

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES
BANCO COURT**

**PRESTON CJ AND
THE JUDGES OF THE
LAND AND ENVIRONMENT COURT**

TUESDAY 5 JULY 2016

**SWEARING IN CEREMONY OF
THE HONOURABLE JOHN ERNEST ROBSON
AS A JUSTICE OF THE LAND AND ENVIRONMENT COURT OF
NEW SOUTH WALES**

- 1 **ROBSON J:** Chief Judge I have the honour to announce that I have been appointed a judge of the Land and Environment Court of New South Wales and I present to you my commission.

(Commission read)

(Oaths of office taken)

- 2 **PRESTON CJ:** Justice Robson, I welcome you to the Court both on my own behalf and on behalf of all of the judges and commissioners of the Court.

- 3 **UPTON:** Your Honour, Justice Robson, it is with great pleasure I want to congratulate you today on your appointment to the Bench of the Land and Environment Court of New South Wales. I want to also extend my best wishes to your family who I know are here today to share in what must be an exceptionally proud moment for your whole family. To Penelope and to Holly and Lucia I look forward to meeting

them after these proceedings and of course my warmest congratulations to you all.

- 4 Your Honour has had a formidable legal career and as New South Wales Attorney General I am proud to take part in the swearing in of you as a judge in this Court. I want to take this opportunity to share with the Court, if you will, some of the journey and achievements that have brought you to this proud moment.
- 5 Your Honour lived in Tasmania as a child I am told. You boarded for some years at school and much to your displeasure I am told. When your family sold their business in Tasmania and moved to Sydney's northern beaches I hear that you insisted on following hot on their heels. I gather as a young man you showed promise as a swimmer a portent no doubt of your hardy constitution. One who swims and indeed swims well in a cold climate like Tasmania would have to have one.
- 6 Your Honour then graduated with Bachelor of Laws and Bachelor of Economics from the University of Sydney and was admitted as a solicitor in New South Wales in 1982. When your Honour became a partner at Gadens you were one of the youngest partners that firm had appointed. Your Honour was called to the Bar in 1989, as junior counsel you worked with notable Senior Counsel including those who would later join the bench as you have today. Justice Craig whose retirement led to your calling, Justice Tobias and Justice McClelland who's here with us today.
- 7 Your Honour was then appointed Senior Counsel in 2004. While your Honour is known for your environment and planning law practice you are also known for your specialisations in administrative law, commercial law and in equity. Your Honour's practice at the Bar has encompassed advisory, trial and appellate work and you have appeared in virtually all the jurisdictions including the High Court. You

have appeared in cases that have decided important elements of statutory construction and I note two examples. In the *Valuer-General v Fivex* your Honour appeared for the successful applicant in a test case concerning land valuation. And in *Warkworth Mining Limited v Bulga Milbrodale Progress Association Inc.* you appeared in the Court of Appeal for the successful respondent in a case that tested administrative law. This case was an appeal from the Land and Environment Court refusing approval for a major mining infrastructure project.

8 Of course your Honour's dedication to the law and to the legal profession extends beyond your work in the courtroom. Having read for a while on the 10th Floor of Wentworth Selborne you then moved to the 12th floor. Your Honour has been described as one of the pillars on which the 12th floor of Wentworth Selborne was built. Your Honour was head of chambers for a time and described as a highly energetic and effective head of chambers during a time of expansion and of change. At 12th floor Wentworth Selborne your Honour has been a sounding board, a dispenser of sage advice, a peacemaker and I'm told a godfather in the very best sense of that word. Those who know you assure me.

9 Your Honour is known to be approachable, razor smart and practical. You are also known to be an exceptionally hard worker. You are the first in the chambers every morning including many Sundays I am told, and it is said that you are easy to work for and with and that you find good in everyone you come across. You are also a man of generous spirit – that extends to sharing your time and expertise with your colleagues. As junior counsel your Honour took readers almost continuously for 15 years through which you mentored and tutored a dozen or more young lawyers in the nuts and bolts of working at the Bar. Your impact on these fledgling barristers was made clear as I understand it when they took you to lunch when you took silk. I am

also led to believe that a similar celebration is now in train to mark your elevation to the Bench.

- 10 Both the first and final of your readers shared the views that I will now take the liberty of sharing. Having your Honour as a tutor they said has been a singular honour and privilege for which a tremendous debt, both professional and personal, is owed. High praise indeed.
- 11 There are many at the Sydney Bar, some of them now silks, and still others on the Bench who also of course hold your Honour in very high regard. They are grateful for the insights you shared with them over the years. And more than a handful of these I know are here today to help celebrate your elevation to the Bench.
- 12 Your Honour's focus and propensity to neatness, including a clean desk policy, has been confirmed to me through multiple sources. I have been advised that more than a single piece of paper on your Honour's desk is unacceptable and that any page that serves no immediate purpose is returned or disposed of. In discussions with your Honour's colleagues I have learnt that you are also an accomplished sportsman. I mentioned earlier that your Honour was a champion swimmer as a young man, and so it was fitting that the move from the apple isle to Sydney's northern beaches brought you championship titles via Narrabeen Beach Surf Life Saving Club. I also understand that your Honour was a surf lifesaver while you studied at university. And that your speed on the sand led you to win the National Beach Sprinting Champion Award.
- 13 Your Honour I'm told has competed in ocean swims in the southern and northern hemispheres from Palm Beach to Maui and to many places in between. I am told that when your Honour's shoulder protested the swims too much you then took to running, and that you have made as good a showing on the land as in the sea. On top of your swimming and running accomplishments I hear you are a

devotee of the spin classes at Tattersall's Clubs, or the athletic department as I understand it is known. You are an alumnus of the Gordon Rugby Club and a keen and skilled skier on Australian slopes and overseas. In summary your Honour's physical fitness and good health were strongly attested to by all your colleagues. You were invariably described as ageless and in glowing good health. It appears your Honour you are the envy of more than a few.

- 14 A colleague from your Honour's former chambers shared an observation that strikes I believe the perfect notes for today's proceedings, saying "John is widely regarded as a shining example of how practice at the Sydney Bar should be conducted".
- 15 Your Honour I am delighted that as a man of character, a lawyer of skill, held in high esteem and committed to both the law and to your colleagues you have answered the call to the Bench of the Land and Environment Court of New South Wales. I personally warmly congratulate you on your appointment. May it please the Court.
- 16 **ULMAN:** May it please the Court. I am grateful for the opportunity to address the Court today. Your Honour, the bedrock of our democracy is a rule of law and the cornerstone of the rule of law is a strong and independent judicial system. It is your Honour's induction into this institution and your commitment to its best values that we celebrate it today. The Court you have joined is a fundamental component of judicial oversight on planning, building, environmental and other related issues that are so critical for the people of this State. The solicitors of New South Wales have a proud history of engagement with this jurisdiction and indeed many have worked closely with your Honour during your time at the Bar. On their behalf and on behalf of the solicitors of this State I congratulate you most sincerely on your appointment to the bench.

- 17 Into the future the solicitors of this State will be glad to not only appear before your Honour as you now sit on the other side of the bar table but they will continue to work with you in a real sense as your Honour seeks the just resolution of issues within your courtroom.
- 18 Your Honour is no stranger to the life of those I represent today having been admitted as we've heard as a solicitor in 1982. Your Honour was known for your attention to detail and thorough preparation as a practitioner and you quickly rose to a partner at Gadens becoming as I understand the second youngest partner in that firm's history. You remained a partner of that firm for six years before going to the Bar. Your Honour has been highly sought after as a barrister and you are rightly regarded as a leading specialist in the Land and Environment world. The approachable and hardworking nature of your Honour's work ethic endeared you to many solicitors throughout your time at the Bar.
- 19 Equal to the warmth of your Honour's professional reputation is the positive sense of your Honour's personality when your colleagues at the Bar speak of you. Indeed those close to you paint quite the picture of an individual who is debonair, urbane and witty. I am assured however that this charming persona is well balanced by a somewhat self-deprecating, always empathetic and caring nature. These qualities translated very well to the chamber setting where your Honour was formerly head of 12 Selborne and Wentworth Chambers. During that time and since your Honour's presence around chambers has involved a significant role as what has been described to me as floor peacekeeper. Your colleagues say that your shoes in this role will be almost impossible to fill.
- 20 In the courtroom your Honour's advocacy has been described as concise in presentation and forthright in conversation. In fact it's been said that you respond rather than duck when lobbed a question from the bench. This was never truer than one instance many years ago

when your Honour was appearing before Justice Bignold. Justice Bignold was known to be a deeply religious person. Your Honour was briefed in a matter that involved an application to restrain someone, unlawfully constructing a form of circus tent on a particular block of land during the Easter holiday. Trying to find a suitable date for the injunction application Justice Bignold offered you Good Friday if it could not be accommodated any earlier. It is reliably reported that on hearing this you said, "Well your Honour knows what happened to the last person who sat in judgment on Good Friday". I understand your Honour said it was one of those moments when you can hear the words escaping from your mouth but you're just powerless to gather.

21 True to your personal reputation you have also been described as a charming advocate. It was said by Sir Maurice Byers, the former Commonwealth Solicitor General "we are paid to please". Sir Owen Dixon's maxim was "advocacy is tact in action". Both these quotations are hallmarks of your style which is courtesy as its centrepiece. Members of the Bar speak of you as a pleasure to appear against as you never saw any warrant to be aggressive towards opponents even when they tested your patience. I am though informed that if your Honour has one failing it is your sweet tooth. Indeed it has been said that your Honour has an incurable passion for food that is bad for you. Apparently if your Honour knows that there is chocolate somewhere in the house you must find it. I've also heard your Honour described as an insomniac, these two conditions, insomnia and a sweet tooth, combine to create something of a perfect storm.

22 Family is all important to your Honour, indeed colleagues tell me that your Honour was often spied on a Sunday coming into chambers where you would spend an hour or two setting up for the week so that you could retreat to the haven of your family home for a stress-free Sunday evening. Your Honour is married to Penny of the dozen strong Hollingdale family, as in Freehill, Hollingdale and Page as the firm Herbert Smith Freehills was formerly known. Penny, a qualified

solicitor and life coach has been described as the anchor in your Honour's life and the close-knit family the two of you share is no doubt extremely proud of such a distinguished achievement as that which we mark today.

23 Your Honour is a wonderfully committed father. Your eldest daughter Lucia is embarking on a career in business having worked as an accountant while Holly, your youngest, is perhaps following in your footsteps by studying law. Your family is not just a sanctuary it is also a point of outreach. Many have commended the constant kindness that your family extends to those struggling, the type of kindness that does not merely wish someone well but offers them a place to stay or a home cooked meal. Colleagues say that this quality has made itself known even in your adventures overseas where while hiking through the Pyrenees your colleagues pointed out that your Honour is always the one to volunteer to carry the packs of the less fit climbers and carrying your own heavy pack at the same time.

24 Your Honour's approach to life is expected to be reflected in your time on the bench where your colleagues expect your Honour to use the role to genuinely reach out to counsel engaging with them in order to truly diagnose the issues at hand. On the bench your Honour is also expected to bring out the very best in counsel, an attribute that can only come from the true mastery of the area in which your Honour will adjudicate. Your colleagues have also told me that the kind of conversation which your Honour hosts one of which the real issues are agitated would ensure that you will be properly assisted by the very best of what counsel have to honour.

25 And finally on a personal note I'd like to observe that over quite a few years the paths your Honour and I have taken in the legal profession crossed on a number of occasions and so I am particularly pleased to have had the opportunity to appear before you today. Yours is a truly fine appointment, an appointment no doubt due in no small measure to

the undoubted expertise that you will bring to the Land and Environment Court, but also I am sure inspired by the courteous, patient, hard-working and collegiate manner in which your Honour has conducted yourself, qualities that I am sure you'll bring to your life as a judge.

26 Once again may I congratulate you and wish you the very best for your time on the bench. As the Court pleases.

27 **PRESTON CJ:** Justice Robson I invite you to reply.

28 **ROBSON J:** Before I commence I acknowledge and pay respect to the traditional owners of the land on which we meet today – the Gadigal people of the Eora Nation.

29 Chief Judge, present, past Judges, the High Court, Court of Appeal, The Supreme Court, Federal Court, District Court, and of course the Land and Environment Court and other jurisdictions, Madam Attorney, Mr Ulman, members of the profession, family and friends. Thank you all for coming, it is an honour to the Court and to me. Despite over two decades on my feet I confess to being a little daunted by my role in this august ceremony.

30 This side of the bar table presents, obviously, a different perspective. I am reminded of times spent in this very courtroom, as well as others, where I have been standing at the bar table attempting to convey a cool, confident manner when the fact was that beneath my bar jacket was both a pounding heart and what could be described as a micro-climate. Today is not entirely different although without an opponent or hostile Bench.

31 It goes without saying, and I don't mean to be clichéd, that I am honoured to serve on this Court, and I am particularly conscious of the

very real responsibility which has been entrusted in me and the very important judicial oath I have just given.

32 I should just note that I am grateful for the kind words of Madam Attorney and Mr Ulman and I will not correct the inadequacies where they have been complimentary, but I will say two things. First, I have not been wet for many years and, second, my rugby ability was such that I had usually finished my game and showered before lunch. That might sound a little esoteric to those who do not know, but I will not elaborate.

33 As is customary, I wish to reflect briefly upon the course that has brought me to this point. I will try and not be repetitive. I need to acknowledge some debts of gratitude.

34 I honour the memory of my father and mother on both of whom I effectively lost in my late teens. They were outstanding parents and I could not have wished to have a better mother or father. They gave me, and my two sisters, a happy uncomplicated, and indeed, being the youngest of three children, a somewhat indulged, at least in an emotional sense, upbringing. They instilled in me certain values of kindness, of hard work and respect for all. I have endeavoured on occasions to embrace those values.

35 I will say a little about my background. My father was a publican and although we spent some time in Tasmania, I in fact grew up in hotels in country towns and later in cities and that growing up in such circumstances exposed me to interesting and diverse experiences – despite my parents' best endeavours.

36 My earliest years were spent in a small country town known as Koorawatha which was between Cowra and Young, in country New South Wales, although in those days the mothers, particularly the

Catholics, would travel to Sydney to have their children at Darlinghurst for reasons not clear now.

- 37 My parents were the proprietors of a quaintly named hotel known as the Railway Hotel, which I should say was the biggest hotel in Koorawatha. This somewhat idyllic existence continued up until the early or mid sixties when, I am sad to say, an unfortunate fire broke out and severely damaged the hotel, a cause of which apparently remained a mystery for the past 50 years. On this occasion, and it may be some surprise to my sisters who are present, that the cause may have been a precocious five year old who was fascinated by what were then called "safety matches". It has taken me 50 years to get that off my chest, and I wanted to state it in public.
- 38 My schooling was variously through the Catholic Education system as my mother was a Catholic. It initially started at Koorawatha, thereafter at various Marist and Christian Brothers' schools in New South Wales and Hobart and as Madam Attorney has indicated, my parents left me for some period of time when they moved back to New South Wales, but I followed them there afterwards and I finished my schooling at Marist Brothers at North Shore.
- 39 After school, despite having a desire to study medicine I think which was to please my mother, I studied economics and law at the University of Sydney. I had many fine lecturers, some of whom are present today in various capacities. Whilst at law school my first introduction to litigation was a short stint as an associate to His Honour Judge George Smith of the District Court. That relatively short experience had a profound effect upon me and sparked my desire to be a barrister.
- 40 As has already been recounted by Mr Ulman I worked as a solicitor for a number of years prior to coming to the Bar and I think I can say I have truly looked at law from both sides now.

- 41 Over the past few decades I formed many close relationships with solicitors, both instructing and otherwise, and indeed I have known you, Mr Ulman, for many years and through you I formally acknowledge my gratitude and appreciation for the assistance and instructions I have received from solicitors over many years. A number, I could say many instructing solicitors have become friends and some are here today for which I am grateful. At the risk of neglecting some, I shall not name any.
- 42 When I came to the Bar I had a relatively short time as a floater reading on the 10th floor at Wentworth under the watchful eye of Ken Hall, one of the Bar's great clerks. In my first year at the Bar when young barristers had Masters, I was helped significantly by Alan Sullivan and John Webster, and at that time by a then fledgling Michelle Kearns, all of whom remained influential for many years.
- 43 After some months I acquired a room on the 12th floor where I spent the rest of my time as a barrister. Whilst it is not uncommon for newly minted judges to wax eloquent about their former floor, I seek some short indulgence to make specific comments. The 12th floor, as it is well known to most, has a rich history of great barristers and indeed interesting characters. Being surrounded by a group of intelligent hard-working women and men over the past 25 years has provided me with a workplace without compare, where I have enjoyed enormous support, friendship and encouragement. Again it is inappropriate to single out particular members (past and present) of the floor so, at the risk of neglecting to name some (with one exception) I will name none.
- 44 The floor has held together through good times and not so good times. If I can add, somewhat cryptically, more recently, the tragic circumstances which have surrounded my friend and colleague Robert Dubler which I do not repeat save to say that he is unable to be here

today, illustrates to those who know the close community that is the Bar, and in particular the 12th floor. I will miss you all.

45 Any floor would not function without the guidance of a clerk and I reserve specific mention for Bob Rymer, who apart from Ken Hall has been the only clerk I have had over the past 25 years. In his quiet, unassuming, self-effacing manner, Bob has carefully managed a floor of diverse individuals and personalities and I thank Bob for his years of support and assistance.

46 As is frequently noted on these occasions, and is noted by those who have spoken before me, the demands of a professional practice affect family life. Whilst not the occasion for overly personal outpourings I note I have been blessed with a wonderful and supportive family.

47 To my wife Penelope, there is nothing adequate that can be said. She has shown enduring love, support and encouragement, and, on occasion thankfully, forgiveness – perhaps more recently, daily coaching, which I assume will continue. As with many partners of barristers, and indeed professionals generally, she has unselfishly relegated her own career and aspirations to support me and to raise our wonderful daughters Lucia and Holly.

48 My daughters, about whom you have already heard, have ensured that over the years my feet have remained firmly on the ground and, on occasions, out of my mouth. They are exceptional young women and each has given me great support and, indeed, ongoing advice. I have little doubt that their support and ongoing advice will continue in the judicial chapter of my life. They have been on the whole obliging to, and tolerant of, their father and indeed watching them grow into the women they are has been one of the major joys of my life.

49 I mentioned my childhood. I am the youngest of three. I have two sisters, Julianne and Patricia, and I am so very pleased that they have

travelled, with their families from afar to be here today. Their support for me, their younger, somewhat spoilt, brother over many years has been constant, and I trust my comment about the unfortunate fire at Koorawatha has not been too shocking for them. Indeed I sometimes ponder what would have been our lives if that fire had not happened. That's another story.

50 In any event I have been very fortunate to receive support and encouragement originally from my parents and my family and subsequently over many years from Penelope's family, which is, as you are now aware, extensive.

51 While any abilities I may have had in any area would be better described as enthusiastic, rather than being particularly capable, I should note that my various attempts at athletic endeavours over many years have allowed me to foster a collection of good friends, many of whom are here today. You will be relieved to know that many of those are not lawyers.

52 Most importantly, as most of those present know, the Land and Environment Court has important and special jurisdiction beyond its primary nomenclature. The jurisdiction has expanded, on one view, well beyond Division 3 of the Land and Environment Court Act. I am indeed privileged now to be a member of this Court. I acknowledge the warm welcome I have received from my judicial colleagues, both judges and commissioners.

53 Someone asked me recently "What sort of judge will you be?" which I thought was a strange question. We all know there are judges of different temperaments, methods and indeed, in some cases, peculiarities. However, on reflection as to what sort of judge I wanted to be, and assuming I have a choice, I have reflected upon the words of Sir Harry Gibbs who at his swearing in as Chief Justice in 1981, said words which I will repeat. He said,

“It is the proper role of the courts to apply and develop the law in a way that will lead to decisions which are humane, practical and just...”

He continued,

“But it would be destructive of the authority of the courts if they were to put social and political theories of their own in place of legal principle”.

54 Now whilst minds may differ as to the real import of those words being uttered by a Chief Justice of the High Court they are words which I believe provide sufficient guidance for one in my position.

55 I look forward to the challenge of judicial life both with enthusiasm and some anxiety.

56 Finally, I have been overwhelmed by the support of friends and colleagues since the announcement of my appointment. Again, I thank you all for your attendance this morning. I shall do everything possible to justify the faith which has been shown in my appointment to the Court.

57 **PRESTON CJ:** The Court will now adjourn.
