
| Mr Michael Neustein | Royal Australian Institute of Architects (NSW) |
| Mr George Newhouse | Local Government Association of NSW |
| Mr John O'Grady | Australian Institute of Landscape Architects |
| Mr Gordon Plath | Environment Protection Authority |
| Mr Michael Reymond | North Sydney Council |
| Ms Cecilia Rose | Maddocks |
| Ms Kirsty Ruddock | Environmental Defenders Office |
| Mr Eugene Sarich | Australian Institute of Building Surveyors & Australian Institute of Environmental Health |
| Mr Chris Shaw | Property Council of Australia |
| Mr Stuart Simington | Housing Industry Association |
| Mr John Sheehan | Australian Property Institute Inc |
| Mr Gary Shiels | Planning Institute of Australia (NSW Division) |
| Ms Mary-Lynne Taylor | Urban Development Institute of Australia |
| Mr Peter Tomasetti | Barrister |
| Mr Anthony Whealy | Gadens Lawyers |
| Mr Michael Whelan | Institution of Surveyors NSW Inc |
| Mr Ian Woodward | Local Government Lawyers Group |

Appendix 2 – Court Committees

Court Committees

The Court has a number of internal committees to assist in the discharge of the Court's functions.

Rules Committee

The Rules Committee meets throughout the year to consider proposed changes to the Land and Environment Court Rules with a view to increasing the efficiency of the Court's operations, and reducing cost and delay in accordance with the requirements of access to justice.

Members

The Hon. Justice Brian John Preston, Chief Judge
The Hon. Justice Jayne Margaret Jagot
The Hon. Justice Peter Meldrum Biscoe

Education Committee

The Education Committee organised the Annual Conference for the Judges and Commissioners of the Court.

Members

The Hon. Mr Justice David Henry Lloyd (Chair)
Mr Trevor A Bly, Commissioner
Ms Susan Dixon, Registrar
Ms R Windeler, Education Director, Judicial Commission of New South Wales
Ms R Sheard, Conference Co-ordinator, Judicial Commission of New South Wales

Library Committee

The Library Committee provides advice on the management of the Judges' Chambers Collections and other Court Collections.

Members

The Hon. Justice Nicola Hope Margaret Pain
The Hon. Justice Jayne Margaret Jagot
Ms Kate Moore, Court Librarian

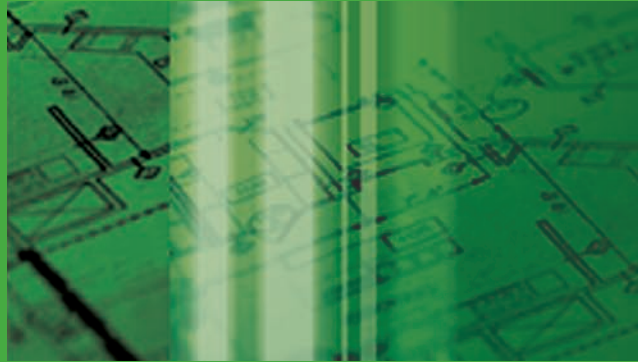
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