Director's Copy.

Environmental Services Division
Legal Statistics Report
May, 1992

Report by Director Environmental Services (OH/PV)

A. L & E COURT - CASE ORIGINS All cases pursued in 1992 till 1st June, 1992.

The following information identifies the originating circumstances of all Council's Land and Environmental Court cases. This information will assist to indicate whether Council, Staff or a combination of the two or other factors are influencing the number of cases currently being pursued.

The categories are:

Class 4/5 cases
Staff Delegated Refusal
Council Refused and Staff Refused
Council Refused and Staff Recommended
Deemed Refusal - longer than 40 days
Appeal Against Conditions
Other (eg 317M Objection) (Other (eg317m))

See Figure 1 - L & E Court Actions
Case Origins for 1/1/92 to 1/6/92

B. Case Status

The following information refers to the status of all L & E Court cases pursued in 1992 as at 1st June, 1992. Of the undetermined cases some are handled in house by the Environmental Solicitor and some are handled by external solicitors. The Council's solicitor is involved in all cases as the Council's representative in court or as co-ordinator of all court information and instructing the external lawyer.

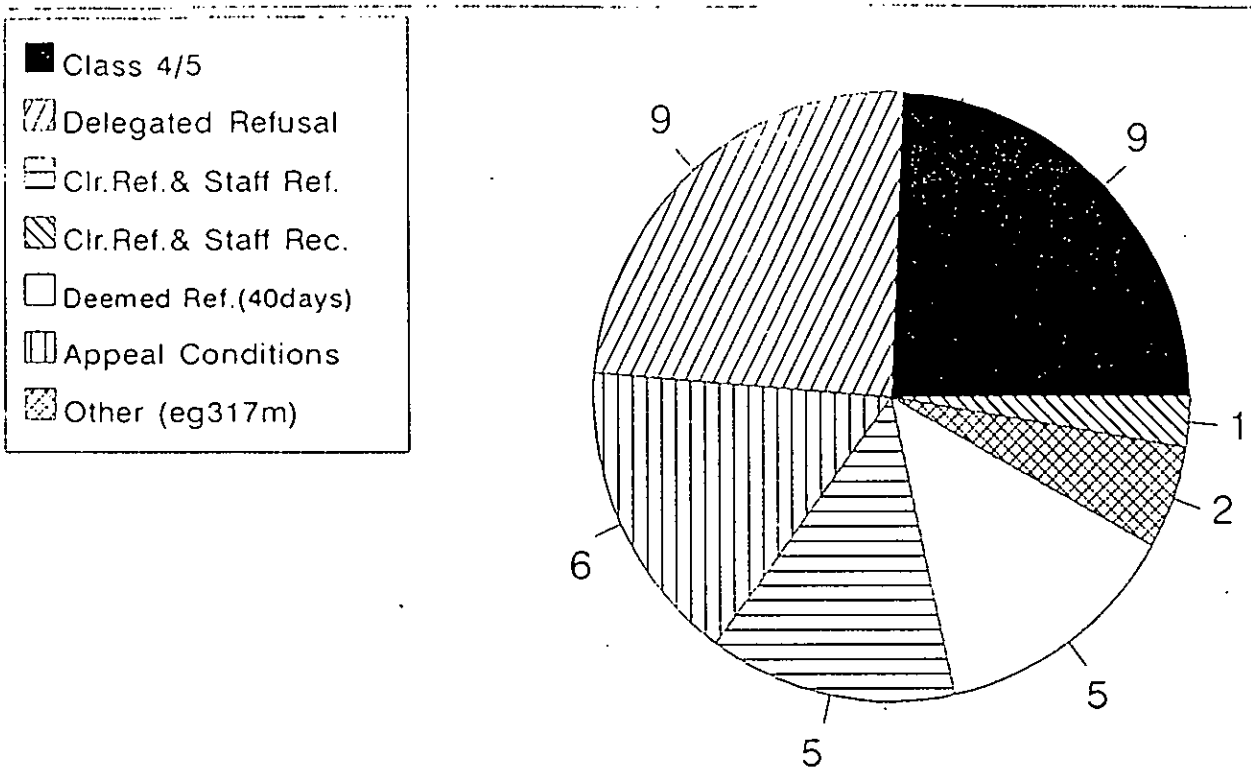
The categories are:

Cases Won by Council
Cases Lost by Council
Lost (but satisfactory result)
Negotiated out of Court
Withdrawn
Mediated in Court
Undetermined Cases
- Private Solicitor
- Barrister
- In House Solicitor

See Figure 2 - L & E Court Case Status
Plus Undetermined Cases for 1/1/92 to 1/6/92

L.& E. COURT ACTIONS

Case Origins For 1/1/92 to 1/6/92



CASEORGN

Figure 1

L.& E. COURT CASE STATUS

Plus Undetermined Cases For 1/1/92 to 1/6/92

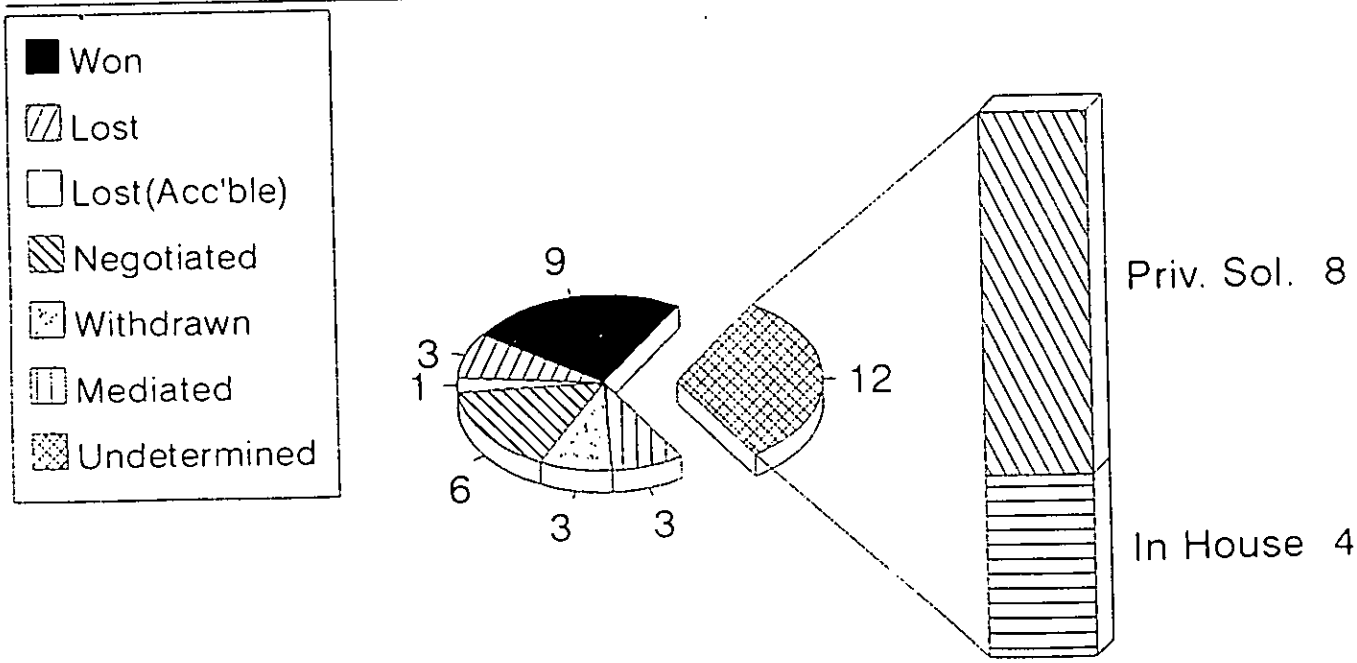


Figure 2

CASESTAT

Environmental Services Division
Legal Statistics Report
May, 1992

Report by Director Environmental Services (OH/PV)

The following information represents an analysis of Litigation, Number of Opinions given and the Number of Enforcement matters dealt with during May, 1992.

A. LITIGATION

		L & E Court	Local Court	Liquor Admin Board	Other Courts	Totals
(i)	No of New Actions	5		1	2	8
(ii)	No of Current Actions	12		3		15
(iii)	No of days in Court including call overs, appearances, hearings, and motions	9		1	2	12
(iv)	No of Court Matters Resolved	5		–	2	7

COMMENTS

Council was successful in 4 proceedings relating to the Services Area at Menai where 4 fast food outlets and a service station had been proposed contrary to Council's DCPs under LEP 97. Council was also successful in having a condition of Development Consent/Building Approval requiring the demolition of a water front cottage upheld and a proposed waterfront dwelling house refused because of bulk.

With regard to matters before the Liquor Administration Board there are now three matters under investigation. These matters involve L A Rock Cafe, Biggles Restaurant and the Royal Motor Yacht Club. Council officers have carried out night surveillance for the Board and the results will be tabled before the court in June.

B. OPINIONS

		Director	Planning Services	Dev. Services	Health Services	Building Services	Manage ment Services	Totals
(i)	No. of Legal Opinions – written							
(ii)	– Oral			3				3
(iii)	No. of matters handled which could result in Court Actions							
(iv)	No of external legal opinions requested		1					1

C. ENFORCEMENT

No. of complaints received	No of matters currently under investigation	No of matters resolved	No of field inspections carried out
19	114	12	51

COMMENTS

The Council has recently been awarded costs in the total of $15,980 for a 1988 Class No 4 enforcement action involving the unauthorised refurbishment of a waterfront cottage on Yowie Bay.

During May one fresh Class No. 4 action was commenced against a property owner for the prohibited encroachment onto one of the Council's reserves.

1. ~~KNIGHT~~ CH
2. LEACHATE
3. ~~ENG~~ DESIGN
4. AQUATIC TOXICOLOGY

Chardonnay flows as Balmain gets its way

S.M.H. 20.2.91 p. 1

By ALICIA LARRIERA, ADAM FULTON and GERALDINE O'BRIEN

The Minister for Planning and Local Government, Mr Hay, has suffered an embarrassing defeat over his attempts to speed up the redevelopment of the Balmain Peninsula with the Court of Appeal ruling yesterday that his appointment of a planning administrator to the sensitive foreshore area was invalid.

Mr Hay appointed the administrator to control planning after Leichhardt Council failed to meet a five-week deadline for producing draft local environment plans for the development of five contentious industrial sites.

The Court of Appeal ruled yesterday that his expectations of Leichhardt Council were "manifestly unreasonable".

The court also ruled that Mr Hay be restrained from acting on the rulings of the administrator and that he should pay costs to the Balmain Association – the 350-member residents' group which took the State Government to court over the minister's actions.

Mr Hay refused to comment on the decision, other than to say that he was "disappointed by the judgment" and that he was "currently in consultation with my legal advisers with whom I am closely examining the judgment and its implications".

Ms Helen Styles of the Balmain Development Trust said its members, who spent more than $60,000 on the court actions, were delighted by the outcome, and also the decision to award costs to the applicant, the Balmain Association.

The decision was also welcomed by Independent Alderman Sue Stock, who said it was a vindication of the views of the residents and of "progressive alderpersons" on Leichhardt Council.

"We are not against development but we want it properly assessed," she said.

The Labor MP for McKell, Ms Sandra Nori, who has campaigned alongside residents fighting for Leichhardt Council's planning powers to be restored, yesterday labelled the court decision a great victory for local government and residents.

She said that Mr Hay had handled the whole affair in a "crass and hopelessly inept way".

"Premier Greiner really has to look at the future of a bungling minister who so crassly took the side of developers and tried to subvert [planning laws]."

Ms Nori has already foreshadowed that she will raise the matter in Parliament – probably tomorrow – and call for Mr Hay's sacking.

In August last year, Mr Hay stripped Leichhardt Council of its planning powers and appointed a planning administrator, claiming the council had delayed its rezoning consideration of the five foreshore sites beyond what was reasonable. He also launched a public inquiry into the council.

The council had failed to meet his deadline for the preparation of five Local Environment Plans for the contentious industrial sites – the Ampol, Unilever, former Monsanto chemical factory, Caltex and Balmain Power Station sites making up 23 hectares of foreshore land.

Last month, the Balmain Association, which

Continued Page 7

PAGE 7: Greiner raises doubts about land court.

LAND AND ENVIRONMENT COURT FEES EFFECTIVE 19 AUGUST 1991

	$
1. On filing a process to commence proceedings in Class 1 of the Court's jurisdiction (other than proceedings referred to in Item 2 or 3).....	440.00
2. On filing a process to commence proceedings in Class 1 of the Court's jurisdiction where the matter relates to a development, building or subdivision application:	
(a) if the value of the development, building or subdivision is less than $50,000	130.00
(b) if the value of the development, building or subdivision is $50,000 or more but less than $500,000	440.00
(c) if the value of the development, building or subdivision is $500,000 or more but less than $1,000,000.....	2,000.00
(d) if the value of the development, building or subdivision is $1,000,000 or more	2,500.00
3. On filing a process to commence proceedings in Class 1 of the Court's jurisdiction where the matter relates to an objection under section 98 of the Environmental Planning and Assessment Act 1979.....	130.00
4. On filing a process to commence proceedings in Class 2 of the Court's jurisdiction (other than proceedings referred to in Item 5).....	440.00
5. On filing a process to commence proceedings in Class 2 of the Court's jurisdiction where the matter relates to a development, building or subdivision application and the value of the development, building or sub-division is less than $50,000.....	130.00
6. On filing a process to commence proceedings in Class 3 of the Court's jurisdiction (other than proceedings referred to in Item 7, 8 or 9).....	440.00
7. On filing a process to commence proceedings in Class 3 of the Court's jurisdiction where the matter relates to a rating appeal under section 133 of the Local Government Act 1919.....	65.00
8. On filing a process to commence proceedings in Class 3 of the Court's jurisdiction where the matter relates to an objection to a valuation under Part 3 of the Valuation of Land Act 1916 as to the value of the land in question, and that value, as determined by the respondent rating or taxing authority:	
(a) is less than $100,000	110.00
(b) is $100,000 or more but less than $500,000	150.00
(c) is $500,000 or more but less than $1,000,000	245.00
(d) is $1,000,000 or more	345.00

	$
9. On filing a process to commence proceedings in Class 3 of the Court's jurisdiction where the matter relates to a claim for compensation by reason of the acquisition of land as referred to in Division 2 of Part 3 of the Land and Environment Court Act 1979:	
(a) if the amount offered as compensation by the resuming or constructing authority is less than $50,000	130.00
(b) if the amount offered as compensation by the resuming or constructing authority is $50,000 or more but less than $500,000	440.00
(c) if the amount offered as compensation by the resuming or constructing authority is $500,000 or more but less than $1,000,000	2,000.00
(d) if the amount offered as compensation by the resuming or constructing authority is $1,000,000 or more	2,500.00
10. In respect of Item 6,8 or 9,if the Registrar determines that, because of the substance of the matter and its lack of complexity, the fee referred to in the Item is not appropriate	65.00
11. On filing a process to commence proceedings in Class 4 of the Court's jurisdiction	440.00
12. On filing a process to commence proceedings in Class 5 of the Court's jurisdiction	440.00
13. On filing a process to commence an appeal to the Court under section 56A of the Land and Environment Court Act 1979	530.00
14. For an officer of the Court to produce a document at a place (other than the place at which the Court sits or the office of the Registrar)	35.00
15. To furnish a copy of a document in any proceedings to a person who is not a party to the proceedings	30.00
16. Making a copy of any document,per page	2.00
(minimum fee	10.00)
17. For each copy of the transcript/diskette of any proceedings :	
(a) per page (or equivalent) where the matter being transcribed is under 3 months old	6.50
(minimum fee for 1 to 8 pages (or equivalent)	55.00)
(b) per page (or equivalent) where the matter being transcribed is over 3 months old	7.50
(minimum fee for 1 to 8 pages (or equivalent)	65.00)
18. To furnish to a party to proceedings a second or subsequent copy of the written opinion or reasons for opinion of any Judge or of any assessor or other officer of the Court in relation to the proceedings, for each copy	35.00

	$
19. To open or keep open the office of the Registrar:	
(a) on a Saturday, Sunday or other holiday (except the day after Easter Monday)	345.00
(b) on any other day:	
(i) before 9 in the morning or after 4.30 in the afternoon	345.00
(ii) between 9 and 9.30 in the morning or 4 and 4.30 in the afternoon	35.00
20. Supply of duplicate tape recording of sound recorded evidence, each cassette	30.00
21. Taxation fees:	
(a) on filing a bill of costs	200.00
(b) on lodging an objection to a bill of costs	200.00

RIVER CARE GROUPS

o Kempsey.

d for the Bellinger and Kalang Rivers - artment of Water Resources at a public

Representatives of the Department of Water Resources at the public meeting in Bellingen last Wednesday.

protect what we now have for future generations."

"We must leave the rivers as we found them, or even better."

Mr. Moar said development could be carried out without destroying the environment. "Departmental officers are not greenies. It's our responsibility to maintain the river for those who want to use it."

Mr. Wood took the meeting through a series of slides showing degradation.

"Rivers are degrading. The Bellinger River is showing signs of stress," Mr. Wood said.

He said consultants commissioned to report on 9 north coast rivers had found they were unstable and alternatives to sand and gravel extraction should be found. The consultants suggested alternatives were the plains or hard rock quarries.

Mr. Wood said the Department would continue to issue individual permits for extraction from rivers, but generally only above the water level.

DISCUSSION PAPER

He said the response to the Department's discussion paper explaining the proposed policy has been most gratifying. "140 very detailed submissions were received and analysed by a review panel of government, industry and environmental representatives."

Environmentalists and professionals such as engineers and geographers who study streams claimed the removal of any material from rivers would change erosion and deposit patterns. They said extraction should be limited and strategies developed which would reduce demand.

"The Department's comment was that the proposed policy aims at managing an important industry to ensure detrimental effects are minimised. The potential damage to streams is acknowledged and management plans are proposed for streams where there is a high demand for sand and gravel.

"The Department of Planning has ruled that environmental impact statements (EIS) will still be needed," Mr. Wood said. "But information from the management plans can be inputs to an invidivual EIS." Industry agrees alternative sources of sand and gravel must be developed, but it also wants controlled river extraction to be encouraged.

The Department says the proposed policy recognises the importance of river sand and gravel to the construction industry. "In areas of high demand management plans will be prepared for individual river valleys which will simplify the EIS process and and identify sites and quantities of materials which can be extracted."

"However, the problems caused by over extraction of sand and gravel are well known and are not isolated to New South Wales..

"One of the aims of the discussion paper was to make people aware of the damage caused by taking sand and gravel from river beds. Our objective was to encourage the use of other sources of aggregate, and the proposed policy encourages liaison between Water Resources, Lands, Public Works and other government departments to develop these other sources," Mr. Wood said.

Many landowners are worried about riverbank erosion sometimes associated with the build up of gravel. Other landholders are worried about the effect of extractive industries on their quality of life.

Mr. Wood said the proposed policy recognised these problems.

"Areas where gravel extraction will reduce erosion will be looked at favourably - but it must be appreciated that this is not always possible where the cumulative effects of extraction may make erosion in the river worse. Individual landholders do not always realise this wider problem.

"Water Resources is seeking Commonwealth funds to help landowners undertake riverbank erosion control works.

"Granting of 'existing use rights' is not for Water Resources to judge. The Department of Planning has guidelines which councils should use when making decisions as to whether or not existing use rights apply," he said.

Shire councils want clear guidelines for continued extraction and better monitoring of illegal activity.

The Department says the proposed policy would set out management strategies for different river conditions. "Clear guidelines for local government - the consent and planning authority - will be set out in management plans for areas of high demand."

RAYMONDS EXTRACTION

Mr. Wood and other Departmental officers inspected sections of the Bellinger and Nambucca Rivers prior to the public meeting looking at bank erosion and the build up of gravel deposits.

Their inspection included the site of Gus Raymond's gravel bed at Gordonville, which has been the subject of a long running dispute between Mr Raymond and neighbours, who are now represented by the Bellingen Environment Centre.

Mr. Wood told the meeting: "We would recommend that the Gordonville bar be extracted."

Ian Causley, the Minister for Water Resources, who was in the inspection group, expressed concern that Mr. Raymond would be footing the bill for his legal expenses while the Environment Centre could get legal aid.

"I'm sure it is against the spirit of legal aid," Mr. Causley said. "It highlights the problem of legal aid. When I have a pensioner in need of obvious support, they often don't get it."

"If you look at the composition of the Legal Aid Commssion committee, you'll find it's loaded with environmentalists," he said.

Mr. Wood said the comments of people at the three public meetings would be taken into consideration when the new policy was being drafted.

The draft would be sent to the Water Resources Council for endorsement after which it would be submitted to Cabinet.

BELLINGEN LANDCARE

The Bellinger Valley Catchment Management Committee is calling a public meeting to discuss streambank erosion problems around Bellingen township.

The meeting, to be held at 5 p.m. at the Bellingen Shire Chambers on April 30, will discuss possible strategies to address the streambank erosion problem...

Mr. David Miller, Landcare Co-ordinator for the mid-north coast, said that streambank erosion was one of the north coast's most pressing environmental problems.

"Streambank erosion is truly a community problem," he said. "It is not only destroying valuable grazing land, but it's changing the character of our beautiful rivers. The problem is bigger than any individual landholder, and must be addressed by the wider community."

Mr. Miller went on to say that he hoped the Bellingen community got behind its TCM committee and supported the public meeting.

A range of speakers will be attending the meeting, including representatives from Bellingen Shire Council, the Soil Conservation, the Department of Public Works and NSW Agriculture and Fisheries.

Weather Report

There were some good falls of rain in Bellingen early in the weather week - the best rain for many weeks.

Falls were 10.5mm on Monday; 31.5mm on Tuesday; 13mm on Wednesday; and 9mm on Thursday for a total of 64mm.

Temperatures ranged from 22 degrees early in the week to a high of 27 degrees on Sunday. Overnight minimums were in the range 13 to 16.

MEDIATION OF DISPUTES

From 1st May, 1991, the Court is introducing an option of mediation of disputes in Classes 1, 2 and 3 of the Court's jurisdiction. The aim of this proposal is to give parties the opportunity of attempting to resolve their dispute without going to the expense of a full Court hearing.

Mediations will be conducted by the Registrar or a Deputy Registrar who is to be specially appointed for this purpose. The mediator is an independent person whose purpose is to try and assist the parties arrive at their own solution to the dispute. It is a fundamental principle of mediation that it is voluntary and that any agreement reached at mediation is acceptable to both sides, and not imposed by a third party. For this reason the mediator cannot impose his or her decision.

It is envisaged that a mediation session or sessions can be requested at any time between filing of the documents in Court and the date the matter is set down for hearing. If a matter has been set down for hearing it will normally not be suitable for mediation as the Court needs to maintain trial date certainty for Assessors and Judges hearing days.

You are required to serve a copy of this notice on the other side, together with a copy of the papers which commenced the action. Should both parties wish to undergo mediation the List Clerk at the Court should be notified as soon as possible. Arrangements will then be made to arrange a mediation session at a time and date suitable to both parties.

At least seven days prior to mediation the parties are required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible the statement be limited to 2 or 3 A4 pages.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of experts reports. At this stage the parties should know their relative positions.

Should you require further information, please contact the Court on telephone number 228-8388.

PRACTICE DIRECTION

MEDIATION AND ISSUES CONFERENCES

From 1st May, 1991, the Court intends to introduce an option of a mediation conference for some types of cases, and to introduce compulsory issues conferences in Class 4 matters to explore the possibility of settlement and to narrow the issues.

MEDIATION

In Class 1 appeals in respect of development applications; in Class 2 appeals in respect of building applications, demolition orders, refusals to issue 317AE Certificates; and in Class 3 compensation matters, the Court will offer the parties the option of having a mediation session or sessions with the Registrar or the Deputy Registrar.

It is a fundamental tenet of mediation that it be voluntary. Therefore, each party will be required to indicate in writing that it wishes a dispute to be mediated.

It is envisaged that a mediation can be requested at any time between service of the documents on the other side and before the matter is set down for hearing.

Mediations will be conducted at the Court. If objectors are involved it is anticipated that they should attend at the mediation so that the views of all interested parties may be taken into account in any mediated settlement.

It is expected that persons appointed to act on behalf of any of the parties to a mediation will have the authority to authorise a resolution of the dispute. If a party does not have that authority it will substantially weaken the mediation process. Legal representation is not seen as necessary at mediations, but it will be allowed by leave.

At least a week before the mediation the parties will be required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible, the statement be limited to 2 or 3 A4 pages.

When filing the application to commence the action in the Court a statement setting out the option of mediation will be handed to the party lodging the application by the Court staff. It will be required that a copy of that statement also be served on the other side.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of expert reports. At this stage the parties should know their relative positions. A successful mediation at this point would alleviate the need for further expense to the parties. The parties valuer and any other experts should be present at the mediation.

At the conclusion of the mediation, where agreement has been reached the parties will be expected to give effect to the agreement in the best possible way. In most cases this will involve one of the parties giving consent or agreeing to be bound by terms of settlement. In those cases where the parties see a need for orders of the Court to be made it is expected that consent orders will be agreed upon between the parties, and these will be placed before a Duty Judge.

ISSUES CONFERENCES

In Class 4 matters it is proposed to make compulsory an issues conference once all the affidavits have been filed. Generally speaking matters will be fixed for hearing at an issues conference rather than from a call-over. The primary purpose of the issues conference will be to explore the possibility of settlement. However, even if settlement is not a prospect it is envisaged that the issues can be narrowed following such a conference.

As in mediations, it is requested that the parties have present a representative who is authorised to settle the matter at the conference or who can obtain instructions at short notice as to whether an agreement to settle on a particular basis is authorised. It would be of assistance if any relevant experts were present at the conference. At least a week before the conference each party will be required to file and serve a statement setting out their respective positions. It is requested that the statement be limited to 2 or 3 A4 pages.

It is recognised that some matters will, for a variety of reasons, not need to go to an issues conference. These cases will be dealt with on a case by case basis.

MEDIATION OF DISPUTES

From 1st May, 1991, the Court is introducing an option of mediation of disputes in Classes 1, 2 and 3 of the Court's jurisdiction. The aim of this proposal is to give parties the opportunity of attempting to resolve their dispute without going to the expense of a full Court hearing.

Mediations will be conducted by the Registrar or a Deputy Registrar who is to be specially appointed for this purpose. The mediator is an independent person whose purpose is to try and assist the parties arrive at their own solution to the dispute. It is a fundamental principle of mediation that it is voluntary and that any agreement reached at mediation is acceptable to both sides, and not imposed by a third party. For this reason the mediator cannot impose his or her decision.

It is envisaged that a mediation session or sessions can be requested at any time between filing of the documents in Court and the date the matter is set down for hearing. If a matter has been set down for hearing it will normally not be suitable for mediation as the Court needs to maintain trial date certainty for Assessors and Judges hearing days.

You are required to serve a copy of this notice on the other side, together with a copy of the papers which commenced the action. Should both parties wish to undergo mediation the List Clerk at the Court should be notified as soon as possible. Arrangements will then be made to arrange a mediation session at a time and date suitable to both parties.

At least seven days prior to mediation the parties are required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible the statement be limited to 2 or 3 A4 pages.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of experts reports. At this stage the parties should know their relative positions.

Should you require further information, please contact the Court on telephone number 228-8388.

PRACTICE DIRECTION

MEDIATION AND ISSUES CONFERENCES

From 1st May, 1991, the Court intends to introduce an option of a mediation conference for some types of cases, and to introduce compulsory issues conferences in Class 4 matters to explore the possibility of settlement and to narrow the issues.

MEDIATION

In Class 1 appeals in respect of development applications; in Class 2 appeals in respect of building applications, demolition orders, refusals to issue 317AE Certificates; and in Class 3 compensation matters, the Court will offer the parties the option of having a mediation session or sessions with the Registrar or the Deputy Registrar.

It is a fundamental tenet of mediation that it be voluntary. Therefore, each party will be required to indicate in writing that it wishes a dispute to be mediated.

It is envisaged that a mediation can be requested at any time between service of the documents on the other side and before the matter is set down for hearing.

Mediations will be conducted at the Court. If objectors are involved it is anticipated that they should attend at the mediation so that the views of all interested parties may be taken into account in any mediated settlement.

It is expected that persons appointed to act on behalf of any of the parties to a mediation will have the authority to authorise a resolution of the dispute. If a party does not have that authority it will substantially weaken the mediation process. Legal representation is not seen as necessary at mediations, but it will be allowed by leave.

At least a week before the mediation the parties will be required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible, the statement be limited to 2 or 3 A4 pages.

When filing the application to commence the action in the Court a statement setting out the option of mediation will be handed to the party lodging the application by the Court staff. It will be required that a copy of that statement also be served on the other side.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of expert reports. At this stage the parties should know their relative positions. A successful mediation at this point would alleviate the need for further expense to the parties. The parties valuer and any other experts should be present at the mediation.

At the conclusion of the mediation, where agreement has been reached the parties will be expected to give effect to the agreement in the best possible way. In most cases this will involve one of the parties giving consent or agreeing to be bound by terms of settlement. In those cases where the parties see a need for orders of the Court to be made it is expected that consent orders will be agreed upon between the parties, and these will be placed before a Duty Judge.

ISSUES CONFERENCES

In Class 4 matters it is proposed to make compulsory an issues conference once all the affidavits have been filed. Generally speaking matters will be fixed for hearing at an issues conference rather than from a call-over. The primary purpose of the issues conference will be to explore the possibility of settlement. However, even if settlement is not a prospect it is envisaged that the issues can be narrowed following such a conference.

As in mediations, it is requested that the parties have present a representative who is authorised to settle the matter at the conference or who can obtain instructions at short notice as to whether an agreement to settle on a particular basis is authorised. It would be of assistance if any relevant experts were present at the conference. At least a week before the conference each party will be required to file and serve a statement setting out their respective positions. It is requested that the statement be limited to 2 or 3 A4 pages.

It is recognised that some matters will, for a variety of reasons, not need to go to an issues conference. These cases will be dealt with on a case by case basis.

MEDIATION OF DISPUTES

From 1st May, 1991, the Court is introducing an option of mediation of disputes in Classes 1, 2 and 3 of the Court's jurisdiction. The aim of this proposal is to give parties the opportunity of attempting to resolve their dispute without going to the expense of a full Court hearing.

Mediations will be conducted by the Registrar or a Deputy Registrar who is to be specially appointed for this purpose. The mediator is an independent person whose purpose is to try and assist the parties arrive at their own solution to the dispute. It is a fundamental principle of mediation that it is voluntary and that any agreement reached at mediation is acceptable to both sides, and not imposed by a third party. For this reason the mediator cannot impose his or her decision.

It is envisaged that a mediation session or sessions can be requested at any time between filing of the documents in Court and the date the matter is set down for hearing. If a matter has been set down for hearing it will normally not be suitable for mediation as the Court needs to maintain trial date certainty for Assessors and Judges hearing days.

You are required to serve a copy of this notice on the other side, together with a copy of the papers which commenced the action. Should both parties wish to undergo mediation the List Clerk at the Court should be notified as soon as possible. Arrangements will then be made to arrange a mediation session at a time and date suitable to both parties.

At least seven days prior to mediation the parties are required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible the statement be limited to 2 or 3 A4 pages.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of experts reports. At this stage the parties should know their relative positions.

Should you require further information, please contact the Court on telephone number 228-8388.

PRACTICE DIRECTION

MEDIATION AND ISSUES CONFERENCES

From 1st May, 1991, the Court intends to introduce an option of a mediation conference for some types of cases, and to introduce compulsory issues conferences in Class 4 matters to explore the possibility of settlement and to narrow the issues.

MEDIATION

In Class 1 appeals in respect of development applications; in Class 2 appeals in respect of building applications, demolition orders, refusals to issue 317AE Certificates; and in Class 3 compensation matters, the Court will offer the parties the option of having a mediation session or sessions with the Registrar or the Deputy Registrar.

It is a fundamental tenet of mediation that it be voluntary. Therefore, each party will be required to indicate in writing that it wishes a dispute to be mediated.

It is envisaged that a mediation can be requested at any time between service of the documents on the other side and before the matter is set down for hearing.

Mediations will be conducted at the Court. If objectors are involved it is anticipated that they should attend at the mediation so that the views of all interested parties may be taken into account in any mediated settlement.

It is expected that persons appointed to act on behalf of any of the parties to a mediation will have the authority to authorise a resolution of the dispute. If a party does not have that authority it will substantially weaken the mediation process. Legal representation is not seen as necessary at mediations, but it will be allowed by leave.

At least a week before the mediation the parties will be required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible, the statement be limited to 2 or 3 A4 pages.

When filing the application to commence the action in the Court a statement setting out the option of mediation will be handed to the party lodging the application by the Court staff. It will be required that a copy of that statement also be served on the other side.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of expert reports. At this stage the parties should know their relative positions. A successful mediation at this point would alleviate the need for further expense to the parties. The parties valuer and any other experts should be present at the mediation.

At the conclusion of the mediation, where agreement has been reached the parties will be expected to give effect to the agreement in the best possible way. In most cases this will involve one of the parties giving consent or agreeing to be bound by terms of settlement. In those cases where the parties see a need for orders of the Court to be made it is expected that consent orders will be agreed upon between the parties, and these will be placed before a Duty Judge.

ISSUES CONFERENCES

In Class 4 matters it is proposed to make compulsory an issues conference once all the affidavits have been filed. Generally speaking matters will be fixed for hearing at an issues conference rather than from a call-over. The primary purpose of the issues conference will be to explore the possibility of settlement. However, even if settlement is not a prospect it is envisaged that the issues can be narrowed following such a conference.

As in mediations, it is requested that the parties have present a representative who is authorised to settle the matter at the conference or who can obtain instructions at short notice as to whether an agreement to settle on a particular basis is authorised. It would be of assistance if any relevant experts were present at the conference. At least a week before the conference each party will be required to file and serve a statement setting out their respective positions. It is requested that the statement be limited to 2 or 3 A4 pages.

It is recognised that some matters will, for a variety of reasons, not need to go to an issues conference. These cases will be dealt with on a case by case basis.

MEDIATION OF DISPUTES

From 1st May, 1991, the Court is introducing an option of mediation of disputes in Classes 1, 2 and 3 of the Court's jurisdiction. The aim of this proposal is to give parties the opportunity of attempting to resolve their dispute without going to the expense of a full Court hearing.

Mediations will be conducted by the Registrar or a Deputy Registrar who is to be specially appointed for this purpose. The mediator is an independent person whose purpose is to try and assist the parties arrive at their own solution to the dispute. It is a fundamental principle of mediation that it is voluntary and that any agreement reached at mediation is acceptable to both sides, and not imposed by a third party. For this reason the mediator cannot impose his or her decision.

It is envisaged that a mediation session or sessions can be requested at any time between filing of the documents in Court and the date the matter is set down for hearing. If a matter has been set down for hearing it will normally not be suitable for mediation as the Court needs to maintain trial date certainty for Assessors and Judges hearing days.

You are required to serve a copy of this notice on the other side, together with a copy of the papers which commenced the action. Should both parties wish to undergo mediation the List Clerk at the Court should be notified as soon as possible. Arrangements will then be made to arrange a mediation session at a time and date suitable to both parties.

At least seven days prior to mediation the parties are required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible the statement be limited to 2 or 3 A4 pages.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of experts reports. At this stage the parties should know their relative positions.

Should you require further information, please contact the Court on telephone number 228-8388.

PRACTICE DIRECTION

MEDIATION AND ISSUES CONFERENCES

From 1st May, 1991, the Court intends to introduce an option of a mediation conference for some types of cases, and to introduce compulsory issues conferences in Class 4 matters to explore the possibility of settlement and to narrow the issues.

MEDIATION

In Class 1 appeals in respect of development applications; in Class 2 appeals in respect of building applications, demolition orders, refusals to issue 317AE Certificates; and in Class 3 compensation matters, the Court will offer the parties the option of having a mediation session or sessions with the Registrar or the Deputy Registrar.

It is a fundamental tenet of mediation that it be voluntary. Therefore, each party will be required to indicate in writing that it wishes a dispute to be mediated.

It is envisaged that a mediation can be requested at any time between service of the documents on the other side and before the matter is set down for hearing.

Mediations will be conducted at the Court. If objectors are involved it is anticipated that they should attend at the mediation so that the views of all interested parties may be taken into account in any mediated settlement.

It is expected that persons appointed to act on behalf of any of the parties to a mediation will have the authority to authorise a resolution of the dispute. If a party does not have that authority it will substantially weaken the mediation process. Legal representation is not seen as necessary at mediations, but it will be allowed by leave.

At least a week before the mediation the parties will be required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible, the statement be limited to 2 or 3 A4 pages.

When filing the application to commence the action in the Court a statement setting out the option of mediation will be handed to the party lodging the application by the Court staff. It will be required that a copy of that statement also be served on the other side.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of expert reports. At this stage the parties should know their relative positions. A successful mediation at this point would alleviate the need for further expense to the parties. The parties valuer and any other experts should be present at the mediation.

At the conclusion of the mediation, where agreement has been reached the parties will be expected to give effect to the agreement in the best possible way. In most cases this will involve one of the parties giving consent or agreeing to be bound by terms of settlement. In those cases where the parties see a need for orders of the Court to be made it is expected that consent orders will be agreed upon between the parties, and these will be placed before a Duty Judge.

ISSUES CONFERENCES

In Class 4 matters it is proposed to make compulsory an issues conference once all the affidavits have been filed. Generally speaking matters will be fixed for hearing at an issues conference rather than from a call-over. The primary purpose of the issues conference will be to explore the possibility of settlement. However, even if settlement is not a prospect it is envisaged that the issues can be narrowed following such a conference.

As in mediations, it is requested that the parties have present a representative who is authorised to settle the matter at the conference or who can obtain instructions at short notice as to whether an agreement to settle on a particular basis is authorised. It would be of assistance if any relevant experts were present at the conference. At least a week before the conference each party will be required to file and serve a statement setting out their respective positions. It is requested that the statement be limited to 2 or 3 A4 pages.

It is recognised that some matters will, for a variety of reasons, not need to go to an issues conference. These cases will be dealt with on a case by case basis.

MEDIATION OF DISPUTES

From 1st May, 1991, the Court is introducing an option of mediation of disputes in Classes 1, 2 and 3 of the Court's jurisdiction. The aim of this proposal is to give parties the opportunity of attempting to resolve their dispute without going to the expense of a full Court hearing.

Mediations will be conducted by the Registrar or a Deputy Registrar who is to be specially appointed for this purpose. The mediator is an independent person whose purpose is to try and assist the parties arrive at their own solution to the dispute. It is a fundamental principle of mediation that it is voluntary and that any agreement reached at mediation is acceptable to both sides, and not imposed by a third party. For this reason the mediator cannot impose his or her decision.

It is envisaged that a mediation session or sessions can be requested at any time between filing of the documents in Court and the date the matter is set down for hearing. If a matter has been set down for hearing it will normally not be suitable for mediation as the Court needs to maintain trial date certainty for Assessors and Judges hearing days.

You are required to serve a copy of this notice on the other side, together with a copy of the papers which commenced the action. Should both parties wish to undergo mediation the List Clerk at the Court should be notified as soon as possible. Arrangements will then be made to arrange a mediation session at a time and date suitable to both parties.

At least seven days prior to mediation the parties are required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible the statement be limited to 2 or 3 A4 pages.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of experts reports. At this stage the parties should know their relative positions.

Should you require further information, please contact the Court on telephone number 228-8388.

PRACTICE DIRECTION

MEDIATION AND ISSUES CONFERENCES

From 1st May, 1991, the Court intends to introduce an option of a mediation conference for some types of cases, and to introduce compulsory issues conferences in Class 4 matters to explore the possibility of settlement and to narrow the issues.

MEDIATION

In Class 1 appeals in respect of development applications; in Class 2 appeals in respect of building applications, demolition orders, refusals to issue 317AE Certificates; and in Class 3 compensation matters, the Court will offer the parties the option of having a mediation session or sessions with the Registrar or the Deputy Registrar.

It is a fundamental tenet of mediation that it be voluntary. Therefore, each party will be required to indicate in writing that it wishes a dispute to be mediated.

It is envisaged that a mediation can be requested at any time between service of the documents on the other side and before the matter is set down for hearing.

Mediations will be conducted at the Court. If objectors are involved it is anticipated that they should attend at the mediation so that the views of all interested parties may be taken into account in any mediated settlement.

It is expected that persons appointed to act on behalf of any of the parties to a mediation will have the authority to authorise a resolution of the dispute. If a party does not have that authority it will substantially weaken the mediation process. Legal representation is not seen as necessary at mediations, but it will be allowed by leave.

At least a week before the mediation the parties will be required to serve on the other side a statement of their position and the issues as that party sees them. It is requested that, if possible, the statement be limited to 2 or 3 A4 pages.

When filing the application to commence the action in the Court a statement setting out the option of mediation will be handed to the party lodging the application by the Court staff. It will be required that a copy of that statement also be served on the other side.

In Class 3 compensation matters it is anticipated that parties may seek mediation after the exchange of expert reports. At this stage the parties should know their relative positions. A successful mediation at this point would alleviate the need for further expense to the parties. The parties valuer and any other experts should be present at the mediation.

At the conclusion of the mediation, where agreement has been reached the parties will be expected to give effect to the agreement in the best possible way. In most cases this will involve one of the parties giving consent or agreeing to be bound by terms of settlement. In those cases where the parties see a need for orders of the Court to be made it is expected that consent orders will be agreed upon between the parties, and these will be placed before a Duty Judge.

ISSUES CONFERENCES

In Class 4 matters it is proposed to make compulsory an issues conference once all the affidavits have been filed. Generally speaking matters will be fixed for hearing at an issues conference rather than from a call-over. The primary purpose of the issues conference will be to explore the possibility of settlement. However, even if settlement is not a prospect it is envisaged that the issues can be narrowed following such a conference.

As in mediations, it is requested that the parties have present a representative who is authorised to settle the matter at the conference or who can obtain instructions at short notice as to whether an agreement to settle on a particular basis is authorised. It would be of assistance if any relevant experts were present at the conference. At least a week before the conference each party will be required to file and serve a statement setting out their respective positions. It is requested that the statement be limited to 2 or 3 A4 pages.

It is recognised that some matters will, for a variety of reasons, not need to go to an issues conference. These cases will be dealt with on a case by case basis.

The Sydney Morning Herald 20.2.91 P7.

Balmain residents win battle

From Page 1

submitted Mr Hay was not legally authorised to have appointed the administrator in the circumstances, lost its case in the Land and Environment Court.

The Chief Judge of the Land and Environment Court, Justice Cripps, had said after the four-day hearing that he was not satisfied the administrator's appointment breached the Environmental Planning and Assessment Act and he declared it was valid.

It had not been established that Mr Hay's order to Leichhardt Council to complete the draft LEPs for the peninsula sites within five weeks was unreasonable, he said.

However, the Court of Appeal ruled yesterday that the five week deadline was "manifestly unreasonable" and it declared Mr Hay's direction to the council invalid.

The court said it was clear that the council's non-compliance with the direction was an important consideration leading to the administrator's appointment and it also declared that was invalid.

The appointment was not authorised under the Environmental Planning and Assessment Act, the court said.

The order that Mr Hay be restrained from treating any of the administrator's actions as valid means the draft LEPs for the Balmain peninsula – drawn up by the administrator – cannot be acted upon.

Land Court faces uncertain future

By GREG ROBERTS

BRISBANE: The future of the NSW Land and Environment Court was placed under a cloud yesterday when the Premier, Mr Greiner, raised strong doubts about the role of judges in resolving environmental disputes.

Mr Greiner told the Public Issue Dispute Resolution Conference in Brisbane that "lawyers and bureaucrats" could not provide the answers to what were essentially questions about values.

The Premier also announced that his Government was examining the establishment of a new council to manage State-owned natural resources.

The two-day national conference which ended yesterday was attended by 400 people, including the Chief Judge of the NSW Land and Environment Court, Justice Cripps.

The court has been responsible for determining the outcome of many controversial environmental disputes in NSW.

The Premier said governments in Australia had failed to clearly define roles and responsibilities in the environmental decision-making process, and had very often assigned "inappropriate" roles in that process.

"In NSW it is quite possible that

Mr Greiner ... "Now, I'm not having a go at judges."

at the end of the day it will be the judges who finally decide whether or not a development proposal is acceptable, and whether it should go ahead," Mr Greiner said.

"Now, I'm not having a go at judges, but it strikes me as very odd that we should think that lawyers are best placed to make a decision about whether a development is good for society.

"It is all too easy to get lost in the problem at hand and to continue to confront environmental disputes on a case-by-case basis, or to look to the judiciary for salvation."

The Opposition Leader, Mr Carr, said last night the Premier was clearly caving into National Party demands to scrap the Land and Environment Court.

"Thank God for the judges of the court, who time and time again have forced Mr Greiner and his ministers to obey the requirements of environmental protection legislation," Mr Carr said.

Mr Greiner took delegates by surprise by announcing the establishment of a council to manage State-owned land and other natural resources.

He said some of the most controversial environmental disputes had focused upon decisions made by governments in relation to the use and management of State-owned lands.

The NSW council would have three functions: to gather information about the environmental and economic qualities of State-owned resources, to assess claims and counter-claims on behalf of the community about the most appropriate use of these resources, and to offer a procedure which resolves conflicts in a "fair, open and sensible manner".

The NSW campaign co-ordinator for the Australian Conservation Foundation, Ms Sue Salmon, said the council should not proceed without full public consultation and debate on the merits of the Premier's suggestion.

MARLENE

Two issues: L+E Court: natural resources council.

Court: must remain: shouldn't tinker: quote Dand.

role of judges, lawyers + bureaucrats → expert evidence prepared.

evidence which Cabinet + Ministers won't consider.

→ No enforcement: SPCC DoP FCNSW

not judgements on policy or values but law:

Statistics of court: how many times has Govt been losing party?

refer Washpool + Balmain Peninsula (Leichhardt Council)

Council: need other processes to resolve policy + values:

consultation to public essential:

take politics out of land use assessment:

about mini-RAC + hands off (→ refer SS Inman) Green

If Premier serious, then should prepare + publish White paper

on scrub proposal + listen to public comment!

Shouldn't be developed behind closed doors! Court doors are open

Public documents!

L+E Court Classes of Appeal

Cl. 1. s.97 objectors EPA

2. building matters LGA

3. valuations compensation rating

4. s.123 remedy breach EPA.

5. summary enforcement of several Acts.

ENQUIRIES

228 - 8395

228 - 8394

228 - 8386

THE LAND AND ENVIRONMENT COURT

A Layman's Guide to Procedures and Terms

The Land and Environment Court -

A laymans guide to procedures and terms.

This booklet is provided by the Environmental Law Association of New South Wales. It was written by Michael McMahon a former Assistant Registrar of the Court, and currently the editor of the Environmental Law Newsletter, with the assistance of the executive of the Environmental Law Association.

The Association was established in 1981 with objectives including the advancement of knowledge of environmental law and practice among the legal profession and the community generally.

If you would like to join the Association call Cathy Barmes on 660-3355 or address your enquiry to The Environmental Law Association, GPO Box 2144, Sydney 2001 or DX 1250.

ISBN 0 7316 0820 8

THE LAND AND ENVIRONMENT COURT:-

A LAYMAN'S GUIDE TO PROCEDURES AND TERMS

C O N T E N T S

Q.1 WHAT IS THE JURISDICTION OF THE COURT?

A. "Jurisdiction" has two meanings. The first meaning is the territory over which the Court has power. The Court has power to hear cases involving land anywhere in the State of New South Wales. The other meaning of jurisdiction is the power of the Court. The "Land and Environment Court Act, 1979" (The Act) sets out the powers of the Land and Environment Court. The Act provides the Judges of the Court with power to make "rules". The rules are mainly concerned with practice and procedure adopted by the Court. The Act and rules may be read at the Court counter, Level 6, 388 George Street, Sydney. They are also available at libraries which have the New South Wales statutes in their collections, or copies may be purchased from the Government Information and Sales Centre, 55 Hunter Street, Sydney.

Q.2 WHAT IS THE DIFFERENCE BETWEEN AN "ASSESSOR" AND A JUDGE?

A. An assessor is a judicial officer of the Court who has had extensive experience in town planning, local government, engineering, architecture, building construction or a related field who conducts conferences and Court hearings. The assessors take turns to act as duty assessor.

A Judge has all the powers of an assessor and also has power to grant injunctions restraining the continuation of certain acts and can convict people for criminal offences. A Judge is addressed as "Your Honour". An assessor is addressed as "Mr. Assessor" or in the case of a female assessor "Madam Assessor". The registrar is addressed as "Mr. Registrar".

Q.3 HOW MANY CLASSES OF CASES ARE THERE?

A. A "Class" is a group of cases which have similar characteristics. There are five Classes. Broadly, the Classes may be described as follows:- Class One: Development; Class Two: Building; Class Three: Valuation; Class Four: Equitable remedies; Class Five: Criminal. The Act should be read if you require a more accurate definition of the various Classes, in particular Sections 17 to 21.

Q.4 WHAT ARE THE MOST COMMON CASES IN CLASS ONE?

A. Appeals under Section 97 of the Environmental Planning and Assessment Act, 1979, are the most common. These are appeals against conditions a council has imposed in a consent to a development application and appeals against the refusal of a development application or the delay in giving a decision.

Q.5 WHAT ARE THE MOST COMMON CASES IN CLASS TWO?

A. Appeals under Section 317L of the Local Government Act, 1919 are the most common in Class Two. These appeals involve building applications. If you lodge a building application with your local council and it refuses it, or you are not satisfied with the conditions imposed on the approval, you may appeal to the Court. You may also appeal against delay by the council after forty days. The Court takes over all the powers of the council and hears the case again. Both you and the council are given the opportunity to express views on the manner in which the Court should decide the case.

If a development application is required for the use of the land, there could be a Class One appeal in relation to the development application, and a Class Two appeal in relation to the building application. It is usual to obtain development consent first but it is possible to apply for building approval at the same time.

Q.6 WHAT ARE CLASS THREE PROCEEDINGS?

A. Class Three proceedings relate to valuation and compensation matters set out in Section 19 of the Act. The current procedure in objections to valuation is for the objector to lodge an objection with the Valuer-General, who then forwards it to the Court. A letter is sent by the Court to the objector requesting that the fee be paid by a date nominated. If the fee is paid the matter is removed from the call-over list and is listed for a hearing when sufficient cases have been received in the area where the land is situated.

The case usually goes straight to a hearing before an assessor and since these matters are usually short, several are dealt with on the one day.

Other Class Three cases involving compensation following a resumption may take weeks to hear. Lawyers are normally involved in those types of cases. Individuals commonly conduct objections to the valuation by the Valuer General.

Q.7 WHAT ARE CLASS FOUR PROCEEDINGS?

A. Class Four proceedings are set out in Section 20 of the Act. Only a Judge can hear Class Four proceedings and costs are usually awarded against an unsuccessful party. Each party is normally represented by a barrister and solicitor in this Class. This Class covers judicial review proceedings. The remedies available are remedies which Judges traditionally give, such as declarations that certain rights, or duties exist and injunctions restraining a breach of the law. The law which the Judges are dealing with is "planning or environmental law" as defined in Section 20. Few individuals represent themselves in this Class.

Q.8 WHAT ARE CLASS FIVE PROCEEDINGS?

A. Class Five involves the criminal jurisdiction of the Court as set out in Section 21 of the Act. There are very few actions brought in Class Five, mainly because Class Four proceedings provide a more effective remedy.

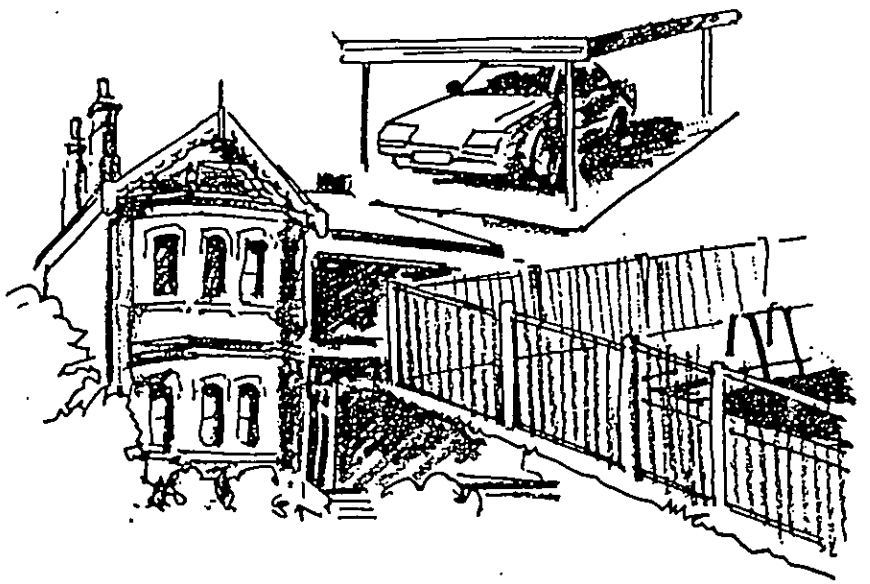
For example, if a person starts using his house as a factory in a residential zone without the consent of the council, the more effective remedy for the council is to commence Class Four proceedings. In Class Four there could be an application for a declaration from the Court that the use of the land as a factory is a prohibited use in the zone; and an application for an injunction restraining the continuation of the use. If Class Five proceedings were commenced the remedy would usually be a fine, but the fine in itself would not stop the house being used as a factory.

Q.9 WHAT DO THE OTHER SECTIONS OF THE LOCAL GOVERNMENT ACT REFERRED TO IN SECTION 18 OF THE LAND AND ENVIRONMENT COURT ACT MEAN?

A. You may appeal to the Court if any of these sections apply in your situation. The appeals relate to the following:

270JB - Parking stations
288C(5) - Swimming pool fencing
289(m) - Dangerous waterholes

317A - Certificate of compliance with building ordinances
317B(5) - Repair or demolition orders
317F - Fire notices
317L - Building appeals
317M - Objections that the building ordinance is not appropriate for your building
341 - Subdivisions
495(2) - Orders for the removal of undergrowth
510(3) - Advertising sign appeals
510A(4) - Appeals against orders concerning the storage of old motor vehicles



Q.10 MY NEIGHBOUR HAS APPLIED TO DEVELOP HIS LAND IN A WAY WHICH WILL AFFECT MY VIEWS. WHAT CAN I DO ABOUT IT?

A. If a person lodges an appeal against the conditions of approval of a development or building application, that person is the applicant (or the first party), the council is the respondent (or second party), and any other party that does not have a case in common with either that person (a second applicant), or the council (a second respondent) is known as a third party. In these circumstances you would be a third party.

A third party does not have an automatic right of appeal, although he or she might be asked to attend as a witness by the council whose decision is being appealed against. In certain circumstances where a residential flat

building is proposed a third party may object to the development. Section 342ZA of the Local Government Act, 1919, does not enable a third party to lodge an appeal, but if a developer lodges an appeal, the third party is able to seek the leave of the Court to be admitted as if a party to the proceedings.

A third party does have the right of appeal under the Environmental Planning and Assessment Act, 1979, in relation to designated development; however, designated development has been given a limited meaning and is restricted to mainly industrial type uses and sand mining.

Even though there may not appear to be a third party right of appeal it may be possible that Class Four proceedings could be instituted by a third party. If you are contemplating bringing Class Four proceedings a solicitor should be consulted.

Q.11 I HAVE PUT A BUILDING APPLICATION IN TO THE COUNCIL AND IT HAS IMPOSED CONDITIONS WHICH I DO NOT THINK ARE APPROPRIATE. HOW DO I GO ABOUT APPEALING?

A. Firstly, discover whether you have the right of appeal. Refer to Section 18 of the Land and Environment Court Act and you will find that the Court has jurisdiction to hear appeals under Section 317L of the Local Government Act. Section 317L states that you may appeal within 12 months of being notified of council's decision.

Secondly, obtain three copies of Form 2 under the Land and Environment Court Rules. These may be obtained from your local Court house or from the counter at the Land and Environment Court. Complete the forms and lodge them personally or by post to the Court the Land and Environment Court, Level 6, 388 George Street, Sydney. See Table 5 for the fee payable.

Q.12 HOW DO I FILL IN THE FORM?

A. Refer to Table 1 at the back of this guide. A form has been completed for a typical building appeal. Under "Act of Parliament or other instrument under which proceedings are brought" enter "Local Government Act, 1919 - Section 317L", if it is a building appeal. If it is not a building appeal enter the section which is appropriate for your case. For a Class Two case the appropriate section may be found in Section 18 of the Land and Environment Court Act. Next, check the section of the Act referred to in Section 18 to determine your right of appeal. Under "Address of subject land" insert the full address of that land. If it does not have a street number, the title reference may be inserted. A small sketch showing where the land is situated in relation to neighbouring land and nearest cross streets should be

included to assist the Court. Under "Decision appealed against" write "Building approval of (date of council decision) communicated by letter, dated (date of council letter)". Usually, three copies of the application and the council's letter should be included with the appeal (and so the last dotted line on the form will not need to be completed). In the left hand column above the word applicant write your name and above the word respondent write the name of the council to which you submitted the application. When you lodge the appeal complete the date, sign the form and pay the fee set out in Table 5.

Q.13 WHAT HAPPENS WHEN I LODGE THE FORMS WITH THE COURT?

A. A receipt will be issued for the fee paid and your application will be given a file number. A file number such as 20456/87 means that it is a Class Two case and it is the 456th case filed in 1987. The Court will nominate a date when a call-over is to take place. If it is a less complex city appeal it may be listed for an early hearing before a duty assessor. In that case you will know the date set for the hearing as soon as you lodge your appeal. The Court seal will be stamped on the application and the other documents lodged, and two sets will be returned to you. If the application is lodged with the Clerk of the Local Court a number will not be allocated until the file is sent to the Land and Environment Court.

Q.14 WHAT DO I DO WITH THE TWO SETS OF DOCUMENTS THAT ARE HANDED BACK TO ME?

A. Keep one so that you have a record of what has happened. Take the other set to the council which made the decision you are appealing against. You should serve the set on the council prior to the last day for service. The last day for service will have been stamped on the appeal by the Court. You should read the Court Rules regarding service of documents to make sure you serve the council properly.

Q.15 IF THE COUNCIL DOES NOT DEAL WITH MY APPLICATION WHAT CAN I DO ABOUT IT?

A. After forty days from lodgement of the application you may appeal against the council's "neglect or delay". In rare circumstances, where the council is required to consult, a longer period applies. After the forty day period the council is deemed to have refused the application although it may subsequently approve the application even after an appeal is lodged.

Q.16 HOW LONG DO I HAVE TO APPEAL?

A. After 40 days from when you lodge an application with the council the period is usually twelve months. To find the

exact period, check the section under which you are appealing. If no period is specified, the Court Rules limit the period to 60 days. The Court may extend the period in special circumstances. If the council serves a notice on you, such as a notice to fence a swimming pool under Section 288C of the Local Government Act, the period for appeal will be shorter. If you are in doubt contact your council or the Court or seek professional advice.

Q.17 IF THE TIME LIMIT FOR APPEALING HAS EXPIRED, WHAT CAN I DO ABOUT IT?

A. Depending on the type of appeal you may apply to a Judge of the Court to have the period extended. Alternatively, another application may be lodged with the Council.

Q.18 DO I HAVE TO HAVE A SOLICITOR OR BARRISTER BEFORE I CAN APPEAR IN THE COURT?

A. No. However, if you do not wish to appear on your own behalf, you may pay a solicitor or barrister to represent you. Except in Class Five cases (criminal jurisdiction) you may authorise an agent in writing to appear for you. The agent does not need to have any particular qualifications; however, an understanding of the principles applying in the case would be an advantage.

Q.19 HOW CAN I FIND A SOLICITOR WHO SPECIALISES IN THIS COURT?

A. Solicitors' offices by city, suburb, country and interstate areas are contained in the Legal Services Directory provided by the Law Society. The Directory sets out the areas of law in which each solicitor's office is willing to provide assistance. A copy of the Directory is available for perusal at the Land and Environment Court or at the Law Society Office. Other solicitors who practise in the Court and who don't have their names included in the Directory may be found by reading law reports of cases before the Court. The Environmental Defender's Office may appear for you if you are contemplating bringing proceedings concerning protection of the environment.

Q.20 WHAT ARE COSTS?

A. Each party spends money in attending Court. If either party engages a solicitor, the solicitor will charge that party "costs". The "costs" a party is required to pay are known as the "solicitor-client costs". They are the fees charged for exercising the skills of the profession. The costs that could be awarded against either party are "party-party costs" and are the costs the Court awards against one party to reimburse the other. The costs awarded on a party-party basis are

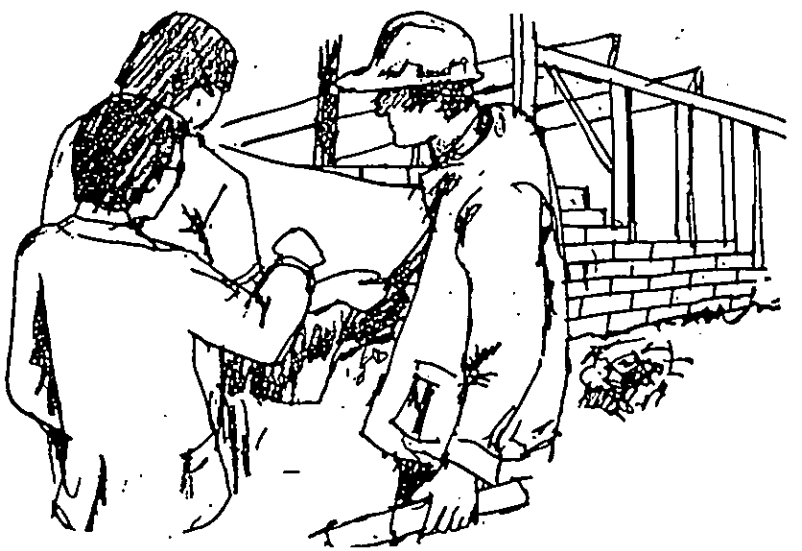
usually less than the solicitor-client basis ,and so if costs are awarded in your favour, the amount recovered from the other side may not fully cover the costs of your solicitor.

Q.21 WHEN ARE COSTS AWARDED?

A. In Classes One, Two and Three there must be exceptional circumstances before costs are awarded against the losing party. In these Classes costs are rarely awarded and each party is usually liable to pay their own.

Q.22 ARE ALL CASES COMPLETED IN THE SAME WAY

A. No. All cases do not follow the same procedure and may vary in length of time it takes for them to be completed. The ways in which a case may be completed are as follows: 1. By an assessor at a conference. 2. By an assessor at a hearing. 3. By a registrar at a call-over where all the parties consent to it being completed in a particular way. 4. By a Judge at a call-over. 5. By a Judge at a hearing. 6. By the filing of a Notice of Discontinuance.



Q.23 WHAT HAPPENS AT "A CONFERENCE"?

A. Conferences are conducted by assessors only if both parties request one. The main aim of a conference is to settle the dispute between the parties, thus avoiding the

need for a hearing. You may appear by yourself or if it's a large development you may wish to have your solicitor, architect, engineer or agent with you to put your views across.

With a building appeal, the council's building surveyor (formerly known as the building inspector) will usually attend on behalf of the council. This person may be accompanied by council's solicitor and perhaps an alderman. Anything said or done at a conference is not taken into account at a subsequent hearing.

The conference has two purposes. Firstly, to discover whether the parties can come to an agreement on the way in which the case should be decided. Secondly, if the case cannot be settled, the issues between the parties are identified. The parties may agree prior to the conference that they agree to being bound by the decision of the assessor at the conference. Of the conferences held nowadays most are conducted on the basis that the assessor will make a decision at the end of the conference. Issues can be settled at a call-over without a conference. If the conference is not successful it may increase delay and your costs.

Q.24 WHAT ARE "ISSUES"?

A. Issues are the causes of the argument between the two parties and may generally be regarded as the reasons for appeal. Generally, where the council refuses your application it gives reasons for refusal. The reasons for refusal become the issues. The council may raise other issues prior to the hearing of the appeal.

Q.25 DOES THE ASSESSOR WHO CONDUCTS THE CONFERENCE ALSO CONDUCT THE HEARING LATER IN THE CASE?

A. No.

Q.26 CAN I WITHDRAW AFTER THE CONFERENCE?

A. Yes. You can withdraw at any time by filing a notice of discontinuance. See Table 2 for particulars of how you fill out the notice.

Q.27 WHAT HAPPENS IF THE COUNCIL REFUSES TO SIGN THE NOTICE OF DISCONTINUANCE?

A. If a council does not sign a notice of discontinuance it is usually because they are seeking costs. You can still file notice of discontinuance but at the time of filing, explain why the council has not signed the notice. In practice, councils agree to sign notices of discontinuance, as in Classes One and Two costs are rarely awarded against either party.

Q.28 WHAT IS A "CALL-OVER"?

A. A call-over is a short discussion in a Court room before the registrar. The parties are asked if they are prepared to proceed to a hearing. If they are not ready they may mutually agree to the case being put off. This is called being "stood over" to another call-over or the registrar may nominate a further call-over date. Call-overs take place on each day of the week except Mondays. The registrar will ask how long you estimate that the case will take and how many witnesses may be called. The names of your witnesses (if any) and their field of expertise should be written on the form (see Table 6). You may employ a Town Planner or other appropriate expert for your type of case. If you are prepared for a hearing you will be asked to hand up the form. Spare copies of the form are available in the Court room. If both parties are ready to proceed the registrar will set the matter down for hearing. A matter is not considered to be ready until experts (if any) have been engaged and the issues in dispute identified. Judges can also conduct call-overs.

Q.29 WHO IS THE "REGISTRAR"?

A. The registrar is a lawyer who is responsible for the day-to-day running of the Court. At a call-over the registrar exercises certain powers and functions of the Court. The orders are generally made to ensure that the case is ready for hearing when it is heard by an assessor or Judge.

Q.30 HOW LONG DOES A CALL-OVER TAKE?

A. For a Class One or Class Two case, a call-over takes about five minutes if your case is first in the list. A list of available dates is published in the law notices in the Sydney Morning Herald on the day of the call-over. The dates are also on the notice board outside the Court room and on the bar table inside the Court room. Those dates are available for matters to be set down for hearing and you could discuss with the other party prior to the call-over the date most suitable to both of you. Your case will be published in the list in the Sydney Morning Herald. Although your case may be low in the list it is a good idea to be in the Court room at 9.00 a.m. You can see what happens with the other cases while you wait.

Q.31 HOW DO I FIND OUT WHAT DOCUMENTS THE OTHER PARTY HAS IN THEIR POSSESSION WHICH THEY MAY BE USING IN THEIR CASE?

A. You can send the other party a letter requesting that they produce the documents for inspection at a time and place convenient to both of you. If the other party

objects you may request the registrar to order the other party to produce the document for inspection. The other party may object, perhaps on the grounds of privilege, and that issue may become an additional issue between the parties. The registrar could refer the matter to a Judge for determination, and it could be disposed of as a preliminary issue before the full hearing. The Council may agree to informal inspection of its documents or you could give the Council notice to produce at the call-over.

Q.32 WHAT IS A SUBPOENA?

A. A subpoena is an order commanding a person's attendance in the Court. It is usually directed to a person who is not a party to the proceedings. There are three forms of subpoena.

1. Subpoena to give evidence

A person can be subpoenaed to give evidence, commanding that person to attend Court to give oral evidence. The form of subpoena can be found in the Supreme Court Rules. Forms are also available at the Land and Environment Court counter.

2. Subpoena for production

This is directed to a person who has possession of a particular document, and commands that person to produce the document to the Court. The return date of this form of subpoena is usually prior to the hearing date in a registrar's call-over, that is, the documents must be produced before the registrar prior to the actual hearing of the case by a Judge or an assessor.

3. Subpoena for production and to give evidence

The last form of subpoena is a combination of the above two. A subpoena should not be used as a "fishing expedition" in which you are trying to find out whether a document exists. Its purpose is to command the production of the document to the Court so that it will be available at the hearing. At least five clear days is required to be given between the time of service of the subpoena and the return date. A sum sufficient to meet the reasonable expenses of the person named of complying with the subpoena must be paid or tendered at the time of service.

Q.33 WHAT HAPPENS ON THE DAY OF THE HEARING?

A. Check the Law Notices in the Sydney Morning Herald on the day of the hearing under the heading, "Land and Environment Court". You will find the name of the Judge or assessor hearing your case, the Court room number and the time of commencement of the hearing which is usually 10.00 a.m. (Call-overs are listed at the end of the list.)

The Court room will be opened prior to the time nominated in the paper and you may go in and sit down. The hearings are open to the public. You could attend the Court on a day prior to your case and see the way the Court operates.

Q.34 WHAT DOES IT MEAN THAT A CASE IS BEING DECIDED "ON THE MERITS"?

A. When considering an application, the council and subsequently the Court are required to take into consideration certain aspects of the application before reaching a conclusion. With a building application, for example, Part XI of the Local Government Act is taken into consideration and in particular, Section 313 within that part of the Act. That Section requires the council to take into consideration factors such as design, materials, stability, building line and height and many others before it gives approval.

One of the main reasons why costs are not awarded in Classes One and Two is that the council could have quite properly come to its conclusion, on the merits on the basis of the evidence before it. Once a case is before the Court certain merits may come to light which were not evident when the case was before the council and in these circumstances an approval may be justified.

Q.35 IF MY APPLICATION IS APPROVED BY THE COUNCIL SUBJECT TO CONDITIONS AND I APPEAL AGAINST ONE OF THE CONDITIONS CAN THE COURT REVOKE THE WHOLE APPROVAL?

A. Such a case would be rare. The Court would usually confine itself to the factors which are the subject of the appeal; however, it could refuse the application. The Court is not bound to decide the case in the same way as the council. The appeal is in the nature of a rehearing rather than an enquiry as to whether the council made the correct decision in the first place. In the majority of cases the condition appealed against is the only one that is the subject of close examination. It can be either deleted or modified by the Court. Approval is usually granted subject to the other conditions not in dispute.

Q.36 WHAT HAPPENS IN THE COURT ROOM WHEN AN ASSESSOR IS HEARING THE CASE?

A. Just prior to the hearing the Court attendant asks the people present for particulars of the names of the representatives of the parties. The Court attendant writes the names on a slip of paper and places the paper on the bench. The Court attendant asks the parties whether they are ready to proceed, checks with the monitor that the sound recording equipment is prepared and then goes to the door behind the bench. The Court attendant then says "silence, all rise" and the assessor enters the Court room. The assessor walks across and stands in front of the assessor's chair. Everybody bows and they sit down. The Court attendant then says "the Land and Environment Court is now sitting". The assessor will then invite one of the parties to begin. Usually the council begins the case. Sometimes the council representative will give an opening address which is a short summary of what the case is all about. At the end of that address the assessor will either invite you to comment or ask the council representative to proceed with the evidence. There may be no opening address and the council may go directly into evidence. The Court is not bound by the strict rules of evidence but certain of the formalities are retained so that the case may be disposed of as efficiently as possible. The usual practice when the council representative calls a witness is for the council representative to ask the witness a number of questions, called the examination in chief. You can then

ask that witness a number of questions, called cross-examination. The council representative can then ask further questions, called re-examination and the Court may permit you to ask further questions. The council usually calls all its witnesses and you are then asked to call your witnesses. The same procedure applies with your witnesses and then both parties will be asked whether they wish to make submissions. Submissions are statements commenting on the evidence that is before the Court. The submissions give the views of each party on the way they consider the case should be decided. If a lawyer is involved prior cases may be quoted to assist the Court.

Q.37 IS A DECISION GIVEN ON THE DAY OF THE HEARING?

A. The assessor can give a decision verbally on the day of the hearing but the usual practice is for the decision to be reserved. A written decision is then prepared by the assessor and the file is forwarded to the registry. A clerk from the registry will telephone you and the council representative and tell you of the date when the decision will be delivered, usually the day following the telephone call. Orders are prepared and the case is listed in the registrar's call-over.

In the Sydney Morning Herald on that day you will find that your case is listed at the start of the registrar's call-over. The registrar will announce briefly what the effect of the order of the Court is and you will be handed a copy of the order and the decision and any exhibits you may have produced will be returned.

Q.38 HOW CAN I CHANGE THE NORMAL PROCEDURE?

A. By filing a notice of motion with a supporting affidavit. If you do not understand the following, contact the counter clerk at the Court.

A notice of motion is set out in Table 3. It is normal practice to nominate a Friday at least three clear days from the date of filing the notice of motion as being the date when the Court will consider it. If you can establish that there are exceptional circumstances the Registrar-in-Chambers can abridge the time. Abridging the time means that he can allow a shorter time for service on the other party. By abridging the time the notice of motion can be before the Court the next day or the day after that. The notice of motion is a notice to the other party stating that an order of the Court is being sought. The notice should set out the actual terms of the order or orders being sought. An example of a supporting affidavit is set out in Table 4. The affidavit contains facts. You state what has happened and if any documents are involved you annex then. Each

paragraph in the affidavit should be numbered and each should contain a separate fact. The affidavit forms the basis of the evidence you are presenting to the Judge. The Judge will read your affidavit and at the hearing of the notice of motion the Judge may request further particulars. Both parties will be given the opportunity to present additional facts if the Judge considers it necessary. The Judge will then either make the orders sought or make other orders.

As with other documents filed with the Court, these documents are required to be filed in triplicate. One is placed on the Court file, one is returned to you for your own records and the other is returned to you so that you can serve it on the other party.

Q.39 WHAT HAPPENS AFTER THE COURT MAKES AN ORDER?

A. If the order of the Court is one which allows an application subject to conditions, that order is sent to the council and the approval is deemed to have been made by the council. The council is required to give effect to the order in the same way it gives effect to other approvals of the council. The decision of the Court is the final one in relation to that application.

Q.40 IF I DO NOT LIKE THE COURT'S DECISION CAN I APPEAL TO A HIGHER COURT?

A. It is now possible to appeal from an assessor to a Judge of the Court on a question of law. An appeal to the Court of Appeal Division of the Supreme Court may be available to either party. In Classes One, Two and Three the appeal is only available on a question of law. If the case has been decided entirely on the merits, the decision of the Land and Environment Court is final and no right of appeal exists. Appeals to the Court of Appeal are not common and they are usually only in those cases where an important question of law is involved. Solicitors are usually involved in appeals to Judges and barristers usually conduct the appeals to the Court of Appeal.

Q.41 PART OF MY PROPOSED BUILDING DOES NOT COMPLY WITH THE BUILDING ORDINANCE. WHAT CAN I DO ABOUT IT?

A. Ordinance 70 is an ordinance made under the Local Government Act, being a law which has been passed by the Parliament. Ordinance 70 sets out standards which should be used when buildings are being erected. The standards are appropriate for most buildings; however, sometimes because of the peculiarities of the site or the building, they may not be appropriate. For instance, the Ordinance provides that you should have 900mm between your house and the boundary. If you can show special circumstances

you may have the figure changed to a lesser amount. Any other provision in the Ordinance could be changed by the Court in the same way.

The procedure to deviate from the standards in Ordinance 70 is set out in Section 317M of the Local Government Act. In the case of these objections the Court has special powers. Councils cannot change the provisions of Ordinance 70 but the Court can. It is called an "objection" so as to be distinguished from an appeal. With most objections the councils support the objector, but with an appeal the parties are not of the same view.

An objection may be lodged with the Court at the same time as an appeal if you would like both heard together.

These objections are usually listed before a duty assessor. Cases listed before a duty assessor go straight to an early hearing without a call-over. Usually they are less complex city objections and city appeals which are fixed for hearing before a duty assessor.

Q.42 HOW CAN I FIND OUT MORE ABOUT THE COURT?

A. General enquiries may be directed to the counter clerk at the Court at Level 6, 388 George Street, Sydney. The counter clerk may refer you to the "Environmental Law Reporter" which contains brief summaries of cases decided by the Court.

Telephone enquiries may be made by phoning (02) 238-1111.

TABLE 1
Q.12

IN THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

20123 of 19

NORMAN LITIGANT

Applicant(s)

NORTH SYDNEY MUNICIPAL COUNCIL

Respondent(s)

APPLICATION CLASSES 1, 2 and 3 (Part 7, Rule 1(a))

Applicant's address for Service

69 Mount Street,
NORTH SYDNEY

Phone: 747-1555

Full name of applicant (whether appellant, objector, claimant or referring authority):
Norman Litigant

Address: 69 Mount Street, North Sydney

Occupation: Computer Programmer

Act of Parliament or other instrument under which proceedings are brought:
Local Government Act, 1919 - Section 317L

Situation of subject land: 69 Mount Street, North Sydney

Decision or other matter appealed against, or objected to, or otherwise the subject of the proceedings:
Building approval of / 19
Conditions 8 and 9

Annex copy of the application to and letter from, council or other body stating its decision or state why copies cannot be annexed: _____

_____

Date:
(Signed) applicant or his solicitor or agent

_____

To the respondent (address):

A conference will take place before an assessor of the Court at the time and place specified below.

OR

A call-over will take place before the registrar at the time and place specified below.

If there is no attendance before the registrar by you or your counsel or solicitor or your agent authorised by you in writing, the call-over may take place and orders may be made in your absence

Application by:

Property:

A conference, pursuant to Section 34 of the Land and Environment Court Act, 1979, will be held in respect of the above matter at the time and place listed below. A representative of each party should attend.

Time and Date:

Place:

In the event of the conference being unsuccessful, a call-over will take place before the registrar at Level 6, 388 George Street, Sydney, at 9.15 a.m. on

The purpose of the call-over is to fix a date for hearing. The registrar will require the following information.

(a) the issues which will be argued;

(b) the number of witnesses to be called;

(c) the probably length of the hearing; and

(d) any other particulars which may affect the hearing, e.g. will an interpreter be required.

If the parties wish to have documents produced on subpoena, the subpoena should be returnable on the call-over date.

If the parties reach a settlement prior to the call-over they may either file a notice of discontinuance prior to the call-over or, at the call-over, hand up terms of settlement to the registrar who may make orders by consent pursuant to those terms.

Yours faithfully,

Registrar

TABLE 2
Q.26

IN THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES

20123 of 19

NORMAN LITIGANT

Applicant(s)

NORTH SYDNEY MUNICIPAL COUNCIL

Respondent(s)

NOTICE OF DISCONTINUANCE

Filed by:
N. Litigant
69 Mount Street
NORTH SYDNEY
Phone: 747-1555

The Applicant discontinues these proceedings.

Dated

Signed N. Litigant
Applicant or his solicitor
or agent

I consent hereto.

Dated

Signed.....
Respondent or his solicitor
or agent

FOOTNOTE
A copy of this Notice of Discontinuance must be served on the respondent.

TABLE 3
Q.38

IN THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES

20123 of 198

NORMAN LITIGANT

Applicant

NORTH SYDNEY
MUNICIPAL COUNCIL

Respondent

NOTICE OF MOTION

Filed by:

N. Litigant,
69 Mount Street,
NORTH SYDNEY.
Phone: 747 1555

The applicant will at 2.00pm on 7th May, 198 at Level 7, 388 George Street, Sydney, move the Court for orders -

1. That the hearing of this matter be expedited.

2. Such other order as the Court considers appropriate.

Date:

N. Litigant
Applicant

To the Respondent

TABLE 4
Q.38

IN THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

20123 of 198

NORMAN LITIGANT
Applicant

NORTH SYDNEY MUNICIPAL COUNCIL
Respondent

AFFIDAVIT

On 3rd May, 198 , I Norman Litigant of 69 Mount Street, North Sydney, Computer Programmer say on oath -

1. I am the applicant in these proceedings.

2. At the time when I lodged the building application with the Respondent council the Senior Building Surveyor said to me "There is no way that the council will pass this plan. If you proceed with this case the council will regard it as a test case and will strenuously fight it in the Court".

3. On 3rd March, 19 I said to Alderman Truck "Do you think there is a chance of a compromise in this case" and he said to me "I am sorry, but the council is determined that this type of building will not be built in North Sydney and the council will not consent to the Court permitting it to be built".

4. I have an option to purchase the land which is the subject of this application which is annexed hereto and marked with the letter "A".

5. The option is due to expire on 18th June, 198 and the Vendor has indicated that an extension will not be granted.

6. I will not be able to proceed with the application if an approval is not to hand by 18th June, 198 as it is a condition of my obtaining finance that an approval be obtained before the option is exercised.

Sworn at Sydney
before me:

Filed by:

N. Litigant,
69 Mount Street,
NORTH SYDNEY
Phone: 747 1555

CALLOVER INFORMATION SHEET

All matters proceed at some stage to a Callover or mention. The Callovers are conducted by the Registrar ,Mr M.J. Connell.

Callovers are held in Courtroom 9 and commence at 9 a.m. on all weekdays except Mondays.

Callovers before the Duty Judge are referred to as "mentions" and commence at 9.30 a.m. on Fridays.

The purpose of the callover is primarily to seek information from the parties as to whether or not a matter ir ready to be listed for hearing.

If a matter is ready to proceed to be fixed for hearing , the Registrar will request of the parties the following details;

1.The issues to be argued.
2.How many witnesses are to be called.
3.What the probable length of the hearing will be, and
4.Any other particulars which may affect the hearing.

After these facts have been established , the matter can then be listed for heaing on a day or days within the 'Range of Dates'.

If a matter is not ready to be fixed for hearing the Registrar would need to be informed of the reasons and circumstances so that ;

1. the matter may be stood over to another Callover.
2. the matter may be listed before the Duty Judge.
3. the matter may be listed for hearing if the reasons for delay are unsatisfactory.

If you have any queries or questions about Callovers or any other function of the Court , please call the Registry on 228-8394 ,228-8395.

LAND AND ENVIRONMENT COURT ACT 1979 - REGULATION

(Relating to fees)

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Land and Environment Court Act 1979, has been pleased to make the Regulation set forth hereunder.

Attorney General.

Commencement

1. This Regulation commences on 1 January 1990.

Amendment

2. The Land and Environment Court (Fees) Regulation is amended by omitting Schedule 1 and by inserting instead the following Schedule:

SCHEDULE 1 - COURT FEES

(Cl 7)

	$
1. On filing process to commence:	
(a) proceedings in Class 1 or 2 of the Court's jurisdiction except where the matter relates to a development, building or subdivision application and the value of such is less than $50,000, then the fee is to be	325.00 100.00
(b) proceedings in Class 3 of the Court's jurisdiction ..... except where the matter relates to a rating appeal under the Local Government Act 1919 or an objection to a valuation under the Valuation of Land Act 1916, or the registrar determines that, because of the substance of the matter and its lack of complexity, the total fee is not appropriate, then the fee is to be	325.00 60.00
(c) proceedings in Class 4 of the Court's jurisdiction ...	325.00
(d) proceedings in Class 5 of the Court's jurisdiction ...	325.00

(e) an appeal to the Court under section 56A of the Land and Environment Court Act 1979	500.00
2. For an officer of the Court to produce a document at a place (other than the place at which the Court sits or the office of the registrar)	30.00
3. To furnish a copy of a document in any proceedings to a person who is not a party to the proceedings	25.00
4. Making a copy of any document, per page ..... (minimum fee	2.00 10.00)
5. For each copy of the transcript/diskette of any proceedings:	
(a) per page (or equivalent) where the matter being transcribed is under 3 months old ..... (minimum fee for 1 to 8 pages (or equivalent)	6.00 50.00)
(b) per page (or equivalent) where the matter being transcribed is over 3 months old ..... (minimum fee for 1 to 8 pages (or equivalent)	7.00 60.00)
6. To furnish to a party to proceedings a second or subsequent copy of the written opinion or reasons for opinion of any Judge or of any assessor or other officer of the Court in relation to the proceedings, for each copy	30.00
7. To open the office of the registrar:	
(a) on a Saturday, Sunday or other holiday (except the day after Easter Monday)	325.00
(b) on any other day:	
(i) before 9 in the morning or after 4.30 in the afternoon	325.00
(ii) between 9 and 9.30 in the morning or 4 and 4.30 in the afternoon	30.00
8. Supply of duplicate tape recording of sound recorded evidence, each cassette	25.00

Fees, charges and loadings to be levied in respect to services offered by the Court Reporting Branch.

Fee for transcript/depositions, diskettes

(a) Per page (or equivalent) where the matter being transcribed is under 3 months old.....$ 6.00
(minimum fee for 1 to 8 pages .....$50.00)

(b) per page (or equivalent) where the matter being transcribed is over 3 months old at the time of application .....$ 7.00
(minimum fee for 1 to 8 pages .....$60.00)

Sale of Cassettes

Supply of duplicate tape recording of sound recorded evidence, each cassette.....$25.00

Sound Recording Charges

(a) Half day.....$150.00

(b) Full day.....$250.00

Loading on recording charges where services required before 9 a.m. or after 5 p.m., per each half hour outside core time.....$30.00

EXPLANATORY NOTE

The object of this Regulation is to amend the Land and Environment Court (Fees) Regulation:

(a) to increase the fees to be taken in respect of the business of the Land and Environment Court; and

(b) to prescribe the fee to be taken in respect of proceedings in Class 5 of the Court's jurisdiction.

ENVIRONMENTAL LAW REPORTER

REPORTERS IN THIS ISSUE: Peter Williams

(1990) 9 ELR - page 11

Registered by Australia Post Publication No.NBG 6415 ISSN No. 0727-0668

CIRCULATE TO: .....(1990) ELR (S90-013) 31 AUGUST, 1990

SPECIAL SUPPLEMENT

(S90-013) The Land & Environment Court of New South Wales

TEN YEARS IN REVIEW

The 1st September 1990 sees the tenth anniversary of the establishment of the Land and Environment Court of New South Wales. This presents an opportune time to offer a brief review of the Court - its personnel, caseload, achievements, highlights and changes.

At the time of its commencement the Court was - as it remains today - unique among the other courts and tribunals exercising similar jurisdictions throughout the States and Territories of Australia. The Court is the only tribunal in its specialist area in Australia which enjoys the benefits of a combined jurisdiction within a single court. Development and building appeals, related supervisory, civil and summary enforcement jurisdictions, and valuation, rating, compensation and other land tenure matters, all come within the ambit of the Court. The advantages of a combined jurisdiction (in terms of savings in costs, delays and better accessibility to the court system) have been recognised in the recent Commonwealth Government report by Mr. B. Hayes QC on the development appeal process, which saw the Court in many respects as the model upon which similar jurisdictions in the rest of Australia should be based.

Personnel - Past and Present

When the Court commenced sitting in September 1980 it comprised three judges and nine conciliation and technical assessors. Despite a substantial increase in its caseload in the intervening period, the only addition to its judicial resources occurred in mid 1985 with the appointment of a fourth judge. The first three judges of the Court were Mr. Justice J.R. McClelland, Chief Judge, Mr. Justice J.S. Cripps and Mr. Justice E.T. Perrignon. In mid 1984 Mr. Justice McClelland was appointed President of the Maralinga Royal Commission and retired from the bench in June 1985, although his duties with the Royal Commission continued until its completion in November of that year. In June 1985 Mr. Justice Cripps was appointed Chief Judge. Mr. Justice N.R. Bignold, previously Senior Assessor of the Court and acting judge during Mr. Justice McClelland's time on the Maralinga Inquiry, was sworn in as a judge of the Court in 1985, along with Mr. Justice Paul Stein, who became the Court's fourth judge. Following Mr. Justice Perrignon's retirement in October 1987 Mr. Justice N.A. Hemmings was commissioned as a judge of the Court. Mr. Justice Perrignon's enthusiasm for the challenge of judicial work remains, however, as he is now a senior member of the Administrative Appeals Tribunal. Mention must also be made of Mr. Justice K.J. Holland (presently on a temporary appointment as an acting judge of the Supreme Court) who came out of early retirement to make a lively contribution to the Court during his six-month tenure while replacing Mr. Justice Stein.

The assessors of the Court have been, as required by the Land and Environment Court Act, persons expert in planning, engineering, architecture, building, valuation, law and other professions relevant to environmental planning, development and the building industry. The first senior assessor of the Court was Mr. Neal Bignold, previously senior legal officer with the then Planning and Environment Commission (PEC) and one of the authors of the Environmental Planning and Assessment Act, and now of course, a judge of the Court. The other first assessors were Frank Hanson (previously Chairman member of the Local Government Appeals Tribunal), Bryce O'Neile, Ken Riding and Stan Chivers (all formerly members of the LGAT), and Judith Fitz-Henry, Joan Domicelj, Frank O'Neil and Trefor Davies (all senior officers of the PEC prior to joining the Court).

Stan Chivers retired in mid 1983, and was replaced by Graham Andrews in December of that year. Prior to his appointment, Graham Andrews held managerial positions in private environmental studies and engineering consultancy firms and with the PEC. The consequences of the elevation of Mr. Justice Bignold to the Bench were two-fold. Frank Hanson became Senior Assessor in 1984, and Tony Nott, a member of the Sydney Bar specialising in planning, local government and resumption law, was appointed an assessor in September of the same year. Alan Stewart, an environmental biologist with the Department of Agriculture and former member of State Parliament with extensive experience in a number of Government committees dealing with environmental planning and resource matters, was appointed an acting assessor for a 12 month period in 1985-86 (while Joan Domicelj was on leave) and had his appointment confirmed following Frank O'Neil's retirement in 1986. The same year also saw the resignation of Frank Hanson from the Court to take up a position with the Sydney City Council where he is now the Director of Planning and Building. Since 1986 the Senior Assessor has been Peter Jensen, who joined the Court from Woollahra Municipal Council where he was Chief Town Planner. With Joan Domicelj's resignation in September 1988 to undertake private consultancy work and research, Stafford Watts, formerly Director of Development and Planning at North Sydney Municipal Council was appointed to the Court. The most recent change in the Court's judicial personnel was in July of this year, with the retirement of Judith Fitz-Henry.

During its ten years the Court has had four Registrars. The first, Gerald Whalan, left the Court in 1982, and is now Prothonotary of the Supreme Court. The next Registrar was Tony Nevill (now Deputy Public Trustee), who was with the Court for a year. He was succeeded by Ted Irwin, who was Registrar for 6 years from early 1983 until early 1989, when he was appointed as a registrar of the Supreme Court. Michael Connell, formerly Deputy Director of Local Courts in the Attorney General's Department, is the present Registrar.

Caseload, Delay and Caseflow Management

In recent years the number of matters lodged with the Court has risen steadily. AS demonstrated in the table below, the total number of actions commenced in the Court has exhibited this overall trend, rising from 2,011 lodgements in 1987, to 2,328 in 1989.

Number of Applications in the Land and Environment Court, 1987 to 1989

Year	Class 1	Class 2	Class 3	Class 4	Class 5	Total
1987	667	632	414	275	23	2,011
1988	723	682	428	302	40	2,175
1989	877	710	228	320	193	2,328

In the period from 1987 to 1989 there was a strong growth in registrations in Classes 1,2,4 and 5 - particularly in Classes 1 and 5 which rose by 31% and over 700% respectively during this period. These increases in filings were reflected in a greater caseload for both judges and assessors. While Class 3 filings in 1989 were down on the levels of previous years, this decrease was more than offset by the rise in applications received in the other classes.

So far during 1990, the number of filings of Class 5 matters has continued to grow, reinforcing the trend of an increasing reliance on the Court's criminal enforcement jurisdiction in environmental pollution offences. A substantial rise in lodgements in the Class 3 jurisdiction has also been evident. Numbers of new Class 4 matters have remained stable, while applications in Classes 1 and 2 have, for the moment, returned to pre-1989 levels. In reality however, there has been little respite from the heavy listing of the judges and assessors. The maintenance of high levels of registrations in Classes 4 and 5 has meant that the judges remain fully listed for several months in advance, so that as a result an increasing proportion of Class 1 planning matters (including many of the "bigger" cases) are being listed before the assessors.

As a consequence of the increasing caseload, "delay" in terms of the waiting time, or range of available dates for hearing once at call-over, has increased accordingly. In the absence of additional judicial and assessor resources, increases in listings, potential backlog (i.e. pending matters) and delay, would appear to be unavoidable consequences of the Court's burgeoning workload. It has only been the introduction of a number of successful measures and initiatives in recent times which have improved the efficiency of the Court in terms of its handling and disposal of matters and averted serious delay problems. An example of the caseflow management practices introduced over the past few years include:

- The introduction of the short notice judges hearing list.
- Adoption of new call-over and listing procedures, including referral of matters to the Duty Judge for dismissal for want of prosecution where parties fail to attend at call-over or dismissal by the Registrar in appropriate cases.
- A regular cull of older active and stood over matters.
- The discontinuance, by and large, of standing matters over generally.
- The introduction of short pre-hearing mentions and call-overs for the settlement of issues particularly in more complicated compensation and civil matters.
- The practice of requiring matters which have over-run the hearing dates allocated to continue to completion rather than allowing them to be adjourned to a later date.
- Restricting the right of parties to adjourn matters by consent after hearing dates have been allocated.
- Encouraging references of law under s.36 of the LEC Act in preference to appeals under s.56A.
- A far higher proportion of decisions at the conclusion of hearing being given ex-temporally, rather than being reserved, a practice which has been adopted particularly by the assessors.
- The establishment of a regional programme for the listing and hearing of valuation matters, similar to the country hearing programme for the assessors, which has resulted in a substantial decline in the number of pending valuation objections.
- Delegation to the Registrar of costs hearings where the amount at issue is less than $5,000.

The policy of close monitoring of the Court's performance and the implementation of efficacious caseflow management practices and procedures have helped to ensure that the Court maintains its reputation for the efficient resolution of matters before it. In this regard, besides the pivotal administrative roles played by the Chief Judge and the last two Registrars, Ted Irwin and Michael Connell, all the judges, assessors and Registry staff have, by their efforts, contributed to the fulfilment of this objective. Recognition of the Court's record and efforts in this area was made by the Attorney-General, the Honourable Mr. John Dowd, in his speech at the 1988 Conference of the Environmental Law Association, when he remarked that "It is a tribute to those who administer the jurisdiction and those that sit in it, that it creates the shortest delays and indeed has the most efficient case management system".

Changes involving the Court

The last ten years have seen a number of legislative and administrative changes which have affected the Court. Some of the more notable changes have included:

- The abolition of compulsory conciliation conferences in the Class 1 and 2 jurisdictions during 1984. It is worthwhile noting however, that the Court in consultation with the Attorney-General's Department is currently assessing the introduction of more widespread use of alternative dispute resolution and expedition procedures - conferences, mediation and pre-trial issues hearings etc. - in all five classes of its jurisdiction where appropriate.
- The introduction of the "fast track" duty assessor system for the expeditious disposal - often within 2-3 weeks of filing of simpler building appeals (generally objections to Ordinance 70 under s.317m of the Local Government Act and appeals against swimming pool fencing notices under s.288C of the Act).
- The introduction in 1985 of internal rights of appeal under S.56A of the Court's Act against a decision of an assessor to a judge of the Court on alleged errors of law only.
- Unfortunately, 1990 has witnessed the first instance in the Court's ten years of the divesting of part of its jurisdiction, contrary to the proven and logical model of a single court with combined jurisdictions. Appeals against notices ordering the fencing of existing swimming pools, previously under s.288C of the LG Act have, by the proclamation of the Swimming Pools Act 1990, been removed from the Court and placed in the hands of a five member Swimming Pool Appeal Board, which conducts hearings as a three member Panel.

The President, Peter McClellan QC, Members of the National Environmental Law Association (NSW) and the Managing Editor of the Reporter extend their congratulations to the Court on its 10th anniversary.