

The Land and Environment Court of NSW



Annual Review

2007

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## Foreword From Chief Judge

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

Traditionally, court administration performance is evaluated by quantitative output indicators based on the registrations (filings), finalisations, pending caseload and time taken between filing and finalisation. Prior to 2006, the Court's Annual Reviews had focused solely on these performance indicators. This year's Review continues the practice adopted in last year's Annual Review of reporting on an expanded range of quantitative performance indicators. Reference to these quantitative performance indicators reveals that the Court has been successful in achieving the objectives of equity, effectiveness and efficiency.

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

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

But even the inclusion of these qualitative indicators still leave unevaluated the Court's material contribution to the community represented by the large volume of decisions made. The Court produced 844 substantive written judgments. These judgments are published on the Court's website [www.lawlink.nsw.gov.au/lec](http://www.lawlink.nsw.gov.au/lec) and elsewhere. They provide a valuable contribution to planning and environmental jurisprudence. They also enable transparency and accountability in the Court's decision-making.

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

**The Honourable Justice Brian J Preston**  
Chief Judge

# 1 **2007: An Overview**

- Court Performance
- Reforms and Developments
- Education and Community

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## Court Performance

The Court has an overriding duty to ensure the just, quick and cheap resolution of the real issues in all civil proceedings in the Court. In most areas of its work, the Court has been able to improve its performance in achieving this overriding objective relative to the results achieved in 2006.

Of particular significance are:

- A decrease in the number of matters pending in the Court, to its lowest level in the last five years;
- Maintenance of productivity, as evidenced by the total clearance rate for all matters exceeding 100%;
- Improvements in nearly all classes of the Court's jurisdiction in the timeliness of the case load, as measured by the backlog indicator;
- A decrease in the time taken for finalisation of both merits review appeals (Classes 1, 2 and 3) and judicial proceedings (Classes 4 to 7);
- A decrease in the time taken to deliver reserved judgments; and
- A significant increase in the use of alternative dispute resolution mechanisms, particularly conciliation.

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

## Reforms and Developments

The Court has continued to improve its practice and procedure to better enable the just, quick and cheap resolution of civil proceedings.

The major legislative reform was to apply the *Civil Procedure Act 2005* and Uniform Civil Procedure Rules 2005 to the Court. This involved legislative changes, including to the *Land and Environment Court Act 1979* and the Court Rules. However, although the legislation was assented to on 15 November 2007, the changes will not take effect until 28 January 2008. The operation and effect of the legislative changes will be reported on in next year's Annual Review.

The Court totally revised its practice directions. All former practice directions were repealed and replaced by comprehensive practice notes covering the differing types of proceedings in the Court. New practice notes cover Class 1 Development Appeals, Classes 1, 2 and 3 Miscellaneous Appeals, Class 3 Compensation Claims, Class 3 Valuation Objections and Class 4 applications (civil enforcement and judicial review proceedings). The practice notes were effective from 14 May 2007.

Legislative amendments were also made late in 2007 refining the legislative provisions governing conciliation conferences under s 34 of the Court Act.

The Court acquired new jurisdiction under the *Trees (Disputes Between Neighbours) Act 2006* which came into effect on 2 February 2007. In response, the Court developed practices and procedures to ensure the just, quick and cheap resolution of disputes between neighbours about trees.

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

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

## Education and Community Involvement

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

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

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

## Consultation with Court Users

In 2007, the Court continued to consult and work closely with users to improve systems and procedures through its Committees and User Group. Consultation occurred both formally through the Court Users Group and informally with a variety of legal practitioners and professional bodies.

Details of the Court Users Group are in Appendix 1 and the Court's Committees are in Appendix 2.

## 2 Court Profile

- The Court's Jurisdiction
- Who makes the decisions?
  - The Judges
  - The Commissioners
  - The Registrars
- Appointments and Retirements
- Supporting the Court: The Registry

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## The Court's Jurisdiction

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

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

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

Table 2.1 summarises these seven classes.

**Table 2.1 Classes of the Court's Jurisdiction**

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

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



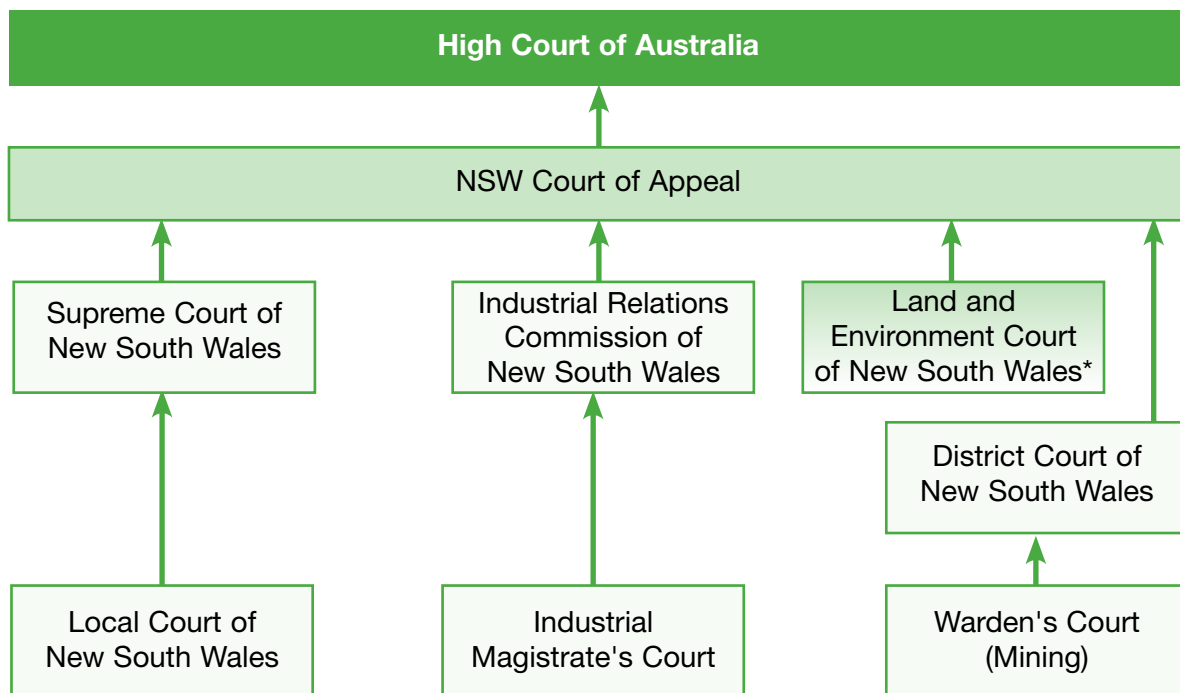
**Figure 2.1 New South Wales Court System – Criminal Jurisdiction**



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

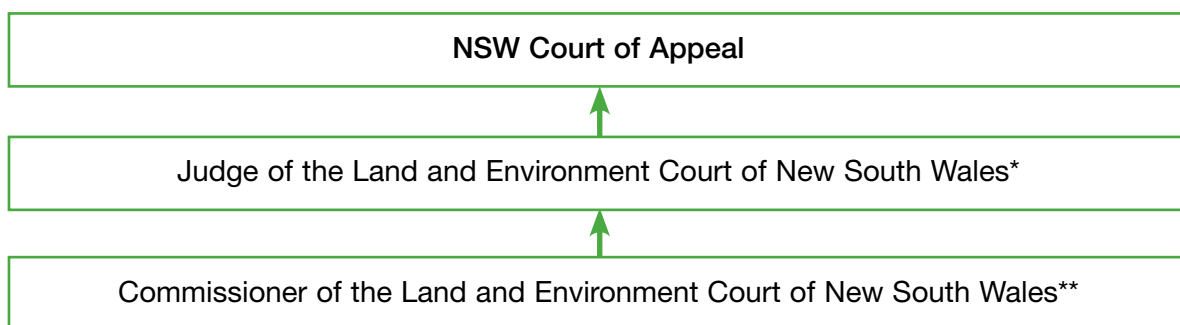
\*\* Appeals from the Local Court of New South Wales to the Land and Environment Court are with respect to an environmental offence under the *Crimes (Appeal and Review) Act 2001* and are in Classes 6 and 7 of the Land and Environment Court's jurisdiction.

**Figure 2.2 New South Wales Court System – Civil Jurisdiction**



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

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



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

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

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## Who makes the decisions?

### The Judges

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

As at 31 December 2007, the Judges, in order of seniority, were as follows:

### Chief Judge

The Honourable Justice Brian John Preston

### Judges

The Honourable Mr Justice David Henry Lloyd

The Honourable Justice Terence William Sheahan AO

The Honourable Justice Nicola Hope Margaret Pain

The Honourable Justice Jayne Margaret Jagot

The Honourable Justice Peter Meldrum Biscoe

### Acting Judges

The following person held a commission for and sat during 2007:

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

### The Commissioners

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

- local government administration;
- town planning;
- environmental science;
- land valuation;
- architecture, engineering, surveying;
- building construction;
- natural resources management;
- urban design or heritage; and
- land rights for Aborigines or disputes involving Aborigines.

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

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

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At 31 December 2007, the Commissioners were as follows:

**Senior Commissioner**

Dr John Roseth

**Commissioners**

Mr Stafford J Watts  
Mr Trevor A Bly  
Mr Robert R Hussey  
Mr Kevin G Hoffman  
Mr Graham T Brown  
Ms Janette S Murrell  
Ms Annelise Tuor  
Mr Tim Moore

**Acting Commissioners**

Associate Professor Dr Paul Adam – botanist and ecologist  
Professor Dr Larissa Behrendt – member of the Aboriginal community  
Dr Mark Carleton – environmental engineer and planner  
Ms Megan Davis – member of the Aboriginal community  
Ms Mary Edmunds – member of the Aboriginal community and mediator  
Ms Judy Fakes – arborist  
Professor Dr David Goldney – ecologist  
Ms Rhonda Jacobson – member of the Aboriginal community  
Mr E Craig Miller – valuer and mediator  
Dr David Parker – valuer  
Dr Stephen Phillips – ecologist  
Mr John Sheehan – valuer, surveyor and town planner  
Professor Sharon Sullivan AO – heritage consultant  
Dr Mark Taylor – environmental scientist and geomorphologist  
Mr Peter Thyer – arborist  
Mr Michael Whelan – surveyor, mediator and arbitrator

**The Registrars**

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

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

As at 31 December 2007, the Registrars were as follows:

**Registrar** Ms Susan Dixon

**Assistant Registrar** Ms Margaret Lennan

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## Appointments and Retirements

### Appointments

Mr Robert R Hussey was re-appointed as a Commissioner of the Land and Environment Court in 2007.

### Retirements

The Honourable Justice Neal Bignold retired as a permanent Judge of the Land and Environment Court on 16 March 2007.

### Secondments

The Honourable Justice Terence William Sheahan AO continued as President of the Workers Compensation Commission whilst retaining his commission as a Judge of the Court. He retired as President of the Workers Compensation Commission on 2 November 2007 and returned to active duty with the Court on 5 November 2007.

## Supporting the Court: The Registry

The Court Registry comprises the following four sections:

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### 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.

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### 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.

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### 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.

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### Commissioner Support

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

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

# 3 Caseflow Management

- Introduction
- Overview by Class of Jurisdiction
- Types of Callovers
- Class 1 Hearing Options
- Alternative Dispute Resolution
  - Conciliation
  - Mediation
  - Neutral evaluation

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## Introduction

The Court manages the flow of its cases from inception to completion in a number of ways, and is continually looking to improve its processes and outcomes. The Chief Judge determines the day-to-day caseload management strategy of the Court. This strategy is reflected in the *Land and Environment Court Act 1979*, *Land and Environment Court Rules 2007*, the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005*, and the Practice Notes issued by the Chief Judge. The Judges, Commissioners and Registrars work together to ensure cases are resolved in a just, timely and cost-efficient manner.

## Overview by Class of Jurisdiction

Caseload management varies with the type or class of proceeding.

### Class 1

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

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

At the callover, the Registrar will review the matter and make appropriate directions for the orderly, efficient and proper preparation of the matter for resolution by the appropriate dispute resolution mechanism. The appropriate dispute

resolution mechanism may be a consensual mechanism such as conciliation (a conference under s 34 of the Court Act) or mediation or an adjudicative mechanism by the Court hearing and determining the matter either by an on-site hearing or a court hearing.

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

The practice and procedure governing Class 1 appeals is described in the Practice Note: Class 1 Development Appeals and Classes 1, 2 and 3 Miscellaneous Appeals (depending on the type of appeal).

### Class 2: Tree Disputes

Proceedings under the *Trees (Disputes Between Neighbours) Act 2006* involve applications to the Court to remedy, restrain or prevent damage caused, being caused or likely to be caused to property or to prevent a risk of injury to any person as a consequence of a tree.

The Court manages a separate list for tree disputes. About 75% of the parties are self-represented. The application is returnable before a Commissioner assigned to manage the list. This first court attendance can be either a telephone conference or in court. The Commissioner explains the process of preparation for and hearing of the application.

The Commissioner explores whether the parties may be able to resolve the dispute between themselves. If the parties are not able to resolve the dispute, the Commissioner will fix a final hearing date, usually not more than four to five weeks after the first court attendance. The Commissioner will make directions in

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preparation for the final hearing, such as for the provision of information by the parties to each other.

The final hearing will usually be held on site. A Commissioner or Commissioners will preside at the hearing. Often, one of the Commissioners will have special knowledge and expertise in arboriculture. The practice and procedure for tree disputes is described in the special pages for tree disputes on the Court's website.

### **Class 3**

Proceedings in Class 3 also involve merits review appeals. There is a range of matters including claims for compensation by reason of the compulsory acquisition of land and valuation objections under s 37 of the *Valuation of Land Act 1916*. Practice notes introduced in 2007 refine the practice and procedure established in 2006 in the former Practice Direction No 1 of 2006 – Class 3 Compensation Claims and Practice Direction No 2 of 2006 – Class 3 Valuation Objections.

The Practice Note Class 3 Compensation Claims and Practice Note Class 3 Valuation Objections (both effective 14 May 2007) establish Lists for these matters. The Class 3 Lists are managed by the List Judge in Court each Friday. The practice directions specify the callover and directions hearings to be held in preparation for hearing and the directions that will usually be made at these callovers and directions hearing. The purpose of the practice directions is to set out the case management practices for the just, quick and cheap resolution of the proceedings.

Valuation objections are usually heard by commissioners, mostly persons with special knowledge and expertise in the valuation of land. Compensation claims are heard by a Judge, but at times assisted by a

Commissioner with special knowledge and expertise in valuation of land. Other matters assigned to Class 3, such as Aboriginal land claims, are also case managed by the Class 3 List Judge. Such matters are heard by a Judge, assisted by one or more Commissioners appointed with qualifications under s 12(2)(g) of the Court Act including in relation to land rights for Aborigines.

### **Class 4**

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

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

The practice and procedure governing Class 4 proceedings is described in the Practice Note Class 4 applications.

### **Class 5**

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

Class 5 proceedings are case managed in a Class 5 List by the List Judge on a Friday. The List Judge makes appropriate directions for the orderly, efficient and proper preparation for trial or sentence hearing. One purpose of the directions hearings is to allow the entry of pleas prior to the trial. Such a procedure can minimise the loss of available judicial time that occurs when



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trials are vacated after they are listed for hearing or when a guilty plea is entered immediately prior to, or on the day of the trial's commencement.

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

### **Classes 6 and 7**

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

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

### **Types of Callover**

The Court offers court users three types of callover:

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#### **actual callover**

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

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#### **telephone callover**

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

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#### **eCourt callover**

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

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In general, the initial allocations for callover are:

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

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

In 2007, the Court experienced an increase in the use of eCourt callover and recorded in excess of 798 registered eCourt users (up from 706 in 2006). The Court is recognised nationally as a leader in eCourt case management.

### **Class 1 Hearing Options**

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

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

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

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## Alternative Dispute Resolution

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

The methods of ADR available are:

- Conciliation;
- Mediation; and
- Neutral evaluation.

### Conciliation

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

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

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

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

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

Table 3.1 shows the comparison between the number of conciliation conferences in 2004-2007.

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**Table 3.1 s 34 Conciliation Conferences  
2004 – 2007**

	2004	2005	2006	2007
<b>s 34 conferences</b>	39	17	29	214

The table shows, as forecast in the Court's Annual Review 2006, a dramatic increase in the utilisation of conciliation conferences in 2007. This increase has been facilitated by legislative provisions enabling all proceedings in Classes 1, 2 and 3 to be conciliated, the Court's practices and procedures encouraging conciliation, specialist training of Commissioners in conciliation, and education of lawyers and court users about conciliation (see Chapter 6 Education and Community Involvement).

### **Mediation**

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

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

Table 3.2 provides a comparison between mediations in 2004, 2005, 2006 and 2007. Internal mediations are those conducted by the Court mediator. External mediations are those conducted by a mediator not associated with the Court and agreed to by the parties.

**Table 3.2 Mediations in 2004 – 2007**

	2004	2005	2006	2007
<b>Classes 1 and 2</b>				
Total:	23	8	15	9
Internal	6	7	5	6
External	17	1	10	3
Number finalised pre-hearing	8	5	13	5
% finalised pre-hearing	35	63	87	56
<b>Class 3</b>				
Total:	15	9	30	15
Internal	2	1	1	0
External	13	8	29	15
Number finalised pre-hearing	8	3	26	12
% finalised pre-hearing	53	33	87	80
<b>Class 4</b>				
Total:	11	7	7	7
Internal	8	3	3	3
External	3	4	4	4
Number finalised pre-hearing	4	6	7	5
% finalised pre-hearing	36	86	100	71
<b>All Classes</b>				
Total:	49	24	52	31
Internal	16	12	9	9
External	33	13	43	22
Number finalised pre-hearing	20	14	46	22
% finalised pre-hearing	41	58	88	71

The table shows a decrease between 2006 and 2007 in the number of mediations in Classes 1, 2 and 3, attributable to the increased availability and utilisation of conciliation under s 34 of the Court Act, conciliation being another form of alternative dispute resolution. The number of Class 4 matters mediated has remained constant over the last three years.

### Neutral evaluation

Neutral evaluation is a process of evaluation of a dispute in which an impartial evaluator

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

The Court may refer proceedings in Classes 1, 2, 3 and 4 to neutral evaluation with or without the consent of the parties. In 2007, the Court has referred matters to neutral evaluation by a Commissioner or an external person agreed to by the parties.

## 4 Reforms and Developments

- Uniform Civil Procedure
- Practice Notes
- Conciliation Conferences
- Tree Disputes
- Planning Principles and Tree Dispute Principles

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During 2007, reforms continued with respect to the following areas:

- Uniform Civil Procedure;
- Practice Notes;
- Conciliation conferences; and
- Tree Disputes.

Planning principles continued to be developed and new tree dispute principles were also developed.

## Uniform Civil Procedure

During 2007, legislation was passed applying the *Civil Procedure Act 2005* and the Uniform Civil Procedure Rules 2005 to the Court. This brings the Court into conformity with the Supreme Court, District Court and Local Court, in all of which the uniform civil procedure regime applies. The legislation effecting this change, the *Courts Legislation Amendment Act 2007*, was assented to on 15 November 2007, but does not come into effect in relation to the Court until 29 January 2008.

## Practice Notes

The Court has reformed and consolidated the Court's Practice Directions as Practice Notes. Practice Notes now group practice and procedure according to the types of proceedings, instead of the former approach of addressing topics of practice and procedure.

The result is that all matters of practice and procedure for a type of proceeding will generally be self-contained in the practice note for that type of proceeding. There is one exception dealing with the use of electronic documents and images.

The new and replacement practice notes and the types of proceedings in the Court to which they apply are as follows:

### ■ Practice Note – Class 1 Development

**Appeals:** appeals under ss 97 and 98 and ss 96, 96AA and 96A of the *Environmental Planning and Assessment Act 1979*.

### ■ Practice Note – Classes 1, 2 and 3 Miscellaneous Appeals:

appeals, objections and applications assigned to:

- Class 1 (other than appeals under ss 96, 96AA, 96A, 97 and 98 of the *Environmental Planning and Assessment Act 1979*): see s 17 of the *Land and Environment Court Act 1979*;
- Class 2 (other than applications under the *Trees (Disputes Between Neighbours) Act 2006*): see s 18 of the *Land and Environment Court Act 1979*; and
- Class 3 (other than appeals under s 37(1) of the *Valuation of the Land Act 1916*, claims for compensation by reason of the acquisition of land referred to in Division 2 of Part 3 of the *Land and Environment Court Act 1979* and appeals and references under the *Aboriginal Land Rights Act 1983*): see s 19 of the *Land and Environment Court Act 1979*.

### ■ Practice Note – Class 3 Compensation

**Claims:** claims for compensation by reason of the acquisition of land referred to in Division 2 of Part 3 of the *Land and Environment Court Act 1979*, including claims under the *Land Acquisition (Just Terms Compensation) Act 1991* and Division 2 of Part 12 of the *Roads Act 1993*. This practice note replaces the former practice direction as well as incorporating amendments to ensure

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consistency between the practice notes insofar as practicable.

■ **Practice Note – Class 3 Valuation**

**Objections:** appeals under s 37(1) of the *Valuation of Land Act 1916*. This practice note replaces the former practice direction as well as incorporating amendments to ensure consistency between the practice notes insofar as practicable.

■ **Practice Note – Class 4 applications:** proceedings referred to in s 20(1), (2) and (3) of the *Land and Environment Court Act 1979*.

## Conciliation Conferences

Section 34 of the Court Act was refined and replaced by the *Courts Legislation Amendment Act 2007*, effective 29 January 2008. Section 34 was further amended by the *Courts and Other Legislation Amendment Act 2007* to address issues of privilege with respect to conciliation conferences.

The Practice Notes made in 2007 applicable to matters in Classes 1, 2 and 3 encourage the use of conciliation conferences.

## Tree Disputes

On 2 February 2007, the *Trees (Disputes Between Neighbours) Act 2006* came into force.

The Act establishes a statutory scheme for resolution of disputes between neighbours concerning trees. It enables the Court to make orders to remedy, restrain or prevent damage to property or to prevent injury to any person when a tree that is situated on adjoining land might cause that damage or injury. It also permits the Court to order compensation for or rectification of damage caused by a tree.

The Court established special practices and procedures to deal with tree disputes. Application forms have been drafted in plain English and are intended to be able to be completed by the neighbours themselves. Comprehensive information on tree disputes has been prepared and made available, including on the Court's website. A special Trees Dispute Information webpage provides reference material to assist applicants, tree owners, and local councils understand how the Court deals with tree disputes. The material includes:

- *The Trees (Disputes Between Neighbours) Act 2006* (link to the Act);
- Trees Act – Notes and Frequently Asked Questions
- Tree Dispute Principles (published by the Court)
- Where preliminary Trees Act conferences will be held (by local government area or location of the tree property)
- Standard directions to be given at preliminary Trees Act conferences
- Dates for future preliminary Trees Act conferences
- Guidance decisions about the Act and the Court's decisions
- The decisions of the Court under the Trees Act, grouped firstly by refusals and approvals and secondly, within each category, by the type of application, such as removal of tree, pruning or other work on a tree, remedial works or compensation.

## Planning Principles and Tree Dispute Principles

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

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

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

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

In 2007, the Court published one judgment dealing with planning principles. This judgment is detailed in Table 4.1 below.

**Table 4.1 Planning principles decision**

Principle	Case
<i>Height, bulk and scale</i> – Assessment of height, bulk and scale	<i>Veloshin v Randwick City Council</i> [2007] NSWLEC 428

In a similar fashion, the Court has developed principles or provided guidance in decisions under the *Trees (Disputes Between Neighbours) Act 2006*. The Court published two judgments dealing with tree dispute principles. These judgments are detailed in Table 4.2 below.

**Table 4.2 Tree dispute principles decisions**

Principle	Specific aspect	Case
<i>The tree was there first</i>	Matters to be considered when determining who should pay for any works or removal of a tree	<i>Black v Johnson (No 2)</i> [2007] NSWLEC 513
<i>Urban trees and ordinary maintenance issues</i>	The dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide basis for ordering removal of or intervention with an urban tree	<i>Barker v Kyriakides</i> [2007] NSWLEC 292



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The Court delivered three judgments in 2007 considering and interpreting the Act. These judgments are detailed in Table 4.3 below.

**Table 4.3 Consideration and Interpretation of Trees Act**

<b>Principle</b>	<b>Case</b>
<i>“In the near future” – s 10(2)(a) – Interpretation guidance</i>	<i>Yang v Scerri</i> [2007] NSWLEC 592
<i>Damage caused by animals, birds or insects is not caused by the tree which attracts them or provides habitat for them – s 10(2) – Jurisdictional finding</i>	<i>Dooley &amp; Anor v Nevell</i> [2007] NSWLEC 715
<i>Trees “situated on adjoining land” include trees separated from the applicant’s land by a public road – s 7 – jurisdictional finding</i>	<i>P Baer Investments Pty Limited v University of New South Wales</i> [2007] NSWLEC 128

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# 5 Court Performance

- Overall Caseload
- Court Performance by Class of Jurisdiction
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- Output Indicators of Access to Justice
  - Affordability
  - Accessibility
    - Geographical accessibility
    - Access for persons with disabilities
    - Access to help and information
    - Access for unrepresented litigants
    - Access to alternative dispute resolution
    - Facilitating public participation
  - Responsiveness to the needs of users
- Output Indicators of Effectiveness and Efficiency
  - Backlog indicator
  - Delivery of reserved judgments
  - Clearance rate
  - Attendance indicator
- Appeals

## Overall Caseload

The comparative caseload statistics between 2003 and 2007 are summarised in Table 5.1.

**Table 5.1 Caseload Statistics**

	2003	2004	2005	2006	2007
<b>Class 1</b>					
Registrations	1206	1211	1099	874	788
Restored	69	112	80	131	90
Pre-Trial Disposals	635	742	618	675	507
Disposed by Hearing	689	563	519	524	485
Pending	593	611	653	457	328
<b>Class 2</b>					
Registrations	27	32	15	12	184
Restored	3	1	1	1	8
Pre-Trial Disposals	7	13	26	8	59
Disposed by Hearing	13	2	3	5	100
Pending	5	23	11	7	40
<b>Class 3</b>					
Registrations	188	232	288	152	124
Restored	2	47	16	18	14
Pre-Trial Disposals	71	161	113	212	125
Disposed by Hearing	63	61	80	115	43
Pending	147	204	319	165	130
<b>Class 4</b>					
Registrations	251	196	187	244	234
Restored	28	43	42	39	45
Pre-Trial Disposals	127	176	123	180	219
Disposed by Hearing	163	96	80	87	89
Pending	142	109	142	164	133
<b>Class 5</b>					
Registrations	120	77	73	48	88
Restored	6	1	14	6	7
Pre-Trial Disposals	23	30	6	3	7
Disposed by Hearing	116	63	67	68	68
Pending	81	66	81	63	79
<b>Class 6</b>					
Registrations	5	7	14	12	20
Restored	0	0	1	0	1
Pre-Trial Disposals	1	3	3	6	6
Disposed by Hearing	4	4	6	12	9
Pending	1	2	8	2	8
<b>TOTAL</b>					
Registrations	1798	1755	1676	1342	1438
Restored	109	204	154	195	165
Pre-Trial Disposals	868	1125	889	1083	923
Disposed by Hearing	1051	789	755	811	794
Pending	1086	1015	1214	858	718

Table 5.1 shows the following trends between 2006 and 2007:

- Total registrations increased in 2007, a result of increased registrations in Class 2 (tree disputes), Class 5 (criminal prosecutions) and Class 6 (criminal appeals) which more than offset a decrease in registrations in Classes 1, 3 and (to a small extent) 4.
- Total finalisations decreased in 2007, a result of the decrease in finalisations (principally in Classes 1 and 3 due to a decrease in registrations) which more than offset the increases in finalisations in Classes 2, 4 and 5.
- Total finalisations continued to exceed total registrations in 2007, resulting in the total pending caseload decreasing in 2007, indeed to its lowest level in five years.
- Merits review proceedings in Classes 1, 2 and 3 comprised 77% of the Court's finalised caseload in 2007.
- Judicial proceedings in Classes 4, 5, 6 and 7 comprised 23% of the Court's finalised caseload in 2007.
- The means of finalisation in 2006 were 54% pre-trial disposals (including by negotiated settlement) and 46% by adjudication by the Court. This proportion has remained reasonably constant over the last five years, as Table 5.2 shows.

**Table 5.2 Means of Finalisation – All Matters**

	03	04	05	06	07
Total matters finalised – all classes	1919	1914	1644	1894	1717
Total pre-trial finalisations	868	1125	889	1083	923
% matters finalised pre-trial	45	59	54	57	54

The means of finalisation for proceedings in Class 1, 2 and 3 included s 34 conciliation conferences and on-site hearings (mainly for Class 1 and 2 proceedings). As Table 5.3 shows, 21% of appeals in Classes 1, 2 and 3 were finalised by these means. There were 204 onsite hearings, and 73 section 34 conciliation conferences in 2007.

**Table 5.3 Means of Finalisation – Classes 1, 2 & 3**

	03	04	05	06	07
Total matters finalised	1486	1541	1359	1539	1319
s 34 conferences and on-site hearings	76	226	184	175	277
% s 34 and matters finalised on-site	5.1	14.7	13.5	11.4	21.0

## Court Performance by Class of Jurisdiction

A brief summary of the Court's performance in 2007 for each of the seven classes of jurisdiction is provided.

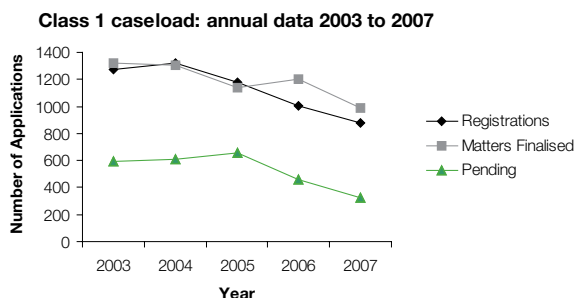
### Class 1

Class 1 matters constitute the bulk of the Court's finalised caseload (58%). 64% of all Class 1 matters finalised were appeals under s 97 of the *Environmental Planning and Assessment Act 1979* relating to development applications. 48% of the appeals under s 97 were applications where councils had not determined the development application within the statutory time period ("deemed refusals").

Of the remaining matters finalised in 2007, 18% were applications to modify a development consent under s 96 of the *Environmental Planning and Assessment Act 1979* and 9% were appeals against council orders and the actual or deemed refusal by councils to issue building certificates. Applications for costs, appeals against the Court's decisions and prevention / remediation notices constituted the remaining matters in Class 1.

Figure 5.1 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 1 between 2003 to 2007.

**Figure 5.1**



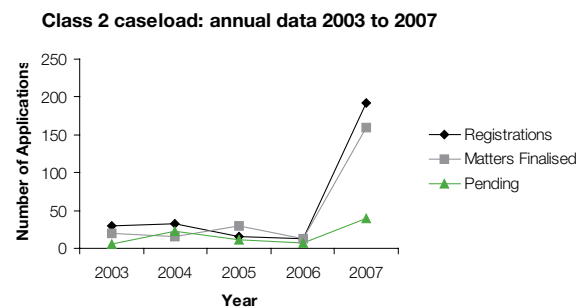
### Class 2

Class 2 registrations increased dramatically in 2007 due to the coming into force of the *Trees (Disputes Between Neighbours) Act 2006*. Class 2 registrations represented 12% of total registrations in the Court.

The number of Class 2 matters finalised in 2007 represented 9% of the Court's finalised caseload. These are overwhelmingly applications under the *Trees (Disputes Between Neighbours) Act 2006*.

Figure 5.2 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 2 between 2003 to 2007.

**Figure 5.2**



### Class 3

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

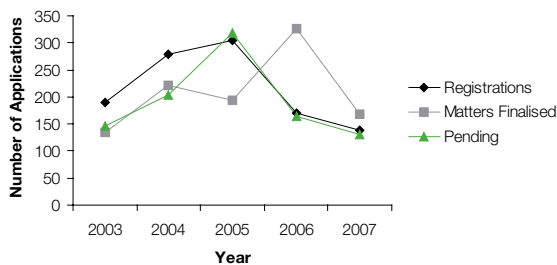
New registrations in Class 3 decreased by 18% in 2007. Valuation and rating appeals accounted for 63% of new Class 3 appeals in 2007. Compensation claims for compulsory acquisition of land constituted 23% of all Class 3 appeals registered in 2007.

Of the matters finalised in 2007, 54% were valuation or rating appeals, 24% were compensation claims and 22% were other matters.

Figure 5.3 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 3 between 2003 and 2007.

**Figure 5.3**

**Class 3 caseload: annual data 2003 to 2007**

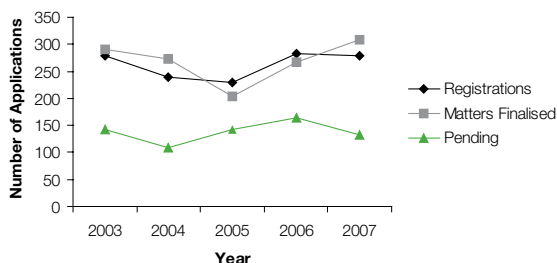


### Class 4

New Class 4 registrations fell by 4% and finalisations increased by 15% in 2007. Of the Class 4 matters finalised in 2007, 57% were initiated by councils. Figure 5.4 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 4 between 2003 and 2007.

**Figure 5.4**

**Class 4 caseload: annual data 2003 to 2007**



### Class 5

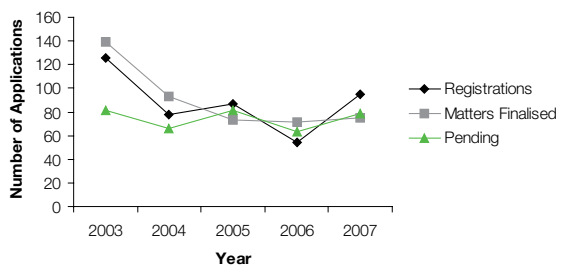
New Class 5 registrations rose 83% in 2007. The Environment Protection Authority initiated 22% of all new registrations. The number of matters initiated by local councils increased to 65% of all Class 5 registrations, up from 54% in 2006. Other statutory bodies initiated 13% of all new registrations.

Of the 75 matters finalised in 2007, convictions were recorded in 50, 2 were withdrawn, 13 were dismissed, 2 were proved with no conviction entered and 8 involved costs or extensions of time to comply with other orders. Fines for conviction ranged from \$200 to \$110,000.

Figure 5.5 represents graphically a comparison of the registrations, finalisations and pending caseload in Class 5 between 2003 and 2007.

**Figure 5.5**

**Class 5 caseload: annual data 2003 to 2007**



### Classes 6 and 7

20 new Class 6 appeals were filed, 15 of which were finalised. There were no Class 7 appeals before the Court in 2007.

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## Measuring Court Performance

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

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

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

## Output Indicators of Access to Justice

### Affordability

Access to justice is facilitated by ensuring affordability of litigation in the Court. One indicator of affordability is the fees paid by applicants. Lower court fees help keep courts accessible to those with less financial means. However, ensuring a high standard of court administration service quality (so as to achieve the objective of effectiveness) requires financial resources. These days, a primary source of revenue to fund court administration is court fees. The Land and

Environment Court is no exception. It was necessary in 2007 to increase court fees by 4% to be able to balance the Court's budget and ensure a high standard of court administration service quality (effective 1 July 2007). Nevertheless, the increased court fees still meet criteria of equity.

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

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

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

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

fees for these proceedings are comparable to those charged by the Supreme Court.

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

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

### Accessibility

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

### Geographical accessibility

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

First, the Court regularly holds hearings in country locations. Table 5.4 shows the country hearings for 2007.

**Table 5.4 Country Hearings**

Courthouse	Number of Hearings				
	Class 1	Class 2	Class 3	Class 4	Class 5
Albury	2				
Ballina	2				
Bateman's Bay	2				
Bathurst	1				
Belmont	1				
Byron	1				
Casino	1				
Cessnock	1				
Coffs Harbour	1				
Dubbo	1				
East Maitland	3				
Eden	1				
Forster	1				
Gosford	5	1	1		
Goulburn			1		
Griffith	1				
Katoomba	3				
Kempsey	1				
Kiama	3				
Kurri Kurri	3				
Lithgow	2				
Maitland	1				
Moama			1		
Moss Vale	4				
Mullumbimby	1				
Murwillumbah	3				
Newcastle	4				
Orange	1				
Picton	2			1	
Queanbeyan	1				
Raymond Terrace	1		1		
Singleton	1				
Taree	1			1	
Tenterfield	1				
Toronto	1				
Wagga Wagga	1				
Yass	1				
<b>TOTAL</b>	<b>56</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>0</b>



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

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

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

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

### ***Access for persons with disabilities***

The Court has a disability strategic plan that aims to ensure that all members of the community have equal access to the Court's services and programs. The Court is able to make special arrangements for witnesses with special needs. The Court can be accessed by persons with a disability. The Land and Environment Court website contains a special page outlining the disability services provided by the Court.

### ***Access to help and information***

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

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

The provision of such help and information facilitates access to justice and allows the people who use the judicial system to understand it.

### ***Access for unrepresented litigants***

The Court also makes special efforts to assist unrepresented litigants, through its website and its published information and fact sheets, and by the Registry staff. The Court has a special fact sheet for "Litigants

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in Person in the Land and Environment Court of New South Wales”. The fact sheet contains information on:

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

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

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

### ***Access to alternative dispute resolution***

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

When the Land and Environment Court was established in 1980 there was the facility for conciliation conferences under s 34 of the Court Act. These were curtailed in 2002 when on-site hearings were provided for but in 2006 the facility of conciliation conferences was extended to all matters in Classes 1, 2 and 3.

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

### ***Facilitating public participation***

Access to justice can also be facilitated by the Court ensuring that its practice and procedure promotes and does not impede access by all. This involves careful identification and removal of barriers to participation, including by the public. Procedural law dealing with standing to sue, interlocutory injunctions (particularly undertaking for damages), security for costs, laches and costs of proceedings,

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to give some examples, can either impede or facilitate public access to justice. The Court's decisions in these matters have generally been to facilitate public access to the courts.

### **Responsiveness to the needs of users**

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

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

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

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

In 2007, the Judges, Commissioners and the Registrar have participated in numerous conferences and seminars to enhance awareness of recent developments in the Court relating to both procedural and substantive law.

### **Output Indicators of Effectiveness and Efficiency**

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

#### **Backlog indicator**

The backlog indicator is an output indicator of case processing timeliness. It is derived by comparing the age (in elapsed time from lodgment) of the Court's caseload against time standards.

The Court adopted its own standards for the different classes of its jurisdiction in 1996. These are:

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

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

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

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

Time taken to process cases is not necessarily due to court administration delay. Some delays are caused by factors other than those related to the workload of

the Court. These include delay by parties, unavailability of a witness, other litigation taking precedence, and appeals against interim rulings.

The results of the backlog indicator measured against the Land and Environment Court time standards for 2007 are:

**Table 5.5 Backlog Indicator (LEC time standards)**

	Unit	LEC Standards	2003	2004	2005	2006	2007
<b>Class 1</b>							
Pending caseload	no.		593	611	653	457	328
Cases > 6 months	%	5	15.5	12.8	29.1	22.8	11.3
Cases > 12 months	%	0	6.9	5.4	9.6	10.1	3.4
<b>Class 2</b>							
Pending caseload	no.		5	23	11	7	40
Cases > 6 months	%	5	20.0	82.1	45.5	28.6	12.5
Cases > 12 months	%	0	20.0	25.0	36.3	14.3	2.5
<b>Class 3</b>							
Pending caseload	no.		147	204	319	165	130
Cases > 6 months	%	5	34.7	32.0	44.8	55.2	51.5
Cases > 12 months	%	0	16.3	17.9	25.1	38.8	40.0
<b>Class 4</b>							
Pending caseload	no.		142	109	142	164	133
Cases > 8 months	%	5	26.1	35.0	28.8	19.5	21.1
Cases > 16 months	%	0	14.1	19.7	16.4	12.2	8.3
<b>Class 5</b>							
Pending caseload	no.		81	66	81	63	79
Cases > 8 months	%	5	30.9	52.1	29.1	55.5	31.6
Cases > 16 months	%	0	14.8	26.1	18.9	11.1	10.1
<b>Class 6</b>							
Pending caseload	no.		1	2	8	2	8
Cases > 8 months	%	5	0	0	0	0	0
Cases > 16 months	%	0	0	0	0	0	0
<b>Class 1- 3</b>							
Pending caseload	no.		861	838	983	629	498
Cases > 6 months	%	5	31.8	25.8	34.6	31.3	21.9
Cases > 12 months	%	0	19.5	11.1	15	17.6	12.9
<b>Class 4 – 7</b>							
Pending caseload	no.		224	177	231	229	220
Cases > 8 months	%	5	27.6	44.0	27.9	29.3	24.1
Cases > 16 months	%	0	14.2	22.6	16.7	11.8	8.6

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These backlog figures need some explanation:

- Class 1: The backlog figure has improved significantly, resulting in the figures for pending caseload exceeding both the 6 months and 12 months standards falling to their lowest in five years. In fact, the improvement is even more than these figures reveal. The actual number of older files has decreased by a greater margin (62% for cases exceeding the 6 months standard and 75% for cases exceeding the 12 months standard) but these decreases are masked by the total pending Class 1 caseload also falling (by 25%). This reduction in the backlog is a response to the new Practice Note for class 1 appeals that came into force in the year and concerted case management by the Court.
- Class 2: The backlog figure decreased in 2007, a commendable result having regard to the manifold increase in Class 2 matters.
- Class 3: The 2007 backlog figure decreased slightly for cases exceeding the 6 months standard and increased slightly for cases exceeding the 12 months standard. However, the actual number of files exceeding the 6 months standard decreased by 17% in 2007. The backlog figure appears higher as the total pending caseload fell by 21% so that the older cases represent proportionately more of the pending caseload. 75% of the pending cases exceeding the 12 months standard comprise compensation claims and Aboriginal land claims. These older cases have involved difficulties and complexities in preparation for hearing and the delay is often by and at the request of the parties to enable the proper preparation for hearing.
- Class 4: Although there was a slight increase in the backlog figure for pending caseload exceeding the 8 months standard, there has been a larger decrease in the pending caseload exceeding the 16 months standard. This reveals that progress is being made in finalising the older cases. The slight increase in cases exceeding 8 months is, in fact, a result of the decrease in total caseload (by 19%).
- Class 5: The significant decrease in the backlog figure for 2007 for pending cases exceeding both the 8 months and 16 months standard is representative of the actual decrease in the pending caseload. The improvements reflect the success of case management in the Class 5 list.

If the national time standards are used, the results of the backlog indicator for the Court in 2007 are:

**Table 5.6 Backlog Indicator (national time standards)**

	Unit	National Standards	2003	2004	2005	2006	2007
<b>Class 1</b>							
Pending caseload	no.		593	611	653	457	328
Cases > 12 months	%	10	6.9	5.4	9.6	10.1	3.4
Cases > 24 months	%	0	1.7	0.84	0.9	2.2	1.5
<b>Class 2</b>							
Pending caseload	no.		5	23	11	7	40
Cases > 12 months	%	10	20.0	25.0	36.3	14.3	2.5
Cases > 24 months	%	0	0	4.3	9.1	0	0
<b>Class 3</b>							
Pending caseload	no.		147	204	319	165	130
Cases > 12 months	%	10	16.3	17.9	25.1	38.8	40.0
Cases > 24 months	%	0	7.4	6.3	8.1	10.9	13.1
<b>Class 4</b>							
Pending caseload	no.		142	109	142	164	133
Cases > 12 months	%	10	21.2	26.9	20.0	17.1	15.8
Cases > 24 months	%	0	7.5	10.1	10.8	6.7	2.3
<b>Class 5</b>							
Pending caseload	no.		81	66	81	63	79
Cases > 12 months	%	10	23.5	38.8	19.5	42.9	13.9
Cases > 24 months	%	0	7.4	3.0	9.1	4.8	8.9
<b>Class 6</b>							
Pending caseload	no.		1	2	8	2	8
Cases > 12 months	%	10	0	0	0	0	0
Cases > 24 months	%	0	0	0	0	0	0

This table shows that the Court's performance in Classes 1, 2 and 6 betters the national standard and in Classes 4 and 5 is comparable to the national standard. The result for Class 3 is explicable for the reasons given above in relation to the Court's time standards.

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## Delivery of reserved judgments

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

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

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

- 100% are to be delivered within 90 days of hearing.
- These are strict standards compared to other courts.
- As Table 5.7 shows, the Court's performance has improved in 2007, increasing the number of reserved judgments delivered for each of the 14, 30 and 90 days standard. The number of reserved judgments delivered within 90 days was 90% in 2007.

**Table 5.7 Reserved Judgments compliance with time standards**

	<b>Standard</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
% delivered within 14 days	50	39	42	35	33	39
% delivered within 30 days	75	61	64	51	52	62
% delivered within 90 days	100	90	88	90	80	90

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## Clearance rate

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

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

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

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

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

**Table 5.8 Clearance Rate**

	<b>2003</b> %	<b>2004</b> %	<b>2005</b> %	<b>2006</b> %	<b>2007</b> %
Class 1	103.8	98.6	96.4	119.3	113.0
Class 2	66.7	45.5	181.3	100.0	82.8
Class 3	70.5	79.8	63.5	192.4	121.7
Class 4	103.9	113.8	88.7	94.3	110.4
Class 5	110.3	119.2	83.9	131.5	78.9
Class 6	100.0	100.0	60.0	150.0	71.4
Classes 1-3	98.9	94.3	90.7	129.5	109.2
Classes 4-7	105.9	114.8	86.1	102.0	100.8
<b>Total</b>	<b>100.6</b>	<b>97.7</b>	<b>89.8</b>	<b>123.4</b>	<b>107.1</b>



These figures show that the clearance rate in 2007 has continued to be commendable. The total clearance rate for all of the Court's caseload exceeds 100% (107%) thereby decreasing the pending caseload. The three classes in which the clearance dropped below 100%, Classes 2, 5 and 6, all experienced stronger than usual registrations. Nevertheless, the Court continued to be productive in finalising cases in these jurisdictions, as the figures for the backlog indicator show.

The continued productivity, as evidenced by the clearance rate, is testament to the success of the Court's revised practice and procedure implemented in 2006 (discussed in the Court's Annual Review 2006) which has been continued and refined with the implementation of the new Practice Notes in 2007.

### Attendance indicator

The attendance indicator is an output indicator of efficiency where court attendances act as a proxy for input costs. The more attendances, the greater the costs both to the parties and to public resources. The number of attendances is the number of times that parties or their representatives are required to be present in Court to be heard by a judicial officer or mediator (including appointments that are adjourned or rescheduled).

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

Fewer attendances may suggest a more efficient process. However, intensive case management can increase the number of attendances although there may be countervailing benefits. Intensive case

management may maximise the prospects of settlement (and thereby reduce the parties' costs, for the number of cases queuing for hearing and the flow of work to appellate courts) or may narrow the issues for hearing (thus shortening hearing time and also reducing costs and queuing time for other cases waiting for hearing). In the Land and Environment Court, increased use of the facilities of conciliation conferences and case management conferences may be means to achieve these benefits.

Table 5.9 below compares the median number of pre-hearing attendances for each class of proceedings completed in 2006 and 2007.

**Table 5.9 Median number of Pre-hearing Attendances by Class**

	2006	2007
Class 1	5	3
Class 2	3	1
Class 3: (all matters)	4	5
Compensation claims	7	10
Valuation objections	4	3
Miscellaneous	2	5
Class 4	4	3
Class 5	6	3
Class 6	2	2

The table reveals that for all classes other than Class 3, the number of pre-hearing attendances decreased, evidencing the success of the Court's revised practice and procedure and Practice Notes. The number of pre-hearing attendances in Class 3 increased in 2007. However, this was a product of the finalisation in 2007 of older cases that, prior to 2007 already had many pre-hearing attendances. When these older cases are cleared, the figure should improve.

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## Appeals

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

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

First, Commissioner decisions in Classes 1, 2 and 3 may be appealed to a Judge of the Court pursuant to s 56A of the Court Act. Section 56A appeals are confined to errors of law and do not permit a review of the Commissioner's merit decision. As shown in Table 5.10, in 2007 the Court registered 29 s 56A appeals. Of these, 13 were completed at hearing, 8 were settled pre-hearing and 8 remained pending at 31 December 2007. Of the 13 that were completed at hearing, 4 were upheld. This represents 0.3% of the number of matters finalised in Classes 1, 2 and 3 (1319).

**Table 5.10 s 56A Appeal Outcomes**

	2004	2005	2006	2007
Total no. of appeals	14	19	12	29
No. finalised pre-hearing	5	7	3	8
No. of appeals to hearing	7	11	4	13
Outcome:				
Upheld	3	2	2	4
Dismissed	4	9	2	9

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

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

In 2007, 25 appeals with appointment were lodged with the Court of Appeal and 2 appeals were lodged with the Court of Criminal Appeal. The number of appeals to these appellate courts over the past five years is shown below in Table 5.11.

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**Table 5.11 Appeals to the Appellate Courts**

	2003	2004	2005	2006	2007
<b>Court of Appeal</b>					
Appeal with appointment	27	24	13	17	25
Appeal without appointment	33	43	12	30	19
<b>Total</b>	<b>60</b>	<b>67</b>	<b>25</b>	<b>47</b>	<b>44</b>
<b>Court of Criminal Appeal</b>					
Conviction and Sentence	2	1	0	4	2
Severity of Sentence	0	0	0	0	0
Sentence only	0	2	0	0	0
Crown Appeals	0	0	1	2	0
Costs	0	1	0	0	0
Stated case, section 5AE	0	1	0	2	0
<b>Total</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>8</b>	<b>2</b>

## 6 Education and Community Involvement

- Judicial Education and Professional Development
  - Domestic activities
  - International activities
- Education and Participation in the Community

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## Judicial Education and Professional Development

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

### Domestic activities

- Seven Judges and nine Commissioners attended the Land and Environment Court's Annual Conference at Gerringong. The conference was organised in partnership with the Judicial Commission of New South Wales. The two day conference programme included sessions on:
  - practice and procedure update;
  - role of law in environmental decision-making;
  - trends in alternative dispute resolution;
  - water recycling; and
  - expert evidence.
- Nine Commissioners and five Acting Commissioners attended a three-day training course, organised by the Australian Commercial Disputes Centre in conjunction with the Court, on conciliation under s 34 of the Court Act. Key addresses were delivered by:
  - Sir Laurence Street AC KCMG QC, "Overview of Mediation Experiences"
  - The Hon. Justice Brian J Preston, "Conciliation in the Land and

Environment Court of New South Wales: History, nature and benefits"

- The Hon. Justice Terry Sheahan AO, "Introduction to Conciliation" and "Experiences in ADR: Med-Arb".
- Mary Walker, "LEC conciliation practice model", "Stages of the conciliation process", "Principles of interest-based negotiation" and leading the conciliation practice session and simulation.
- Salli Browning, "Alternative Dispute Resolution" and leading the conciliation practice session and simulation

Participants engaged in simulated conciliations, both as disputants and as conciliator, to develop skills in conciliation. Training manuals with the addresses and relevant literature on ADR were provided to all participants.

- Two Commissioners attended the Planning Institute of Australia National Congress and one Commissioner attended the Royal Australian Institute of Architects Annual Conference.

### International activities

- The Chief Judge attended as a lecturer and trainer in a capacity building judicial education program on environmental law for the judges of the Court of Appeal of Kenya, Uganda and Tanzania. Amongst the number of presentations made by the Chief Judge was a paper on the role of the courts in relation to ecologically sustainable development.
- The Chief Judge attended the capacity building judicial education program on strengthening environmental adjudication in the courts as part of the Asian Justices Forum. Amongst the presentations made by the Chief Judge were papers on

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operating an environmental court and the role of expert witnesses and concurrent evidence in environmental adjudication.

- One Judge attended the 5th Worldwide Colloquium of the IUCN Academy of Environmental law and presented a paper on ecologically sustainable development in New South Wales.

## **Education and Participation in the Community**

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

The Judges' and Commissioners' activities during 2007 are summarised below:

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## The Hon. Justice Brian John Preston, Chief Judge

### Conferences

<b>9-11 February</b>	National Judicial College of Australia, Confidence In the Courts Conference, Canberra
<b>9-16 April</b>	Kenya National Judicial Colloquium on Environmental Law, Mombasa, Kenya
<b>5-8 June</b>	LAWASIA Conference 2007, Hong Kong
<b>5-6 July</b>	Asian Justices Forum on the Environment, Sharing Experience to Strengthen Environmental Adjudication in Asia, Manila, Philippines
<b>17-19 August</b>	Supreme Court of New South Wales Annual Conference, Magenta Shores

### Speaking Engagements

<b>8 February</b>	<i>Practice and Procedure in the Land and Environment Court of New South Wales</i> , LexisNexis Planning and Development and Environmental Law Conference, Sydney
<b>16 February</b>	Opening address, Beyond Environmental Law conference, co-hosted by Australian Centre for Environmental Law, University of Sydney, Faculty of Law and the Environmental Defenders' Office, Sydney
<b>26 February</b>	<i>Land and Environment Court practice and procedure</i> , briefing of the Council of the City of Sydney, Town Hall, Sydney
<b>3 March</b>	<i>Practice and Procedure In the Land and Environment Court of New South Wales</i> , New South Wales Bar Association Continuing Professional Development Mini-Conference, Orange
<b>5 March</b>	Book launch of R Lyster and A Bradbook, <i>Energy Law and the Environment</i> , Cambridge University Press, 2006, University of Sydney, Sydney
<b>16 March</b>	<i>Environmental Law 1927-2007: Retrospect and Prospect</i> , The Judges' Review Conference 2007: Past, Present and Future Perspectives on the Law, Sydney
<b>29 March</b>	<i>Environmental Crime</i> , CPD Seminar, Bar Association of New South Wales, Sydney
<b>9 April</b>	<i>The Role of the Judiciary in Promoting Sustainable Development, The Experience of Asia and the Pacific and Criminal Enforcement of Environmental Law in NSW: A Synopsis</i> , Kenya National Judicial Symposium on Environmental Law, Mombasa, Kenya
<b>20 April</b>	<i>Principles of Ecologically Sustainable Development</i> , University of Wollongong, Faculty of Law, lecture, Wollongong

<b>24 April</b>	<i>Principles of Ecologically Sustainable Development</i> , Responsible Business Forum, Breakfast Seminar, Sydney
<b>9 May</b>	<i>Practice and Procedure Update</i> , Land and Environment Court Conference 2007, Gerringong
<b>15 May</b>	<i>Land and Environment Court Practice Notes</i> , Environmental and Planning Law Association (NSW) Twilight Seminar, Sydney
<b>17 May</b>	<i>Practice and Procedure in the Land and Environment Court</i> , Queensland Environmental Law Association 2007 Conference, Kingscliff
<b>21 May</b>	<i>Expert Evidence</i> , Australian Property Institute NSW Division – Associate Professional Certificate in Expert Evidence
<b>25 May</b>	<i>Land and Environment Court Practice Notes</i> , Urban Development Institute of Australia, Sydney
<b>28 May</b>	<i>The New Trees (Disputes Between Neighbours) Act 2006 Explained</i> , Continuing Professional Development Seminar, College of Law, Sydney
<b>7 June</b>	<i>Principled Sentencing for Environmental Offences</i> , LAWASIA 2007 Conference, Hong Kong
<b>5 July</b>	<i>Operating an Environmental Court: Lessons from Australia, and Role of Expert Witnesses and Concurrent Evidence in Environment Adjudication</i> , Asian Justices Forum on the Environment, Sharing Experiences to Strengthen Environmental Adjudication in Asia, Manila, Philippines
<b>27 July</b>	<i>Land and Environment Court Practice Notes</i> , Local Government Lawyers Group luncheon, Law Society of New South Wales, Sydney
<b>1 August</b>	Opening address, <i>The Land and Environment Court in 2007: cases, procedures and outcomes</i> , NEERG Seminar, Sydney
<b>3 August</b>	<i>Conciliation In the Land and Environment Court of New South Wales: History, Nature &amp; Benefits</i> , ACDC Conciliation Training Seminar on s 34 conferences, Sydney
<b>8 August</b>	<i>New Land and Environment Court Practice Notes</i> , Australian Property Institute Seminar, Sydney
<b>21 August</b>	<i>Sentencing for environmental offences</i> , University of Sydney, Pollution Law Course, lecture, Sydney
<b>22 August</b>	<i>Administrative Law In an Environmental Context</i> , Bar Association of New South Wales, Administrative Law Section Annual Dinner, Sydney
<b>28 August</b>	<i>Operating an Environmental Court: Lessons from Australia</i> , delegation of trainee judges from Thailand, UNSW, Sydney
<b>30 August-1 September</b>	University of Sydney, Faculty of Law, Biodiversity Law Course, Sydney



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<b>19 September</b>	<i>Changing concepts of property in environmental law</i> , University of Sydney, Faculty of Law, Advance Real Property lecture, Sydney
<b>21 September</b>	<i>Conciliation in the Land and Environment Court</i> , training seminar, Local Government Lawyers Group, Sydney
<b>25 September</b>	<i>Conciliation in the Land and Environment Court</i> , training seminar, Bar Association of New South Wales, Sydney
<b>26 September</b>	<i>The Environment and its Influence on the Law</i> , Keynote address, Legal Aid New South Wales Civil Law Conference, Sydney
<b>27 September</b>	<i>Principles of Ecologically Sustainable Development</i> , UDIA (NSW) Seminar, Newcastle
<b>19 October</b>	<i>Practice and Procedure in the Land and Environment Court</i> , Vision Splendid – City/Country Best Planning Practices, Planning Institute Australia Conference, Medlow Bath
<b>15 November</b>	<i>The Land and Environment Court of New South Wales: Moving towards a Multi-Door Courthouse</i> , 2007 Environmental and Planning Law Association (NSW) Conference, Penrith
<b>15 November</b>	<i>The Land and Environment Court of New South Wales: Moving towards a Multi-Door Courthouse</i> , NSW Chapter LEADR Annual Dinner, Sydney
<b>4 December</b>	<i>Expert Evidence in the Land and Environment Court</i> , Environmental Institute of Australia and New Zealand Seminar, Sydney

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## Publications

“Environmental Crime”, *Environmental Responsibilities Law New South Wales*, Law Book Co, Sydney, 2007

“Principled sentencing for environmental offences – Part 1: Purposes of sentencing” (2007) 31(2) *Criminal Law Journal* 91

“Principled sentencing for environmental offences – Part 2: Sentencing considerations and options” (2007) 31(3) *Criminal Law Journal* 142

“Environmental Law 1927-2007: Retrospect and Prospect”, (2007) 81 *Australian Law Journal* 616

“Conciliation in the Land and Environment Court of New South Wales: History, nature & benefits”, (2007) 23 *Local Government Law Journal* 110

“Administrative law in an environmental context: An update”, (2007) 15 *Australian Journal of Administrative Law*

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## **Membership of Legal, Cultural or Benevolent Organisations**

Official member, Judicial Commission of New South Wales

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

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

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Member, Environmental Law Commission, The World Conservation Union (IUCN)

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Member, Australian Centre for Environmental Law (Sydney)

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

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Member, Editorial Advisory Board, Asia Pacific Journal of Environmental Law

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## **Delegations and International Assistance**

**9-17 June**                      Judicial delegation to national, provincial and local courts of Shenzhen, Guangdong and Hubei, China

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**28 August**                      Delegation of trainee judges from Thailand

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## The Hon. Mr Justice David Henry Lloyd

### Conferences

**6-8 October** Judicial Conference of Australia Colloquium, Canberra

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### Speaking Engagements

**14 & 21 April** Local Court of New South Wales Judgment Writing Program, Judicial Commission of New South Wales, Sydney

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**14-18 May** Chair, National Judicial Orientation Program, Melbourne

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**27-29 August** Federal Magistrates Judicial College of Australia, Melbourne

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**30-31 August** District Court of New South Wales Judgment Writing Program, Judicial Commission of New South Wales, Sydney

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**3-4 September** Judgment Writing Master Class for judges of the Supreme Court, District Court and Local Court of New South Wales, Judicial Commission of New South Wales, Sydney

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**29 October-2 November** Chair, National Judicial Orientation Program, Sydney

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### Membership of Legal, Cultural or Benevolent Organisations

Member, National Judicial College of Australia Advisory Committee

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

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

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Member, Governing Council, Judicial Conference of Australia

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### Publications

“How to Develop Effective Judgment Writing” (2007) 19(5) *Judicial Officers’ Bulletin* 41-43

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## The Hon. Justice Nicola Hope Margaret Pain

### Speaking Engagements

- |                     |   |
|---------------------|---|
| <b>28 August</b>    | <i>Operation and jurisprudence of the New South Wales Land and Environment Court</i> , address to delegation of lawyers from South Pacific region attending Rule of Law conference arranged by Law Council of Australia |
| <b>12 September</b> | Book launch of R Lyster et al <i>Environmental &amp; Planning Law In New South Wales</i> (Federation Press, 2007)   |
| <b>26 October</b>   | <i>Legal Framework of Water Resource Management on “The Right to Water”</i> , address to the International Development Law Organisation conference, Sydney  |
| <b>8 November</b>   | <i>Networking and Environmental Law</i> , address to the Women Lawyers Association, Sydney  |
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## The Hon. Justice Jayne Margaret Jagot

### Conferences

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|--------------------|---|
| <b>16 November</b> | <i>Recent Updates – The Latest Must Know Cases</i> , Environment and Planning Law Association (NSW) Conference, Co-chair, Penrith |
| <b>17 November</b> | Provision of Expert Evidence Workshop – Moot court, National Institute of Forensic Science – UTS, Faculty of Law, Sydney          |
| <b>23 November</b> | Royal Institution of Chartered Surveyors Interstate Property Moot Court 2007, Land Court of Queensland, Brisbane                  |
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### Speaking Engagements

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|---------------------|---|
| <b>15 September</b> | <i>Valuation, Mid and North Coast Valuers Group Seminar, Port Macquarie</i> |
|---------------------|---|
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## The Hon. Justice Peter Meldrum Biscoe

### Commissions in Other Courts

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

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### Conferences

**31 May – 5 June** 5th Worldwide Colloquium of the IUCN Academy of Environmental Law “Rio + 15: a Legal Critique of Ecologically Sustainable Development”, Paraty, Brazil

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### Speaking Engagements

**1 March** Environment and Planning Law Seminar, University of New South Wales Law Faculty

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**11 May** Address at University of New South Wales Combined Faculty of Law and Faculty of Built Environment Graduation ceremony

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**2 June** *Ecologically Sustainable Development: In New South Wales*, 5th Worldwide Colloquium of the IUCN Academy of International Law, Paraty, Brazil

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### Delegations and International Assistance

**13 March** Visit by Filipino Delegation on land law

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### Publications

“Freezing and Search Orders”, Federal Court of Australia Forms and Precedents

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### Membership of Legal, Cultural or Benevolent Organisations

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

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## Mr Stafford Watts, Commissioner

### Speaking Engagements

**1 August**            *The Land and Environment Court and the Planning Principles*, The Land and Environment Court in 2007 cases, procedures and outcomes, NEERG seminar Sydney

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**5 October**           *The Role of the Land and Environment Court of NSW in Planning and Environmental Decision Making*, lecture, Macquarie University, Department of Physical Geography, Sydney

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## Mr Trevor Bly, Commissioner

### Conferences

**2-4 May**            Planning Institute of Australia, National Congress, Perth

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**15 November**      Environmental and Planning Law Association (NSW) Conference, Penrith

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### Speaking Engagements

**21 September**      *Section 34 Conferences*, Local Government Lawyers Group, Sydney

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## Mr Robert Hussey, Commissioner

### Speaking Engagements

**18 May**            *Practice and Procedure in the Land and Environment Court*, Urban Development Institute of Australia CPD course, Sydney

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**14 September**      *Practice and Procedure in the Land and Environment Court*, Urban Development Institute of Australia CPD course, Sydney

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## Mr Kevin Hoffman, Commissioner

### Conferences

**2-6 October** Royal Australian Institute of Architects Annual Conference – Country Division

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### Speaking Engagements

**1 March** Presentation of two Scholarships in the Master of Urban Development and Design Program, University of New South Wales, Sydney

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**13 April** Presentation of Urban Design Award 2006, University of Newcastle

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**27 November** Announcement of Urban Design Award 2007, University of Newcastle

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### Appointments and Sponsorships

**12 October** University of Newcastle Faculty Advisory Board Member

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**13 November** University of Newcastle School of Architecture and the Built Environment, assessment of graduands urban design projects

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**Sponsorship** Sponsor of two University of New South Wales Urban Design Scholarships, The Faculty of the Built Environment, Master of Urban Development and Design

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Sponsor of University of Newcastle Graduands Urban Design Award, The School of Architecture and the Built Environment

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## Mr Graham Brown, Commissioner

### Speaking Engagements

**17 October** *The Land and Environment Court of NSW – Help or Hindrance?*, Presentation to Building Designers Association, Sydney

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**16 November** *Say what you mean and mean what you say – plain speaking conditions*, Environmental and Planning Law Association (NSW) Conference, Penrith

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## Ms Jan Murrell, Commissioner

### Speaking Engagements

**11 September**      *Merit Appeals*, lecture to Masters students in planning, University of Sydney, Sydney

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## Ms Annelise Tuor, Commissioner

### Conferences

**1-4 May**              Planning Institute of Australia, National Congress, Perth

**15 November**      Environmental and Planning Law Association (NSW) Conference, Penrith

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## Mr Tim Moore, Commissioner

### Speaking Engagements

**11 July**              *Expert evidence in the Land and Environment Court*, Australian Property Institute – Practice and Procedure

**28 November**      *Expert evidence in the Land and Environment Court*, Australian Property Institute – Associate Professional Certificate

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# **Appendices**

**Appendix 1 – Court Users Group**

**Appendix 2 – Court Committees**

# Appendix 1 – Court Users Group

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## Court Users Group

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

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

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

## Members during 2007

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The Hon. Justice Brian Preston, Chief Judge (Chairperson)	Land and Environment Court
The Hon. Justice Jayne Jagot	Land and Environment Court
Dr John Roseth, Senior Commissioner	Land and Environment Court
Ms Susan Dixon, Registrar	Land and Environment Court
Mr Peter Callaghan SC	Institute of Arbitrators and Mediators
Mr Grant Christmas	Local Government Association of New South Wales and Shires Association of New South Wales
Mr James Eager	Australian Property Institute
Mr Ross Fox	Department of Environment and Climate Change
Ms Katherin Gardner	Law Society of New South Wales
Mr Chris Hallam	Engineers Australia
Mr Ian Hemmings	Environment and Planning Law Association
Mr James Johnson	Nature Conservation Council of New South Wales
Dr Jeff Kildea	New South Wales Bar Association
Mr Paul Lalich	NSW Urban Taskforce
Ms Helen MacFarlane	Urban Development Institute of Australia
Mr Warwick Mayne-Wilson	Australian Institute of Landscape Architects
Ms Louise McAndrew	Department of Planning

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Ms Jacqueline Moore	Department of Water and Energy
Mr Michael Neustein	Royal Australian Institute of Architects (NSW Chapter)
Mr Stuart Simington	Housing Industry Association
Cr Michael Raymond	Local Government Representatives
Ms Kirsty Ruddock	Environmental Defenders' Office
Mr Eugene Sarich	Australian Institute of Building Surveyors and Australian Institute of Environmental Health
Mr Chris Shaw	Property Council of Australia
Mr Gary Shiels	Planning Institute of Australia (NSW Division)
Ms Mary-Lynne Taylor	Urban Development Institute of Australia
Ms Julie Walsh	Law Society Development and Planning Committee
Mr Colin Weatherby	Institution of Surveyors New South Wales
Mr Ian Woodward	Local Government Lawyers Group

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## Appendix 2 – Court Committees

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### Court Committees

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

### Rules Committee

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

#### Members

The Hon. Justice Brian John Preston, Chief Judge

The Hon. Justice Jayne Margaret Jagot

The Hon. Justice Peter Meldrum Biscoe

### Education Committee

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

#### Members

The Hon. Mr Justice David Henry Lloyd (Chair)

Mr Trevor A Bly, Commissioner

Ms Susan Dixon, Registrar

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

Ms R Sheard, Conference Co-ordinator, Judicial Commission of New South Wales

### Library Committee

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

#### Members

The Hon. Justice Nicola Hope Margaret Pain

The Hon. Justice Jayne Margaret Jagot

Ms Julie Whitley, Court Librarian

### Website

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**Land and Environment  
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of New South Wales

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