



The Northern Territory of Australia

The Lands and Mining Tribunal

Chairperson: David Loadman
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Darwin NT 0800

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The Hon Peter Toyne MLA
Attorney-General
Parliament House
State Square
Darwin NT 0800

Dear Attorney-General

Pursuant to section 38 of the *Lands and Mining Tribunal Act*, I submit to you the Annual Report on the operations of the Lands and Mining Tribunal for the period 1 July 2002 to 30 June 2003.

During this period, the Tribunal's functions have been primarily associated with compulsory land acquisitions and claims for compensation under the *Lands Acquisition Act* and planning appeals under the *Planning Act*.

In providing this report, I advise that the Tribunal's financial services have been 'outsourced' to the Courts Administration section of Department of Justice and all financial statements and compliance with the financial Management Regulations have been vested with the Director of that Unit. As a consequence any financial and audit reports will be contained in the Annual Report of that body.

Yours faithfully

David Loadman
Chairperson
30 July 2003



The Northern Territory of Australia

The Lands and Mining Tribunal

ANNUAL REPORT

2002 - 2003

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1. FROM THE CHAIRPERSON:

This is the third annual report in respect of the operations of the Lands and Mining Tribunal.

The Lands and Mining Tribunal came into effect on 1 June 2000 with the appointment of the inaugural Chairperson, Mr David Loadman.

Pursuant to the provisions of the *Lands and Mining Tribunal Act*, other jurisdictions are capable of being vested in the Tribunal. The jurisdiction of the Tribunal currently is confined to:

- A: Planning appeals from decisions of the Development Consent Authority;**
- B: Consideration of applications for compulsory land acquisition by the Minister for Lands and Planning.**
- C: Determination of applications for compensation under the *Lands Acquisition Act***
- D: Upon the commencement of the Swimming Pools Fencing Act on 1 January 2003, the Lands and Mining Tribunal became the appeals body for appeals available under that Act.**

Pursuant to the Lands and Mining Act, other jurisdictions may be vested in the Tribunal but, to date that has not occurred.

**David Loadman
Chairperson
30 July 2003**

2. AGENCY ACCESS

Location: 3rd Floor, 9-11 Cavenagh Street, Darwin

Postal Address: GPO Box 2014, Darwin NT 0801

General Inquiries: Telephone 8999 1471
Facsimile: 8999 1473

Email: landsmining.tribunal@nt.gov.au

Website: <http://www.nt.gov.au/justice/graphpages/courts/lands.shtm>

Chairperson David Loadman

Registrar Kathy Wadrop

3. ADMINISTRATION

The procedure of the Tribunal in this jurisdiction continues to be governed by the Acts, the Rules and Practice Directions.

The Tribunal has issued Practice Directions dealing with those functioning jurisdictions it is required to discharge and referred to above.

The Tribunal has established a Website which contains the Tribunal's Decisions, Practice Directions, Rules, Panels of Mediators and Forms. The Website address is shown as page 2 of this Report.

Mrs Kathy Wadrop is appointed as Registrar of the Tribunal pursuant to section 33(1) of the Lands and Mining Tribunal Act. No further staff have been appointed by the Chairperson.

The total staff being the Chairperson and the Registrar has proved an effective tool in maintaining the streamlined process for the Tribunal's functions, as intended in the legislation. Many Tribunals seem to have demonstrated difficulty in expeditious convention for the purpose of ventilating matters. In part this seems to be due to a large number of members being on those Tribunals. That of course, since there is a single Chairperson, is not a difficulty encountered by this Tribunal.

4. FINANCIAL STATEMENTS

Because of the curtailment of the Tribunal's staffing at the instance of the Chairperson, the financial aspects of the Tribunal's operations are in the hands of the Courts Administration section of Department of Justice. The financial statements relating discretely to the Tribunal will be published by that Unit as part of its duties.

5. LANDS AND MINING TRIBUNAL ACT

The Tribunal has requested some changes be made to the Act, including the change of name proposed, namely "Lands and Planning Tribunal", due to the fact that although there is some abstract relevance of the Mining Act, in practical terms there is no mining related function for this Tribunal. Resolution of this issue seems to be fraught with more difficulty than the Chairperson conceived.

6. LANDS AND MINING TRIBUNAL RULES

The Rules governing proceedings before the Tribunal are contained in Regulation Gazette 2000 No 51 and commenced on 25 October 2000. There was an amendment to the Rules published in regulation Gazette No 63 and it commenced on 10 January 2001.

There are currently some further Rule changes in the process of finalisation.

Both the *Lands Acquisition Act* and the *Planning Act* have procedural provisions of their own, which in some instances over-ride the Rules.

7. CHAIRPERSON'S TRAVEL OR ATTENDANCE AT CONFERENCES

The Chairperson attended no conferences during this financial year.

8. CHAIRPERSON'S OTHER ACTIVITIES

The Chairperson has responded to requests for information regarding proposed legislative changes to the Planning Act. In addition the proposed changes to the Act and the form of proposed planning instruments to replace those existing, were the subject of a presentation and meeting attending by the Chairperson on 17 March 2003, with Mr Jim O'Neil, Director of Planning and Mr John Gronow, Executive Director, from the Department of Lands Planning and Environment.

The Chairperson holds office as Stipendiary Magistrate conjointly with his position as Chairperson. The Chairperson discharges his duties in relation to both those offices as circumstances dictate.

9. TRIBUNAL'S FUNCTIONS

A: PLANNING ACT APPEALS

Pursuant to section 5(1)(j) of the *Lands and Mining Tribunal Act* the Tribunal is charged with discharging the functions of the Planning Appeals Tribunal. The power of the Tribunal to discharge this function is conferred by section 108 of the *Planning Act* NT.

The panel of mediators established pursuant to section 122(1) *Planning Act* is Attachment A to this Report.

The Tribunal reports a continued excellent response to the mediation process with an overall success rate of 60%. Mediation has proved a speedy and efficient method of resolving matters which is very acceptable to all stakeholders.

If mediation is not successful, the Tribunal procedure to date is that submissions be filed, for adjudication by the Chairperson.

The Chairperson has initiated a process whereupon formal views of the proposed planning development are scheduled. Not only the parties but any registered objectors have been invited to attend such views.

This attempt to involve objectors has only been moderately successful, as it shows a poor attendance from objectors at the views.

Statistics: From 1 June 2000 to 30 June 2003:

Planning appeals filed:	24
Planning appeals outstanding at end June 2003:	1
Planning Appeals settled at mediation:	14
Planning Appeals adjudicated by Chairperson:	9

Timeline

The average turnaround figure for a Planning Appeal from the date of filing the Notice to Appeal to completion is **2.4 months**.

9. TRIBUNAL'S FUNCTIONS (cont)

A: PLANNING ACT APPEALS (cont)

Appeals against the Tribunal's decisions

Under the Act, this jurisdiction may be appealed to the Supreme Court on a point of law.

To date, one Planning appeal decision has been referred to the Supreme Court on a ruling of costs on 1 July 2002. This matter was before Bailey J on 23 September 2002 and His Honour's decision handed down on 2 October 2002.

The applicant sought an order that the Lands and Mining Tribunal decision making an order for costs be quashed; and in the alternative, sought a declaration that the Lands and Mining Tribunal Act does not permit the Tribunal to make an order for costs, other than legal costs.

The application to quash the decision was refused. His Honour also held that it was open to the Tribunal to require the payment of costs by the unsuccessful respondent in this instance comprising the costs of the applicant's retaining a town planning consultant.

9. TRIBUNAL'S FUNCTIONS (cont)

B: COMPULSORY LAND ACQUISITION - LANDS ACQUISITION ACT

The Tribunal has continued to discharge the functions specified in sub-section 5(1)(a) of the *Lands and Mining Tribunal Act*, namely to hear and make recommendations about objections to the acquisition of land under the *Lands Acquisition Act*, including objections by registered native title claimants and registered native title bodies corporate.

Although section 37 of the *Lands Acquisition Act* provides for a reference to mediation in sub-section 4A, the Tribunal is unaware of any reference to mediation having occurred pursuant to those provisions.

Sub-section 4 *Lands Acquisition Act* refers to a reference to mediation by agreement. The Tribunal is not aware of any such a reference to date.

Section 37 *Lands Acquisition Act* is a "prescribed provision" pursuant to the provisions of section 36(5) *Lands and Mining Tribunal Act*. For that purpose and in compliance with section 36(3) the Chairperson has appointed a panel of mediators who are willing to act as mediators for the purpose of section 37 *Lands Acquisition Act*. A copy of that panel of mediators so appointed is included in Attachment A to this Report.

Despite continuing invitations to the parties in the Lands Acquisition jurisdiction to submit their disputes to mediation by the Tribunal, no party has elected to pursue that course.

This part of the jurisdiction has come to a virtual stop.

Statistics: From 1 June 2000 to 30 June 2003:

Applications re land acquisition filed:	40
Applications outstanding at end June 2003:	3
Applications withdrawn by the Minister:	2
Decisions handed down at directions hearings:	2
Decisions after full hearings:	5
Decisions handed down ex parte:	24
Objections to acquisitions withdrawn	4

9. TRIBUNAL'S FUNCTIONS (cont)

B: COMPULSORY LAND ACQUISITION - LANDS ACQUISITION ACT (cont)

Timeline

The average turnaround figure for an Application re Compulsory land Acquisition from the date of filing the Application to completion is **10 months**.

Applications for Review

The Lands Acquisition Act provides that a person aggrieved by a Ministerial decision to acquire land may apply to the Supreme Court for judicial review of that decision. By sub-section (2A) of section 45A LAA, it is expressly provided such a process does not extend to a review of the decision on its merits.

The Tribunal made a recommendation on 22 March 2003 recommending to the Minister that subject to certain conditions, land the subject of notices of acquire under the Act, be acquired by the Minister. The Minister pursuant to the recommendation gave notice to interested parties of his intention to accept the recommendation.

An application to review the Tribunal's recommendation and the Minister's decision was lodged at the Supreme Court on 14 May 2002. The matter was argued before His Honour Mr Justice Angel on 24 March 2003 and decision reserved. No decision has been handed down as at 30 June 2003.

9. TRIBUNAL'S FUNCTIONS (cont)

C: APPLICATIONS FOR COMPENSATION – LANDS ACQUISITION ACT

Pursuant to section 5 of the *Lands and Mining Tribunal Act*, the Tribunal has various specified functions including determination of applications for compulsory acquisition of land under the Lands Acquisition Act.

The first application for compensation arising out of the acquisition of land for the railway corridor was lodged with the Tribunal on 17 February 2003 and the first directions hearing was on 28 March 2003. The claim by the applicant is for compensation amounting to \$10 million.

The matter was listed for hearing in December 2003 but there is currently some doubt as to whether it will proceed on that day and future dates have been tentatively set aside by the Registrar in February 2004.

The second matter has been transferred to the Tribunal from the Lands Acquisition Tribunal, as a consequence of legislative changes to the Act. The compensation application had been with the preceding Tribunal for determination from 1997 and there appears there has been many difficulties in attempting resolution, not the least being any convening of that Tribunal was often delayed because of the necessity of convening several members of the Tribunal to be available at the same time. As has been mentioned elsewhere, the Lands and Mining Tribunal sees the position of having one Chairperson an advantage in being readily available to sit on Tribunal matters.

This Tribunal was seized of this matter on 25 June 2003 and a directions hearing has been listed for 5 August 2003. The compensation sought in this matter is \$200,000.

Statistics: From 1 June 2000 to 30 June 2003:

Applications re compensation filed:	2
Applications outstanding at end June 2003:	2

Timeline

The parties in both matters have indicated that they require formal hearings. It is the policy of the Tribunal to direct parties to file affidavit material in advance of hearing, such material to be evidence in chief/

9. TRIBUNAL'S FUNCTIONS (cont)

D: APPEALS UNDER THE SWIMMING POOL FENCING AUTHORITY ACT

No applications or appeals have been made to the Tribunal under this Act.

The Registrar has written to the Authority on 30 April 2003 requesting clarification of procedures under the appeals process, but to date has received no reply.

LANDS AND MINING TRIBUNAL

PANELS OF MEDIATORS

*Panel for Lands and Mining Tribunal Act Section 36(3)**Panel for Planning Act Section 122(1)*

NAME	Phone Number	Workplace
Barker-Hudson, Brydget	Ph: 89481828 Fax: 89483221	Medius PO Box 42828 Casuarina NT 0811
Brears, John	Ph: 8941 8948	Asset Services, Winnellie GPO Box 4159 Darwin NT 0801
Collier, Nardine	Ph: 89526566 Fax: 89530876	Bowden Collier & Deane PO Box 8245 Alice Springs NT 0871
Elliott, Peter	Ph: 89413070 Fax: 89419978	Edmund Barton Chambers GPO Box 3650 Darwin NT 0801
Leahy, Elizabeth	Ph: 89819517 Fax: 89819517	Darwin Dispute Resolution Centre GPO Box 2194 Darwin NT 0801
McIntyre, Patrick	Ph: 89413373 Fax: 89417018	John Toohey Chambers GPO Box 3348, Darwin NT 0801

Mediators are on both panels, for the Planning Act and the Lands and Mining Tribunal Act, unless indicated otherwise.

