

Alternate Dispute Resolution (ADR) as a Means of Addressing

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SUMMARY

Background I am first and foremost a Registered NSW Land Surveyor. In 1977 I established the surveying / planning practice known as “Whelans Land Information Consultants”. Within a short time we were a National organisation. I resigned from the company in 2002 to establish a Mediation Practice. I am also a Barrister of the Supreme Court of NSW. I am an Acting Commissioner of the Land and Environment Court of NSW, having been first appointed on 28 February 2007 and my appointment subsequently renewed until 2010. I have been able to assist the Court in conducting formal Mediations and Section 34 Conferences, some of which resulted in the disposing of the proceedings by a formal hearing. On 3 September 2008 the NSW Minister for Planning announced the appointment of Michael Whelan to the Building Professionals Board (BPB). This is a three year appointment. I am an active member of the Disciplinary Sub-committee of the BPB. Registered Surveyors are able to qualify as “Certifiers” under the Act in the fields of Strata and Land Subdivisions. I am a qualified Arbitrator under the Commercial Arbitration Act NSW and an accredited Adjudicator under the NSW Building and Construction Industry Security of Payment Act 1999. Observations Most disputes, when not resolved between the parties, end up in the Court system. Land Surveyors are frequently called to give “Expert Evidence “based upon a pre-prepared report. Experts are subject to cross-examination and in some jurisdictions required to give concurrent evidence. The process can be expensive for the parties, exhausting for the “expert” and does not always produce an acceptable result. My experience as an ADR Practitioner is that where a less formal process is available and early intervention in the dispute process occurs then in most disputes an “agreed” outcome can be achieved. The process to which I refer is Commercial Mediation. By agreed I mean an outcome which each party can live with. True it is that to achieve this result one has to compromise. In any event this is better than the alternative where an imposed determination is the result.

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