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Comments and Submissions on aspects of Reimaging decision-making processes for Queensland Mining Consultation Paper – July 2024

Prologue

I am a retired Barrister at Law and a Life Member of the Queensland Environmental Law Association having been its Foundation President from 1987 to 1991. I do not currently speak on behalf of the Association but have remained interested in its activities. My curriculum vitae is attached to the email which sends this document. I have written on many environmental law topics including Expert Witnesses, Access to Information, Mediation and other forms of Additional Dispute Resolution.

This submission –

- Supports the proposed reframing of participation in the Government's decision-making process – P1.
- Agrees with an online Government portal consistent with access to information as part of the public participation effort -P2.
- Disagrees with an Independent Expert Advisory Panel as there already exists sufficient practice and procedures for Expert Witnesses which can be improved, if required, by amending the existing practice and procedures – P3.
- Endorses the proposed amendments to the statutory criteria – P4.
- Endorses the proposed amendments to the statutory criteria concerning rights and interests of First Nations peoples – P5.
- Supports the Reviewing of the Government decisions proposals – P6.

I have reread many of my conference papers (1983-2013) and in a section below named "My previous dialogues as a Checklist leading to current and future discussions and decisions on Land Court Practice and Procedures" I have collated many of the previous references to put forward a checklist of concepts and ideas which you may find useful and/or helpful in fine tuning or enhancing the QLRC recommendations and final report. The checklist contains prompts and ideas meant to be helpful in themselves or able to be added into the consideration and recommendations process. The checklist has 38 points.

Other Consultation Proposals and Questions

Appendix B – Interaction with other laws considered below

Questions in Appendix B	
Q22	Issues interacting which should be considered
Q23	Opportunities to integrating interacting Acts
Q25	Is there anything else you would like to tells us about the current processes?
Q26	Are there any additional options for reform of the current processes ...?

Court merger to create the Queensland Land and Environment Court

In reading the QLRC information and background materials it seemed to me that the Planning and Environment Court should be merged into the Land Court to create the Queensland Land and Environment Court as was the recommendation of the Hayes Trenorden Report (1990).

I was involved in the dialogue for the unsuccessful merger discussions about 20 years ago. Maybe it was being looked at back then as a merger in the wrong direction.

The Land Court is not only the second oldest Court in Queensland but also a stand alone Court dealing with land issues. On the other hand, the Planning and Environment Court is part of the District Courts of Queensland without the independence of the Land Court. The Land Court has a President. The Planning and Environment Court has no President or Chief Judge.

Dispute Avoidance and Minimisation Centre

As stakeholder dialogue is an important component of avoiding and minimising disputes then better forms of dialogue will help create improved standards for Government decisions and their Review by the Land Court.

Environment Conflict Resolution (ECR) should also be involved in encouraging dispute avoidance and dispute minimisation. With better environmental knowledge there is an opportunity to avoid disputes. The community needs to focus on dispute avoidance as a mechanism. The Court system and Additional Dispute Resolution (ADR) cannot be

expected to deal with all potential disputes that are likely to arise if dispute avoidance does not become a reality. Disputes will not be eliminated completely.

Accessibility to all relevant knowledge is fundamental to any consideration of dispute avoidance. There is a need for trust so that all relevant information is recorded and available for public access.

In 2004 as part of the dialogue on the then Courts merger proposal I developed the concept of a Dispute Avoidance and Minimisation Centre (DAMC) for planning and environment issues. It could now include land and resources issues.

I made the following comments which are still relevant today:

1. To establish a 21st century framework for handling these disputes requires proactive leadership.
2. The public is demanding and getting more planning and environment regulations. The increasing layers of regulation will continue for some time until we reach a more developed level of interaction.
3. The public is more knowledgeable on environmental issues now than 20 years ago and knows how to use the additional information in a dispute situation.
4. Self representation in Courts is on the increase.
5. The cost of litigation is prohibitive in more cases now than it was before.
6. Negotiating styles are generally speaking very basic.
7. Ultimately the public pays.
8. Time is money.

The DAMC will be able to create and give support to State and Local Government and the private sector in developing quicker and less costly ways of achieving decisions on planning, environment, resources and land issues. In Queensland there is a need to have greater certainty in the taking of timely decisions to be able to manage growth effectively and efficiently.

Early intervention and dispute resolution, even before matters are filed in Court, will be an advantage. The DAMC will be able to develop and promote a wide range of options.

The role of the third party neutral needs to better understood. Facilitated meetings using a third party neutral should be promoted and used as an alternative to mediation. The DAMC can develop this further.

Dispute resolution is only part of the process. In 1995 I addressed dispute avoidance in "The Continuing Development of the Right to Know and the Right to Participate as Public Environmental Rights" (1995) presented at the Queensland Environmental Law Association (QELA) Conference. The paper also looked at Negotiated Rulemaking.

ECR for the resolution of environmental and planning disputes require a cultural shift within Queensland which has not yet fully occurred. The next phase of the development of ECR is the introduction of negotiated rulemaking. The DAMC will be able to lead the

way forward on negotiated rulemaking. Negotiated Rulemaking is a process which brings together representatives of various interest groups and the Government Department or Agency to negotiate the text of a proposed law (to be an Act or Regulation). The goal of a negotiated rulemaking proceeding is for the stakeholders to reach consensus on the text of the proposed law.

The concept of the Independent Hearing and Assessment Panel used by some Councils in NSW needs to be adapted for use in Queensland. Dr Jianbo Kuang and I have developed an "early chance to be heard" concept for Queensland local government as part of our 2002 ADR Information Seminar series. We have also prepared a proposal for Local Government to develop and implement over a 12 month period an ADR Planning Scheme Policy to go with each IPA Planning Scheme.

The DAMC will be able to collect quantitative and qualitative data on appeals review practices by Regulatory Bodies (including Local Governments) to make suggestions and offer training on how to improve these processes.

Improvements in negotiating styles will increase the satisfaction levels. The DAMC will help with information and workshops on negotiation skills.

Much more work needs to be done to make sure that an institutional change is permanently adopted.

Concurrence Agencies need more training and support.

The use of a third party neutral person to facilitate can be researched and monitored by the DAMC.

DAMC research and training will help improve trust and confidence in the use of a range of ECR skills. The DAMC is capable of providing a bridge between the different styles and expectations and creating a constructive atmosphere for a forward looking view of ECR.

The DAMC will lead (over time) to a less litigious society where the disputes that do arise are addressed in constructive ways so that everyone has access to this form of justice.

Assisted Dispute Resolution (ADR) for Environmental Law

I first mentioned mediation at the Local Government Planners conference in Brisbane in 1988 and have been advocating for a wider use of mediation and other ADR techniques since then. The 1988 paper "The Judicial System and Public Interest in Queensland Town Planning" was published in (1989) 6 EPLJ 18.

Slowly I have seen an increased use of mediation in planning and environment litigation.

There is still a long way to go and many more and varied techniques for Environmental Conflict Resolution (ECR).

After 36 years of encouraging more use of ADR/ECR it is clear the take up is not as much as originally thought reasonable. The cultural shift to offer and use a genuine alternative to adversarial dispute resolution (Courts) has been slower than optimal.

Court annexed ADR/ECR has to be more than a case management tool or a "tick the box" procedure. It is time to reinvent the flexibility of ADR/ECR.

More encouragement is required for Court annexed ECR and for a private practice ECR to keep these processes alive and flexible.

It is time to add "Conciliation" to a Renewed ADR/ECR Toolkit

The fact that there are different names for ADR/ECR procedures is helpful in attracting more people to use the part of the Toolkit which fits best with the disputants' conceptualisation of what is meant by dispute resolution. The use of "conflict" could be seen as a softer term than "dispute" so ECR has some advantages over ADR.

Some people may prefer Conciliation because it is often Court annexed relating to an administrative decision and could be seen as providing more assistance than Mediation.

We now have a definition of "Conciliation" recommended by the Australian Dispute Resolution Advisory Council (ADRAC) in November 2021 "Conciliation: Connecting the dots – Conciliation Report". ADRAC Conciliation report _ November 21.pdf

The recommended definition is –

> Conciliation is a facilitative dispute resolution process in which the disputing parties are brought together and, with the assistance the conciliator, have discussions with the conciliator jointly or separately about key issues for the purpose of resolving their dispute. The process is conducted under and in accordance with legislation or other binding rule which places obligations on conciliators and the disputing parties to comply with the norms and standards required by that context. Conciliations are non-determinative. If the process does not achieve resolution, the matter typically proceeds to a determinative process, either that legislated or governed by other binding rule.
>
> Conciliators may use their specialist knowledge and experience to evaluate each disputing party's position, to express their own opinions, to offer advice, and to identify and clarify issues with a view to assisting the disputing parties to resolve their dispute.

The Land Court should add this definition to the Land Court Act and then allow the Land Court to develop practices and procedures to use conciliation as part of its ADR/ECR Toolkit.

The flexibility for ADR/ECR need not be in the statute apart from allowing the Land Court to develop and amend its practices and procedures.

Before the final ADRAC Report setting out the definition, The Honourable Ruth McColl AO SC at the Resolution Institute Conference in Sydney on Thursday 15 July 2021 delivered a paper entitled "CONCILIATION: CONNECTING THE DOTS" which included the following extracts in italics with footnotes excluded but an online copy of the speech with footnotes appears at Conciliation - connecting the dots - Resolution Institute Speech.pdf (adrac.org.au)

1 In 2016, the Australian Dispute Resolution Advisory Council (ADRAC), of which I became Chair in 2019, embarked upon an ambitious task of searching for the meaning of conciliation as a form of dispute resolution in contemporary Australia. ...

4. ... As you will hear a process called "conciliation" is the subject of a large and wide array of legislation. It is the raison d'être of many conciliation entities which provide for a process called "conciliation", and also for the conciliators who conduct the process. And yet, conciliation is a subject as to which there has not hitherto been "much examination of some of its basic assumptions".

11. First, in 2003 the National Dispute Advisory Council (NADRAC) published a still widely cited glossary of Dispute Resolution Terms. ...

12. Of all the ADR terms NADRAC acknowledged the difficulty of describing "conciliation". In its Introduction, the Glossary explained that "both 'mediation' and 'conciliation' [were] ... used to refer to a wide range of processes and that an overlap in their usage is inevitable."

14. Secondly, the comparative uncertainty manifested in the NADRAC Glossary was reflected in academic writings in which "[e]minent ADR scholars in Australia have consistently raised this definitional difficulty, particularly the problem of distinguishing 'conciliation' from mediation.

18. Conciliation was enshrined in s 51(xxxv) of the Constitution which conferred on the Australian Parliament power to make laws for the peace, order, and good government of the Commonwealth with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State".

20. The Australian Parliament used its constitutional head of power in 1904 soon after Federation by enacting the Conciliation and Arbitration Act 1904 (Cth) (1904 Act). ...

23. However judicial authority in the early days of the construction of the 1904 Act of what the processes of "arbitration" and "conciliation" entailed is sparse. In 1923 Isaacs J described "conciliation" as having been "openly preferred by the Legislature as being the simpler, surer and happier method, and most conducive to better understanding and mutual goodwill—perhaps the greatest asset in industrial operations". That preference has continued it would appear in the legislative mind having regard to its adoption in much legislation to this day. ...

25. What these observations lack in the case of conciliation in particular, is that they do not identify in what manner the conciliator undertakes the conciliation task, one clearly intended to be very different from the adjudicative arbitral process. Understanding how that role is to be discharged is important both for the conciliator seeking to adopt a uniform approach under the legislative remit, and, too, for the transparency of the process for the disputing parties.

26. In 2004 in a speech delivered on the centenary of the creation of the Conciliation and Arbitration Court, Michael Kirby observed that "the High Court, need[ed] to look more closely at that word 'conciliation'", observing, somewhat elliptically that "[i]t has been

in the Constitution, and the Act, from the start. But its full potential has never been realised." ...

28. *In its research, ADRAC sought to identify both the usual features and essential elements of conciliation. It pursued four interrelated enquiries. First, ADRAC identified and analysed 96 statutes which entrusted a conciliation function to an identified entity. Secondly, ADRAC surveyed and analysed material published on the websites of bodies entrusted with a conciliation function under statute. It also sought information from conciliation entities via online surveys. Thirdly, ADRAC met with a wide range of conciliators working under those legislative regimes. Fourthly, ADRAC conducted focus groups of between 10 and 18 conciliators in the major mainland capital cities.*

29. *It was apparent from ADRAC's research that conciliation has moved far away from its industrial roots. ADRAC identified over 90 conciliation entities whose remit covered areas as diverse as aboriginal land rights, access to information, anti-discrimination, apprenticeships and vocational training, building disputes, complaints against architects, consumer affairs, disability services, equal opportunity and native title. It was difficult to discern any commonality which explained why parliaments have chosen to subject these kinds of disputes, but not others, to conciliation. Perhaps it is still, as Isaacs J suggested, a belief that conciliation is "the simpler, surer and happier method, and most conducive to better understanding and mutual goodwill", in those categories of case.* ...

30. *Nevertheless, it was possible to identify some "themes" across the conciliation legislation. These were that:*

    (1) conferral of a conciliation function takes place under laws which may broadly be described as regulatory i.e. the relevant laws imposed norms or standards to which people were required or expected to adhere.

    (2) the entity upon whom a conciliation function is conferred has some form of enforcement function over the stipulated norm or standard.

(3) The legislature has formed the view that the public interest is served or advanced by (at least) each of 3 things: first, the stipulation of the norm or standard; secondly, requiring adherence to the norm or standard; and thirdly, conferral of the conciliation function.

Supervising Facilitator

First discussed by me in 2004 at a Legalwise Seminar ("Lawyers, Expert Witnesses and the Planning and Environment Court" published (2004) 9 LGLJ 204) and repeated from time to time up to 2013.

Elements of the Supervising Facilitator can be seen in the Land Court's CMEE processes. There are more opportunities to use/adapt the Supervising Facilitator concept into the Land Court's practice and procedures.

What is said here is in addition to other available information on Assisted Dispute Resolution (ADR).

An early and real chance for submitters to be heard will improve the rate of obtaining consensus and reduce the number of hearings involving submitters.

The Supervising Facilitator can be used before the Government decision is made because a dialogue among the parties in conflict may well come to acceptable outcomes which can then be reflected in the Government decision. Further information could well be created as a result of the intervention of the Supervising Facilitator.

The Supervising Facilitator appointment and processes are less formal and more capable of being an ongoing (as required) process than conventional Mediation.

Assisting with the Expert Witness processes is another role for the Supervising Facilitator.

The Supervising Facilitator could be a member of the Court if the appointment is made after the application finds itself in a Court.

Now we have a recommended definition of "Conciliation" from the Australian Dispute Resolution Advisory Council (ADRAC toward accord) a Supervising Facilitator type approach can be considered as part of the Conciliation.

A cultural shift will be required for this consensual process to work effectively or efficiently.

Individuals and communities benefit from a structured process for the resolution of environmental disputes. There is a need to develop dispute avoidance and conflict minimisation. For the remaining disputes there needs to be a greater use of third party Supervising Facilitators. A structured process includes consensus building especially though dialogue rather than polarised debate. The Supervising Facilitator helps the discussion process keep on track by using a number of techniques like objectivity and reality testing.

Managing public participation is a technique for improving decision making processes. For example, before a public meeting a Supervising Facilitator can discuss concerns in separate sessions with groups who have a common interest. The role of the Supervising Facilitator at the public meeting is to keep the dialogue moving and maintaining civility. If a disruption occurs at the public meeting the opportunity for a separate sub-meeting to discuss the concerns allows the Supervising Facilitator to help these conflicting parties to work out a way to return to and continue the public meeting.

The interactive workshop seminar style is proving to be a successful learning exercise when compared to the more traditional "talkfest" style for conferences. The two way

dialogue helps the workshop Supervising Facilitators as well as delegates. It assists in a constructive exchange of ideas.

Polarised public meetings should be a thing of the past. They have a greater potential to result in increased conflict with a "them and us" approach, which makes a later consensus building processes more complicated.

Facilitated public and private forums are to be preferred. An independent private Facilitator helps manage the consensus building process.

The Supervising Facilitator has to be unbiased. The Facilitator's role is wide and varied and includes negotiating a way forward. Confidential communications with stakeholders away from the open forum allows the Supervising Facilitator to have an understanding of the underlying concerns and suggesting options for the forum to consider. The Supervising Facilitator is not a decision maker.

The examples that follow are not exhaustive.

The concept of a Supervising Facilitator should be considered for those Applications acknowledged as complex or those applications that get bogged down during the assessment process. This may well be an ongoing appointment where the Facilitator comes in from time to time to resolve disputes when each arises and before the parties becomes entrenched or the issue becomes a stumbling block. With many aspects and fields of expertise there may be more than one occasion when a third-party neutral (the Facilitator) can help keep the assessment process moving.

If at a prelodgement meeting it becomes apparent that the proposals of the Applicant and the response of the Respondent are not the same, then mechanisms need to be put in place then to allow for those matters to be resolved. Before or immediately after an Application has been lodged the appointment of a Supervising Facilitator (by written agreement with the costs shared equally) allows for disputes to be discussed with the assistance of a third-party neutral person and keep the process moving so that the assessment of the application does not get bogged down. This may take the form of discussing what should be included in an Information or similar Request and what response should be forthcoming from an Information Request. This is a creative approach to problem solving that needs to be seriously considered.

Questions in Appendix B	
Q24	There should be a legislated pre-lodgement process. It should not be mandatory but should be available if the applicant wishes to use it, There are some pre-lodgement processes which have been useful and others which have failed on occasions.

A second example relates to an Application that attracts significant debate. A significant number of adverse submitters or serious disputes raised by submitters should call for the intervention of the Supervising Facilitator to assist in better defining what the issues of

concern are and how they might be resolved. If the Supervising Facilitator has already been appointed then, subject to any new parties agreeing, the mediation process is reconvened

Once submissions have been lodged there are disputes and points of conflict. It would be useful for the Respondent to have available to it prior to the decision a better understanding of what is involved with the submissions. Are they submissions which should lead to an amended proposal? It would be of use to the Applicant to know that as well. By bringing in the third-party neutral person (the Supervising Facilitator) the 3 parties (the Submitters, the Applicant and the Approval Body) have an opportunity of working through the disputes so that amendments can be made to the Development Application and plans or certain conditions be imposed on an approval.

On the other hand, if the application is to be refused more precise reasons for refusal can be formulated during this process.

Once the Decision-maker has made its decision, the Supervising Facilitator may well be called in again, or for the first time, to see whether or not any of then current disputes can be resolved without the necessity of having to refer the matter to the Court.

If a hearing by a Court is required, then the Supervising Facilitator should be called in immediately to help resolve the dispute or at least formulate it as a clear and precise set of issues for the Court to hear and determine.

If the hearing is about conditions then the use of a Supervising Facilitator would be beneficial in helping to resolve those matters quickly or at least refining what the real dispute is with respect to conditions so that the matter can proceed through the Court process as soon as reasonably practicable.

Terms of Reference for the QLRC

The Background to the Terms of Reference recognises the current processes place the Land Court in an unusual position for a Court making recommendations to a Government Minister or senior public servant. There is a wide scope under the Terms of Reference.

By way of summary the QLRC is asked to have regard to a number of matters which are relevant to all forms of public interest laws and need to be transparent and promote efficiency together with effectiveness.

The Independence of Expert Witnesses with their Duty to the Court is fundamentally important to the practice and procedures of public interest courts like the Land Court.

Having procedures which encourage dispute avoidance and early intervention to resolve conflicts and disputes saves time and money as well as promoting less adversarial approaches to the dialogue. More often than not I use “dialogue” rather than “debate” as the former is less adversarial than the latter.

Dialogue helps with the exchange of ideas, concepts and information which promotes consensus building.

Questions in Appendix B	
Q1	Yes, the guiding principles are appropriate
Q2	Yes. Dispute Avoidance + Minimisation Centre and Renewed ADR/ECR Toolkit and Conciliation and Supervising Facilitator

Proposal 1 - Participating in the Government's decision-making processes

The reframing in P1 will enhance the decision-making processes.

Refreshingly how participation is managed reduces the conflicts through different forms of negotiation.

Flexibility to change processes through Land Court procedures now and in the future should recognise the need for continual improvement (TQM).

Evolving and testing new methods will give the opportunity for more non adversarial approaches to be considered.

Questions in Appendix B	
Q3	Proposal 1 will improve the practice and procedure of the Land Court as a contemporary reform
Q4	Participation needs to be early and often as needed during the various stages.
Q5	The proposed reform will enhance private interests with more efficient and more effective sequencing. It should also encourage early dialogue when conflicts arise.
Q6	Tailored participation processes would be an advantage as the participation will be responding to the facts and circumstances of the application and the objections. The criteria should not be fixed but be adapted to the individual circumstances. The forms of participation should be open and then developed to suit the individual circumstances. Having definitions of the options like Conciliation will allow the parties and the Land Court to formulate a carefully crafted participation model.
Q7	The Land Court needs to be proactive and have annual dialogues with the Stakeholders to review how well the participation process is being responsive to the needs of the Communities. The Land Court needs to be flexible in each matter so the participation model is being responsive to the relevant communities.

Proposal 2 - Central online information portal maintained by Government

Public access to the original information to support the application and updating the mining proposal are very important components of giving the public the opportunity to have a better understanding of the application. Access to up to date and reliable information is important in reaching a negotiated outcome (aka a consensus).

Applicants need to be encouraged to share more information.

There needs to be a right for Access to Information supporting the Application and a public right to Participate. I have written about the importance of public participation in environment related applications (including mining and planning). The decision-making process is enhanced by stakeholder participation. This is part of the what I wrote about Dispute Avoidance in 1995 -

"With better environmental knowledge there is an opportunity to avoid disputes. The community needs to focus on dispute avoidance as a mechanism. The Court system and Additional Dispute Resolution (ADR) cannot be expected to deal with all potential disputes which are likely to arise if dispute avoidance does not become a reality. Disputes will not be eliminated completely.

Accessibility to all relevant knowledge is fundamental to any consideration of dispute avoidance. There is a need for trust so that all relevant information is recorded and available for public access.

It is an essential part of the right to public participation that that participation is based upon the best information available. Otherwise a biased result occurs. We all should trust the process which results in a publicly available ecoinformationbank. If we all have access to the same information then the level of disputation can reduce.

Where environmental factual disputes arise, limited enquiries or "fact finding assessments" can be undertaken which are aimed at resolving the dispute. The result is then recorded in the "ecoinformationbank". Such a system can allow for amendments to be made when better scientific information becomes available. The right to public participation should be included in these processes.

Environmental guidelines or standards can be formulated based on the ecoinformationbank. Negotiated rulemaking techniques can be used to help formulate the guidelines.

It is important to emphasis that the type of participation needs to be meaningful otherwise sections of the public will come to distrust the process and then look for a confrontational approach. The methodologies will vary with the circumstances. The challenge is to work positively at the issues. Dispute avoidance will follow. Not all disputes will be avoided. However, by concentrating on trying to avoid disputes those that do arise will be limited in scope. If that does not work then ADR techniques (before or during litigation), properly used, will help to narrow or better define the scope of the dispute." [1]

[1] The Continuing Development of the Right to Know and the Right to Participate as Public Environmental Rights presented to the Queensland Environmental Law Association Conference in Port Douglas in May 1995.

Questions in Appendix B	
Q8	P2 is an essential part of the Toolkit /package leading towards dispute avoidance and minimisation or quick resolution of disputes/conflicts.
Q9	There is an advantage in having as much information as possible available for the parties to share so all information created for the application and its process through the statutory maze should be included.
Q10	All documents should be included.
Q11	It is a matter for the First Nations Peoples to suggest what is important information for them to receive.

Proposal 3 – Independent Expert Advisory Panel

The concept of an Expert Advisory Panel is a similar to the Single Court Appointed Expert which has been rarely used since being proposed about 20 years ago.

The Land Court and the PEC have for more than 20 years implemented improvements on how the Courts deal with expert evidence. Considerable improvements continue to appear with all the discussions, conference papers, rule changes, practice directions, guidelines for experts and workshops over the last 20 years to say Expert Advisory Panels are not needed.

An Expert Advisory Panel proposal runs the risk of being perceived as the alternative decision making body in the Land Court contrary to the recognised respective roles of Judges and Expert Witnesses.

Judge Alan Wilson SC (as he then was) gave a paper to the 2005 National Environmental Law Association Conference in Canberra on the "Role of Courts and Expert Witnesses" saying Court Appointed Experts were not needed for reasons which apply to the proposal for Expert Advisory Panels.

Even if there is an Expert Advisory Panel those parties with sufficient funds will engage their own Experts to help challenge the Expert Advisory Panel. Those without sufficient funds will be at a disadvantage.

Much has been written on expert witnesses since 2000.

My contributions have included "Lawyers, Expert Witnesses and the Planning and Environment Court" delivered to a Legalwise Seminar in Brisbane in November 2003 (later published (2004) 9 LGLJ 204).

The Land Court has an impressive Expert Witness Toolkit which is another reason not to add in an Expert Advisory Panel. The toolkit includes -

- Procedural Assistance Services – including online Forms.
- Expert Evidence Practice Direction.
- Guidelines for Expert Evidence.

- Court Managed Expert Evidence (CMEE) Process including Meetings of Experts and joint reports.
- Queensland Environmental Law Association Expert Evidence Workshops.[2]

How the Land Court and Expert Witnesses interact is an evolving process as can be seen from what has happened since 2000.

I will leave it to others to comment on the Independent Expert Advisory Committee.

Questions in Appendix B	
Q12	My views against an Independent Expert Advisory Panel are canvassed above.
Q13	I will leave responding to this question to First Nations Peoples for how to establish and maintain the Independent Expert Advisory Committees.

Proposals 4 and 5 - Statutory Criteria

Questions in Appendix B	
Q14	Proposal 4 (a) should see the statutory criteria amended to refer to the information obtained through the new participation process. Proposal 4 (b) I am leaving comments on the proposed Independent Expert Advisory Committee to others, in particular, First Nations Peoples. If advice is to come form the Committee then I would expect that to be relevant for the decision-maker to consider.
Q15	Proposal 5 – the statutory criteria should include consideration of the rights and interests of the First Nations Peoples.
Q16	These two decisions need to stand side by side and not give rise to conflict. It seems reasonable for the mining lease application decider to take into account the decision and reasons of the decision-maker for the environmental authority. The relevant law is public interest law. Both decision-makers should take into account – (a) The public interest. (b) Adverse environmental impacts. (c) The rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture, and cultural heritage (see proposal 5). (d) Any other criteria relevant to the facts and circumstances of the applications (like World Heritage Listing or RAMSAR Wetlands).
Q17	No other additional reforms come to mind at this stage.

Proposal 6 – Reviewing the Government's decisions

The best practice for the Land Court is to encourage all the parties to put all relevant information before the Court's one and only hearing supported by any points of law the

[2] Land Court of Queensland Annual Report 2022-2023 at page 9

parties wish to raise. The decision is then on the facts and the law. One appeal from the Land Court in Queensland should be the norm and sufficient for all litigants.

P6 (a) is too absolute so there should be a discretion as to whether there should be decisions on both applications before the Land Court starts its processes. For example, there maybe a particular environmental issue which the parties agree should be determined first. They should not be automatically forced into two applications if the circumstances show the second application should be deferred. If there is no acceptable environmental solution, then the mining lease application should not proceed. It could work the other way with the mining lease application goes first. It used to be under the Liquor Act, that licensed premises needed a town planning approval and a liquor licence approval. Courts held it did not much matter in which order the approvals were granted. The parties usually sought the town planning approval first.

P6 (b) is unclear if it is to apply to one combined Land Court hearing for the mining lease application and the environmental licence application – that would be too onerous and too costly to apply in all cases. Some applications could proceed in this way so there should be a Land Court discretion on the issue. If the proposition is combined merits and judicial review for each application then that is reasonable.

P6 (c) + (d) are inconsistent with (d) appearing to be de novo hearing (anew or afresh) and with (c) it looks like hearing on the papers.

Anyone, like me, who wants to see decisions with good environmental outcomes then a hearing de novo is the way to go as it allows new or even updated information to be produced and relied upon in the Land Court to get a better outcome.

Hearings de novo have well served the Local Government Court in Queensland (1966 to 1991) and the Queensland Planning and Environment Court (since 1991).

De novo hearings still allow preliminary steps to limit the disputed issues and for the Expert Witnesses to limit or resolve disputed issues because those preliminary steps are sensible modifications to the otherwise adversarial system.

ADR includes developing new options to resolve the disputes which is consistent in keeping a de novo hearing. It helps negotiate refreshingly new outcomes with better information.

P6 (c) makes me uncomfortable if the parties in the Land Court have to litigate "exceptional circumstances". What on earth do those 2 words really mean?

They troubled me throughout my career. Usually, they were not defined.

It is my view that "exceptional circumstances" should not be used as they create additional costs in trying to prove they exist.

P6 (d) means that the Land Court practices and procedures at the date of filing the originating proceedings are those applying to that matter before the Land Court.

With a de novo hearing the exceptional circumstances do not need to be demonstrated.

Questions in Appendix B	
Q18	The Land Court reforms are acceptable with appeals to the Court of Appeal on grounds of errors of law or jurisdictional error. The appeals to the Court of Appeal will then be in line with appeals from the Planning and Environment Court. There will then be no longer a need to retain the Land Appeal Court as an additional appeal step.
Q19	For cost and efficient reasons the combined (merits and judicial) review should be the preferred practice and for there to be separate reviews some particular circumstances need to be made out. What circumstances should not be a closed or limited list as the flexibility of the Land Court practice should be maintained. Words like "in special circumstances" for separate reviews should be avoided.
Q20	The Land Court should have the power to substitute its own decision. The Planning and Environment Court has this power so why not give the same power to the Land Court? If the matter is sent back to the decision-maker that adds an additional step and more costs which is not desirable. The original decision-maker is a party before the Land Court and has the ability to support its own decision. By having one hearing before the Land Court puts each party in the position of litigating all issues in the one Land Court hearing.
Q21	It has always been my opinion that each party pays it own costs in public interest litigation and should not be liable for the costs of any other party.

My previous dialogues as a Checklist leading to current and future discussions and decisions on Land Court Practice and Procedures

While writing broadly on environmental law topics I have included the topics listed below some of which may trigger responses to the current investigation or lead to future consideration.

Relevant topics paragraph numbers in this Submission have been merged into a continuous list and does not use the numbering, if any, in the individual papers. While most of the commentary relates to the Planning and Environment Court there are many similarities applying to the Land Court.

Relevant topics for the Land Court review are1-38 listed below.

From **"A Forward Looking View of the Planning and Environment Court",** ISBN 0-9580049-0-0 published in December 2001. This paper was written during the debate on Court or Tribunal after a very expensive appeal hearing in the Noosa Shire raised concerns. -

1. In February, 1990 the **Hayes Trenorden Report** was published and it looked at the building and planning jurisdictions Australia wide and came up with the recommended model not dissimilar to the Land and Environment Court in New South Wales and the then tribunals operating in South Australia.[3]

2. By 30 March, 1998 when the **Integrated Planning Act 1997** commenced the Queensland Parliament added ADR processes (Alternative Dispute Resolution).

3. From time to time concerns are raised with increasing costs and delays caused by Appeals. Uncertainty with respect to development projects is also a matter of concern that is raised from time to time.[4] Costs are passed on to the community in a variety of ways. It is in the interest of the public that everyone involved in the process should act efficiently. Any time delay (including the processing of the Application) means money. Reducing costs and delays to get dispute resolution should be a top priority.

4. **Alternative Dispute Resolution** is sometimes referred to additional dispute resolution. In the last decade (1990s) there has been considerable public support for ADR. However, this has not generally lead to planning and environment disputes being resolved by alternative means. There is a need to educate all the stakeholders so that the opportunity for ADR is used. The cooperation and positive endeavours of the parties to develop options and resolve disputes by negotiation is in the public interest. Always the Planning and Environment Court is there as the safety net so that those disputes that are not able to be resolved by alternative means have a fair and equitable hearing by the Court.

5. The adversarial system has served the community well. It assists the decision taker to understand the competing points. It is also a valuable exercise in arguing points of law. In all Courts where experts appear there have been sensible modifications to the adversarial model[5]. Further refinement is capable of being achieved in the future. A process of change (some may say experiment) and review will lead to an improved system overall (not unlike TQM Processes)[6]. The Australian Institute of Judicial Administration Incorporated has been conducting research into the use of expert evidence.[7]

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[3] **Combined Jurisdiction for Development Appeals in the States and Territories, Department of Industry Technology and Commerce, 1990, ISBN 0 644 11886 5 by Brian Hayes QC and Christine Trenorden** (now retired Judge)**.**

[4] These matters have arisen in Queensland in 2001 and is mentioned in the 1st point of the Executive Summary in the **Hayes Trenorden Report** on page 4 and also note the 12th point where it is noted the Tribunals are not necessarily cheaper and less formal. The Report of the Land and Environment Court Working Party, September, 2001 also raises the issue at Section 8.1.

[5] The Federal Court of Australia has issued a Practice Direction with respect to experts and the Planning and Environment Court Practice Direction 1 of 2000 includes Guidelines to Experts.

[6] Total Quality Management.

[7] **Australian Judicial Perspectives on Expert Evidence: An Empirical Study**; by Dr Ian Freckelton, Dr Prasuna Reddy and Mr Hugh Selby (1999).

6. By working together in a multidisciplinary environment the best interest of the community will be served. There is a proactive role for Lawyers, Experts, the Developers and the Community as well as Local Government. Judges and Commissioners are also allowed to be proactive. Guidelines as to how the proactive approach will be managed need to be developed. All involved in the process should be looking for good planning outcomes. Ecologically sustainable development is part of the **Integrated Planning Act 1997.**[8] The New South Wales Land and Environment Court Working Party said *Ecologically sustainable development is a significant planning principle*.[9] Total Catchment Management (TCM) is also an important part of the process of ecologically sustainable development. Matters relevant to economic development are part of the balancing process of ecological sustainability. The Continuing Professional Development of all participants should be recognised as important.

7. Saving time spent in the Planning and Environment Court has a direct relationship to the costs to the community with respect to the development process. Apart from new procedures for minor matters, the major matters need improved case management so as to reduce the time spent in Court. In the last 15 years in Queensland with expert reports being produced time has been saved. However, generally speaking reports have got longer. There are limited opportunities for the experts to narrow the scope of their reports before they write them. A chance to better define or narrow the issues will lead to less time in Court. Time limits on examination in chief, cross examination and reexamination should be trialed.

From **"Lawyers, Expert Witnesses and the Planning and Environment Court."** Legalwise Seminar, Brisbane, Australia, November 2003 (published (2004) 9 LGLJ 204)

8. Planning and Environmental Law operates as part of the public interest law that has developed through various statutes.

9. Cost and delay concerns are repeated in this paper.

10. In all Courts where experts appear there have been sensible modifications to the adversarial model.

11. By working together in a multidisciplinary environment the best interest of the community will be served through proactive roles where all involved in the process should be looking for good planning outcomes and Continuing Professional Development for all participants should be recognised as important.

12. All participants in the development approval process (including appeals and other proceedings to the Planning and Environment Court) need to take the time to better inform themselves as to the processes available and how they can be improved. I am in favour of change. I also expect that there will be a considered and widespread

[8] **Sections 1.2.3** and **1.3.3**.
[9] Page 38 of the Report.

debate amongst all the stakeholders (including clients) before the changes are implemented.

From **"Statutory Framework for Development in Queensland: Timing and Other Issues."** Legalwise Seminar, Brisbane, Australia, September 2004.

13. Planning and environment issues are multidisciplinary so it is often helpful for clients and their Lawyers to be assisted by other professions (like Town Planners). Contaminated land present specific problems to be addressed and professionals involved in remediation should be engaged. Arborists and Landscape Architects assist with vegetation and visual amenity issues. And the list goes on.

14. The concept of a Supervising Mediator was presented to this seminar and afterwards it was renamed Supervising Facilitator. [10]

15. The development process continues to be a maze through which experienced and ordinary citizens must try and move.

16. The public has required greater attention to environmental issues over the last 20 years (1984-2004). As a result layers of laws and regulations have come into existence.

17. Public participation is still an important element in the development and implementation of planning and environment regulation. Negotiated Rulemaking needs greater acceptance in Australia.[11]

18. It is in the public interest that all professionals work on assisting all sectors of the community (including developers) to participate in the planning process in a meaningful manner.

19. All spheres of Government should be working towards ensuring, in legal and practical ways, that the planning and development processes are able to be accessed by all who want or need to be involved.

20. A multidisciplinary approach is necessary generally.

21. Sellers and buyers need to understand the statutory process so that realistic expectations can be developed as to the time likely to be taken and the steps involved. The parties must contemplate the possibility of delay.[12]

22. Many different tools are needed to be able to assist everyone, including State and Local Government, through the statutory maze. Third party neutral persons are

[10] There is a separate subheading "Supervising Facilitator" in this submission which summarises the concept.

[11] The United States Environmental Protection Agency has developed Negotiated Rulemaking as a method of stakeholder participation in making and amending laws and regulations and this topic will be discussed at the 2005 National Environmental Law Association Conference in Canberra. If you want to register your interest in this topic email johnhaydon@ecodirections.com

[12] de Jersey CJ in **Hayes v Walker [2004] QCA 288** at [16]

essential for time and money reasons as well as for developer, government and community satisfaction. The concept of the Supervising Facilitator does not require legislative intervention. It can be done by agreement now. All that is needed is the willingness of all participants to work positively and proactively towards a genuine improvement in how we deal with the development process and environmental issues. It is recognised that a cultural shift is required, but that is not impossible to achieve.

From **"Developing and Expanding the Environmental Conflict Resolution Toolkit: Facilitation and Consensus Building for Better Environmental Outcomes."** Co-authored with Dr Jianbo Kuang Science Mediator & ECR Consultant at EcoDirections International and presented to the 2011 International Conference on Environmental Science and Development (ICESD 2011) in Mumbai, India, January 2011.

23. An eight-point plan with a multidisciplinary approach has been developed to work towards achieving better environmental outcomes.

    1) Provide an early and meaningful chance to be heard for stakeholders because public participation is important.

    2) Dispute avoidance through sharing of information and consensus building by seeking out and identifying common ground.

    3) Environment Conflict Resolution (ECR) needs to be developed further through the recognition of the importance of the third party neutral Facilitator and Supervising Facilitator.

    4) Look at using a third party neutral for new format public meetings.

    5) Improve participation in the making and amending of environmental laws and policies by consensus building and dialogue not debate.
    6) Improve the dialogue during the processing of the development applications and/or assessing development proposals by increasing the opportunities for dialogue.

    7) Work with stakeholders to achieve cultural shifts necessary to have a greater use of Environmental Conflict Resolution (ECR) techniques. The development of ECR policies will help. Holding dialogues at interactive seminars will assist.

    8) Encourage a greater use of mediation and other ECR techniques both before and after litigation has commenced. Both public and private mediation services need to be encouraged. Reducing the amount of litigation is in the public interest especially when the cost of public interest litigation is passed onto the public in various ways.

From **"Aspects of Environmental Conflict Resolution and Consensus Building for Improved Sustainability Outcomes."** Co-authored with Dr Jianbo Kuang, Science Mediator & ECR Consultant at EcoDirections International and presented to the 2012

Second Asian Conference on Sustainability, Energy and the Environment (ACSEE 2012) in Osaka, Japan, May 2012.

24. Negotiating for sustainability and working together often require a multidisciplinary approach (adopted by the Authors where science and law are interwoven). Consensus building is a transformational tool that can be effectively used to work towards achieving better environmental outcomes.

25. Consensus building is valuable in interest based negotiations and a primary mechanism for the negotiation of win-win agreements. Illustrations are included in the paper.

26. This paper emphasises that the stakeholders should have early opportunities to participate in the making and amending of environmental policies.

27. Which should come first – a change in public opinion or a change in the environmental law or policy? The competing advantages of each approach are examined.

28. Techniques for the developing of consensus including publicly sharing information, using facilitated private and public forums, encouraging the use of dialogue rather than debate are canvassed.

29. In the 21st century, we need to encourage a greater use of environmental conflict resolution and minimisation, consensus building and collaborative governance techniques.

30. Why not have a dialogue rather than a debate? The difference is significant when looking at achieving good environmental outcomes. Collaboration is far better than polarised debate where issues can remain unresolved.

31. The right to participate is an important cornerstone in all public interest law and policy issues. There is an even greater need to develop this right in the context of encouraging a cultural shift towards greater consensual and collaborative environmental solutions. All stakeholders need to be involved. It is not a "them and us" approach. We need to use methods which include all stakeholders no matter which part of the community they represent. The inclusive approach is built up over time and involves mutual sharing of information and trust.

32. Public consultation can be time and resource consuming. By using facilitation and consensus building techniques and skills, the public consultation becomes meaningful and interactive among stakeholders who become involved in the process and they "own" the process.

33. Polarised public meetings should be a thing of the past. They have a greater potential to result in increased conflict with a "them and us" approach, which makes a later consensus building processes more complicated.

34. Facilitated public and private forums are to be preferred. An independent private Facilitator helps manage the consensus building process.

35. How do you know you have identified all of the stakeholders?

36. The Facilitator has to be unbiased. The Facilitator's role is wide and varied and includes negotiating a way forward. Confidential communications with stakeholders away from the open forum allows the Facilitator to have an understanding of the underlying concerns and suggesting options for the forum to consider. The Facilitator is not a decision maker.

From **"Using environmental conflict resolution and consensus building towards improved sustainability."** Co- authored with Dr Jianbo Kuang, Science Mediator & ECR Consultant at EcoDirections International and presented to the Wessex Institute of Technology Eight International Conference on Urban Regeneration and Sustainability (Sustainable City 2013) in Putrajaya, Kuala Lumper, Malaysia, December 2013.

37. The resolution of environmental disputes and conflicts is an important component for long term sustainability in which diversity and well-being issues are considered. The Authors combine science and law with diverse cultural backgrounds. Environmental rights and responsibilities are evolving through many processes which emphasise improved dialogue. This paper promotes a new paradigm where:
    - Productivity has to be environmentally sustainable.
    - Polarised debate is replaced with dialogue and facilitated information sharing.
    - Active listening is practised as part of appreciating the underlying concerns of others.
    - Diversity and well being should be taken into account in devising a "decision making model". The options are limitless but careful planning is important.
    - Consensus building is recommended.

38. Individuals and communities benefit from a structured process for the resolution of environmental disputes. Sustainability is about sharing experiences and learning to develop improved techniques. Managing public participation is analysed as a technique for improving decision making processes. Diversity is a community asset. Intergenerational Equity is an essential principle. It helps guide the new decision making paradigm. The new paradigm for decision making extends to the implementation of new and improved environmental management processes. It is a partnership between Government, business, industry and individuals. Creative ways to solve problems allows innovation to thrive. What are the benefits of a third party (independent) Facilitator? Facilitation is a broad concept so has the potential for a wide range of opportunities and outcomes. During the remainder of the 21st century, we need to encourage a greater use of environmental conflict resolution, dispute minimisation, consensus building and collaborative governance techniques.

Kindest regards

John Haydon

Attached curriculum vitae – John Haydon

JOHN HAYDON

LLB

Retired Barrister at Law, Environmental Conflict and Dispute Resolution Consultant, Facilitator, a former Certified Environmental Practitioner, Life Member of Queensland Environmental Law Association, Life Member of the National Environmental Law Association (Australia), Life Member of Greening Australia and awarded the United Nations Association of Australia Peace Award and Peace Medal

PROFESSIONAL

LLB University of Queensland 1976
Admitted as Barrister at Law, Supreme Court of Queensland 1976, High Court of Australia 1983, Supreme Court of New South Wales 1987. Admitted as Barrister and Solicitor, Supreme Court of Victoria 1986
Private Practice as Barrister at Law from 24 January 1977 to 30 June 2016

MEIANZ: Member of the Environment Institute of Australia and New Zealand formerly the Environment Institute of Australia since 1987 to early 2010s.

Specialised in planning and environmental litigation and dispute resolution from August 1983. Started advocating for mediation in 1988 and re-engineered the approach to Alternative Dispute Resolution advocacy in 1995 and from 2002 by a continual improvement process through seminar/workshop presentations.

Mediator training with Bond University and the Bar Association of Queensland - 1990

Fellow - Salzburg Seminar - Negotiation Theory and Practice in Environmental Disputes: (Session 284), Salzburg, Austria in June 1990.

Environmental Auditor: Environmental Audit Workshop (Modules 1 and 2) - Centre for Professional Development, 2000.

CEnvP: Certified Environmental Practitioner from the Environment Institute of Australia and New Zealand 2005-2016.

Certificate in Public Participation: from the International Association of Public Participation: Planning for Effective Public Participation; Techniques for Effective Public Participation; and Effective Communication for Public Participation, 2005.

MEMBERSHIPS & OTHER ACTIVITIES

Legal:

Member-	Bar Association of Queensland 1977-2016
Associate Member -	Bar Association of Queensland 2016-
Member-	International Bar Association 1979-2005
Associate Member-	American Bar Association (Associate) 1989- 2016
Examiner -	Local Government Law Barristers Board of Queensland 1981-2004

Guest Lectures:
University of Queensland Faculty of Law - 1988 & 1990
University of Queensland - Department of Geographical Sciences - 1990
Griffith University - School of Law - 1994, 1998 and 2003
Griffith University - School of Environmental Studies - 2005
Queensland University of Technology – School of Planning, Landscape Architecture and Surveying – 1997 and 1998
University of Queensland – Department of Geography, Planning & Architecture – 2005
University of Queensland Faculty of Law – LLM Commercial Negotiation Strategies Intensive - 2013
University of Queensland Faculty of Law – LLM Mediation Intensive - 2013

Foundation President - Queensland Environmental Law Association Inc. 1987-1991 and now Life Member. Contributions to and Editorship of the *Environmental Law Service* (Queensland Environmental Law Association Inc), Australia 1990-1993

National President - National Environmental Law Association of Australia 1992-1993 (Executive 1988-1993 and Vice President 1990-1992) and Member since 1987 and Life Member in 2010. Contributions to *Australian Environmental Law News* (the journal of the National Environmental Law Association of Australia) 1992 -1993 and *National Environmental Law Review* (the changed name of the journal of the National Environmental Law Association of Australia) 2005 -

Other endeavours supporting environmental law interests:

State Editor - *Local Government Law Journal*, The Law Book Company Limited, Australia. 1996 – 1998.
Member – Leading Edge Alternative Dispute Resolvers (LEADR) 1990 -2004.
Member - Environmental Management Industry Association of Australia 1991-1993.
Member – International Association for Public Participation (IAP2) 2005 -
Member – Resource Management Law Association (RMLA) of New Zealand 2005 – 2008.
Member – Certification Board of the Environment Institute of Australia and New Zealand for Certified Environmental Practitioners (CEnvP) 2006 – 2011.

United Nations Association of Australia (UNAA)
Joined 1971:

- National Vice President 1980-1983
- National Secretary/Treasurer 1983-1985
- National President 1985-1987
- Immediate Past President 1987-1990
- UNAA Peace Award and Peace Medal in September 1988

United Nations Association of Australia (Queensland Division)
Joined 1971:

- Secretary Human Environment Year Committee (Queensland) 1972
- Member Queensland State Planning Committee for the International Year of the Child (IYC) 1979-1980
- Member Queensland State Planning Committee for the International Year of Disabled Persons (IYDP) 1980-1981
- Chairman Australian Year of the Tree Committee (Queensland) 1982-1983
- Member UNAA Queensland State Executive 1971-1989 (except 1975-1977)
- UNAA Queensland State Executive Vice President 1977-1979
- UNAA Queensland State Executive President 1979-1982 1985-1988
- Immediate Past President 1982-1985 1988-1989

United Nations Pavilion Limited (for World Expo '88, Brisbane): Board Member

Greening Australia

- Queensland - Foundation Chairman 1983-1985
- Member National Tree Program (NTP) State Steering Committee 1982-1984
- Member National Executive/Board of Directors 1983-1992
- National Vice President 1984-1985
- National President 1985-1987, 1991-1992
- Life Member September 1987 -
- Facilitator for a hypothetical at the National Conference, Freemantle, October 1994 and a hypothetical on EMS at the Greening Western Australia Seminar, Perth, November 1997

National Co-ordination Committee National Tree Program (Ministerial Advisory Committee)

- Acting Chairman 1984
- Chairman 1985-1987

Queensland Committee for UNICEF

- Committee Member 1973-1990 (except 1975-1977)
- Deputy Chairman 1978-1981
- Chairman 1981-1984
- President 1988-1990

UNICEF Committee of Australia Incorporated

- Member National Board of Directors 1982-1984 1985-1986
- National Vice President 1987-1989

PUBLICATIONS WITH RESPECT TO QUEENSLAND ENVIRONMENTAL LAW AND POLICY

In Trial Presentation of Local Government Court Appeals - First Annual Conference of Local Government Planners' Association of Queensland, Cairns, Australia, 1983

The Legal Aspects of Economic Impact Assessments - Second Annual Conference of Local Government Planners' Association of Queensland, Surfers Paradise, Australia, 1984

Co-author with His Honour Judge Row of *Planning Control and Industry - a Review of the Queensland Situation* presented to International Bar Association 4th Environmental Law Seminar, Stratford upon Avon, England, April 1985

Co-author with His Honour Judge Row and John Gallagher QC of *Rights of the Public in Environmental and Planning Decision Making - The Queensland Dimension* presented to International Bar Association Section on Business Law Seminar, Victoria/Vancouver BC, Canada, March 1986.

The Local Authority and the Planning Process - Fourth Annual Conference of Local Government Planners' Association of Queensland, Townsville, Australia, July 1986.

Environment and Planning Law in Queensland - A Commentary on some Legislative Provisions presented to National Environmental Law Association of Australia Seminar, Brisbane, Australia, February 1987.

Review of Planning Appeal Processes in Australia and New Zealand - The Queensland System presented to National Environmental Law Association of Australia Annual Conference, Melbourne, Australia, September 1987

Preparing for a Local Government Court Appeal - a Checklist of Things to Remember for the Court Hearing presented at Brisbane City Council Training Seminar, Brisbane, Australia, September 1987.

People and Environmental Law in Queensland presented at Inter Campus Seminar program at Griffith University, October, 1987

Preparing for a Local Government Court Appeal - a Checklist of Things to Remember for the Court Hearing presented to Local Government Planners Association of Queensland Seminar, Brisbane, November 1987 and repeated in Cairns, Australia, March 1988.

Co-author with Tim Trotter, Barrister at Law of *Practical Hints for Local Government Court Appeals in Queensland* presented to the Environmental Law Association of New South Wales and Queensland Environmental Law Association Inc. Joint Conference, Coolangatta, Australia, November 1987.

Paradise Unlimited - A Case Study in Tourism and Development presented to the Queensland Environmental Law Association Inc. Conference, Cairns, Australia, June 1988.

The Judicial System and Public Interest in Queensland Town Planning presented to the Local Government Planners Association of Queensland 6th Annual Conference Brisbane, Australia, August 1988.

Local Government Court section of *Court Forms, Precedents & Pleadings, Queensland* Butterworths, November 1989. Revised as *Local Government - Planning and Environment* Section with the coming into force of the Local Government (Planning and Environment) Act 1990 and later updated. Joint author 1991-1997. The further update in 1998 in the *Planning and Environment Court* Section with references to the *Integrated Planning Act 1997.*

Environmental Law presented to 30th Legal Symposium of the Queensland Law Society and the Bar Association of Queensland, Surfers Paradise, Australia, March, 1990.

Practice and Procedure in Planning Law - A Multi Disciplinary Approach presented to the Queensland Environmental Law Association Inc and Continuing Legal Education of the Queensland Law Society Seminar, Brisbane, Australia, May, 1990.

Major Retail Developments: Planning and Environmental Issues presented to the Law Council of Australia, General Practice Section Seminar, Brisbane, Australia, August 1992.

Reform of Water Law in Queensland Co-author with James Houston, Cooper Grace & Ward, Solicitors, Brisbane and presented to the National Environmental Law Association Conference, Perth, Australia, September 1992.

Major Shopping Developments and their Environmental Impact Assessment Requirements in Queensland (1993) 10 EPLJ 115.

The Continuing Development of the Right to Know and the Right to Participate as Public Environmental Rights presented to the Queensland Environmental Law Association Conference, Port Douglas, Australia, May 1995.

The Development Assessment Approvals System Proposed Under the Planning Environment and Development Assessment Bill (Exposure Draft) presented to Building Owners and Managers Association of Australia Limited Workshop, Brisbane, Australia, July 1995

Local Governments in Queensland Need to Ensure that Local Laws are Carefully Drafted (1996) 1 LGLJ 116

Can an Authorised Agent Sign Documents which are Lodged with Local Government? (1996) 2 LGLJ 15

What happens in Queensland when an elected Councilor becomes a Member of the House of Representatives? (1996) 2 LGLJ 71.

The Judicial Review Act 1991 (Qld) and the Tender Process under the Local Government Act 1993 (Qld) co author with Lisa Sullivan (1997) 2 LGLJ 115

Misleading and False Election Publication Provisions of the Local Government Act 1993 (Qld) co author with Janine Weekes-Ives (1997) 2 LGLJ 119

Co-author with Jenny Hogan, Barrister at Law of *Enforcement Powers and Obligations of Local Government and the Role of the Planning and Environment Court* presented to the LAAMS seminar on Critical Issues in Local Government Law, Brisbane, Australia, April 1997.

Town Planning Law presented at the Far North Queensland Law Association Legal Intensive, Cairns, Australia, 6 June 1997

A Town Planning Law Update on Major Shopping Developments in Queensland (1997) 14 EPLJ 314

The General Rule in Queensland continues to be that all land to be used for development needs to be included in the Application (1997) 3 LGLJ 6

*Appeals, Offences and Enforcement under the Integrated Planning Act 1997 (Queensland) p*resented to the LAAMS Seminar, Brisbane, Australia, March 1998

Local Government in Queensland and the Integrated Planning Act 1997 (1998) 4 LGLJ 30

Regulatory Negotiation and Emerging Trends of Mediation and Expert Appraisal presented to the Queensland Environmental Law Conference, Noosa, Australia, May 1999.

A Forward Looking View of the Planning and Environment Court, ISBN 0-9580049-0-0 published in December 2001.

Information seminar series on Assisted Dispute Resolution (including Mediation) for planning and environment issues, various centres throughout Queensland, from 2002.

How is Assisted Dispute Resolution relevant to Plan Making, Integrated Development Assessment System (IDAS) and the Planning and Environment Court? Planning Institute of Australia Queensland Division State Conference, Brisbane, Australia, October 2003.

Lawyers, Expert Witnesses and the Planning and Environment Court. Legalwise Seminar, Brisbane, Australia, November 2003 (published (2004) 9 LGLJ 204)

Assisted Dispute Resolution. The Stormwater Industry Association of Queensland Inc, Brisbane, Australia, February 2004.

Statutory Framework for Development in Queensland: Timing and Other Issues. Legalwise Seminar, Brisbane, Australia, September 2004.

Co-author with Deborah Dalton (International Expert in Negotiated Rulemaking, Environmental Conflict Resolution & Public Participation, from Washington DC, USA): *Planning and Environment Dispute Resolution.* Joint Queensland Environmental law Association Inc & EcoDirections International Pty Ltd Seminar, Brisbane, Australia, August 2005.

Planning Need. Joint paper with David Perkins (Consultant Town Planner) and Jon Norling (Economic Analyst) at the Queensland Environmental Law Association Inc Seminar, Brisbane, Australia, September 2005.

Planning and Environmental Law Update. Legalwise Seminar, Brisbane, Australia, March 2007.

Adopting the Negotiated Rulemaking Act: A Brighter Future for Environmental Law and Policy in Australia co-authored with C Genevieve Jenkins, Legal Intern from the William and Mary Law School (Virginia, USA) and Research Consultant at Ecodirections International Pty Ltd for the National Environmental Law Review (Australia), 2007.

Integrating Negotiated Rulemaking into State and Territory Delegated Legislation: The crucial difference between Consultation and Collaboration co-authored with C Genevieve Jenkins, Legal Intern from the William and Mary Law School (Virginia, USA) and Research Consultant at Ecodirections International Pty Ltd for the National Environmental Law Review (Australia), 2007.

Active Litigation Management & Avoidance presented to a Mullins Lawyers Seminar, Brisbane, Australia, March 2009.

Contribution to the *Interactive Expert Witness Workshop Book of Materials* for the Young National Environmental Law Association of Australia (the interactive workshop was co-facilitated with Judge Alan Wilson SC of the Planning and Environment Court), Brisbane, Australia, April 2009.

The Duty and Responsibility of Lawyers to Negotiate in Good Faith and have their Clients do the same presented to the Master of Laws Commercial Negotiation Strategies Intensive, University of Queensland, Brisbane, March 2013.

Masterclass – mediation in action – practical tips for conducting an effective mediation – Panellist at the Annual Alternative Dispute Resolution Conference, Queensland Law Society, Brisbane, August 2013.

An Early Chance to be Heard and Other Aspects of Planning and Environment ADR presented to the Master of Laws Mediation Intensive, University of Queensland, Brisbane, August 2013

PUBLICATIONS WITH RESPECT TO AUSTRALIAN ENVIRONMENTAL LAW AND POLICY

The Need for a Multi Disciplinary Approach to Environmental Legislation presented to joint Seminar of the Royal Australian Institute of Public Administration (Queensland Division) and the Queensland Environmental Law Association Inc, Brisbane, Australia, March 1989.

Overview of Australian Environmental Law as part of the European Environmental Yearbook 1990 by Docter (Institute of Environmental Studies, Milan, Italy).

It Is Time For More Greenhouse Action Now presented to the National Environmental Law Association 13th Annual National Conference, Melbourne, Australia, October1994.
Australian Native Vegetation Needs Retention for Biodiversity, the Reduction of Carbon Dioxide and Ecological Integrity ISBN 0 646 23812 4 published April 1995

A Comparison of the Legislative Approach to Environmental Protection Across Australia presented to the 29th Australian Legal Convention, 24-28 September 1995, Brisbane Convention and Exhibition Centre, Australia.

Co-author with Dr Jianbo Kuang of *Vegetation and the Redesign of Australian Agricultural Practices: Greenhouse Issues Demand a New Forestry and a New Agriculture for Australia* presented at the Second Australasian Natural Resources Law & Policy: Focus on Forestry Conference, Perth, Australia, March 2001.

Development Assessment Forum (DAF): Why should you be interested? Presented to the Queensland Environmental Law Association Conference, Couran Cove Island Resort, Australia, May 2005.

Co-Author with Deborah Dalton (International Expert in Negotiated Rulemaking, Environmental Conflict Resolution & Public Participation from Washington DC, USA): *Dispute Resolution Workshop: Techniques for the Resolution of Environmental Issues & Disputes: Negotiated Rulemaking, Facilitation& Mediation.* National Environmental Law Association Conference, Canberra, Australia, July 2005.

The Environmental Law Roundtable of Australia and New Zealand co-authored article with Erin Thomas then Young Professional and Research Consultant at EcoDirections International Pty Ltd, for the National Environmental Law Review (Australia), 2005.

Responsibilities in Environmental Ethics. Presented to the Environment Institute of Australia and New Zealand South East Queensland Division Seminar, Brisbane, Australia, July 2006.

The Environmental Law Roundtable of Australia and New Zealand: Legal Issues in Consensus Building co-authored article with Gemma Ayriss then Young Professional and Research Consultant at EcoDirections International Pty Ltd, for the National Environmental Law Review (Australia) and the Resource Management Journal (New Zealand), 2006.

The Environmental Law Roundtable of Australia and New Zealand: Designing a Consensus Building Process co-authored article with Scott Sellwood then Young Professional and Research Consultant at EcoDirections International Pty Ltd, for the National Environmental Law Review (Australia) and the Resource Management Journal (New Zealand), 2006.

The Environmental Law Roundtable of Australia and New Zealand: Conflict Resolution Assessment co-authored article with Gemma Ayriss then Young Professional and Research Consultant at EcoDirections International Pty Ltd, for the National Environmental Law Review (Australia) and the Resource Management Journal (New Zealand), 2006.

Specialist Issues: Using Consensus Building for Policy Development and Third Party Facilitation for Dispute Resolution. OzWater conference, Sydney, March 2007 with Poster on the Environmental Law Roundtable of Australia and New Zealand.

How realistic is a National Development Assessment System – How to Build Consensus. presented to the Queensland Environmental Law Association Conference, Kingscliff, Australia, May 2007.

Responsibilities in Environmental Ethics presented to the Institute of Chemical Engineers in Australia and Engineers Australia Seminar, Brisbane, Australia, October 2007.

PUBLICATIONS RELEVANT TO INTERNATIONAL ENVIRONMENTAL LAW AND POLICY

Turning Poetry into Environmental Legislation presented to the Sixth General Assembly of the World Future Society, Washington DC, USA, July 1989.

Overseas Update on Negotiation and Additional Dispute Resolution Techniques
presented to the National Environmental Law Association Conference, Surfers Paradise, Australia, August 1990.

Recent Trends in Environmental Law and Policy in Australia presented in Belfast,
Northern Ireland (September, 1993) and Washington DC, USA (October, 1993).

Should there be an EPA for Northern Ireland? An International Perspective presented to the Northern Ireland Environment Link (NIEL), Comber, Northern Ireland, May 1994.

Local Action Against Climate Change - The Australian Local Government Experience presented to the Northern Ireland Environment Link, Crossgar, Northern Ireland, June 1994.

An Australian Perspective on Vegetation and Climate Change presented in Belfast, Northern Ireland and in London, England, January 1999.

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