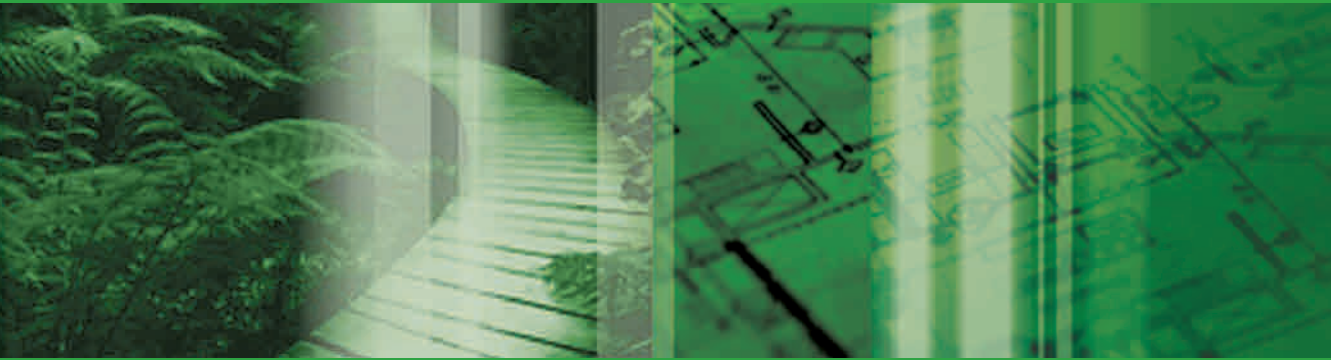


The Land and Environment Court of NSW



Annual Review

2005

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Foreword From Chief Judge

Twelve months on, we are able to consider the performance of the reforms introduced over the past two to three years. It is clear that much has been achieved, but that things remain to be done.

Routinely commencing merit appeals on site at 9.30am has had well recognised benefits. The decision-maker is able to understand the issues in the context of the site and its surrounds. The need for lengthy opening statements has been obviated. Evidence of local people may be taken on or in the vicinity of the site. In consequence, many merit appeals are able to be completed in a single day. Work remains to be done with respect to ensuring appropriate management of evidence given on site and the keeping of records of such evidence. Those issues will be addressed in 2006 through the expansion and consolidation of the Court's practice directions.

The giving of concurrent evidence by experts in Court (for the same or related disciplines) remains fundamental to the positive outcomes achieved by the reforms. Experts, parties and legal representatives now expect that in all merit appeals where expert evidence is relied upon, such evidence will be given concurrently. They have readily adapted to this method of adducing evidence. There can be little doubt that concurrent evidence works most effectively when the experts have diligently implemented their obligations with respect to the preparation of joint statements. It is also apparent that benefits may be offered in many cases by requiring expert conferences before statements of evidence are prepared. In less complex appeals, joint expert statements alone may be appropriate for resolution of the issues in dispute. Again, these issues will be addressed in 2006 through the expansion and consolidation of the Court's practice directions.

Twelve months on it is also apparent that experts, parties and legal representatives have readily adapted to the use of court appointed experts. Appointing a single expert has advantages in appropriate cases: it may reduce costs and ensure the Court has the benefit of evidence from a person who is independent and not engaged by only one party. Nevertheless, there may be occasions where the Court may be assisted by reviewing and considering the evidence of another expert called by a party.

Further work needs to be done to be able to identify the cases and issues where the use of Court appointed experts (or, indeed, any experts) is likely to yield overall benefits to the

Court and the parties, and the cases or issues where it may be appropriate for parties to call their own expert in addition to a Court appointed expert.

It will also be necessary to ensure that persons appointed as court appointed experts are leaders in their field of expertise, holding appropriate specialised qualifications and experience, and to ensure there is a broad pool of experts available for appointment. Repeat appointments of a small number of persons as Court appointed experts is likely to deprive the Court and parties of the benefits of an expert opinion which is properly formed, sound, impartial and able to be seen as such.

With the increase in objections to compensation on compulsory acquisitions and valuations apparent in 2005, it is important to ensure the Court's procedures for resolution of these disputes are also tailored to enable the just, quick and cheap resolution of the real issues in such proceedings. The recently promulgated Class 3 Compensation Claims Practice Direction addresses part of this requirement. An equivalent practice direction for valuation objections has been recently made.

Another reform recently consolidated by the Court is the listing of all Class 3, 4 and 5 matters for mention before the List Judge on Fridays. The object is to increase efficiency and minimise the number of pre trial mentions. Minimising the number of pre-trial mentions in merit appeals is also necessary, and will be another focus for 2006.

Continuing the process of reform, and tailoring existing reforms to ensure they fulfill their object of providing high quality and cost effective resolution of merit appeals, requires ongoing review by the Court and engagement of parties, experts and the legal profession. 2005 saw many of the reforms from 2003 and 2004 for merit appeals accepted as routine. 2006 will be a year of review, adjustment and consolidation of those reforms. It will also be a year of further reform, particularly with respect to compensation claims and valuation objections. The Judges, Commissioners, Registrar, Registry staff and I look forward to continued engagement with parties and the profession in that process. I also thank all for their significant contribution thus far.



Justice Brian Preston
Chief Judge

The Court's Jurisdiction

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

The Court has an appellate and a review jurisdiction in relation to planning, building, environmental and ancillary matters.

Jurisdiction is exercised by reference to the subject matter of the application. This may involve matters that have an impact on community interest as well as matters of government policy.

Sections 16 to 21B of the Act provide for 7 Classes of jurisdiction in the Court. The Classes are described as follows:

-
- | | |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Class 1 | environmental planning and protection appeals (merit appeals). |
| Class 2 | local government and miscellaneous appeals (merit appeals). |
| Class 3 | land tenure, valuation, rating and compensation matters. |
| Class 4 | environmental planning and protection (civil enforcement). |
| Class 5 | environmental planning and protection (summary criminal enforcement). |
| Class 6 | appeals from convictions relating to environmental offences (appeals from Magistrates in Local Courts prosecutions for environmental offences). |
| Class 7 | appeals from informant relating to environmental offences (appeals from Magistrates in Local Courts prosecutions for environmental offences). |
-

Who makes the decisions: The Judges, Commissioners and Registrar

The Judges

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

As at 31 December 2005, the Judges, in order of seniority, were as follows:

Chief Judge

The Hon. Justice Brian John Preston

Judges

The Hon. Justice Neal Raymond Bignold
The Hon. Justice Robert Neville Talbot
The Hon. Mr Justice David Henry Lloyd
The Hon. Justice Terence William Sheahan AO
The Hon. Justice Dennis Antill Cowdroy OAM
The Hon. Justice Nicola Hope Margaret Pain

The Commissioners

Commissioners are appointed for a term of 7 years. The qualifications and experience required for a Commissioner are specified in section 12 of the Act and include the areas of:

- local government administration;
- town planning;
- environmental science;
- architecture, engineering, surveying;
- building;
- natural resources management; and
- urban design or heritage.

The primary function of Commissioners is to hear and determine merit appeals in Class 1, 2, and 3 (valuation and rating) of the Court's jurisdiction. On occasion the Chief Judge

may direct that a Commissioner sit with a Judge, or that 2 Commissioners sit together to hear Class 1, 2 and 3 matters.

Section 12 of the Act also provides for the appointment of Commissioners who have suitable knowledge, qualifications and experience to deal with disputes under the Aboriginal Land Rights Act 1983. These Commissioners are appointed on a casual basis and hear matters when the need arises.

At 31 December 2005, the Commissioners were as follows:

Senior Commissioner

Dr John Roseth

Commissioners

Mr Anthony J Nott

Mr Stafford J Watts

Mr Trevor A Bly

Mr Robert R Hussey

Mr Kevin G Hoffman

Mr Graham T Brown

Ms Janette S Murrell

Ms Annelise Tuor

Mr Tim Moore

Part Time Commissioners

Mr Gregory Davison

Ms Cherie Imlah

Associate Professor McDaniel

Mullenjaiwakka

Ms Julie Smith

The Registrar

The Court Registrar, Ms Susan Dixon, has the overall administrative responsibility for the Court, as well as exercising quasi-judicial powers such as conducting call-overs and mediations. The Chief Judge directs the Registrar on the day to day running of the Court.

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

Appointments

Justice Sheahan continued as President of the Workers Compensation Commission whilst retaining his commission as a Judge of the Court.

Supporting the Court: The Registry

The Court Registry comprises the following four sections:

Client Services

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

Listings

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

Information and Research

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

Commissioner Support

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

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

2 Caseflow Management

The Chief Judge determines the day to day caseflow management strategy of the Court. This strategy is reflected in the Court's Rules and Practice Directions.

Callover

The Court's primary case management tool is the callover before the Registrar in Class 1, 2 and 3 matters and before a Judge in Class 4, 5, 6 and 7 matters.

The Court offers Court users three types of callover:

actual callover

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

telephone callover

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

eCourt callover

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



Senior Commissioner Roseth with parties and their legal representatives at an on site hearing.

In Classes 1, 2, 3 and 4 matters parties can elect to use any type of callover and are encouraged to use the most cost effective method.

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

The List Judge of the Court manages the criminal list as required.

The Duty Judge of the Court deals with all urgent interlocutory applications and any urgent matters arising, which are outside the jurisdiction of the Registrar.

Class 1 Hearing Options

The Act provides that all Class 1 matters filed pursuant to section 97 of the Act shall be dealt with by the Court as an onsite hearing or a court hearing. The Registrar determines at callover the type of hearing having regard to the issues in dispute, the submissions of the parties and the suitability of the site.

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

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

Alternative Dispute Resolution

The Court encourages Alternative Dispute Resolution (ADR). Part 5A of the Act empowers the Court to refer matters to mediation at the request of the parties where the Court considers such referral will assist the resolution of the matter.

The Court provides a mediation service at no cost to the parties by referral to the Court's mediator. The Court also publishes a list of approved mediators from whom the parties can nominate a mediator.

The following table provides a comparison between mediations in 2004 and 2005. Internal mediations are those conducted by the Court mediator. External mediations are those conducted by a mediator not associated with the Court and agreed to by the parties. The table shows a decrease in the number of mediations but an increase in the percentage of matters finalised before a court hearing.

Table 3.1 Mediations 2004 – 2005

	2004	2005
Class 1		
Total:	23	8
Internal	6	7
External	17	1
Number finalised pre-hearing	8	5
% finalised pre-hearing	35	63
Class 3		
Total:	15	9
Internal	2	1
External	13	8
Number finalised pre-hearing	8	3
% finalised pre-hearing	53	33
Class 4		
Total:	11	7
Internal	8	3
External	3	4
Number finalised pre-hearing	4	6
% finalised pre-hearing	36	86
All Classes		
Total:	49	24
Internal	16	12
External	33	13
Number finalised pre-hearing	20	14
% finalised pre-hearing	41	58

3 Reforms

The Hon. R J Debus MP, Attorney General of New South Wales, speaking at the swearing-in ceremony of the Honourable Justice Preston as Chief Judge of the Land and Environment Court, outlined a series of significant reforms that occurred within the Court over the past two years:

“Justice McClellan was responsible for the modification of a range of Court procedures and these included the introduction of the expert witness practice direction, which allows for Court-appointed experts in appropriate matters to ensure that experts are more clearly independent in their role of assisting the Court to resolve issues.

Also the prehearing practice direction now provides for Class 1 planning hearings to commence with a view on site at 9.30am on the first day of the hearing unless otherwise directed. This procedure saves time and money while providing an invaluable early context to proceedings.

The rules of Court have also been amended to provide a new basis for awarding costs, no order for costs will be made unless the Court thinks that such an order is in the circumstances of the particular occasion fair and reasonable.”

During 2005, reforms continued with respect to the following areas:

- Court appointed experts;
- Concurrent evidence;
- Cost orders; and
- Planning principles.

Court Appointed Experts

As defined in the Expert’s Code of Conduct, a Court appointed expert is ‘an independent expert engaged by both parties to assist the Court impartially on matters relevant to the expert’s area of expertise.’

Court Appointed Expert Standard Practice Direction No. 1 of 2005 is designed to give guidance to parties and to expert witnesses. It outlines the process of appointment of experts by the Court in proceedings in Classes 1, 2 and 3, how such experts are to conduct themselves, and how they are to prepare their evidence. Court Appointed Expert Standard Direction No. 1 provides a timetable for parties to adhere to enable matters to run as smoothly and efficiently as possible.

In 2005 the Court appointed 373 Court appointed experts.

Concurrent Evidence

Concurrent evidence is the practice of taking the evidence of more than one expert witness at the same time. The witnesses are all sworn at the same time and the Judge or Commissioner then manages a discussion in which experts and practitioners talk about the relevant issues. Concurrent evidence is now seen as routine in Class 1, 2 and 3 appeals. Its use in hearings in the Court has continued to provide well recognised benefits – in terms of both enabling key issues to be identified and articulated, and reducing the length of hearings.

In late 2005, the Judicial Commission released a DVD “Concurrent Evidence – New Methods with Experts” using a Class 3 compensation hearing in the Court as an example of this method of taking evidence.

Cost Orders

In 2004, a number of important changes were made to the Court's powers to order costs in merit appeals. Part 16 Rule 4(2) of the Land and Environment Court Rules provides:

'No order for costs will be made in proceedings to which this rule applies unless the Court considers that the making of costs orders is, in the circumstances of the particular case, fair and reasonable.'

In December 2005, changes were made to the rules and practice directions regarding costs. The power of Commissioners to order costs was removed. This was done because the previous practice required double-handling of applications for costs of proceedings, first a hearing and determination by the Commissioner, then submissions and a determination by the Chief Judge as to whether to grant concurrence to any order for approval by the Commissioner. The new practice ensures applications for each case are only heard and determined once by a judge. Secondly, The Registrar's power to award costs was increased from \$5,000 to \$30,000. Following the amendment of Part 3 Rule 4(1) of the Land and Environment Court Rules, the Registrar can hear proceedings:

'... if the only matter in question is the matter of costs and it is unlikely in the opinion of the Registrar that the costs will exceed \$30,000.'

Further, in Class 5 criminal enforcement matters before the Court, costs may be ordered against either the prosecuting authority or the defendant. There is an option for the parties to reach an agreement as to the amount payable, however, if no agreement can be reached the Court's rules have been amended so that the prosecutor or defendant applies to for an assessment by a costs assessor of all, or some, of the costs.

Planning Principles

To ensure consistency of decision making in merit appeals, the Chief Judge has encouraged the Commissioners to develop planning principles in their judgments. In 2005 the Court published 10 planning principles, which have been applied by the Court. These are detailed in Table 3.1 below.

Table 3.1 2005 Planning Principles

Principle	Case
Aesthetics – Weight to be given to expert opinion on architectural design	<i>Architects Marshall v Lake Macquarie City Council</i> [2005] NSWLEC 78
Aesthetics – Acceptance or not of proposals of court appointed expert witness	<i>PDP (Darlinghurst Apartments) Pty Limited v City of Sydney Council</i> [2005] NSWLEC 41
FSR – Compatibility in a suburban context	<i>Salanitro-Chafei v Ashfield Council</i> [2005] NSWLEC 366
General impact – Impact on neighbouring properties	<i>Pafbarn v North Sydney Council</i> [2005] NSWLEC 444
Landscaping – Imposition of conditions relating to the preservation of landscaping or protection of existing vegetation	<i>Falcomata v Ku-ring-gai Council (No 2)</i> [2005] NSWLEC 459
Plans of management – Adequacy or appropriateness of the plan to the particular use and situation	<i>Renaldo Plus 3 Pty Limited v Hurstville City Council</i> [2005] NSWLEC 315
Redevelopment – Existing use rights and merit assessment	<i>Fodor Investments v Hornsby Shire Council</i> [2005] NSWLEC 71
Setbacks – Building to the side boundary in residential areas	<i>Galea v Marrickville Council</i> [2005] NSWLEC 113
Site consolidation – Application for separate development of site identified for consolidated development	<i>Sorin Dascalu v Botany Bay City Council</i> [2005] NSWLEC 12
Use – Licensed premises – extension of trading hours, increase in permitted patron numbers or additional attractions	<i>Vinson v Randwick Council</i> [2005] NSWLEC 142

Consultation with Court Users

The Court has been concerned to involve the community in developing the reform initiatives.

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

In 2005 the Court's Judges, Commissioners and the Registrar have participated in several conferences and seminars to enhance awareness of recent developments in the Court. Details of the Court Users Group, Court Committees and other professional activities of the Judges and Commissioners of the Court can be found in Appendices 2 and 3.

The reforms will continue to evolve to meet the needs and concerns of the community and all those who use the Court.

4 Court Performance

A Snapshot for 2005

Merit appeals comprised 65% of the Court's caseload.

The Court finalised 1137 merit appeals. The total finalisations exceeded new registrations by 3%.

There were 167 onsite hearings, and 17 section 34 conciliation conferences.

54% of all matters before the Court were finalised prior to hearings.

The table below shows the percentage of matters finalised before and by hearing for 2001 – 2005.

Table 4.1 Means of Finalisation – All Matters

	01	02	03	04	05
Total matters finalised - all classes	2036	1927	1919	1909	1644
Total pre-trial finalisations	950	1073	868	1124	889
% matters finalised pre-trial	47	56	45	59	54

The table below shows the ways in which matters were finalised in Classes 1 to 3 for 2001 – 2005.

Table 4.2 Means of Finalisation - Classes 1, 2 & 3

	01	02	03	04	05
Total matters finalised	1454	1321	1486	1541	1359
s 34 conferences and on-site hearings	93	57	76	226	184
% s 34 and matters finalised on-site	6	4.3	5.1	14.7	13.5

Court Performance By Class Of Jurisdiction

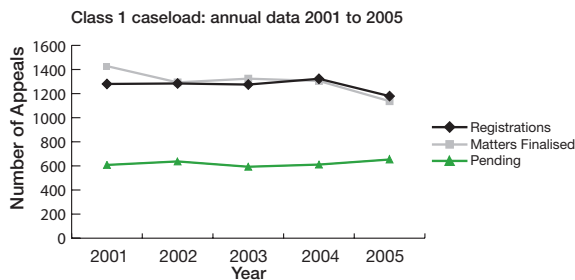
A brief summary of the Court's performance in 2005 for each of the 7 classes of jurisdiction is provided.

Class 1

Class 1 matters constitute the bulk of the Court's caseload (65%). 72% of all Class 1 matters finalised were appeals under section 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications.

54% of Class 1 registrations were applications where councils had not determined the development application within the statutory time period ("deemed refusals"). These are down from 63% in 2004.

Of the remaining matters finalised in 2005, 13% were applications to modify a development consent. 6% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Applications for costs and appeals against the Court's decisions constituted the remaining matters in Class 1.



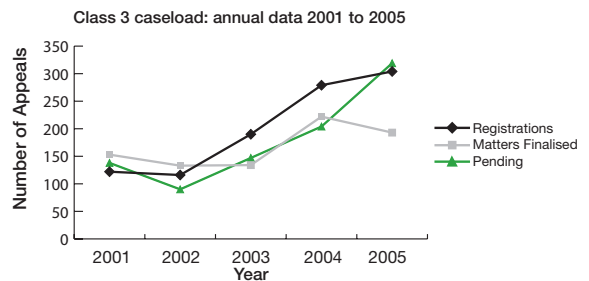
Class 2

The number of Class 2 matters before the Court is falling and now represents less than 1% of all registrations.

Class 3

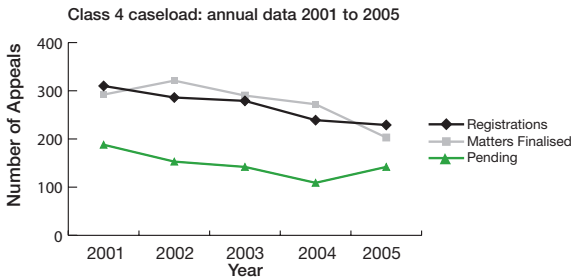
Class 3 of the Court's jurisdiction encompasses a range of proceedings including resumption matters, valuation and rating appeals and some Aboriginal land rights matters.

Registrations in Class 3 continued to rise in 2005, with new registrations increasing by 24%. Valuation appeals accounted for 53% of new Class 3 appeals in 2005. Of the valuation appeals finalised in 2005, 86% were disposed of pre-hearing. The proportion of resumption of land matters finalised fell 22%. Aboriginal land rights claims appeals constituted 10% of all Class 3 appeals registered in 2005.



Class 4

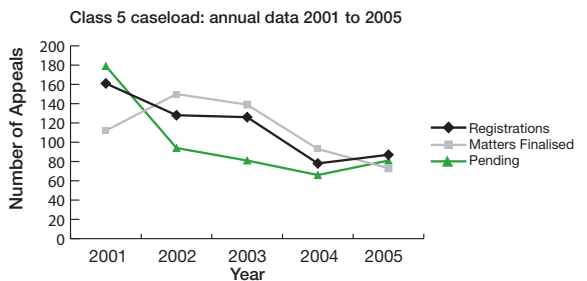
Class 4 registrations and finalisations fell in 2005. Of the Class 4 matters finalised in 2005, 57% were initiated by councils.



Class 5

The 2001 – 2004 fall in Class 5 registrations steadied in 2005. The Environment Protection Authority initiated 51% of all new registrations. The number of matters initiated by local councils decreased to 12% - down from 35% in 2004. Other statutory bodies initiated 33% of all new registrations.

Of the 73 matters finalised in 2005, convictions were recorded on 40 summonses and there were 12 pre-trial disposals where the summonses were withdrawn. The remainder were dismissed. Fines for conviction ranged from \$500 to \$225,000.



Class 6 & 7

14 new Class 6 appeals were filed, 7 of which were finalised. There were no Class 7 appeals before the Court.

Time Standards

Table 4.3 provides a backlog indicator, a measure of timeliness that relates to the age of the Court's pending caseload to timeliness standards.

Table 4.3 Backlog Indicator

		2001	2002	2003	2004	2005
Class 1						
Pending caseload	no.	608	637	593	611	653
Cases > 6 months	%	26.7	22.0	15.5	12.8	29.1
Cases > 12 months	%	13.2	7.0	6.9	5.4	9.6
Class 2						
Pending caseload	no.	153	116	5	23	11
Cases > 6 months	%	79.1	84.5	20.0	82.1	45.5
Cases > 12 months	%	60.0	79.3	20.0	25.0	36.3
Class 3						
Pending caseload	no.	138	90	147	204	319
Cases > 6 months	%	34.1	42.0	34.7	32.0	44.8
Cases > 12 months	%	23.2	26.0	16.3	17.9	25.1
Class 4						
Pending caseload	no.	188	153	142	109	142
Cases > 8 months	%	31.1	27.0	26.1	35.0	28.8
Cases > 16 months	%	13.1	9.2	14.1	19.7	16.4
Class 5						
Pending caseload	no.	179	94	81	66	81
Cases > 8 months	%	26.7	30.9	30.9	52.1	29.1
Cases > 16 months	%	0	6.4	14.8	26.1	18.9
Class 6						
Pending caseload	no.	2	0	1	2	8
Cases > 8 months	%	0	0	0	0	0
Cases > 16 months	%	0	0	0	0	0
Class 1- 3						
Pending caseload	no.	899	843	861	838	983
Cases > 6 months	%	37.1	32.7	31.8	25.8	34.6
Cases > 12 months	%	21.5	19	19.5	11.1	15
Class 4 - 7						
Pending caseload	no.	369	247	224	177	231
Cases > 8 months	%	29.0	28.5	27.6	44.0	27.9
Cases > 16 months	%	8.0	8.1	14.2	22.6	16.7

The time standards for the finalisation of matters are as follows:

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

Disposal of Cases - compliance with time standards in Class 1, 2 & 3

% within 6 months	66	63	58	74	62
95% completed within (months)	17	19	12	12	15

Disposal of Cases - compliance with time standards in Class 4, 5 & 6

% within 8 months	73	66	72	71	67
95% completed within (months)	21	20	15	24	24

The Court also monitors the time taken for judgments to be handed down. This time standard is determined from the date of the last day of hearing to the delivery date of the judgment. The current time standards for Court judgments are as follows:

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

As Table 4.4 shows, the number of judgments delivered within 90 days was 90% in 2005.

Table 4.4 Reserved Judgments compliance with time standards

	2001	2002	2003	2004	2005
% delivered within 14 days	32	30	39	42	35
% delivered within 30 days	51	56	61	64	51
% delivered within 90 days	85	90	90	88	90

Clearance Ratio

The clearance ratio provides a measure of whether the Court is keeping up with its workload. It is the number of finalisations divided by the number of lodgments/ registrations (multiplied by 100 to convert to a percentage). 100% means cases finalised equal cases received for the year. A figure more than 100% represents more cases were finalised than received.

Table 4.5 outlines the clearance ratios for all classes of matters in the Court from 2001 to 2005.

Table 4.5 Clearance Ratio

	2001 %	2002 %	2003 %	2004 %	2005 %
Class 1	111.6	101.0	103.8	98.6	96.4
Class 2	50.0	75.7	66.7	45.5	181.3
Class 3	125.4	111.8	70.5	79.8	63.5
Class 4	94.2	112.2	103.9	113.8	88.7
Class 5	69.6	117.2	110.3	119.2	83.9
Class 6	100.0	100.0	100.0	100.0	60.0
Classes 1-3	110.5	101.0	98.9	94.3	90.7
Classes 4-7	85.9	113.7	105.9	114.8	86.1
Total	104.5	103.9	100.6	97.7	89.8

Note: Matters that had been set down for hearing and where the parties agreed to consent orders have been counted as going to hearing. Where consent orders were made but the matter had not been set down for a hearing, the matter has been counted as being finalised pre-hearing.

Appeals

There are two types of appeals that can be generated from decisions of the Court.

Firstly, Commissioner decisions may be appealed to a Judge of the Court pursuant to s 56A of the Act. Section 56A appeals are confined to errors of law and do not permit a review of the Commissioner's merit decision. As shown in Table 4.6, in 2005 the Court registered 19 s 56A appeals. Of these, 11 were completed at hearing, 7 were settled pre-hearing and 1 remains pending.

Table 4.6 S 56A Appeal Outcomes

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

Secondly, appeals from decisions made by Judges in Classes 1 to 4 are heard in the Court of Appeal. Appeals from decisions made by Judges in Class 5 are heard in the Court of Criminal Appeal. In 2005, 25 appeals with appointment were lodged with the Court of Appeal and three appeals were lodged with the Court of Criminal Appeal. The number of appeals to the appellate courts over the past five years is shown below in Table 4.7.

Table 4.7 Appeals to the Appellate Court

	2001	2002	2003	2004	2005
Court of Appeal					
Appeal with appointment	24	29	27	24	13
Appeal without appointment	13	25	33	43	12
Total	37	54	60	67	25
Court of Criminal Appeal					
Conviction and Sentence	4	2	2	1	0
Severity of Sentence	1	0	0	0	0
Sentence only	0	0	0	2	0
Crown Appeals	1	0	0	0	1
Costs	0	0	0	1	0
Stated case, section 5AE	1	0	0	1	0
Total	7	2	2	5	1



Farewell ceremony for Justice Peter McClellan as outgoing Chief Judge of the Court.

Clockwise from top left: Justice Bignold, Justice McClellan, the Honourable Jerrold Cripps, Justice Talbot, Registrar Susan Dixon, Justice Cowdroy and Justice Lloyd.



Justice McClellan, the outgoing Chief Judge of the Court, speaks at the Anniversary Dinner.



From left to right Justice Talbot, Justice Preston and Chief Justice Spigelman at the swearing in ceremony.

The Court Celebrates

On 1 September 2005 a farewell ceremony was held for Justice Peter McClellan, Chief Judge, as he left the Court to take up an appointment as the Chief Judge at Common Law, Supreme Court of New South Wales. The date was significant as the Land and Environment Court of New South Wales celebrated 25 years as a Court.

The occasion of the anniversary was marked by a dinner at Parliament House, where over 350 people celebrated the significant contribution the Court has made to the State and the environment. The Honourable Neville Wran, Premier at the time of the creation of the Court, was invited to toast the Court. Mr Wran praised the Land and Environment Court's specialist and flexible nature, noting the Court enjoys the benefits of a combined jurisdiction within a single Court, that of appellate and review jurisdiction.

The appointment of Brian Preston SC as Chief Judge

On 14 November 2005, the Honourable Justice Brian John Preston SC was sworn in as the Chief Judge of the Court.

The Chief Judge has a long and distinguished career in planning and environmental law. He has practised as a solicitor and a barrister and is the author of a number of learned articles and has published a textbook and lectured at Sydney University Law School.

The new Chief Judge will lead a Court that is more accessible, more informal and more flexible than traditional Courts – a Court which is committed to ensuring resolution of environmental issues in the most efficient and effective manner.

Appendix 1 - Definitions

- **Backlog indicator:** a measure of timeliness that relates to the age of each court's pending caseload to timeliness standards.
- **Clearance ratio:** a measure of whether the Court is keeping up with its workload. It is the number of finalisations divided by the number of lodgments/registrations (multiplied by 100 to convert to a percentage).
- **Finalisations:** Completed matters (either by Court adjudication or at the pre-hearing stage).
- **Judicial officers:** the number of judicial officers is a measure of resources (that is, the number of officers who can make enforceable orders of the Court). It also indicates access to the judicial system.
- **Pending:** Current active files.
- **Pre-Hearing disposals:** Matters that have been completed prior to the substantive hearing. These matters are completed by discontinuance, consent orders or mediation.
- **Registrations:** New initiating process.
- **Restorations:** Matters that have been completed by the Court, but have been reactivated by the parties e.g. for a costs or a modification application.
- **Time for disposal:** Calculated by deducting the date of registration from the date of completion.

Appendix 2 – Court User Group Court Committees

Court Users Group

A Court Users Group was established in 1996 as a consultative committee comprising of representatives from interested organisations. The Group meets 3 times a year and assists with improving Court services by making recommendations to the Chief Judge about:

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

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

Members during 2005

The Hon. Justice Peter David McClellan, Chief Judge (Chairperson)	Land and Environment Court
The Hon. Mr Justice David Henry Lloyd	Land and Environment Court
Dr John Roseth, Senior Commissioner	Land and Environment Court
Mr Stafford J Watts, Commissioner	Land and Environment Court
Ms Susan Dixon, Registrar	Land and Environment Court
Mr Terry Byrnes	Environment and Planning Law Association
Ms Isabella Patrice Ferguson	Gadens Lawyers
Ms Cecilia Rose	Maddocks
Dr Nicholas Brunton	Partner, Henry Davis York
Ms Rachel Fitzhardinge	Department of Infrastructure, Planning and Natural Resources
Ms Katherine Gardner	The Law Society of New South Wales
Mr Chris Hallam	Institution of Engineers
Mr Ian Hemmings	Environment and Planning Law Association
Dr Jeff Kildea	The Bar Association of NSW
Mr Stan Kondilios	Maddocks
Mr Ian Lacey	Ethnic Communities' Council of NSW Inc
Mr Peter Lee	Local Government Association of NSW
Mr Craig Leggatt	Nature Conservation Council of NSW Inc
Mr Tony McGlynn	Department of Infrastructure, Planning and Natural Resources
Ms Ilona Miller	Environmental Defenders Office
Mr Michael Neustein	Royal Australian Institute of Architects (NSW)
Mr John O'Grady	Australian Institute of Landscape Architects
Mr Gordon Plath	Environment Protection Authority
Mr Mark Purdy	Local Government Association of NSW
Mr George Newhouse	Local Government Association of NSW
Mr Eugene Sarich	Australian Institute of Building Surveyors & Australian Institute of Environmental Health
Mr Chris Shaw	Property Council of Australia
Mr Stuart Simington	Housing Industry Association
Mr John Sheehan	Australian Property Institute Inc
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Ms Mary-Lynne Taylor	Urban Development Institute of Australia
Mr Peter Tomasetti	Barrister
Mr Michael Whelan	Institution of Surveyors NSW Inc
Mr Ian Woodward	Local Government Lawyers Group

Library Committee

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

Members

The Hon. Justice Neal Raymond Bignold

Ms Janette S Murrell, Commissioner

Ms Yvonne Brown, Director, Library Services,
Attorney Generals Department

Mr Jack Hourigan, Manager, NSW Law
Libraries

Rule Committee

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

Members

The Hon. Justice Peter David McClellan,
Chief Judge (to 1 September 2005)

The Hon. Justice Brian John Preston,
Chief Judge (from 14 November 2005)

The Hon. Justice Neal Raymond Bignold

Education Committee

The Education Committee organised the Annual Conference for judicial officers in Canberra from 5-6 May 2005.

The Conference was held jointly with the Victorian Civil and Administrative Tribunal and allowed the two organisations to compare, discuss and learn from the different structures, functions and methods used in each jurisdiction.

The Conference included four other participants from interstate courts and tribunals as well as members of the Judicial Commission of New South Wales and the administrator from the Judicial College of Victoria. The Conference featured invited speaker Dr Graeme I Pearman AM FAA speaking on Climate Change: Risks, Responsibilities and Legislation.

Members

The Hon. Mr Justice David Henry Lloyd
(Chair)

Mr Trevor A Bly, Commissioner

Ms Susan Dixon, Registrar

Ms R Windeler, Education Director, Judicial
Commission of New South Wales

Mrs C Denison, Conference Co-ordinator,
Judicial Commission of New South Wales

Appendix 3 - Other Court Activity

The Judges and Commissioners of the Court continue to actively contribute, both in Australia and overseas, in matters regarding the law and legal education. Their contribution includes activities such as presenting papers and speeches at conferences and seminars, submitting articles for publication, giving lectures at educational institutions, meeting judicial officers from courts around the world and hosting delegations.

The Judges' and Commissioners' activities during 2005 are summarised below:

The Hon. Justice Peter David McClellan, Chief Judge

Conferences

21 March	Lawasia Downunder Conference – <i>Dispute Resolution – Litigation – expert witnesses</i>
22-23 March	LexisNexis Planning and Environment Law 2005
29 April	Australian Property Institute – rural conference at Manly
5-7 May	Victorian Civil and Administrative Tribunal/Land and Environment Court Conference in Canberra
13 May	Environmental Defenders Office National Conference - <i>Public Interest Environmental Law in Australia</i>
10 June	8th Australian Institute of Judicial Administration Tribunals Conference - <i>The Value of Civil Claims – How Should Resources Be Allocated? Menzies Hotel</i>
14 July	National Environmental Law Association Conference in Canberra – Key note Address <i>Environmental Issues – How should we resolve disputes?</i>

Speaking Engagements

15 February	Australian Property Institute – Associate Professional Certificate
16 February	Woollahra Council – councillors and planning staff
24 February	Institute of Chartered Accountants
28 February	Upper North Shore Network of Architects
6 April	Australian Property Institute – Associate Professional Certificate
8 April	Environment and Planning Law Association book launch
28 April	Lord Mayor – address to Planning Councillors
3 May	Law Council of Australia Environmental and Planning Law Group
25 May	The University of NSW – Centre for Continuing Legal Education: CLE Seminar <i>Local Government and Statutory Authorities</i> , Grace Hotel, Sydney
31 May	Environment Institute of Australia and New Zealand – Parliament House
3 June	Sparke Helmore at Newcastle – councils and councillors.
7 June	Australian Property Institute – Associate Professional Certificate
28 July	Australian Property Institute – CBD based group to speak on reforms of the Land and Environment Court.

Delegations and International Assistance

30 May – 3 June	Visit by members of the Thai and Philippine Judiciary
3 September	Judicial delegation from Vietnam, including the Chief Justice

The Hon. Justice Robert Neville Talbot, Acting Chief Judge 2 September – 14 November 2005

Conferences

2 September	Australian Property Institute North Coast Conference, Coffs Harbour - <i>New Approaches to Expert Evidence – Implications for Regional Valuers</i>
20 October	2005 Environment and Planning Law Association Conference, Sydney Olympic Park - <i>Observations in Response to papers presented on 'Vulnerability of Development Consents: Is the Challenger now advantaged; Who's in the driver's seat?' by Noel Hemmings QC and Tim Robertson SC</i>

Speaking Engagements

22 September	Joint Australian Property Institute and University of Sydney - <i>The Use of Expert Evidence by the Court</i>
29 September	Engineers Australia - <i>The Administrative Appeals Process in the Land and Environment Court of NSW</i>
19 October	Property Law Update, University of NSW - <i>Opening Remarks</i>

The Hon. Justice Robert Neville Talbot

Speaking Engagements

5 April	NSW Young Lawyers - <i>Advanced Practice and Procedure in the Land and Environment Court of NSW</i>
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The Hon. Mr Justice David Henry Lloyd

Justice Lloyd represented the Court at meetings of the Governing Council of the Judicial Conference of Australia throughout the year. He is also the Chairman of the Steering Committee for the National Judicial Orientation Programme.

Speaking Engagements

February	Presented a paper on effective methods of adult education (particularly judicial) and professional development at a meeting of the Consultative Committee of the National Judicial College of Australia
August/September	Acted as co-presenter and facilitator with Professor J Raymond at two-day judgment writing workshops for the Council of Australasian Tribunals (August) and for judges of the District Court of NSW (September) on behalf of the Judicial Commission of New South Wales
October	Chaired several sessions and presented two workshops on judgment writing and evidence at the National Judicial Orientation Program

Commissions in Other Courts

October - December	Appointed as an Acting Judge of the Supreme Court of New South Wales. Sat in the Equity Division for that three-month period.
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The Hon. Mr Justice Dennis A Cowdroy

Justice Cowdroy holds the Rank of Commander in the Royal Australian Navy Reserve. In such capacity, assistance is provided in respect of the environmental operations of the Australian Armed Forces.

Speaking Engagements

30 May	Guest Speaker - <i>Living with Global Change: Challenges to Environmental Sciences</i> , Tel-Aviv, Israel
15 July	Chaired session of the Third Colloquium of the IUCN Academy

Other Activities

March, April, May, August 2005	Assisted environmental operations of Australian Defence Forces
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The Hon. Justice Nicola Hope Margaret Pain

Speaking Engagements

13 May	Environmental Defenders Office 20th Anniversary
25 November	Address to postgraduate students at the University of Sydney - <i>Finding the Cutting Edge – A case study in environmental law</i>

Dr John Roseth, Senior Commissioner

Speaking Engagements

15 February	Speech to the Law Society of NSW
10 March	Australian Institute of Urban Studies seminar - <i>Urban Consolidation – from Policy to Detail</i>
27 July	NEERG Seminar - <i>Developing Planning Principles</i>
11 October	Opening remarks at the NEERG seminar - <i>The Marvel of Heritage Legislation</i>

Ms Jan Murrell, Commissioner

Conference

20-24 June	International Making Cities Liveable Urban Design Conference - Venice
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Speaking Engagements

October	Speech to Masters students in planning, University of Sydney
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Acknowledgement of Photographs

Richard Hsu, Urban Photography

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Chief Judge

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Justice Talbot, Justice Preston and Chief Justice Spigelman at the swearing in ceremony.

Scott Wajon, Golightly Photographics

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Farewell ceremony for Justice Peter McClellan as outgoing Chief Judge of the Court.

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Justice McClellan, the outgoing Chief Judge of the Court speaks at the Anniversary Dinner.

Andrew Edgar

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Senior Commissioner Roseth with parties and their legal representatives at an onsite hearing.



Land and Environment Court

of New South Wales

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