



The Northern Territory of Australia

# The Lands, Planning and Mining Tribunal

# ANNUAL REPORT

# 2007 - 2008

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## **FROM THE CHAIRPERSON**

This is the eighth annual report provided by the Chairperson of the Lands, Planning and Mining Tribunal to the Minister, pursuant to section 38 of the *Lands, Planning and Mining Tribunal Act*.

Section 38 (1) of the Act provides as follows:

The Chairperson must provide the Minister with a report on the performance of the Tribunal's functions and the exercise of the Tribunal's powers during each financial year not later than 3 months after the financial year.

Mr David Loadman, who was appointed as the inaugural Chairperson of the Lands and Mining Tribunal (now the Lands, Planning and Mining Tribunal) on 1 June 2000, retired on 15 May 2007. On 15 June 2007 I was appointed Chairperson of the Lands, Planning and Mining Tribunal for a period of 5 years pursuant to section 29(1) of the *Lands, Planning and Mining Tribunal Act*.

The report is divided into six parts:

- The location and professional staff of the Tribunal
- The independence of the Tribunal
- The jurisdiction of the Tribunal
- Recent legislative developments
- Financial statements
- The performance of the Tribunal's functions and exercise of its powers during the 2007-2008 financial year

Dr John Allan Lowndes  
Chairperson of the Lands, Planning and Mining Tribunal

28 August 2008

## **THE LOCATION AND PROFESSIONAL STAFF OF THE LANDS, PLANNING AND MINING TRIBUNAL**

|                    |   |
|--------------------|---|
| Location:          | 1 <sup>st</sup> Floor, Nichols Place<br>Cnr Cavenagh and Bennett Streets Darwin   |
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| General Inquiries: | Telephone (08) 8999 5001<br>Facsimile (08) 8999 5005  |
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| Website:           | <a href="http://www.nt.gov.au/justice/courtsupp/landplantrib/index.shtml">http://www.nt.gov.au/justice/courtsupp/landplantrib/index.shtml</a> |
| Chairperson:       | Dr John Allan Lowndes   |
| Registrar:         | Ms Nanette Burns  |

## **THE INDEPENDENCE OF THE TRIBUNAL**

The Lands, Planning and Mining Tribunal is an independent statutory body established under the *Lands, Planning and Mining Tribunal Act*, which commenced on 1 August 1998. Section 8 of the *Lands, Planning and Mining Tribunal Act* provides:

In performing a function or exercising a power, the Tribunal is not subject to the direction of the Minister.

## **THE JURISDICTION OF THE LANDS, PLANNING AND MINING TRIBUNAL**

Although the Tribunal has a potentially broad jurisdiction under section 5 of the *Lands, Planning and Mining Act*, the jurisdiction of the Tribunal is currently confined to the following three areas:

- Hearing and determining planning appeals from decisions of the Development Consent Authority;
- Hearing and making recommendations about objections to the acquisition of land under the *Lands Acquisition Act* by persons whose interests in land will be divested, modified or affected by the acquisition;
- Hearing and determining claims for compensation referred to the Tribunal under the provisions of the *Lands Acquisition Act*.

## **RECENT LEGISLATIVE DEVELOPMENTS**

As mentioned in the previous Annual Report there has been talk of enlarging the jurisdiction of the Tribunal in the areas of heritage conservation and mining. However, as at the date of this report, the Chairperson has not been informed of any extension of the jurisdiction of the Tribunal to those specific areas or any other areas.

## **FINANCIAL STATEMENTS**

Financial statements relevant to the operation and activities of the Tribunal during the last financial year form part of the Department of Justice Annual Report, and therefore there is no requirement to include such financial information in this report.

## **PERFORMANCE OF THE TRIBUNAL'S FUNCTIONS AND EXERCISE OF ITS POWERS DURING THE FINANCIAL YEAR 2007- 2008**

### **A. PLANNING ACT APPEALS**

#### **(1) The appellate process**

The Lands, Planning and Mining Tribunal is established as the Appeals Tribunal for the purposes of hearing and determining appeals under Part 9 of the *Planning Act*.

Briefly stated, the processes involved in hearing and determining such appeals are as follows.

The Tribunal is empowered to hear and determine the following appeals:

- Appeal against refusal to issue a development permit;
- Appeal if consent authority does not determine a development application;
- Appeal against refusal to extend period of a development application;
- Appeal against determination of a development application;
- Appeal against refusal to refund or remit a contribution;
- Appeals by third parties in respect of a development application.

The appeal process begins with the lodgement of a notice of appeal. As soon as practicable after a notice of appeal has been lodged the Registrar of the Lands, Planning and Mining Tribunal must fix a date, time and place for a conference between the parties. As soon as reasonably practicable after a notice of appeal has been lodged the Registrar must nominate a mediator to mediate and preside at a conference.

The objectives of the conference are to determine the matters in dispute between the parties and to enable the parties to discuss their reasons for instigating or resisting the appeal, and where possible to settle or resolve the matters in dispute, without requiring the appeal to be heard and determined by the Tribunal.

If a conference has been held and a compromise or settlement has not been reached the appellant may give notice to the Registrar that he or she wishes the matter to be heard by the Tribunal.

After the giving of such notice the parties must make written submissions to the Tribunal. Following the receipt of such submissions, the Tribunal may, if it thinks fit, require a party or any person to appear before it and answer questions put to him or her by the Tribunal.

Following that process, the Tribunal must determine the appeal. The Tribunal must give written reasons for, and maintain a record of, its determinations.

## (2) Statistical data

| <b>(a) Statistics for the financial year 2006 - 2007</b> |   |  |
|--|---|--|
| Planning appeals lodged                                  | 9 | LMT 98 2006 P<br>LMT 99 2006 P<br>LMT 100 2006 P<br>LMT 101 2006 P<br>LMT 102 2006 P<br>LMT 105 2007 P<br>LMT 106 2007 P<br>LMT 107 2007 P<br>LMT 108 2007 P |
| Planning appeals settled at mediation                    | 8 | LMT 95 2006 P<br>LMT 96 2006 P<br>LMT 97 2006 P<br>LMT 100 2006 P<br>LMT 102 2006 P<br>LMT 105 2007 P<br>LMT 106 2007 P<br>LMT 108 2007 P                    |
| Planning appeals determined by the Tribunal              | 1 | LMT 98 2006 P  |
| Planning appeals outstanding as at 30 June 2007          | 3 | LMT 99 2006 P<br>LMT 101 2006 P<br>LMT 107 2007 P  |

It will be seen from the above table that during the 2006–2007 financial year, eight planning appeals were settled at mediation and one appeal was determined by the Tribunal. Applying the performance criterion – timeliness – the average time taken to finalise those appeals, whether by way of resolution at mediation or by way of determination by the Tribunal, was 63.4 days.

| <b>(b) Statistics for the financial year 2007 – 2008</b>       |   |  |
|--|---|--|
| Planning appeals outstanding as at 30 June 2007                | 3 | LMT 99 2006 P<br>LMT 101 2006 P<br>LMT 107 2007 P                    |
| Planning appeals lodged  | 4 | LMT 109 2007 P<br>LMT 110 2007 P<br>LMT 111 2007 P<br>LMT 112 2008 P |
| Planning appeals settled at mediation                          | 4 | LMT 107 2007 P<br>LMT 109 2007 P<br>LMT 110 2007 P<br>LMT 111 2007 P |
| Planning appeals determined by the Tribunal                    | 1 | LMT 101 2006 P   |
| Planning appeals remitted by the Supreme Court to the Tribunal | 1 | LMT 98 2006 P  |
| Planning appeals outstanding as at 30 June 2008                | 3 | LMT 98 2006 P<br>LMT 99 2006 P<br>LMT 112 2008 P                     |

As shown in the table above, 4 planning appeals were settled at mediation and 1 appeal was determined by the Tribunal. The average time taken to finalise those appeals was 149.6 days.

The statutory 2 month period for the delivery of a decision was adhered to.

### **(3) Appeals from the Tribunal to the Supreme Court**

As stated in the previous Annual Report, the Tribunal's decision in the matter of *Phelps v Development Consent Authority* (LMT 98 2006, decided by the Tribunal on 10 January 2007) was appealed to the Supreme Court. The appeal was allowed by consent on 12 September 2007 and, as referred to in the above table, was remitted to the Tribunal for further hearing.

## **B. LAND ACQUISITION APPLICATIONS**

### **(1) The Tribunal process**

Very briefly, the process before the Tribunal is as follows.

Under the *Lands Acquisition Act* either the Minister or the person objecting to an acquisition may apply to the Tribunal to have the objection to the acquisition heard. The Tribunal is empowered to make a recommendation in relation to the acquisition of land, and in making that recommendation the Tribunal must take into account all matters that it considers relevant. Before making a recommendation the Tribunal must inquire of the parties to the proceeding whether there are any issues, relevant to its recommendation, in relation to which the parties have reached agreement; and if such agreement has been reached and the parties consent to the Tribunal doing so, the Tribunal must (if relevant) take the agreement in account.

The Act provides that an objection may be withdrawn at any time by notice in writing to the Minister.

The *Lands, Planning and Mining Tribunal Act* also makes provision for the withdrawal of objections. Where an objection is withdrawn the Tribunal must not proceed to make a recommendation about the objection and must dismiss the referral of the objection.

The Tribunal also has the power to dismiss an objection to a compulsory acquisition under the *Lands Acquisition Act* by a person if, in the Tribunal's opinion, the objection is, inter alia, not on the ground that the compulsory acquisition would affect the person's interest in the land proposed to be acquired.

The Tribunal is given power under the *Lands, Planning and Mining Tribunal Act* to hear and make a recommendation about an objection ex parte.

## (2) Statistical data

| <b>(a) Statistics for the financial year 2006 – 2007</b> |   |   |
|--|---|---|
| Land acquisition applications filed                      | 0 |   |
| Applications or objections withdrawn                     | 0 |   |
| Interlocutory decisions                                  | 0 |   |
| Decisions after Tribunal hearing                         | 0 |   |
| Decisions delivered ex parte                             | 0 |   |
| Matters settled by the parties                           | 0 |   |
| Outstanding matters as at 30 June 2007                   | 3 | LMT 33 2001 LA(N)<br>LMT 58 2002 LA(N)<br>LMT 60 2002 LA(N) |

| <b>(b) Statistics for the financial year 2007 – 2008</b> |   |   |
|--|---|---|
| Land acquisition matters outstanding as at 30 June 2007  | 3 | LMT 33 2001 LA(N)<br>LMT 58 2002 LA(N)<br>LMT 60 2002 LA(N) |
| Land acquisition applications filed                      | 0 |   |
| Applications or objections withdrawn                     | 0 |   |
| Interlocutory decisions                                  | 0 |   |
| Decisions after Tribunal hearing                         | 0 |   |
| Decisions delivered ex parte                             | 0 |   |
| Matters settled by the parties                           | 0 |   |
| Outstanding matters as at 30 June 2008                   | 3 | LMT 33 2001 LA(N)<br>LMT 58 2002 LA(N)<br>LMT 60 2002 LA(N) |

The delay in the 3 appeals referred to in the above table (LMT 33 2001 LA(N), LMT 58 2002 LA(N) and LMT 60 2002 LA(N) being finalised has been explained in several previous Annual Reports. The Tribunal and the parties have been awaiting the decision of the High Court in *Griffiths and the Minister for Lands, Planning and Environment* concerning the power of the Tribunal, conferred by s 5(1)(a) of the *Lands Planning and Mining Tribunal Act*, to hear and make recommendations about the objections to the acquisition of land under the *Lands Acquisition Act* by persons whose interest in the land will be divested, modified or affected by the acquisition, including objections by registered native title claimants and registered native title bodies corporate to the acquisition so far as it affects the registered native title rights and interests of the claimants and bodies. The High Court handed down its decision on 15 May 2008.

Without delving into the complexities and intricacies of the decision, the brief history of the matter is that the Minister for Lands, Planning and Environment gave notices to compulsory acquire certain unalienated land and “all interests including native title

rights and interest (if any)” therein. There were no registered or unregistered interests with respect to the land, except for Mr Griffiths’ applications on behalf of the Ngaliwuru and Nungali peoples for a claim to native title, which had been accepted for registration under the *Native Title Act 1993* (Cth). Mr Griffiths objected to the acquisition on behalf of the Ngaliwuru and Nungali peoples, and the Minister applied to the Lands and Mining Tribunal (as it was then called) to have those objections heard. Mr Griffiths challenged the Tribunal’s jurisdiction. The Tribunal heard the objection and, taking the view that it had jurisdiction, recommended the compulsory acquisition of native title, subject to the Northern Territory paying compensation if native title were determined by the Federal Court to have existed prior to acquisition. Following the Minister’s acceptance of those recommendations, Mr Griffiths commenced proceedings in the Supreme Court to set aside the Tribunal’s recommendations and the decision of the Minister to act upon those recommendations. The Supreme Court made such orders, whereupon the Minister successfully appealed to the Court of Appeal. Mr Griffiths then appealed to the High Court seeking a reinstatement of the orders made by the original appellate judge. The High Court, by a 5-2 majority, dismissed the appeal.

Following the *Griffiths* decision, the parties in the three outstanding appeals sought to adjourn the appeals to 2 December 2008 to enable them to consider the full implications of the High Court decision and to explore the possibility of settling the proceedings. The three matters stand adjourned to that date.

## **C. COMPENSATION APPLICATIONS**

### **(1) The Tribunal process**

As mentioned earlier in this report the Tribunal has jurisdiction to determine claims for compensation in relation to interests in acquired land.

The *Lands Acquisition Act* provides machinery for the referral of compensation claims to the Tribunal. Briefly, the procedure is as follows.

A claimant for compensation served with an offer of compensation must, within 60 days of service of that offer, either serve a notice of acceptance of that offer or serve a notice disputing the offer. If a claimant for compensation does neither of those things, the Minister may refer the matter to the Tribunal. If the Minister is served with a notice of dispute, he or she must within one month of being served with that notice (a) agree that the amount of compensation claimed in the notice of dispute is the appropriate amount of compensation, (b) make a further offer of compensation or (c) refer the matter to the Tribunal. A claimant for compensation served with a further offer must, within one month of being served with that offer, either agree that the amount of compensation offered is appropriate or refer the matter to the Tribunal.

A person who refers a matter to the Tribunal must transmit copies of the following documents to the Tribunal: notice of acquisition, offer (or further) of compensation and any notice of dispute.

On referral of a matter to the Tribunal, it must hear and determine whether the claimant for compensation is entitled to compensation under the *Lands Acquisition Act* and the amount of compensation to which the claimant is entitled. The Tribunal is required to give written reasons for its determination.

The *Lands, Planning and Mining Tribunal Act* gives the Tribunal the power to make consent orders in relation to compensation claims.

## (2) Statistical data

| <b>(a) Statistics for the financial year 2006 – 2007</b> |   |   |
|--|---|---|
| Claims for compensation referred to the Tribunal         | 1 | LMT 103 2006 C                                  |
| Interlocutory decisions                                  | 0 |   |
| Claims settled by parties                                | 1 | LMT 103 2006 C                                  |
| Claims determined by the Tribunal                        | 0 |   |
| Claims for compensation outstanding as at 30 June 2007   | 3 | LMT 83 2004 C<br>LMT 84 2004 C<br>LMT 85 2005 C |

| <b>(b) Statistics for the financial year 2007 – 2008</b> |   |   |
|--|---|---|
| Claims outstanding as at 30 June 2007                    | 3 | LMT 83 2004 C<br>LMT 84 2004 C<br>LMT 85 2005 C |
| Claims for compensation referred to the Tribunal         | 0 |   |
| Interlocutory decisions                                  | 0 |   |
| Claims settled by parties                                | 2 | LMT 83 2004 C<br>LMT 84 2004 C                  |
| Claims determined by the Tribunal                        | 0 |   |
| Claims for compensation outstanding as at 30 June 2008   | 1 | LMT 85 2005 C                                   |

As shown in the above table, 2 claims were finally settled by the parties on 28 September 2007 after very protracted settlement negotiations which were completed soon after the appointment of the present Chairperson. The average time taken to finalise those appeals was 1,026 days.

The remaining outstanding matter (LMT 85 2005 C) has been adjourned to 31 March 2009 awaiting finalisation of a related matter in the Supreme Court of the Northern Territory.