



The Northern Territory of Australia

The Lands and Mining Tribunal

ANNUAL REPORT

2005 - 2006

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1. FROM THE CHAIRPERSON:

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

The Lands and Mining Tribunal came into existence on 1 June 2000. Mr David Loadman was the inaugural Chairperson and during the year under report has remained the Chairperson.

The designation of the Tribunal with effect from the 1st July 2006 is the Lands, Planning and Mining Tribunal.

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 comprises:

- 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 and applications for compensation upon such acquisition by the government;**
- C: Determination of applications for compensation under the *Lands Acquisition Act***

The Tribunal was approached, as was set out in the last annual report, and has agreed to adjudicate on appeals under the *Heritage Conservation Act*. It is the understanding of the Chairperson that the necessary legislation to bring about this situation has not eventuated. The issue of the Mining Wardens jurisdiction is no further advanced from what it was last year.

The Chairperson also holds office as the Presidents' delegate of the Mental Health Review Tribunal and that Tribunal shares physically the accommodation of the Lands and Mining Tribunal at 9 – 11 Cavenagh Street although in the Chairperson's perception the current accommodation is barely adequate and alternative accommodation has been requested.

In terms of the amending legislation, which in part, changes the name of the Tribunal to the Lands, Planning and Mining Tribunal, there are amendments to the term of office of the Chairperson and there are other changes with which this report will not be burdened. In general terms from the 1st July 2006, any Magistrate is capable of being appointed to discharge the functions of a member of the Lands, Planning and Mining Tribunal. There are also changes in the telephone number and fax addresses, those new details being set out in the succeeding heading of this report "Agency Access". Of all the amendments made to the *Planning Act*, the most significant from a practical point of view is the provision for third party appeals to be made in relation to decisions of the Development Consent Authority. There were no such appeals in the year under report.

David Loadman
Chairperson

2. AGENCY ACCESS

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

Postal Address: GPO Box 2014, Darwin NT 0801

General Inquiries: Telephone 8985 8671
Facsimile: 8985 8673

Email: landsmining.tribunal@nt.gov.au

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

Chairperson David Loadman

Registrar Nanette Burns

3. ADMINISTRATION

The Tribunal sees no point in repeating precisely the same comment in relation to Rules, Practice Directions and the Website which were the subject of comment in the previous report.

Nanette Burns remains the Registrar of the Tribunal.

She has discharged her duties despite some extensive personal difficulties in an exemplary way. Thankfully no further administrative catastrophes have occurred during the year under report. During a recent absence by Nanette Burns, Alice Reed acted as the Registrar and managed to ensure the Tribunal didn't end up on the rocks. Alice has now returned to New South Wales to pursue legal studies and other matters.

4. FINANCIAL STATEMENTS

The financial aspects of the Tribunal's operations are in the hands of the Court Supports Services 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, PLANNING AND MINING TRIBUNAL ACT (from 1.07.06)

As commented elsewhere in this report the legislation foreshadowed in the last report has been enacted and those problems referred to in the last report warranting amending legislation have been addressed.

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.

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

7. CHAIRPERSON'S TRAVEL OR ATTENDANCE AT CONFERENCES

The Chairperson did not attend any conference or travel during the year under report but will attend an ACPECT conference to be held in Queensland in September 2006.

8. CHAIRPERSON'S OTHER ACTIVITIES

The Chairperson continues in office as the Northern Territory's representative on the Council of Australian Tribunals ("COAT").

He 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.

Finally he holds office as the Presidents' Delegate of the Mental Health Review Tribunal NT until the 31st day of December 2006.

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

The Tribunal reports a continued excellent outcome in the mediation process with an overall success rate of 50%. Mediation has proved a speedy and efficient method of resolving Planning Appeals.

Where mediation has not been successful, the matter has had to be resolved in accordance with the procedure set out in the *Act*.

Against a decision in Robert Roos and Beverly June Roos v Development Consent Authority LMT-87-2005-P an appeal was noted to the Supreme Court.

The appeal was not ventilated because the relevant parties concluded a settlement between themselves and the matter was disposed of in accordance with that resolution.

The appeal conceptually would have entailed the ventilation of several long standing areas of disagreement between the Tribunal and the Development Consent Authority. Prior to the appeal being noted, at the direction of the Department of Justice, the Tribunal briefed the Solicitor General for an opinion. The Solicitor General declined to provide an opinion because of the perceived incipient ventilation of some of those issues in respect of the appeal referred to. When the appeal resolved as has been indicated, the Chairperson was again directed by the Department of Justice to withdraw a request for an opinion on several highly important matters from Cridlands who had been briefed for the purposes of representing the Tribunals' interests in the said appeal. The Chairperson was directed to again refer the matter to the Solicitor General. The Solicitor General's opinion has still not been received and resolution of the issues the subject of the brief for his opinion, remain unresolved. The Tribunal believes it is beneficial to mention examples of some of these matters.

Firstly it is the contention of the Development Consent Authority that no material coming into existence after the Authority had considered any relevant application can relevantly be taken into account by the Tribunal in relation to any appeal noted against its decision. Mr David Farquhar of Cridlands is of the view that such a contention is not valid. It has always been the Tribunal's contention that it is able to consider such additional material. So for example, where an employee of DIPE has ventured some opinion as to an alleged architectural shortcoming, the Tribunal is empowered to seek advice in that regard and has done so. The Tribunal has acted on that advice. The Tribunal has always maintained as it still does, that it is empowered to consider such material in arriving at any decision in respect of an appeal.

The legislation including the amended legislation to operate from 1st July 2006, does not provide for any advice obtained by the Tribunal or any discussion with someone retained for the purposes of giving that advice to be supplied to the parties involved for their comment. As a consequence of a comment by His Honour Mr Justice Angel made prior to the conclusion of submissions and argument from the parties, as to what he would have done in respect of the appeal referred to above had settlement not occurred which comment the Chairperson respectfully suggests was inappropriate, the Tribunal is as a matter of practice providing the parties with information as to any communication the Chairperson makes with an expert whose advice is being sought in relation to any matter arising out of an appeal against a decision of the Development Consent Authority.

The opinion of the Solicitor General has now been awaited for a period of 9 months and until it is received there is little possibility of attempting to persuade the Development Consent Authority that appeals lodged, for

example on those grounds set out above, should not be pursued. Unless that concession is made by them they will no doubt continue to note appeals on those and other grounds involving the incurring of fairly large amounts of legal costs.

Statistics: From 1 June 2000 to 30 June 2006:

Planning appeals filed:	48
Planning appeals outstanding at end June 2006:	3
Planning Appeals settled at mediation:	29
Planning Appeals adjudicated by Chairperson:	18

Timeline

The prospective problem of the difficulty in delivering a decision within the mandated 2 months has been resolved by the amendment of the *Lands and Mining Tribunal Act*.

The average turnaround figure for a Planning Appeal from the date of filing the Notice to Appeal to completion is 2.5 months. All decisions by law were to be delivered in writing within 2 months of the Tribunals' receipt of the last relevant evidence or submission. This requirement has always been met.

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 the current 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 yet elected to pursue that course.

Statistics: From 1 June 2000 to 30 June 2006:

Applications re land acquisition filed:	44
Applications outstanding at end June 2006:	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
Settled by Parties:	2
Objections to acquisitions withdrawn:	6

The average turnaround figure for an Application re Compulsory land Acquisition from the date of filing the Application to completion is 8.5 months. As with Planning Appeals the time for delivery of a decision is 2 months from receipt of the last evidence or submission.

Applications for Review

Although the Tribunal has not been provided with any official communication, anecdotally when an application for leave to appeal to the High Court of Australia in relation to the government seeking to acquire land at Timber Creek was heard, the fact that there had been no Native Title determination of the Timber Creek land claims was perceived to preclude an application for special leave being ventilated. Anecdotally also, the High Court apparently communicated to the parties that an application for special leave would probably be favourably received if Native Title in respect of the relevant land in fact was first established at law.

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.

Although technically not within the period of the Annual Report, and only according to newspaper reports, the claim for Native Title in the Timber Creek area has been resolved in a finding that non exclusive Native Title exists. Leaving aside the prospect of His Honour Mark Winebergs' decision being appealed, it may be that in the light of that decision the matters referred to above will be capable of resolution by the High Court.

This portends well for the resumption of land acquisition by the government.

In the past four years or more no compulsory land acquisition has been pursued on the understanding of the Chairperson, no compulsory land acquisition has been possible in respect of land to which a Native Title claim is made because of the uncertainty unresolved in respect of the Timber Creek matter. Clearly there will be no resolution until the High Court has made its decision. No doubt the High Court upholds the decision of the Tribunal made at first instance, many claims for compulsory acquisition of land will eventuate but logic dictates will probably not be as contentious as has been the case in the past.

9. TRIBUNAL'S FUNCTIONS (cont)

C: APPLICATIONS FOR COMPENSATION – LANDS ACQUISITION ACT

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

There are two further applications for compensation by the same applicant as was referred to in the last Annual Report. There has been some action in relation to these matters and the Tribunal believes that settlement discussions are continuing and having regard to the principal issue having been resolved the Tribunal is still hopeful that there will be resolution without further adjudication.

In the 2004 report the Tribunal referred to the number of other similar matters which had not been finalised, but which had not been referred to the Tribunal. The position remains the same as it was last year.

Statistics: From 1 June 2000 to 30 June 2006:

Applications re compensation filed:	6
Application finalised:	3
Applications outstanding at end June 2006:	3

LANDS AND MINING TRIBUNAL

PANEL OF MEDIATORS

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

Name	Phone Number	Workplace
O'Donnell, Michael	Ph: 8946 6839 M: 0417 082 720	Charles Darwin University Darwin NT 0909
Brears, John	H/W: 8941 8948 Fax: 8941 8721 M: 0418 894 750	Sumarto Pty Ltd GPO Box 4159 Darwin NT 0801
Elliott, Peter	Ph: 8941 3070 Fax: 8941 9978	Edmund Barton Chambers GPO Box 3650 Darwin NT 0801
Sprigg, Alan	Ph: 8942 0338 Fax: 8942 0883 M: 0418 894 589	Territory Development Services PO Box 54 Nightcliff NT 0814
McIntyre, Patrick	Ph: 8941 3373 A/H: 8942 2722 M: 0417 805 956	John Toohey Chambers GPO Box 3348 Darwin NT 0801
Storey, Matthew	Ph: 8935 7768 A/H: 8985 2509 M: 0407 292 533	Department of Justice GPO Box 1722 Darwin NT 0801
Davis, Justine	Ph: 8985 1604 M: 0414 440 169	PO Box 1146, Nightcliff NT 0814
Vidot, Anthony	Ph: 8946 4800 M: 0406 016 749	ANGLICARE NT PO Box 36506, Winnellie NT 0821
Barker-Hudson, Brydget	Ph: 07 4773 5565 M: 0421 908 948	MEDIUS PO Box 1655, Thuringowa Central 4817

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

LANDS AND MINING TRIBUNAL
COMPLETED MATTERS

Mediation and settlement

Many of the matters that come before the Tribunal are resolved by mediation and or settlement between the parties. In these cases, formal decisions are not handed down. A copy of the final order on any of the following files is available to the public upon application to the Registrar.

LMT file number	Parties	Finalised date
03-2000-P	Martin and Patricia Oates -v- Development Consent Authority	04 Aug 2000
07-2000-P	Marrosan Nominees -v- Development Consent Authority	18 Sep 2000
15-2000-P	Hoang Van Tran and Mrs Tran -v- Development Consent Authority	15 Dec 2000
24-2001-P	Auleth Pty Ltd -v- Development Consent Authority	20 Mar 2001
32-2001-P	Softwood Plantations Pty Ltd -v- Development Consent Authority	28 Nov 2001
34-2001-P	Annie's Place NT -v- Development Consent Authority	18 Aug 2001
50-2001-P	Hoang van Tran and Thi Be Tran -v- Development Consent Authority	14 Jan 2002
52-2001-P	June D'Rozario & Associates Pty Ltd -v- Development Consent Authority	05 Feb 2002
53-2002-P	David Tarabbia -v- Development Consent Authority	15 May 2002
55-2002-P	T & G Builders (NT) Pty Ltd -v- Development Consent Authority	19 Jun 2002
57-2002-P	Darwin City Council -v- Development Consent Authority	18 Jul 2002
61-2002-P	Trans Media Group Pty Ltd -v- Development Consent Authority	22 Oct 2002
62-2002-P	Redco Investments Pty Ltd -v- Development Consent Authority	10 Dec 2002
63-2002-P	Biddlecombe Pty Ltd -v- Development Consent Authority	22 Nov 2002
65-2003-C	Minister for Lands and Planning -v- Albert Sydney Albany	02 Mar 2004
68-2003-C	David and Jennifer James -v- Northern Territory of Australia	09 Mar 2004
69-2004-P	June D'Rozario & Associates -v- Development Consent Authority	24 Mar 2004
76-2004-P	David and Pamela Shoobridge -v- Development Consent Authority	26 May 2004

74-2004-P	Network Design & Construction -v- Development Consent Authority	18 Jun 2004
75-2004-P	Network Design & Construction -v- Development Consent Authority	18 Jun 2004
76-2004-P	David and Pamela Shoobridge -v- Development Consent Authority	26 May 2004
77-2004-P	George Mallias -v- Development Consent Authority	22 Nov 2004
78-2004-P	Brenton Andrew McRae -v- Development Consent Authority	29 Oct 2004
79-2004-P	North Australian Helicopters -v- Development Consent Authority	14 Jan 2005
80-2004-P	Lend Lease Property Management -v- Development Consent Authority	17 Nov 2004
81-2004-P	Lindau Pty Ltd -v- Development Consent Authority	18 Nov 2004
82-2004-P	Corporate Developments Pty Ltd -v- Development Consent Authority	25 Feb 2005
86-2005-P	Jalouise Pty Ltd -v- Development Consent Authority	27 April 2005
89-2005-P	Hampton Transport Services -v- Development Consent Authority	10 June 2005
91-2005-P	Toveesea Pty Ltd -v- Development Consent Authority	28 Oct 2005
92-2006-P	Nair Nominees (NT) -v- Development Consent Authority	12 April 2006
93-2006-P	Nair Nominees (NT) -v- Development Consent Authority	12 April 2006
94-2006-P	Shaye Investments Pty Ltd -v- Development Consent Authority	16 May 2006

Decisions

<p>Qasco Northern Surveys Pty Ltd</p> <p>- v -</p> <p>Development Consent Authority</p>	<p>Download:</p> <p>90-2005-P (16 May 2006) (PDF)</p> <p>90-2005-P (16 May 2006) (Word)</p>
<p>Robert Roos and Beverly Roos</p> <p>- v -</p> <p>Development Consent Authority</p>	<p>Download:</p> <p>87-2005-P (31 Aug 2005) (PDF)</p> <p>87-2005-P (31 Aug 2005) (Word)</p>
<p>Darren, Kurt & Kylie Vries</p> <p>- v -</p> <p>Development Consent Authority</p>	<p>Download:</p> <p>88-2005-P (15 Aug 2005) (PDF)</p> <p>88-2005-P (15 Aug 2005) (Word)</p>

Territory Building Certifiers - v - Development Consent Authority	Download: 72-2004-P (1 Nov 2004) (PDF) 72-2004-P (1 Nov 2004) (Word)
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Ian Warren Quinn
- v -
Development Consent Authority

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Earl James & Associates -v- Development Consent Authority	Download: 66-2003-P (20 June 2003) (PDF) 66-2003-P (20 June 2003) (Word)
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June d'Rozario & Associates on behalf of
Westerna Australia Investments Pty Ltd
v
Development Consent Authority

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Minister for Lands, Planning and Environment -v- Risk and others	Download: 13-2000-LA(N) (18 Feb 2003) (PDF) 13-2000-LA(N) (18 Feb 2003) (Word)
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Minister for Lands, Planning and Environment

-v-
Huddleston and others

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TMP Builders PTY LTD -v- Development Consent Authority	Download: 56-2002-P (11 Sep 2002) (PDF) 56-2002-P (11 Sep 2002) (Word)
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Minister for Lands Planning & Environment

-v-
**Paddy Huddleston & Others on behalf of
the Wagiman People**

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Minister for Lands Planning & Environment
-v-
William Maxwell Risk on behalf of the Larrakia People,
Tibby Quall on behalf of the Dangalaba People,
Ted Stanton & Others on behalf of the Kungarakan People,
Kathleen Mills & Others on behalf of the Kungarakan People

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Raymond & Denis David

v

Development Consent Authority

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John Robinson v Development Consent Authority	Download: 51-2001-P(04 Mar 2002) (PDF) 51-2001-P(04 Mar 2002) (Word)
Eileen Cavanagh Nominees PTY LTD ACN 059 836 264 v Development Consent Authority	Download: 49-2001-P(17 Jan 2002) (PDF) 49-2001-P(17 Jan 2002) (Word)

<p>A Matarazzo, GM Matarazzo, F Matarazzo, V Matarazzo</p> <p>v</p> <p>Development Consent Authority</p>	<p>Download:</p> <p>48-2001-P(17 Jan 2002) (PDF)</p> <p>48-2001-P(17 Jan 2002) (Word)</p>
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<p>Roger & Janet Steele</p> <p>v</p> <p>Development Consent Authority</p>	<p>Download:</p> <p>31-2001-P(29 Jun 2001) (PDF)</p> <p>31-2001-P(29 Jun 2001) (Word)</p>
<p>Minister for Lands Planning and Environment</p> <p>v</p> <p>Gary Manbaloo, Amy Marrapunyah, Ivy Brumby, Jessie Brown, Julie Williams, Marie Dowling & Rhonda Brumby</p>	<p>Download:</p> <p>19-2000-LA(N)(24 May 2001) (PDF)</p> <p>19-2000-LA(N)(24 May 2001) (Word)</p>
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<p>Minister for Lands Planning and Environment</p> <p>v</p> <p>Lorna Talbot, Robert Browne, and William Maxwell Risk on behalf of the Wulna and Larrakia People</p> <p>and</p> <p>Tibby Kevin Lance Quall</p>	<p>Download:</p> <p>21-2000-LA(N)(04 May 2001) (PDF)</p> <p>21-2000-LA(N)(04 May 2001) (Word)</p>

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Tibby Kevin Lance Quall

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