

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

**THE CHIEF JUDGE  
AND THE JUDGES AND COMMISSIONERS OF THE COURT**

**TUESDAY, 13 MARCH 2007**

**SWEARING-OUT CEREMONY OF THE HONOURABLE  
JUSTICE NEAL BIGNOLD AS A JUDGE OF THE LAND AND  
ENVIRONMENT COURT OF NEW SOUTH WALES**

Mr Michael Slattery QC, President, Bar Association of New South Wales

Mr Jeremy Bingham, on behalf of the solicitors of the Law Society of New South Wales

Mr Malcolm Craig QC, President, Environment and Planning Law Association (NSW) Inc

**PRESTON CJ:** Today's ceremonial sitting of the Land and Environment Court is to mark Justice Neal Bignold's impending retirement from the Court, effective this coming Friday 16 March 2007, and to honour his Honour's significant contribution to the Court, and to planning and environmental law in the State.

The distinguished counsel and solicitor who will move the Court shortly will address more fully Justice Bignold's career and achievements, but I wish to say some remarks by way of opening.

Justice Bignold's contribution to the Court and the legislation in respect of which it has jurisdiction began even before the Court was established.

Whilst Justice Bignold was employed as a senior legal officer for the then State Planning and Environment Commission, he was seconded in 1975 to the office of the Minister for Planning and Environment to act as a legal adviser in the reform of the State's planning and environmental laws. This reform process culminated with the enactment of the *Environmental Planning and Assessment Act 1979*, and the cognate *Land and Environment Court Act 1979*. Both laws came into effect on 1 September 1980.

As Justice Bignold, has said, writing extrajudicially in his Honour's characteristically breathless style:

“The deficiencies in the former planning system were obvious, if not notorious, and cried out for comprehensive reform which was commenced in the mid-1970s and was consummated by the enactment of the [*Environmental Planning and Assessment Act 1979*] which radically and comprehensively reformed the former planning system by instituting the concepts and systems of environmental planning and environmental assessment which were far more comprehensive concepts and systems than had been provided by the statutory concept of town and country planning. There had been no prior statutory system of environmental impact assessment”: the Hon Justice Bignold cited in Glen McLeod (ed), *Planning Law in Australia*, Law Book Co, 1997 at p 1-104.

Justice Bignold played a key role in this radical and comprehensive reform of the former planning system. Three key features of this modern planning system were: firstly, the creation of a comprehensive concept and system of environmental planning and of environmental assessment; secondly, the sharing of responsibility between State and local government for environmental planning; and, thirdly, the creation of increased opportunity for public involvement and participation in environmental planning and assessment: the Hon Justice Bignold cited in Glen McLeod (ed), *Planning Law in Australia*, Law Book Co, 1997 at p 1-104 - 1-105. As Justice Bignold has noted, these three key features underlie and inform the various means that are specifically employed or prescribed by the

*Environmental Planning and Assessment Act* for attaining the objects of that Act: the Hon Justice Bignold cited in Glen McLeod (ed), *Planning Law in Australia*, Lawbook Co, 1997 at p 1-105. Justice Bignold would continue to explore these features of the *Environmental Planning and Assessment Act* in his decisions for the next twenty-six and a half years.

As I have noted, cognate with the passing of the *Environmental Planning and Assessment Act* was the *Land and Environment Court Act* which established this Court. The Court was a vital component in the scheme to deliver a modern planning system. The legislature had, at least, two objectives in establishing the Court: first, rationalisation and, second, specialisation.

As to the first, the new Court was an attempt to rationalise the then diversified jurisdictions of a number of courts and tribunals dealing with planning and environmental law - what the first Chief Judge, Justice Jim McClelland, described as an “uncoordinated miscellany of appellate tribunals concerned with planning problems”: McClelland CJ, *Paper presented to an engineering conference*, Hobart, 24 January 1982, p 2. The new court brought together in one body the best attributes of a traditional court system and of a lay tribunal system.

As to the second, the Court was to be a specialised court, best exemplified by its having as staff, persons with special knowledge and expertise in professional disciplines relevant to planning and environmental disputes. These persons were then termed conciliation and technical assessors. They played and continue to play a vital role in the conciliation and adjudication of the merits review proceedings in the court.

Justice Bignold, who had spent the last half decade working on this reform package, was eminently qualified to play a major role in this new court. The government of the day recognised this and Justice Bignold was appointed as the first Senior Conciliation and Technical Assessor of the

Court. He commenced on the day the Court commenced, on 1 September 1980.

These early years of the Court were important. They laid the foundation for much of the success of the Court that would follow. Justice Bignold, as would be expected from his preparatory work, quickly established himself as an invaluable source of knowledge of both the letter and the spirit of the new planning and environmental laws, and of the Court itself. His decisions of this period reveal a thorough understanding of both the substantive new planning and environmental laws, as well as the practice and procedure of the Court.

His work and his work ethic impressed the then Chief Judge, Justice Jim McClelland, and the Attorney General of the day, who is now Justice Sheahan. Justice Bignold was appointed first as an acting judge whilst Justice McClelland was the Royal Commissioner into the Maralinga Atomic Tests, and then a permanent judge of the Court. He was sworn in as a judge on 4 June 1985.

Over the next twenty or so years, Justice Bignold continued his abiding interest in planning and environmental law. His judgments ranged over all of the areas of the Court's jurisdiction. Like a linguist poring over an ancient manuscript, Justice Bignold would painstakingly search for the true meaning of the laws. Having found it, Justice Bignold would, if I can adopt his Honour's inimitable style, adumbrate, elucidate and explicate both the letter of the law and the underlying policy (the last conjunction his Honour would undoubtedly have italicised for emphasis). The result of his Honour's considerable labour is a body of judgments of value to planning and environmental law in this State.

Justice Bignold has also contributed to the body of planning law by his extrajudicial writing, one of which is in the Planning Law Service to which I have earlier referred. He also wrote articles in the Environmental Law Association's Newsletter. I remember a memorable exchange of ideas

about State Environmental Planning Policy No 1 – Development Standards and *SCMP Properties v North Sydney Municipal Council* (1983) 130 LGERA 351, which Mr Craig QC might well remember. His Honour also has written articles published in the *Environmental and Planning Law Journal*.

Justice Bignold's knowledge of the Court and its practice and procedure made him an obvious choice for a position on the Court's rules committee. Indeed, when I was appointed as the Chief Judge, I was informed that Justice Bignold was the rules committee. Justice Bignold has over the years drafted and redrafted the Land and Environment Court Rules and practice directions with dedication and passion to ensure that the Court with which he has had such an involvement can better achieve its goals.

I referred earlier to one of the key features of the modern planning system introduced by the *Environmental Planning and Assessment Act*, which was increased opportunity for public participation. This was supplemented by the Court Act and Rules which facilitated access to justice for all individuals. Justice Bignold's conduct towards litigants in the Court, particularly those who might be unrepresented, and his decisions, reveal a sensitivity to these objectives. Justice Bignold would always be kind, patient and helpful to litigants in person, explaining the procedure and very often the law. Many a litigant no doubt owes a debt of gratitude to Justice Bignold for his assistance in their case.

His kindness, helpfulness and patience also reveals another attribute of Justice Bignold's character, his deep Christian faith. Justice Bignold's compassion for the litigant in need reflects a central instruction of his faith to love your neighbour. Justice Bignold was always prepared to deliver justice to the needy, the downtrodden and the marginalised. Justice Bignold's kindness also was manifest in his concern for the welfare of Court staff - the court officers, reporters, tipstaves and associates who assisted him over the years. I know there is considerable goodwill amongst the staff who have been privileged to serve with him.

Justice Bignold has now served on the Court for twenty-six and a half years in one capacity or another. He has been an integral part of the Court and its development. As I have said, he was there at the Court's conception, gestation, birth, early childhood, adolescence and maturation into adulthood. Justice Bignold's contribution through those years no doubt is a critical factor in the success of the Court and of the planning and environment law system we enjoy today in New South Wales. Justice Bignold's retirement marks the passing of an era. Nevertheless, his legacy will live on and will continue to benefit us all.

Justice Bignold, on behalf of the Court, I thank you for your long service, your dedication and your contribution to the Court and its work. I wish you well in your retirement.

Mr Slattery, do you move?

**MR SLATTERY:** On behalf of all members of the New South Wales Bar I farewell your Honour and thank your Honour for your Honour's great service to the people of New South Wales as a judge of this Court.

Of your Honour's many good qualities as a judge, the one that showed itself in everything you did was your infectious enthusiasm for all legal principle relating to the jurisdiction of this Court. Your Honour took every opportunity to turn that enthusiasm to account for the benefit of the Court by volunteering for the hardest tasks and frequently drawing upon your Honour's special knowledge of the Court's history to assist judicial colleagues and members of the Bar. In all of this, your Honour's approach was to some extent borrowed from the great American inventor, Thomas Edison, who, rather like your Honour is doing today, reflected upon his retirement back on his career. He said of it all, "I never did a day's work in my life. It was all fun." Your Honour always exhibited a practical down-to-earth approach in the cases before you. This should come as no surprise

to anyone familiar with your progress through the law and onto the bench of this Court.

During the 1960s, whilst your Honour studied at the University of Sydney, you were employed by the Maritime Services Board, firstly as a junior clerk and then an articled clerk and finally a legal officer. Quite wisely in those days, in preparation for later legal practice, private solicitors in the Public Service required articled clerks to undertake the time management nightmare of simultaneous study and legal practice. You succeeded in the necessary juggling admirably and after qualifying in law became a legal officer at the Maritime Services Board.

Your Honour graduated in law in a class which has enriched the bench. Your fellow judges from that graduating class of 1969 include the President of the Court of Appeal, Justice Keith Mason, and Justices Hall and Palmer of the Supreme Court.

Perhaps unwittingly, you took the first step that led you ultimately to the bench of this Court when in 1970 you accepted a position as a legal officer with the State Planning Authority of New South Wales. Compared to its modern day complexity, planning law of the early 1970s with the County of Cumberland Planning Scheme was something of a cottage industry, although I suspect that Mr Bingham, who is at the bar table today, will probably disagree with that.

Your Honour saw it grow from 1970 to 1980 as you moved from legal officer to senior legal officer in the department. Your Honour's move from the State Planning and Environment Commission to this Court was no accident. Between 1975 and 1980, though employed by the State Planning Authority, you were seconded to the office of the Minister for Planning and Environment to act as a legal adviser in the reform of the State's planning and environment laws. There, your Honour, together with John Whitehouse, were the principal authors of the *Environmental Planning and Assessment Act* and the *Land and Environment Court Act*.

As a result, your Honour came very well equipped to act as the first Senior Assessor of this Court.

It is one thing to write legislation enacting a new planning regime and creating a court. It is quite another to actually make it work, particularly in the public sector environment of staffing and resource challenges. It is here that as the first assessor of the Court you gave great assistance to the first Chief Judge, the Honourable James McClelland, who because of both your ability and your background in the creation of the Court, took you closely into his confidence. Together and at your respective levels within the Court, you each developed its administration and operation from scratch.

Decisions by prime ministers can have far-reaching consequences. In 1984 the then Prime Minister, Bob Hawke, established the Maralinga Royal Commission. When he did, he asked the then New South Wales Premier, Neville Wran, to release the Chief Judge of this Court as Royal Commissioner. As prime ministers often do, he got his way. Because of his anticipated absence for a lengthy period, the Chief Judge himself personally requested that you be appointed as an Acting Judge of this Court. As chief judges often do, he got his way. After eighteen months' service in the office, it came as no surprise to anyone that you were appointed permanently.

The 1980s were the formative years of the Land and Environment Court. The *Environmental Planning and Assessment Act* was novel. It was in this decade that much of the jurisprudence was developed which underpins both the operation of the Act today and modern planning law in this State. It is this jurisprudence that provides the model for those many jurisdictions that now look to New South Wales in this field.

In those early days, your Honour's knowledge and background experience were a unique judicial resource for a new court. Both as Senior Assessor then as a Judge of the Court, you have made a deep contribution to the

development of the law and the practical operation of the Court. Two examples from this earlier period show this well. As Senior Assessor in 1983, you delivered your judgment in *SCMP Properties Pty Limited v North Sydney Municipal Council* (1983) 130 LGERA 351, which is still regarded as one of the seminal judgments on the approach to be taken in the exercise of power under State Environmental Planning Policy No 1. Your judgment in 1982 in *St George Building Society v Manly Municipal Council* (1982) 2 APA 370 was one of the first important cases on section 94 contributions.

In one important respect there was always something of Lord Denning in your Honour's conduct of your Court. Perhaps by nature or perhaps because of your early advocacy for the inclusion of section 123 into the Act, your Honour has always had a special empathy with the struggle of the litigant in person. Your Honour was always mindful of the need to maintain access to justice for individual members of the community who in larger planning cases could often not afford representation but still needed to be heard.

One prominent example of this in your Honour's time on the bench was in the litigation about the Clyde Waste Recycling Plant in 2003. The applicants were two local residents, John Drake and Allan Brzoson. They represented themselves before your Honour against the New South Wales Government and the multinational Collex, seeking to stop the construction of a waste transfer station behind their homes.

Media reports of the case that occupied nineteen hearing days over eleven months more than once mentioned a passing similarity to the plot of the 1990's film "The Castle". At the end of the case, Allan Brzoson was quoted as saying of the well funded Collex PR and legal machine, "They portrayed us as being complete idiots who have got no idea what they are doing and no idea what they're saying. They've underestimated what they'd be up against."

Your Honour's deft and impartial management of the case proved Mr Brzoson right. The men took turns at cross-examination and with a determination that would have done Jack Smythe QC proud they kept questioning until they obtained the concessions that they wanted. Your Honour was clearly impressed. As your Honour said in your judgment in November 2003 of these two plaintiffs, "They demonstrated a quite extraordinary mastery, as essentially lay persons, of the complex issues raised by the proposal in all of its dimensions (ie scientific, technical, social, environmental and political)": *Drake & Ors; Auburn Council v Minister for Planning & Anor, Collex Pty Ltd* [2003] NSWLEC 270 at [16].

As usual, this Court delivered a just outcome in the case and they won.

It is sad but true, but justice can annoy the powerful. Within barely a week, legislation was introduced into parliament to override your Honour's ruling.

Your Honour's judicial style was steady and practical and always showing insight into the effects of your decisions on other planning decisions and principles generally. Your Honour is known for the assiduous attention you brought to every case you heard. You were always on top of the facts and arguments being advanced on behalf of the parties.

Modern legal research has been revolutionised by Google and by databases such as Aust LII. But there are some things that none of these great search engines can ever do. When we want to be reminded about that early 1990s section 94 case involving the golf course development in western Sydney, only Justice Bignold is able to tell us where it is.

Your Honour has an encyclopaedic memory of provisions of the Act and planning law, and not just the planning law of New South Wales but also other Australian States, New Zealand and the United Kingdom. Your Honour draws readily on it to help your fellow judges by explaining how our legislation evolved. Sometimes they do not even have to ask for your

assistance. Indeed, in recent years you have been a very useful part of the corporate memory of the Court.

Your encyclopaedic knowledge is demonstrated in such important judgments as *Bell v The Minister for Urban Affairs and Planning & Port Waratah Coal Service Ltd* (1997) 95 LGERA 86 in 1997 where your Honour examined the relationship between planning law and the tort of nuisance. In so doing, you called upon many English planning and other authorities. Also in *City West Housing v Sydney City Council* (1999) 110 LGERA 262 in 1999 your Honour analysed authorities both in Australia and England on the extent to which economic considerations are relevant in the application of planning law.

Despite the breadth of your knowledge, your Honour was always disarmingly courteous to everyone in your court. Litigants in person and well resourced developers were all treated with it. But even your Honour's politeness had its subtle nuances. When experienced counsel discerned that your Honour's diplomacy in their direction was being especially effective, they began to suspect they might be losing.

Your Honour bore with equanimity the occasional moments of legislative interference in your work. When your Honour was hearing a case brought by the National Trust against the New South Wales Heritage Council in 1999 about the demolition of historic wharves in the heritage precinct at Walsh Bay, the barrister for the Heritage Council, Bret Walker SC, calmly sought an adjournment on the first day of the case. When you asked counsel what his grounds were, he said that Cabinet Office had "just approved legislation which will, among other things, terminate these proceedings". This Court has been vexed with such interference as long ago as the Parramatta Park proceedings. In this trying situation, your Honour was a master of diplomacy. Your Honour did all that was possible. You adjourned the proceedings for a period. In doing so though, you rather quaintly explained, "The applicant might like to consider whether or not it wishes to proceed."

Your Honour always maintained the highest judicial work ethic. This is simply demonstrated by the fact that you took so little leave throughout your career that you have been forced to take it in one stretch over the last ten months or so. Your work ethic is quite the opposite of that openly professed by the late US President, Ronald Reagan, who once contrasted his working habits with those of Lady Thatcher by saying, "It's true that hard work never killed anybody but I figure why take the chance?"

With your Honour's energy levels, no-one would ever expect your Honour to have a quiet retirement, nevertheless we hope that you will be able to pursue interests from which judicial life has taken you.

It is not widely known, but your Honour does have interests outside the law to pursue in retirement. This has only been revealed indirectly through the exceptional work/life balance maintained by the judicial officers of this Court. The Court has long organised annual judicial conferences at which inter alia members of the Court play tennis against one another. These conferences are a kind of 'Wimbledon comes to 225 Macquarie Street'. Your Honour's fellow judges were quick to point out to me that you were unbeaten at tennis at every one of these conferences. I think they all remember it well.

You richly deserve a long and relaxing retirement after serving the people of this State so ably as a judge of this Court.

May it please the Court.

**PRESTON CJ:** Mr Bingham, do you move?

**MR BINGHAM:** I am privileged to speak on behalf of the President of the Law Society of New South Wales, Mr Geoff Dunlevy, and on behalf of the solicitors of New South Wales.

The retirement of Justice Bignold represents the passing of an era in the history of environmental planning in New South Wales and indeed Australia, an era of innovation, change and remarkable progress.

In the 1970s town planning, as it was then known, was still operating on the English model which was brought to our shores in 1945 with the enactment of Part 12A of the *Local Government Act* 1919 and shortly thereafter the County of Cumberland Planning Scheme. Development control was seen as largely a matter for local councils. Development appeals went to the Local Government Appeals Tribunal, a lay body at one end of town, and judicial review was a matter for the Land and Valuation Court at the other end of town.

The legislative framework of subdivision, building and development control was part of the *Local Government Act* 1919. The environment rated barely a mention, and a private citizen who sought to enforce the law had, generally, no standing and had to apply for the Attorney-General's fiat. Public authorities were largely uncontrolled. In the mid-1970s, as we have heard, the government made a bold and far-sighted decision to introduce a new and comprehensive legislative scheme for environmental planning and assessment, and a new integrated court system.

A reform team of town planners and other experts was established by the Planning and Environment Commission under the chairmanship of Nigel Ashton. The reform team included just one lawyer, senior legal officer Neal Bignold. He worked on the project for five years and was the author not only of the legislation but also of the radically new underlying concepts. His efforts culminated in the *Environmental Planning and Assessment Act* 1979, the *Land and Environment Court Act* 1979, and cognate legislation which, as we all know, came into force in September 1980.

It is worthy of note that despite the highly political and contentious environment in which this legislation operates, and despite numerous modifications and improvements over the years, this legislative framework

still stands in substantially the same form some twenty-seven years later, a tribute to the ability and foresight of the original draftsman.

Neal Bignold's significant role in this legislative process was recognised by his appointment as the original Senior Assessor of the Court and in 1985 by his appointment to the bench, where he has served with distinction for the past twenty-two years.

Of course, the process of reform did not end with the setting up of the new legislative framework and procedures. An enormous challenge lay in making the new system work, and this presented numerous difficulties. We live in a city and a State which are subject to unremitting pressure for growth, both population growth and economic growth. Striking a balance between allowing necessary growth and protecting the environment, both natural and built, is no easy task.

The growth process affects everyone in our community and raises strong disagreements and fierce passions. This has led to repeated attacks on the Court from those who think it should be a division of the Supreme Court, those who think that its appeal function should be limited to judicial review, those who think that it is too legalistic, not legalistic enough, pro-development, anti-development, or just plain wrong.

In the twenty-seven years since its inception however, the Court has firmly established its present reputation for relevance, impartiality and enormous expertise in its areas of operation, so much so that it has been taken as a model for other such courts both interstate and internationally. That the Court has been able not only to survive but also to achieve this reputation in the maelstrom of State and local politics is due to the painstaking efforts of the judges of the Court, and of Justice Bignold in particular.

In carrying out his great work, his Honour has exhibited a number of personal characteristics which are worthy of comment. The first is the amazing breadth and depth of his Honour's knowledge of the law.

At his Honour's swearing-in ceremony on 4 June 1985, Justice Cripps, as he then was, said, "I doubt whether there is any practitioner in New South Wales having such an encyclopaedic knowledge of planning law as that possessed by Mr Justice Bignold". That statement was made twenty-two years ago, during which time his Honour's prodigious knowledge of the law has continued to grow so that there can be no doubt at all about his pre-eminence in this area. This encyclopaedic knowledge shows up in his judgments, which are always a model of consideration of the full legal context and consequence of a matter, not just of the limited subject of forensic argument before him.

The second of Justice Bignold's notable characteristics is his impartiality and his commitment to both the appearance and the reality of a fair hearing. In Court he devotes his full and undivided attention to the person addressing him, be it advocate, witness or party in person. He looks directly at the speaker, he nods encouragement, he pays careful attention to the argument, makes notes, and engages in dialogue to ensure that he fully understands what is being put.

One may not win one's argument before him, but one is never left with the feeling that he did not listen or understand or fully consider the submission. This close attention to the submission being put can lead to some temporary misapprehension by a party to the proceedings. On one occasion my client, an extremely anxious applicant, was convinced that the clarity of Justice Bignold's reaction to my submissions meant that I had persuaded the Court and had won the case, only to be plunged into deep despair and certainty that we had lost when the judge displayed the same level of responses to my opponent's submissions.

Justice Bignold's ability in the law is balanced by an equally formidable understanding of planning principles and an ability to sort through masses of conflicting evidence without being unduly swayed by the qualifications of expert witnesses brought forward by one party or the other.

In a recent class 1 appeal before his Honour, the council's planners, the applicant's planners, and the court-appointed planning and heritage experts all agreed that the application should be approved. The neighbouring resident, however, raised cogent objections. His Honour, on inspection of the site, saw the planning merit of those objections and refused the application despite the weight of expert evidence. Decisions such as this demonstrate that the Court has not lost its common touch, and that cases are not won simply by buying the best lawyers and the best expert witnesses.

Justice Bignold's third notable characteristic is his personal nature and affability. In all his social contacts with his fellow human beings, whatever their station in life, he is always cheerful and friendly. This puts others at ease in his presence and encourages a positive outcome in the interactions of those around him.

Given the political maelstrom in which the Court operates, one wonders how his Honour is able to maintain this perpetual bonhomie. My personal view is that his house must have an attic within which there is a portrait of a grumpy Neal Bignold, growing grumpier by the year.

Justice Bignold is a remarkable man who has made a remarkable contribution to the planning and the environment of this State and to the proud progress of this Court.

A judge's life is, perforce, a somewhat lonely one, and Justice Bignold could not have achieved what he has without the undying love and support of his wife Marie who has always stood by him despite the demands of her own public life.

As the Chief Judge adumbrated, Justice Neal Bignold may truly be described as the father of this Court and of our environmental planning system, a father who can be justifiably proud of his offspring. His

retirement leaves an enormous gap to be filled. We thank him most sincerely for his substantial and enduring contribution to our society.

May it please the Court.

**PRESTON CJ:** Mr Craig, do you move?

**MR CRAIG:** Your Honour, I think it was Bertrand Russell who, at a public meeting, was called upon to speak second and so it is recorded stood up and said “the audience is exhausted but the topic is not.” I am not in the position to sit down immediately and would not wish to do so. Necessarily, some of the things that I have to say at your Honour’s swearing-out are already elucidated to some extent by others, but I will take perhaps a slightly different approach.

The enactment of the *Environmental Planning and Assessment Act* and its cognate legislation in 1979 was at the time considered to be ground breaking. It changed the landscape in which those of us, like your Honour, had practised in areas of the law that were hitherto known as local government or town planning. The Act introduced for the first time the adjectival description of “environmental” to practice in those areas of the law.

The word “environmental” however was not a meaningless adjective. For the first time in a legislative context in this State, the noun “environment” was defined in this legislation to include all aspects of the surroundings of man, whether affecting him as an individual or in his social groupings, a definition which has remained constant throughout the operation of the Act. There was appropriately in this Act an emphasis on the need to consider the environment, whether in the making of statutory instruments or in the assessment of impacts of a given development proposal, whether that proposal be by private enterprise or by a public authority.

It was against the background of this statutory planning approach and approach to environmental assessment, that your Honour embarked upon the judicial career that your Honour did in administering the judicial aspects of this new work. Notwithstanding that that legislation was novel to most of us who had hitherto practised in the old areas, to your Honour, as has been remarked, it was not either new in concept or in language. You played a key role in its preparation at the initiative of the then Minister, Paul Landa. Before making some reference to those heady days leading to the introduction of it, it is necessary to resort to an even earlier history, some of which has been recounted.

As has been recorded, your Honour commenced with the Maritime Services Board. Apparently it was the adeptness with which your Honour prepared tea at the Board that soon led you to becoming the assistant to Mr Jack Wallace, the President of the Board. That was fortuitous because intervals between tea making allowed your Honour to further devote studies to the law.

When the State Planning Authority was abolished and *Planning and Environment Commission Act* enacted, the former chairman of the Authority, Sir Nigel Ashton, who was not appointed to the Commission, needed for political reasons to find an office rather than be superannuated. There was thus established for him the Office of Special Adviser. You were seconded to that office, where you were employed in drafting new legislation which was the precursor to the 1979 Act. The Bill for which you were responsible was introduced to the House by Sir John Fuller but never assented to by the parliament. Nonetheless, work in preparing the Bill perforce caused your Honour to become steeped in the planning law, both statutory and regulatory, as well as the jurisprudence that had hitherto developed around it to that point in time. That knowledge of the old law served you well when coming as a member of the Court to apply the new law.

With the advent of the Wran government, your background in the reform of legislation and talent as an innovative thinker came to the notice of Paul Landa. You provided numerous advices to Minister Landa and soon became a trusted adviser to him. Perhaps unsurprisingly, you were conscripted to prepare the Bill that ultimately became the *Environmental Planning and Assessment Act*. No doubt you also played a key role in transferring what was then seen as perhaps being a minor function, being vested in the Department of Local Government, to a new Department of Planning.

I am reliably informed that habits necessarily acquired during the drafting of that Bill carried through to your mode of work as a judicial officer. It is reported that much of the work involved in preparation of the Bill was undertaken between 8pm and dawn the following day. Your abstemious habits ensured that each night was productive of progress, even if it was necessary for you to carry or cover for some of the less abstemious members of the team, whose imbibing of something stronger than orange juice did not always allow them to see the dawn.

This reference to early acquired habits which were maintained is not to suggest that while in judicial office your Honour's brethren were less than abstemious, requiring you to carry or cover for them. Rather, it reflects upon two aspects of your Honour's judicial work. Sitting beyond the traditional concluding hour of 4pm in the afternoon or spending evening hours reading evidence, transcript or writing judgments, was not an unusual mode of work. However, punctual arrival for a 9am or even a 9.30am directions hearing was not your Honour's strong suit.

Typical of the zeal which your Honour displayed in dealing with each and every case before you was the zeal which you displayed when preparing the Bill. Not only did you develop the concepts and rationale to be incorporated in the Bill but you insisted upon drafting the terms of the legislation itself. Senior Parliamentary Counsel at the time was Rossiter QC. He quickly took umbrage at the fact that the bright young man in the

Minister's office was usurping his function. With equal vigour, you defended your drafting as more felicitously expressing the concepts that had been developed. The turf war that ensued was only resolved following a peace conference convened by Minister Landa. Apparently a favourite retort of Landa, knowing of the midnight oil that you had burned, was "Neal, you need to go home at some stage. Leave the drafting to me."

Your Honour's efforts in drafting the Bill apparently impressed Members of Parliament on both sides of politics. In researching what I should say today, I discovered an article written by a journalist to which a passage of Hansard of 14 November 1997 was appended. The Hansard for that day recorded the debate then being had in the Legislative Assembly concerning the 1997 Environmental Planning and Assessment Amendment Bill. The Liberal Member for Hawkesbury, Kevin Rozzoli, was opposing the Bill. He is recorded as saying this:

"I have been a member of this House long enough to have seen the original legislation; it is a subject in which I have taken a close interest. In the time that I have been a member of parliament I have been closely associated with the development of the original legislation. Although I was in opposition at the time, I worked closely with the then Minister and with his chief advisers, Sir Neal Bignold, who is now a Justice of the Land and Environment Court, and John Whitehouse, who was then working for Minister Landa."

Given your Honour's great love for citation of English authority, it may have been more apt had he referred to your Honour as Lord Justice Bignold.

As is well known, the modern series of law reports containing judgments of the courts throughout Australia pertaining to decisions concerning local government law, valuation law and planning law are the series which, when first published, were known as the Local Government Reports of Australia and more recently known as the Local Government and Environment Reports of Australia. The first volume in that series was

published in 1956. It was that series of law reports which was selected to contain the authorised reports of judgments of the Land and Environment Court. The first volume of that series to record judgments of that Court was volume 41. For the mathematically challenged, such as me, that indicates that in the period of twenty-four years between the commencement of the series and commencement of the Court in 1980, some forty-one volumes were published. In the twenty-four years between 1981 and 2005, a further ninety-eight volumes of the same series were published. This may say something of the expansion of this area of the law. Whatever may be the explanation, I am assured that this almost exponential increase in the number of volumes of reported judgments is in no way due to the length of your Honour's judgments.

Appearance in your Honour's Court has always been a pleasant experience. One never felt rushed. Your Honour was always unfailingly courteous and eager to understand the essence of the case at hand, with the same courteousness and ability to redraft pleadings for parties shown both to legal representatives and litigants in person alike. The plaudits which your Honour receives from that irrepressible litigant, Alan Oshlack, including those same plaudits conveyed by him to other judges of the Court when seeking an indulgence, bears testimony to the latter proposition of fairness shown to all.

A view or site inspection with your Honour was always a particularly pleasant and stimulating experience. It provided an opportunity for discourse or duologue on a diverse range of topics, one of which may include the case at hand. This is not to suggest that your Honour was inattentive to that which was the subject of the view. Rather, your Honour's ready ability to appreciate very quickly and absorb those matters that were meant to inform the purpose of the view ensured ample time for discussion on matters of wide interest.

Justice Talbot (I am sorry, this is an egregious typographical error that has nothing to do with what I am about to say)... I am informed that your

Honour's extra curial interests extend beyond contemplating English environmental jurisprudence or the latest heresy emanating from the Court of Appeal. While these are matters of some importance to you, storing in your phenomenal and photographic memory the results of every major horse race run in this country for the past forty years is obviously a pleasurable pastime. You have truly astounded your colleagues with your capacity to recall accurately and without prompt or note such information pertaining to the Sport of Kings.

Equally, your eye-ball co-ordination has been remarked upon with admiration. Reference has already been made to your Honour's skill as a tennis player. Apparently, when challenged by one of your brethren following a Court conference to have a go at hitting a few golf balls from a bucket of balls at a golf driving range, it is said that with a Tiger Woods-like swing you responded by despatching each ball at least 250 metres, with each ball splitting the fairway. Not only did this episode leave your challenger with a jaw resting on the ground and muttering appropriate superlatives or expletives or a combination of both, but also you deprived him of any further balls which in his miserable attempt he could drive about seventy-five metres, usually by cut or slice.

None of this light heartedness should detract from the very great contribution that your Honour has made as a member of the Court in the despatch of its business generally, and in particular detract from your great contribution to the jurisprudence of environmental law. Your early decision, already mentioned more than once today, as Senior Assessor in *SCMP*, upon the SEPP 1, formed the foundation upon which principles were developed and refined in the application of that policy.

Further, your Honour's decision in *Progress and Securities Pty Ltd v North Sydney Council* (1988) 66 LGRA 236 upon the application of section 102 of the Act as it then was, and later in *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298 upon the determination of the

question of substantially the same development within the meaning of section 96 of the Act, have stood the test of time.

Your Honour's scholarly judgment in *Ervin Mahrer and Partners v Strathfield Council (No 2)* (2001) 115 LGERA 259 upon the power of amendment of a development application under clause 55 of the regulation remains the foundation of judgments for the application of that regulation.

The lamentably unreported judgment of your Honour in *Friends of Pryor Park Incorporated v Ryde Council* [1995] NSWLEC 160 remains a principled judgment on the consideration to be given when categorising development, the purpose of which may fall within permissible or prohibited categories, and continues to reflect a reasoned basis for distinguishing in an appropriate case the better known decision of the Court of Appeal in *CB Investments Pty Ltd v Colo Shire Council* (1980) 41 LGRA 270.

More recently, your Honour's determination that the absence of a Statement of Environmental Effects from documents accompanying a development application did not invalidate a development consent subsequently given, involved a detailed analysis of the statutory provisions relevant to the determination, an analysis which has been wholly sustained by the Court of Appeal: *Cranky Rock Road Action Group Inc v Cowra Shire Council* [2006] NSWCA 339 upholding *Cranky Rock Road Action Group Inc v Cowra Shire Council* (2005) 143 LGERA 356.

These are but a few examples of discourse which do not do justice to your Honour's great contribution to the Court and this area of the law.

Of your judicial life it can truthfully be said in the words of St Paul in his second letter to Timothy, "you have fought the good fight, you have run your race, you have kept the faith".

On behalf of the members of the Environment and Planning Law Association, I express gratitude and admiration for all that you have contributed as a member of the Court over the past twenty-seven years. We wish you well in your retirement.

May it please the Court.

**PRESTON CJ:** Justice Bignold.

**BIGNOLD J:** Chief Judge, fellow judges, distinguished guests and friends, members of the legal profession generally. Thank you, Chief Judge, for holding this retirement ceremony for me today, and to your associate, Robyn Drew, for arranging it with great dignity, style and helpfulness. Thank you also, Chief Judge, for being on hand by telephone as I took the necessary decision leading to today whilst having the benefit of that extended leave that Mr Slattery referred to in the past year, which has been a wonderful pre-retirement experience and one that made my decision to retire not only much easier to come to but compellingly so.

Lest I be misunderstood, it was not that I did not yearn to return to the Court to fight the good fight Mr Craig has referred to for yet some more time, because my time on the Court has been one of considerable satisfaction and fulfilment, coming close to what Mr Slattery referred to as being said by Thomas Edison, it has all been fun. It has all been hard work but most satisfying work and most fulfilling work. Not easy. I never found judging an easy task because I think that I strove for the sometimes indefinable manifestations of justice, where did the justice lie in a case, and that is what I sought to give effect to as I attended to each matter that came before me.

It was not therefore a reluctance to give up the fight, the good fight which had been most fulfilling all of these years, but a realisation that family life and personal matters rank a little more importantly for me, and that is something that I am very grateful that I had the experience these last

twelve or thirteen months to consider, to enjoy, and I have enjoyed it. Someone said they thought I was looking very well. So one could have perhaps with grace continued here, but I think with grace to retreat and retire is the more winsome prospect.

Chief Judge, you have been very helpful to me in that decision-making process. I did not agonise over it but ineluctably I worked towards it. I am very satisfied with the decision. I am overwhelmed by the expressions of goodwill and far too generous appraisal of my work on the Court.

To all of my friends who have come along today I say thank you for participating in this ceremony, which unfortunately like someone has said, like some of my judgments has gone on a little. You will see I am not reading from a tome. I have a few little scratchy notes on small pieces of paper so I shall be brief.

May I say, Chief Judge and Mr Slattery, Mr Bingham and Mr Craig in particular, you have been far too generous in your words of appreciation, but I thank you very much for them. I have learned a lot about myself in them. I am staggered at the industry and the thoroughness of your researchers. Mr Slattery, you have almost given me the basis for some form of biography, which would be not of wide interest but at least of interest to me. I have learned quite a lot about myself. As we all know, human beings form estimates of themselves. We all know that each person forms an estimate of each other. As I say, your estimates have been far too generous and laudatory, and I am going to have the grace to say thank you very much for them and accept them in the spirit with which they have been tendered.

It is very gratifying that today's ceremony is attended by former judges of the Court, Chief Judges of the Court, in fact all living Chief Judges of the Court are here, and I am very pleased to see them alive, looking very well.

Chief Judge Cripps, who led the Court for seven and a half years after Jim McClelland's retirement, is still in high public office showing all of the zeal and zest that one can only envy. He is a little older than I, he has about five times the energy level, but it is wonderful for him to be here. My time with Jerrold, which spanned twelve years on the Court, was a most happy experience, very satisfying because of the force of his personality. It was great fun. All days at work during Jerrold's reign were fun in the broadest sense. He led by example and, as I say, one only wondered where his energy levels came from, but they still seem to be as powerful now as then. It is amazing.

Chief Judge Preston has referred to my association with the Court, at the Court's pre-birth, birth, toddler, adolescent, mature adult and now not coming to retirement, but I am taking leave to retire. It has been wonderful to have been associated with the Court throughout its various stages of development. It is also very gratifying that a number of judges who were on the Court during my time on the Court are here today. Justice Bannon, my dear friend Justice Stein, and Justice Cowdroy, they are judges who have retired or moved on to higher and better things.

I will say a little, if I may, if I am not too bold, about each of the former Chief Judges who are here. May I also say how delighted I am that Sir Laurence Street is with us today. Sir Laurence of course was Chief Justice when I became an Acting Judge of the Court in 1984. He hosted a little private swearing-in, as is the wont on acting appointments, in his chambers, so graciously. I remember it very vividly. My wife and daughter attended. My daughter was at the age of her son Thomas, who is here today. A very pleasant memory.

Sir Laurence also of course presided at my swearing-in as a permanent judge of the Court in June 1985. I shared that occasion with Justice Stein. It was a very pleasant occasion and although it seems a long while ago, memory of it is extremely vivid.

I have a great admiration for Sir Laurence and his magnificent service to the State. He too, like Jerrold Cripps, has magnificent enviable levels of energy and intellectual prowess. He is a wonderful figure in the legal world today and I have unashamed admiration for his judgments when he was the Chief Justice of the Supreme Court. His judgment in *F Hannan Pty Ltd v Electricity Commission of NSW* (1985) 66 LGRA 306 in 1985 demonstrated to me, in my personal respectful judgment, an outstanding mastery of the concept that undergirded the legislation of the Planning Act and the Land and Environment Court, and his exposition of it to my mind remains outstandingly unequalled in the ensuing twenty years. I always looked at it as a locus classicus of the Court's function and power, and Sir Laurence, as we all know, had great gifts in expression. One could only aspire and covet, never emulate, his great skills as a judge and a judgment writer.

Of course, as you would expect, I have done a lot of personal reflection over the past year as I have luxuriated in what ultimately proved to be pre-retirement leave and, as I said earlier, I am amazed to hear it all portrayed before me in the most vivid and scholarly way that Mr Slattery, Mr Bingham and Mr Craig have portrayed. I can honestly say I remember all of the incidents that they have so skilfully assembled but I have not put them together in the way that they have, and I am indebted to them because it does give a portraiture of myself which, as I began to say earlier and did not finish my sentences, a bit like some of my long sentences in judgments, I sometimes add too much into them and gave the appellate judges difficulty perhaps in understanding the point.

I have just remembered. I am very grateful too for the speeches that have been given so generously today. It is good to reflect on what other people see in you. We can all learn from that, not that we necessarily are persuaded by what other people think of us. Of course, I would be less than human if I was not concerned about what people thought of me professionally and personally, but in the main I have tried in life to go through life not too influenced, unless for good, by what other people may

have thought about me or my work. As I say today, the overly generous, lustrous portrayals of my work sound like an opera record that I could play to my heart's content in the quietude of my living room. But I will not, I am not an egomaniac.

I just wanted to say this about my involvement in the law. Mr Slattery took me right back to those days forty-five years ago when I started at the Maritime Services Board. Mr Craig's sources were right, I did make tea for the senior construction engineer, and it is a habit that I have polished up to a fault. I will always drown anyone with cups of tea if they come to my door, my living room or my chambers. It is something which I have grown with.

But what I wanted to say about my experience way back forty-five years ago when I started work as a junior clerk in the Maritime Services Board, that of course I had no expectation, no ambition, no hope, no thought of a legal career. This was especially so in the light of my humble background and then my limited education. Indeed, I recall very vividly as a junior clerk in the legal branch of the Board even having difficulty in delivering a legal brief to Mr Ferrari, then barrister-at-law in University Chambers, when I did not know how to find my way from the Maritime Services Board at Circular Quay to Phillip Street or Elizabeth Street to University Chambers. Little did I realise what lay ahead of me in those subsequent years.

The unfolding, what I thought to myself, the unfolding remarkable vocational transformation from the junior clerk making the tea, not knowing the way to Mr Ferrari's University Chambers, did not happen by accident. I believe there are three persons to whom I would like to publicly acknowledge my eternal gratitude. Their very good will towards me, their encouragement of me and the influence that they exerted on me at three separate and distinct stages of my life.

The first one goes right back forty-five years ago to the solicitor to the Maritime Services Board, David Alexander McDowell. He was an institution in the place when I started there forty-five years ago. He had spent all his life at the Board. He had been the solicitor for the Board for many, many years. He took me under his wing, father figure style, and it was he who opened up to me the possibility and the opportunity to go on to study law. I was articled of course to his successor at the Board, but it was he who very graciously opened up a vista which hitherto had been non-existent for me, and his advice and encouragement and opportunity making role that he played was very pivotal in getting me started in a legal career.

The next person in my career who called me to a task which was to be very instrumental in the shape and future of my career was Nigel Ashton, who is here today I am very pleased to see. Nigel Ashton was the inaugural and only chairman of the State Planning Authority holding that position from 1965 to 1974 when the State Planning Authority was replaced by the Planning and Environment Commission. And I am delighted that Leon Hort, who was the solicitor for the Authority, managed to come today despite his health. It is lovely to see Leon here. I would like to acknowledge him. He was my mentor. He gave me the job as the legal officer at the State Planning Authority and I loved it, I loved it. Leon was a very enthusiastic, kindly mentor and I had a great working relationship and personal relationship with him, and I am glad to see that he has made it today.

So I bracket Leon with Nigel, but Nigel, as we have heard from Mr Slattery, from Mr Craig, had been appointed special adviser to the Minister at a time when the legislature as well as the courts recognised that the state of planning law in New South Wales was ramshackle. It was Sir Harry Gibbs in the *Parramatta City Council v Brickworks Ltd* (1972) 128 CLR 1 case that lamented the unbelievable complexity facing a person trying to know what he or she or it could do with its land with over-layers of planning controls and the like. That was in 1972. So Nigel had been given the task

by Sir John Fuller to reform the law. He called me to join the team. It was a wonderful experience. Mr Craig is right, it did involve a lot of nocturnal work, but it was a wonderful opportunity. Nigel is a person who is now well into his nineties. It is wonderful that he is here and I thank him for that opportunity.

The third person who I would want to mention, has already been mentioned by Mr Slattery today, is Jim McClelland, the first Chief Judge of the Court. He invited me, after I had been seconded to him, to come to the Court as the first Senior Assessor, and I had a wonderful working relationship with Jim and I have great affection for him. Those three persons were extremely influential, got me to where I was at the beginning of this fulfilling twenty-seven years past.

I just wanted to say that life on the Court and work on the Court has been an entirely fulfilling, satisfying life, and as I leave the Court, I leave it I think at a stage where it is well established, in very, very capable hands, facing the challenge that environmentalism globally now presents. Climate change, global warming, carbon trading, these things are no longer esoteric thoughts that are in the minds of a few scientists. The whole of society, indeed it looks like elections in this country are being run on that basis. That simply is an indication that the whole of the community recognises the all-pervasiveness of the environment, the great importance to being a good steward of it.

Chief Judge Preston in my respectful opinion is wonderfully qualified to lead the Court in this exciting era of increasing awareness, indeed imperative awareness of the global environment. I wish him and the Judges and the Commissioners of the Court all the best for continuing the work in the Court which I think will become more exciting as time goes on.

It was indeed Lord Harry Woolf in the 1991 Garner lecture who was extolling a concept of a court system for the environment in the United Kingdom. He painted the characteristics of the court. They were, of

course, modelled on the Land and Environment Court. Lord Harry Woolf, who became Lord Chief Justice of England and a great reforming Chief Justice of the English civil law system in the nineties, was the most wonderful supporter of the Court, of this Court. He was very familiar with its workings. This was especially the result of Jerrold Cripps' wonderful ambassadorship throughout the world for the Land and Environment Court, and although Lord Harry Woolf, who retired at the end of 2005 as Lord Chief Justice of England, although his wish never materialised in England. Who knows, as this Court's reputation continues to expand and be recognised internationally as a leader, the English system may yet adopt our system.

One and all, I thank you very much for your great patience, for being here today. Your support to the end has been most gratifying and I wish you all well.

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

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