

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

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

TUESDAY 10 SEPTEMBER 2019

**SWEARING-IN CEREMONY OF
THE HONOURABLE JUSTICE SANDRA ANNE DUGGAN
AS A JUDGE OF THE LAND AND ENVIRONMENT COURT
OF NEW SOUTH WALES**

1 **DUGGAN 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. I present to you my Commission.

2 **PRESTON CJ:** Thank you, Justice Duggan.

(Commission read)

(Affirmations of office taken)

3 Justice Duggan, on my own behalf and on behalf of the members of the Court I warmly welcome you to the Court. I look forward to your service.

4 **DUGGAN J:** Thank you.

5 **PRESTON CJ:** Mr Attorney.

6 **ATTORNEY GENERAL MARK SPEAKMAN SC MP:** May it please the Court. I acknowledge the traditional custodians of the land on which we are gathered today, the Gadigal of the Eora Nation, and pay my respects to their Elders, past, present and

emerging.

- 7 Your Honour Justice Duggan, on behalf our State and the Bar, congratulations on your appointment as a judge of the Land and Environment Court of New South Wales.
- 8 To your mother, Wendy, welcome. I acknowledge your Honour's late father, John, and I am very sorry that he is not here today to celebrate with us. To your sister Kathy and your nephew Oliver, welcome. To your brother Sean and your niece Evangeline, welcome. Sean, I acknowledge your wife Jenny and your son William. They are not here today because William has his final medical exam today, so everyone please spare a thought or two for him. I congratulate all of you, all of the family members because your love and support and friends are so important, you bring strength, and encouragement, and laughs and joy, and they are all part of building a life and a career.
- 9 Your Honour grew up in the leafy surrounds of Wahroonga. Your father was with what is now known as the Department of Foreign Affairs and Trade and your mother worked in local government and records management. You went to school at Loreto Normanhurst and Barker College, and went on to Macquarie University to study Arts and Law. You are currently undertaking a Master of Archaeological Science at ANU in your spare time, and I apologise, I cannot resist the temptation to say 'Your Honour digs archaeology' and it is no wonder with a name like 'Duggan'.
- 10 You were admitted as a solicitor in 1988. You practised with McDonnell Moffitt Dowling Taylor, which later merged with Abbott Tout, specialists in local government and planning law. In 1995 you were called to the Bar. You read with John Webster, Peter McEwen and Dennis Wilson. You began at six, and then seven, St James Hall. When you began on six you were the first female member of the Floor. This seemed such a novelty at the time that one Floor member did not think he needed to learn your name because he did not think you would be around for too long. And so, to him, you were 'Susan Duncan' and to some people you will always be 'Susan Duncan' but certainly not today.
- 11 By the early 2000's your Honour and some colleagues who also read on six St James Hall decided that the only way to get bigger rooms or rooms that did not overlook the toilets would be to start your own Floor, and so, in 2003, Martin Place Chambers

began. You now leave those Chambers as its Head, as one of Sydney's very few female Heads of Chambers.

- 12 You were instrumental in the Floor taking on First Nations law students in shared-junior positions and you encouraged and mentored them at Floor events, as well as in work for Toongabbie Legal Centre, Arts Law and Jessie Street Trust. I am told your Honour's leadership of Chambers followed closely in the footsteps of your predecessors, Messrs Craig and McEwen as a benevolent dictatorship.
- 13 Members' wellbeing was something your Honour valued highly. As was the wellbeing of members' families. Take for example the story of a certain reader. While he was under tutelage his wife gave birth to their first baby and as you congratulated him you also issued him with the card of a jeweller and instructions to buy his wife diamond earrings. "Two months' worth of billings should cover it" was your ruling. And on the topic of rules, you helped to establish the rules of the Martin Place Chambers 'Booze and Books' book club. Rule 1. Only she who chooses the book has to read the book. Rule 2. The book club shall meet at a champagne bar. Rule 3. The champagne bar shall be a different champagne bar for each meeting, and Rule 4. She who is in court the following day need not attend a book club meeting. These rules evoke a recurrent theme in your Honour's leadership of Chambers - champagne.
- 14 While there are Floors, here and there, whose years are punctuated with tours to The Ashes or the Rugby World Cup, or the Tour de France and the like, MPC is not a 'sporty' floor. Instead, you have led Team MPC on champagne and food tours across Europe. Perhaps we should commission a tiny urn filled with the ashes, of a champagne cork, as a memento of MPC Tours Incorporated. Bruce Springsteen rates highly among your known interests in a recent poll of your colleagues, as does travel, of which your greatest love is Paris. I am told that over the course of many law vacations and decade birthdays your French has come a long way from your first trip to France when your only French was the Hail Mary courtesy of the Loreto nuns.
- 15 I will mention some of your Honour's more notable cases. One is, *Inner West Council v Findlay*, the famous case of 'Horse, the Pony'. Horse is a Shetland pony who has been living at his owner's house in Summer Hill for 17 years. Horse has been the subject of complaints about the amenity impacts on his neighbours. Your Honour represented the respondent in the matter which was decided just a couple of weeks ago. Justice Moore ordered that 'Horse' could stay living at the premises with his

owner. Which means that 'Horse' is perhaps "the only pony across the common law world with a 'life estate in premises'." Your Honour's cross-examination skills were material to the outcome of that case. Indeed, your cross-examinations generally have been described as "incisive and devastating" and "calm, forceful and deadly".

- 16 In *Echt v Ryde City Council* in 2000 you were junior to the esteemed Murray Tobias QC who was one of your Honour's great mentors. Tobias when appointed to the Court of Appeal gave you one of his red bags recognising your skills and his appreciation for your work as his junior. Legend has it that Tobias was once asked by a client to recommend the "best Land and Environment Court barrister" to be his junior. Tobias suggested your Honour but the client said he would prefer a man. To which Tobias said, "I thought you wanted the best" and so you were briefed and the client remained loyal for many years.
- 17 But back to *Echt v Ryde City Council*, Tobias and your Honour saw an earlier order of the Land and Environment Court overturned, reinforcing the concept that a planning authority has the right to do nothing, despite a breach of the planning law, if that is what is thought best.
- 18 Your Honour's work in *Mulpha v The Hills Shire Council* in 2012 confirmed that a beneficiary of development consent has an enforceable right to surrender that right, and a council cannot resist that surrender on the basis that it will not then receive development contributions.
- 19 There are dozens of other cases I could cite but each leads to the same conclusion, that your Honour is one of the most experienced and most well regarded environment and planning law practitioners in our profession.
- 20 Your dedication to the law extends to professional activities and memberships. You have been a member of the Bar Association Committees like the Silk Selection Committee, the Practice Development Committee, a Professional Conduct Committee, the Committee for Equal Opportunity at the Bar, and the Environmental Law Committee. You are a past Chair of the Bar Association's Women Barristers Forum. You are a past Managing Editor of the Environmental Law Reporter and you have presented widely on topics related to the local government and planning law and practice. You are admired as a mentor and "fierce champion for women in our profession". You have soared well beyond the expectations of the fledgling "Susan

Duncan” as something of a pioneer for women in environmental and planning law. One colleague who is proud to wear your junior robes said that you have “constantly pushed women barristers in this jurisdiction to be better, that you have always been very encouraging and that this Court will only be better for your appointment.

21 You are known to be a person of fine character, of great wit and an invaluable friend. All who work with you know two things, one, “bring your A-game” and two, “be on time”. “Duggan time” is known to be seven minutes early by your watch. Being 15 minutes early is tantamount to running late. Happiness only comes from submissions being submitted well before they are due. Adding a conservative 30 minutes to Google Maps predictions ensures arrival by ‘Duggan Standard Time’. So those seeking leave to appear before Duggan J please take note. But lest I overrun a lot of Duggan time, I will wrap up.

22 Your Honour is readily described as a renaissance woman: travel, Paris, Africa, Antarctica, Scandinavia, champagne, shoes, handbags, cooking, literature, theatre, photography, archaeology and Springsteen and a lawyer of exceptional quality. Justice Duggan, I warmly congratulate you on your appointment and I wish you well for your career on the bench. May it please the Court.

23 **PRESTON CJ:** Ms Espinosa?

24 **ESPINOSA:** May it please the Court. I too acknowledge the Gadigal people of the Eora nation, the traditional owners of the land on which this Court stands and I pay my respects to the elders, past, present and emerging.

25 It is my honour to appear before this Court on behalf of the solicitors of New South Wales to offer our congratulations and wish your Honour well on the appointment to the Land and Environment Court of New South Wales.

26 Since being admitted to the roll of solicitors in 1988 your Honour has distinguished yourself as a leading voice in our State on planning, environment and property law. In my own personal capacity, first as general counsel for Sutherland Shire Council and now Liverpool City Council with more than six years’ experience in local government, I have seen first-hand how suitably qualified you are for this judicial appointment.

27 Today I would like to focus on three significant dimensions of your Honour’s character

and remarkable career to date. They are your Honour as a brilliant lawyer, a formidable advocate and a generous mentor. Now, the first I mentioned, a brilliant lawyer. Sandra is, in short, a brilliant lawyer. This is the summation of one solicitor and is corroborated by countless others. As has been noted your Honour boasts a penetrating legal mind. Your Honour has a formidable ability to grasp the relevant facts and hone in on the legal issues they present. Formidable was for many solicitors their goto word when describing your Honour.

28 From an instructing solicitor's perspective your Honour has an established reputation for being great to work with. Punctual with written work, as we have heard, always on top of the brief and terrific on your Honour's feet. Another solicitor quipped that you had an elephantine memory and the only thing they believed that was more impressive than your memory was, in fact, your collection of shoes.

29 While your area of expertise is well-known and highly valued your Honour has never been limited by this expertise. A director of a law firm specialising in liquor licensing and gaming spoke of how ably you represented his interests before the New South Wales Civil and Administrative Tribunal. He was adamant that your Honour's reputation as a specialist should not in any way diminish the regard for how capably you have applied your skills to other areas. He credits your Honour's abundance of common sense as the foundation of which you have established your legal career. In fact, after working with your Honour for some time, he was only able to discern one glut in your knowledge: Rugby League. On this issue alone he did take the lead.

30 Now the second dimension of your character and career, the formidable advocate. If you want to win choose Sandra, this is the sage advice of one solicitor who witnessed your skills in the Courtroom. While solicitors that briefed you were effusive in their praise for your ability, their praise was often mingled with another sentiment, relief. Relief at not having to face your Honour in court. And those solicitors that did, spoke admiringly of your fair mindedness in the Courtroom. Your Honour has a reputation for being an eloquent and effective advocate, a master strategist and single minded in court. One story I heard was that of the staff of a large corporation. He began to look forward to court days, less to have their development appeals and more to watch your Honour in action. Your Honour has the ability, to quote from one solicitor familiar with your work, "the ability to switch between the velvet glove and to the leather glove". Such a skill set made your Honour the silk of choice for government, large corporations and high profile individuals and this explains why Infrastructure New

South Wales turned to you regarding the demolition of the Sydney Football Stadium at Moore Park, or why your Honour was called upon to help with the 52 million Gosford Waterfront Precinct across the line.

- 31 However, your Honour has always been generous with your skills and enthusiastic to share them through your pro bono work. Your Honour's commitment to affordable legal advice is well-known, and one of your Honours last cases was in fact a pro bono case and we have heard a little bit about Horse already. After request for assistance to the bar's pro bono scheme your Honour quickly offered to help. This case did concern a man defending an action brought by his neighbour to have his Shetland pony, we have heard called Horse, removed from the backyard of his home of 17 years. The neighbour had been complaining to the local council for years, during which time Horse had become a treasured part of the inner west community.
- 32 Now interestingly, together with your junior your Honour quickly became experts of Horse, his diet, his manure, the flies and the importance of knowing which way the wind was blowing and as we have heard, the result, thanks to your formidable advocacy skills, Horse was able to stay with his owner and he did resume the iconic 15 to 30 kilometre walks with his owner. This case brings together defining elements of your time in law. A belief government should serve the people, the ability to open doors in Courtrooms that were previously closed and a willingness to treat all people equally.
- 33 Now finally to the third dimension, the generous mentor. This commitment to equality also finds expression in your Honour's commitment to mentoring the next generation of legal practitioners. Your Honour treats everyone equally from the most junior clerk to the most senior judicial officer, from the head of a government department to a person on the street. Your Honour is particularly well loved by junior solicitors that brief you. One sole practitioner with over a decade's worth of experience still remembers that your Honour was the first barrister he briefed. He is one of the many that credits you as his mentor and speaks of your practical ability, legal skills and impeccable moral standards as a source of inspiration.
- 34 On occasion the two of you would drive out to regional centres like Bathurst for a case that he would stand back and watch how your Honour would interact with clients. People were always impressed at your command of the facts and strong manner, they looked visibly comforted to know that they had someone like your Honour on

their side.

35 Another solicitor spoke of how during a major case his mother had passed away. He took leave and had to appoint a junior solicitor and an experienced paralegal to take over from him to work closely with your Honour on that case. On his return both of his staff spoke in glowing terms of how supportive your Honour had been and how much they had learned. Your Honour has never hoarded your deep understanding of the law but shared it freely and generously. Your Honour's commitment to building people's capacity explains why philanthropy comes so naturally to you, including supporting women's education in India and promoting women's participation at the bar.

36 So in conclusion I would like to finish by repeating the words of one of our members, he asked, what will the Courtroom of your Honour look like and he answered the question by saying people will go into her court and they will not be afraid, they will find they are treated very fairly, everything will be reasonable and everything will be even handed. Your Honour brings a wealth, a wealth of knowledge and experience in planning, environmental and property law to the Land and Environment Court of New South Wales. The people of Australia are privileged to be served by you in this role and solicitors have every confidence that you will make an exceptional judicial officer. On behalf of the solicitors of New South Wales congratulations, your Honour.

37 **DUGGAN J:** I also acknowledge that we meet today on the traditional land of the Gadigal people of the Eora nation and I pay my respects to their elders past, present and emerging.

38 Chief Judge, judges and Commissioners of the Court, honoured guests, members of the legal profession, my family and friends, ladies and gentlemen I have never been so nervous in my life. Your presence today honours me and the Court.

39 Mr Attorney, Ms Espinosa thank you for your kind words. I apologise that the swiftness of the time between the announcement of my appointment and ceremony means that I did not have time to become interesting, you have done the very best. It is always special to be offered a judicial appointment, however I felt honoured by this appointment.

40 This Court has been my professional home my entire career. I have appeared in all of

its buildings and before all bar the first of its Chief Judges. I cut my teeth as a very junior barrister appearing against the current Chief Judge - (I hope) honed my skills appearing before him. I am blessed now to join a group of Judges and Commissioners that I have respected for many years. I am honoured to have been chosen to join these ranks.

41 It was with some remarkable foresight that this Court was created as a specialist court of superior record in 1979. At that time, the matters within its jurisdiction were recognised by the Parliament as being crucially important. Perhaps the public did not see it that way at the time. Parliament was and remains tasked with striking the appropriate balance between the ambitions of individuals and the needs of the community. The laws it makes are the democratic reflection of community expectations. This Court ensures that the community expectations evinced by those laws are met, enforced, and where breached appropriately redressed. The volume of work and the expansion of the Court's jurisdiction reflects the importance the community now places in matters commonly referred to as Environment and Planning Law. Remarkably, elections at both Local and State Government levels are now impacted by how Governments deal with their Planning and Environmental Law considerations.

42 The press are now even interested in what we do. I managed to get my face on television in the Stadium case much to the delight of my family and my hairdresser.

43 The nature of the specialist jurisdiction of this Court is exemplified by the specialist assistance that the Court requires. The issues that come before the Court are often complex and require exposition by those with necessary expertise and understanding. The Court could not properly perform its functions without the expertise of its Commissioners and the expert witnesses that appear before it. The work we do involves, at a base level, the way people live, their experiences within their communities, and the future we leave those who come after us. It is important work, and I am pleased to remain part of it. In order to embrace a new opportunity it is often necessary; and perhaps reluctantly, one has to let something go, and it was with a good degree of melancholy that I woke this morning to the sad truth that I would no longer be a barrister. It has been my great privilege to be part of a profession that participates in the proper administration of justice in such an immediate way. The motto of the Bar Association is apt, you are servants of all, yet of none.

44 Too many years ago to mention I was admitted as a solicitor in this very court. I remember it being a lot darker, I think they might have done some renovation to it. I embraced that branch of the profession, as I believed being a solicitor was the only real option for women. I had never heard of a female barrister. It certainly was not suggested as a career path at law school in the 1980s. I understand the truth of the statement that: You cannot be what you cannot see. It was only after about five years of practice that I saw my first female barrister. The more female barristers I saw, the louder the call of the Bar grew, and it was with some naivety that I thought I would give it a go. Being the best junior barrister was the extent of my ambition at that stage; then I saw the female silks and another door opened. Finally, all of the apparent barriers to my ambitions collapsed with a momentous action of the Land and Environment Court. The Honourable Mahla Pearlman was appointed the first female judge of this Court. With her appointment, she became its Chief Judge and the first female head of any jurisdiction in the country.

45 This Court does enjoy its firsts and as I join the Bench today, as far as I am aware it becomes the first gender-balanced court in this State, or as Pepper J speculated this morning, perhaps the country.

46 It was by sheer accident of birth that I came to the Bar at a time where gender was considered a mere disadvantage rather than an absolute barrier. My path was made easier by the brave and indefatigable women that went before me. Their experience was much harder than mine; the challenges they faced were beyond what I believe I could have endured. Without them, I would not be sitting here today - I remember them, and I honour them.

47 To all of you women who choose to follow the same path, I hope that my footsteps added to theirs will make your journey a little more comfortable. And to the young women that are here today, taking a day off school to watch this performance, Eliza Crosley and Lara Eastman, I hope that you as young smart and fabulous women will find your advancement no longer a matter that relates to your gender.

48 One of the inspirational women whose achievements are epic and who has always given her time to mentor me and many other women at the Bar is now Her Excellency, the Governor. It is serendipitous that she is the Governor who signed my commission, and that I am her first judicial appointment. I will treasure that fact. It may not be momentous to her, but I will, as often is seemly, remind her of that fact.

49 There are many people who have been instrumental in my career over the years. To the many solicitors who trusted me with their work, to the silks who were prepared to foster my growth as a barrister, and to the juniors who made me look good, you are too many to mention, but know that I thank you. There is, however, one individual who has played such a significant role in my career that he cannot go un-acclaimed, Mr Murray Tobias QC, a now retired Judge of the Court of Appeal. I met Tobias in my reading year; he was President of the Bar Association. It was a meeting of the very highest of ranks, (his) and the very lowliest of low (mine.) I was terrified. Not as terrified as I am today, but I was terrified. He took me on as his junior and I must have made a half way decent fist of it as we continued to work together until his elevation to the Bench. Tobias was not only generous in the introductions he made for me and the work he sent me, but he was generous with his time and wisdom. Many of what my juniors consider the “Duggan style” of advocacy I learned at the foot of the silk gown of Tobias. He championed me to clients and encouraged me to take risks in my career. My successes are in large part attributable to him; my gratitude is boundless.

50 As you can probably tell, I have never been one who likes a fuss. I do not seek the spotlight, and I confess to my family here today that there have been many ceremonies during my career that I have not told them about. However, in this age of Google I did not think that I would be able to get away with letting this event slip by without notice.

51 My mother and my late father instilled in all of their children the importance of education. They both worked hard and sacrificed much to ensure that we were all given the opportunities that education affords. I am grateful for those opportunities, their support, and their encouragement throughout my life. To my sister Kath and my brother Sean, I think the best thing you can say about siblings is that you are friends as adults. I consider you both wonderful friends, and I thank you for having my back over the years. Importantly, thank you also for giving me my fabulous niece Evangeline, and my equally fabulous nephews Oliver and William. As you have heard, William cannot be here today but we are planning a re-enactment of this ceremony over Christmas lunch, so he will enjoy in its second serve. I love you as if you were my own and I am so proud of your own accomplishments.

52 I spent most of my career at the Bar at Martin Place Chambers. Some of its members

have been chambers mates with me my entire career. As I was reminded by one of the younger members yesterday, I have been the constant presence in chambers for their entire career. For those at the Bar it is hard to comprehend how the ostensibly solitary life at the Bar can be filled with such collegiality. Chambers will do that. You celebrate each other's victories and failures, you get to know the names of their cats, and their kids, their partners become your friends. A large part of the mixed emotions I feel in taking up this appointment is that I will miss being a part of chambers life. I wish you all well.

53 To all of the chamber's juniors I have worked with over the years and our receptionist Ursula, and now Shay who is here with Martin Place baby number two, your endeavours have made my day-to-day life immeasurably easier. For every trolley pushed in searing heat or pouring rain; every special sandwich sourced; and every forgotten item urgently delivered to Court, I thank you.

54 For the last 15 years, I have also been honoured by having Fiona Duffield as my assistant. She kept my life ticking over whilst also looking after four other barristers (who have prohibited me from poaching her to my new chambers.) I will miss her dedication, her unflappability, and her plan folding skills.

55 I have had the same clerk for the last 24 years at the Bar. She has been my clerk for every day of my life as a barrister. I am not embarrassed to say in front of all of the other clerks that are here today that Michele Kearns is the best clerk ever. The job of a clerk is not an easy one, they are the frontline of a barrister's practice. Unfortunately, that often puts them in the range of both enemy and friendly fire. They do everything from keeping the lights on to keeping the diary ticking over. They do this for multiple individuals who all expect individual attention. I do not know how they do it without regularly running into Phillip Street screaming. Whilst that list of horrors is the life of every clerk my now former clerk also braves the pastoral care of her tribe: divorces; marriages; births; deaths; ill health; and late in life sporting ambitions (with the consequential medical attention that requires). Michele manages all of it with unquestionable loyalty, grace and care. Michele, for your friendship and also for your stewardship of my career I am eternally grateful. It did come as quite a shock however to learn how conditional the love a clerk truly is. In the nicest of ways I was told that the keys to me with all of my latent and patent defects have been handed over to the Court and to my new staff, and that I was no longer any of her responsibility. So with that said, I look forward to working with my new associate Kim

Khong and my new tipstaff Cameron Shamsabad who are both here today.

56 I sought counsel for this speech. No advice was offered but two edicts were delivered, the first, keep it short, and I hope I have met that requirement. The second was that I must work into this speech the non-word “irregardless”. Many of you may wonder why people whose wise counsel I would seek would want me to use a non-word. Are they trying to make the Attorney regret my appointment so soon, or make my mother despair for the quality of my education? No. It is to honour the late John Webster of Senior Counsel, longstanding member of Martin Place Chambers. It was his word and he used it with disturbing frequency. Today just a whispered “irregardless” is enough to conjure the spectre of Webster, so today I deploy it in his honour, he was a great barrister and a fine man.

57 Finally, thank you all for your attendance today. I am, despite the evidence of the last 15 minutes, speechless. Accepting as I must that judging the judge is an essential part of the life of a barrister, (and I must say one of the bits I will miss), solicitor or expert witness, all I can ask is that you be kind to me. I will always strive to be worthy of the faith and trust that has been placed in me today, and to serve to the best of my ability the people of the State of New South Wales.

58 Thank you.

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