

## **Changes in the Land & Environment Court**

The Chief Judge of the Land & Environment, the Hon. Justice Peter McClellan QC, has been making substantial changes to the way his Court is run and the way expert evidence is given. As the representative of Engineers Australia on the Court Users Group, I have listened with interest to the changes being made and their effectiveness.

### Reduction in Number of Appeals

At the User Group meeting held in June, the Chief Judge advised that there has been a 13% reduction in Class 1 appeals in the year to date (end of May) compared with the same period in 2004. These are the “merit” appeals in which most engineering evidence is given. Representatives on the Court Users Group felt that this was partly due to the economy and partly due to the new Court procedures.

The Court is also offering what calls “a neutral evaluation”. This process provides the opportunity to consult with a Commissioner on the prospects of success for a pending Appeal. The Commissioners do not take notes. They provide a verbal opinion based on the information presented to them. If the matter does proceed to a hearing, this Commissioner has no further involvement. There have only been a handful of such evaluations to date, but results are promising.

If you want to know more about the operation of the Court plus details of the judgements handed down, see [www.lawlink.nsw.gov.au/lec](http://www.lawlink.nsw.gov.au/lec).

### Court Appointed Experts

The Court has successfully introduced the practice of appointing Court Experts in Class 1 and 3 Appeals. The Court Expert is briefed by both parties, and both parties are responsible for their fees. Fee estimates are initially given. There is available a Court Trust Fund to allow each party to pay the fee estimates in advance, if required. *Practice Direction Number 1 of 2005, Court Appointed Experts*, establishes the framework for the use of Court Experts. This framework allows an expert to bring detailed design deficiencies to the attention of the applicant, to allow their consultants to consider the issues prior to the Appeal being heard, making the process more efficient in resolving the resolvable, and at the same time reduce the costs.

The appointment of a Court Expert does not prevent the parties from having their own independent expert, if they do not agree with the Court Expert’s assessment. These experts then will typically confer, produce a joint report on the matters they agree and disagree on, and if appropriate, appear in the witness box together and present concurrent evidence. Concurrent evidence is an innovative approach where experts can often ask each other questions, or at least provide immediate responses to the views expressed by the other(s).

### Accreditation for Expert Witnesses

The Australian Property Institute (API), in association with the University of Sydney, is running a three-day course for Expert Witnesses, termed the Associate Professional Certificate in Expert Evidence. To date, it has been held in February, April and June,

with the next course to be held on 21-23 September 2005. The first two days are concerned with Court procedures, the principles of giving expert evidence and the role of court experts, while the third day includes case studies and a Moot Hearing. The Chief Judge considers that this course framework is very appropriate. He is the principal speaker on the second day of the course. He advised the Users Group that in due course, he expected all expert witnesses appearing in his Court to have completed this course. For further information, contact Kirsty Nargar at the API on 9299 1811, or [knargar@nsw.api.org.au](mailto:knargar@nsw.api.org.au).

Address by Chief Judge to Engineers Australia, 29<sup>th</sup> September

The Chief Judge has accepted an invitation to address members of Engineers Australia on Thursday 29<sup>th</sup> September 2005, at 6.00pm, in the Auditorium, Ground Floor, 118 Alfred Street, Milsons Point. He will talk on the role of the Court, recent changes in its operation, how expert evidence is viewed by the Court, the use of Court Appointed Experts and the training of expert witnesses, and answer your questions.

Chris Hallam  
Engineers Australia Representative, Court Users Group

**ENGINEERS AUSTRALIA SYDNEY DIVISION  
THURSDAY 29<sup>TH</sup> SEPTEMBER 2005**

**EXPERT EVIDENCE IN THE LAND & ENVIRONMENT COURT**

**The Hon. Justice Peter McClellan QC,  
Chief Judge, Land & Environment Court of NSW**

The Hon. Justice McClellan QC will address members on the changes he has been making in the Land & Environment Court, with particular regard to the role of expert witnesses and the presentation of expert evidence. Topics he will cover will include:

- Overview of changes in the Court
- Role of expert witnesses and Court Appointed Experts
- How Judges and Commissioners view expert evidence
- How experts can improve their preparation and presentation of evidence
- Role of expert conferences and concurrent evidence
- Accreditation for expert witnesses
- The future of the Court
- Questions

Venue

Engineers Australia Auditorium, Ground Floor, 118 Alfred Street, Milsons Point

Date and Time

Thursday 29<sup>th</sup> September 2005

Refreshments at 5.30pm, for a 6.00pm start. Finish time 7.30pm.

# Associate Professional Certificate



## In Expert Witness

For the Land and Environment Court



Expert evidence is commonly given in proceedings in classes 1, 2 and 3 of the Court's jurisdiction. The objective of this course is to give guidance to delegates wishing to undertake an expert witness role. The course will cover the process of appointment of experts by the Court, how experts are to conduct themselves including preparation of evidence, to all in this jurisdiction.

### The Program:

#### Wednesday 21

- Session One Introduction to the court structure of NSW  
- Dr John Keogh, Barrister, Third Floor, Culwulla Chambers
- Session Two Land & Environment Court of NSW - Land & Environment Act 1979  
- Susan Dixon, Registrar NSW Land & Environment Court
- Session Three Introduction Practice Directions  
- Maureen Peatman, Partner, Hunt & Hunt Lawyers
- Session Four Introduction to Expert Evidence  
- Patricia Lane, Barrister St James Hall

#### Thursday 22

- Session Five Preparation & Provision of Expert Evidence  
- Commissioner Tim Moore
- Session Six The Conduct of a Hearing  
- Chief Judge Peter McClellan, Senior Commissioner Dr John Roseth
- Session Seven Court Appointed Experts  
- Chief Judge Peter McClellan
- Session Eight Court Appointed Experts Discussion  
- Chief Judge Peter McClellan

#### Friday 23

#### Case Studies

- Compulsory Acquisition  
- Kevin Gothard, Real Estate Consultant & Valuer  
- Alan Hyam, Barrister, Culwulla Chambers
- Planning Issues  
- Terry Byrnes. Byrnes & Associates
- Planning Appeals  
- Michael Neustein, Neustein Rosenberg Partnership  
- Mary-Lynne Taylor, Norman Waterhouse
- Moot Hearing at Land & Environment Court

Name (for tag) ..... Tel No.....

Organisation (for tag) ..... Fax No.....

Address ..... Post Code .....

**Fee** \$990 including GST

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Signature .....

#### Conditions of Registration

1. Registrants can check with Kirsty Nargar on the availability of places.
2. Substitutions of participants may be made at any time
3. No refund will be made for cancellations received less than 7 days prior to the event date.
4. A registration form without payment is confirmation of attendance and incurs cancellation fees in accordance with cancellation policy. **No written confirmation** will be forwarded.
5. This form constitutes a **Tax Invoice** for the purposes of billing

*Please make cheques payable to Australian Property Institute*  
Return Registration, API, Level 3, 60 York Street, Sydney 2000 Tel (02) 9299 1811 Fax (02) 9299 1490  
**ABN 49 007 505 866**