

## **CLIFFORD IRELAND**

**Barrister**

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**THIRTEEN WENTWORTH SELBORNE**

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### **PROFESSIONAL EXPERIENCE**

With over 11 years of experience at the Bar, and a total of 23 years as a specialist in environmental, planning, mining and associated areas of property law, and also more generally in related areas of commercial law, Clifford has been listed as either a leading or recommended barrister in the environmental and planning area in the “Doyle’s Guide” for the past six years.

Complementing his specialist practice in environmental and planning law (including environmental crime), he also practises in related areas including mining law, property, building and construction, commercial tenancy, administrative law and judicial review, local government, and in related areas of commercial law.

Clifford has advised on and/or appeared in relation to many major projects across the State from large mining developments (the Donaldson Coal Mine open cut, the Gloucester Open Cut coal mine, the Ashton Open Cut coal mine, the Lake Cowal Gold Mine, the Anvil Hill Coal mine, Peabody open cut at Mudgee), and large urban developments, for example, Barangaroo and the proposed Crown Casino. He appears both for proponents and objectors.

He regularly appears in both contested environmental crime or Class 5 cases in the Land and Environment Court and at sentencing hearing, and has appeared for both defendants and the Environment Protection Authority.

He appears across the range of cases in the Land and Environment Court’s jurisdiction including in merits appeals, resumption and compensation, judicial review, and environmental crime.

Clifford appears regularly in the real property list and Equity Division in the Supreme Court in relation to easement and other property law disputes.

He has appeared on several occasions in the Court of Appeal and Court of Criminal Appeal, and has appeared as junior counsel in the High Court of Australia at hearing (*Fazzolari v Parramatta City Council*) and in relation to special leave applications.

He has also acted and appeared on a *pro bono* basis in a number of matters, including contested hearings in the Court of Appeal and Federal Court of Australia.

Clifford is the Bar Association's representative on the Land & Environment Court User's Group.

## **APPOINTMENTS & ADMISSIONS**

- Admitted to the Bar of New South Wales – 2007 to date.
- Appointed Bar Association representative on the Court User's Group 2016 to date.
- Admitted to the NSW Supreme Court and High Court as a Solicitor (1994 - 2007)
- Practising Solicitor, Senior Associate Ashurst Lawyers (1996 – 2007)
- Associate to His Honour Justice Bignold, Land & Environment Court of NSW (1995 – 1996)

## **QUALIFICATIONS & AWARDS**

- BA, LLB (First Class Honours), LL.M (USYD)
- E. Trenchard-Miller Scholarship and the Bowman-Cameron Scholarship from Sydney University (these were awarded based on matriculation results, and scholarships awarded for coming equal 4th in the State in the 1988 HSC)
- Subject prize for Comparative Law during LLB studies.
- Grad Dip Law from the College of Law.

## **RECENT CASES**

- *AMT Planning Consultants Pty Ltd t/as Coastplan Consulting v Central Coast Council* [2018] NSWCA 289 successfully defended an appeal concerning the character of the use of the land for which development consent was granted for the purposes of establishing an “existing use” under sections (formerly known as) 106 and 107(1)(b)(i) of the Environmental Planning and Assessment Act 1979 (**EPA Act**)
- *Mulpha Australia Limited v Central Sydney Planning Committee* [2018] NSWLEC 179 successfully prohibiting the first respondent from determining the Stamford DA “pending the provision of a lawful decision” by the Heritage Council under s 4.47 (formerly s 91A) of the EPA Act and cl 70 of the EPA Regulation. At [132]  
...the Court has found itself largely in agreement with the Applicant's submissions,...
- *Sanctuary Cammeray No 2 Pty Ltd v North Sydney Council* [2018] NSWSC 1699 (Emmett AJA, in Equity) obtained orders for the imposition of s 88K easements.

- ***Environment Protection Authority v Grafil* [2018] NSWLEC 99** successfully defended criminal prosecution for charge of executive liability for operating waste facility without lawful authority.
- ***Pullen v Smedley* [2017] NSWSC 1721** (Ward CJ, in Equity), successfully argued that the carrying out of works on the right of way amounted to the use of land as a “waste facility” contrary to s 144 of the Protection of the Environment Operations Act 1997 (NSW).
- ***EPA v Wellington* [2017] NSWLEC 8; (2017) 222 LGERA 31** successfully argued that the Class 5 criminal proceedings concerning a pollution incident leading to the pollution of the Macquarie River from the council’s sewage treatment plant should be dismissed on legal grounds.
- ***Potier v Attorney-General* [2015] NSWCA 129** was a test case in relation to the *Felons Act* and its relationship with the *Vexatious Litigants Act* and was described by Leeming JA in his Honour’s judgment at [28]:
 

This case raises squarely (for the first time) the question as to the scope of the constraint imposed by the Felons Act
- ***EPA v Riverina* [2015] NSWCCA 165; (2015) 90 NSWLR 57** successfully defending serious criminal charges under the POEO Act brought against client who was a manufacturer of stockfeed.

## RECENT ADVICES

- Advising the Department of Planning and Environment and the Independent Pricing and Regulatory Tribunal.
- Advising on the operation of the *Mining Act* 1992.
- The operation of the former s109E of the EP & A Act and associated regulations concerning the procedures for building stage inspections required to obtain an occupation certificate, and the implications of missed inspections having regard to the decision of *Byron Pirola v City of Canada Bay Council* [2006] NSWLEC 36.
- Large private developer on the construction of the SEPPARH affordable housing SEPP.
- Private school on amendments to its development application and whether all its proposed development needs to be in one or separate DA’s.
- Rating and valuation advice in relation to mining land.

## **PUBLICATIONS**

- **“The Regulation of Asbestos Waste in NSW Law – Balancing Health Risks Against Sustainability ?”** Conference Paper, delivered in Prague, Czech Republic, CPE Legal Conference, 11 July 2018.
- **“Continuation or institution of proceedings against amalgamated councils: Wellington v EPA”** Local Government Reporter (2017), Vol 16, No3, May 2017 (with Alexandra Bartlett).
- **“The Principles of Client Legal Privilege under the Evidence Act 1995 with Particular Attention to Expert Reports”**, 3 September 2014, presented to lawyers at McCullough Robertson, Sydney.
- **“Class 3 Land and Environment Court Proceedings and the Land Acquisition (Just Terms Compensation) Act 1991 – An Introduction”**, Paper presented to College of Law CPD Conference chaired by Biscoe J, February 2011.
- **“Admitting Evidence of pre-contract negotiations”** June 2010, Vol 48 No.5 LSJ.
- **“Environmental planning in the public interest and private property rights: The role of s 28 of the Environmental Planning and Assessment Act 1979 NSW)”** (2010) 15 LGLJ 155.