

# Mediation in the NSW Land and Environment Court

- John Tyrill

**The NSW Land and Environment Court introduced the option of a mediation conference for some types of cases from 1 May 1991.**

The Court now offers the parties the option of a mediation with the Registrar or Deputy Registrar for:-

- (a) Class 1 appeals concerning development applications;
- (b) Class 2 appeals concerning building applications, demolition orders and refusals to issue 317AE Certificates under the Local Government Act; and
- (c) in Class 3 compensation matters.

It is understood that each party is required to indicate in writing that it wishes the dispute to be mediated and that this may be done at any time between service of the documents on the other side and the matter being set down for hearing. Mediations are conducted at the Court. At least a week before the mediation commences, the parties are required to serve on the other side a statement of their position and the issues as each party sees them.

In Class 3 compensation matters, the parties may request mediation after exchange of expert's reports; the

parties should be in a reasonable position to know their relative positions at this stage.

Whilst commending the Court for this initiative, the NSW Law Society's Dispute Resolution Committee has expressed its opinion that, ideally, the mediation role should be performed externally by trained independent mediators, rather than by the Registrar or Deputy Registrar. Further, that legal representation in mediations should be allowed as a matter of right rather than by leave of the Court, "unless the court is persuaded in the particular case on evidence adduced to it that such representation should not be permitted".

The Court has also introduced compulsory issues conferences for Class 4 matters concerning equity issues or applications seeking Court orders or declarations. It is understood that the issues conference is arranged to explore the possibility of settlement and to narrow the issues in dispute, once all the affidavits have been filed.

Where a settlement agreement is reached in the mediation, this may involve one of the parties giving consent or agreeing to be bound by the terms of the settlement. Where an order of the Court is required, the consent order is agreed upon between the parties and placed before a duty judge.