

State Records Authority of New South Wales

**Functional Retention and Disposal  
Authority: FA228**

**Approved: 13 December 2006**

Land and Environment Court of NSW

This authority covers records documenting aspects of the function of the administration of justice with respect to land and the environment

## Functional Retention and Disposal Authority

**Authority no** FA228

**SR file no** 06/0191

**Public office** Land and Environment Court of NSW

**Scope** This functional retention and disposal authority covers records documenting aspects of the function of *the administration of justice with respect to land and the environment*.

**Authority** This functional retention and disposal authority is issued under section 21(2)(c) of the *State Records Act 1998*. It has been approved by the Board of the State Records Authority in accordance with section 21(3) of the State Records Act.

**Authorised**

David Roberts  
Director

13/12/2006

Date

State Records Authority of New South Wales

# How to use the Functional Retention and Disposal Authority

## The disposal process

Disposing of State records involves assessing the value of records for future use, identifying those State records that have continuing value as State archives and identifying how soon the remainder can be destroyed or otherwise disposed of. Disposal can also involve transfer of ownership or custody of records and the alteration of records.

This functional retention and disposal authority is issued under section 21 (2)(c) of the *State Records Act 1998 (NSW)*. Part 3 (Protection of State Records) of the Act provides that records are not to be disposed of without the consent of State Records with certain defined exceptions. These exceptions include an action of disposal which is positively required by law, or which takes place in accordance with a normal administrative practice (NAP) of which State Records does not disapprove. Advice on the State Records Act can be obtained from State Records.

This authority has been prepared as part of the records disposal program of the agency. Two primary objectives of this program are to ensure that records are kept for as long as they are of value to the agency and its stakeholders and to enable the destruction or other disposal of records once they are no longer of value. State Records' decisions take into account both the administrative requirements of the public office in discharging its functional responsibilities and the potential research use of the records by the NSW Government and the public. It is the duty of a public office, in submitting a draft functional retention and disposal authority for approval, to disclose to State Records any information which affects the retention of the records covered by the authority.

## Purpose of the authority

This functional retention and disposal authority authorises the destruction or other disposal of State records as required by the State Records Act.

## Using the authority

This functional retention and disposal authority covers records controlled by the public office and applies only to the records or classes of records described in the authority. The authority is to be used to sentence records. Sentencing is the examination of records in order to identify the disposal class to which they belong. This process enables the sentencing officer to determine the appropriate disposal action for the records. Advice on sentencing can be obtained from State Records.

Where the format of records has changed (for example, from paper-based to electronic) this does not prevent the disposal classes from being used to sentence records which perform the same function. The information must be accessible for the periods prescribed in the classes. Where a record is copied, either onto microform or digitally imaged, the original should not be disposed of without authorisation (see also the *General Disposal Authority – Records that have been imaged*). Public offices will need to ensure that any software, hardware or documentation required to gain continuing access to technologically dependent records is available for the periods prescribed.

## Disposal action

Records that are identified as being required as State archives should be stored in controlled environmental conditions. Control of these records should be transferred to State Records when they cease to be in use for official purposes.

Records that have been identified as being authorised for destruction may only be destroyed once a public office has ensured that all requirements for retaining the records are met. Retention periods set down in this authority are *minimum* periods only and a public office may keep records for a longer period if necessary. Reasons for longer retention can include legal requirements, administrative need, and government directives. A public office *must not* dispose of any records where the public office is aware of possible legal action (including legal discovery, court cases, FOI requests) where the records may be required as evidence. Once all requirements for retention have been met, destruction of records should be carried out in a secure and environmentally sound way. Relevant details of the destruction should be recorded.

In some cases State Records may withhold authorisation for the disposal of a particular disposal class or possibly a whole function or activity. This would be used where records have been identified as having some immediate short term requirements for retention such as pending legal action. These records will need to be re-appraised at the end of a designated period. This re-appraisal process is necessary as the circumstances which instigate the need for the records to be retained for a longer period may also affect the 'value' of the records.

Regardless of whether a record has been authorised for destruction or is required as a State archive, a public office or an officer of a public office must not permanently transfer possession or ownership of a State record to any person or organisation without the explicit authorisation of State Records.

## **Custody**

The custody column in the functional retention and disposal authority is designed to assist public offices in identifying storage requirements for records prior to destruction or transfer arrangements for records identified as State archives (ie with a Disposal action of 'Required as State archives'). The directions in this column are recommendations only and are *not* mandatory. The type of information may include directions on how long records should be retained in the office and how long they should be kept in off-site/ secondary storage prior to their destruction or transfer as State archives. A recommendation to retain records in the agency for more than 25 years does not imply that a *still in use determination* (see Part 4, Section 28 of the State Records Act 1998) or that a distributed management agreement (see Part 4, Section 30 of the State Records Act 1998) has been approved by State Records. Advice on arrangements for managing and transferring State archives can be obtained from State Records.

## **Administrative change**

This functional retention and disposal authority has been designed to link records to the functions they document rather than to organisational structure. This provides for a stable functional retention and disposal authority that is less affected by administrative change. The movement of specified functions between branches or units within the public office does not require the authority to be resubmitted to State Records for approval. However, when functions move from one public office to another State Records should be notified. The public office that inherits the new function will need the approval of State Records to use any existing functional retention and disposal authority to sentence the records that document the function/s.

## **Amendment and review of this authority**

State Records must approve any amendment to this authority. Public offices that use the authority should advise State Records of any proposed changes or amendments to the authority.

State Records recommends a review of this authority after five years to establish whether its provisions are still appropriate. Either the public office or State Records may propose a review of the authority at any other time, particularly in the case of change of

administrative arrangements or procedures which are likely to affect the value of the records covered by this authority.

In all cases the process of review will involve consultation between State Records and the public office. If the process of review reveals that this authority requires amendment, the necessary amendments will be made and authorised.

#### Contact Information

State Records

PO Box 516 Kingswood NSW 2747

Telephone: (02) 8247 8627

Facsimile: (02) 8247 8626

E-mail: [govrec@records.nsw.gov.au](mailto:govrec@records.nsw.gov.au)

## Functional Retention and Disposal Authority Land and Environment Court of NSW

Authority no: FA228

Dates of coverage: 1980+

| No    | Function/Activity     | Description  | Disposal Action | Custody* |
|-------|-----------------------|--|-----------------|----------|
| 1.0.0 | <b>DETERMINATIONS</b> | The function of managing the determination of disputes filed in accordance with the provisions of various land, environmental and planning statutes.   |                 |          |
| 1.1.0 | <b>Cases</b>          | <p>Court files and associated case management records of current or completed matters in all 7 classes of the Court's jurisdiction.</p> <p>These are:</p> <p>Class 1: environmental planning and protection appeals.</p> <p>Class 2: local government and miscellaneous appeals and applications.</p> <p>Class 3: land tenure, valuation, rating and compensation matters.</p> <p>Class 4: environmental planning and protection and development contract - civil enforcement.</p> <p>Class 5: environmental planning and protection - criminal enforcement.</p> <p>Class 6: appeals by defendants from convictions relating to environmental offences.</p> <p>Class 7: other appeals by defendants relating to environmental offences.</p> <p>These files include the transcript/s of the matter, documents</p> |                 |          |

\* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*

## Land and Environment Court of NSW

Authority no: FA228

Dates of coverage: 1980+

| No    | Function/Activity | Description  | Disposal Action             | Custody*                                      |
|-------|-------------------|--|-----------------------------|---|
|       |                   | filed by the parties, produced under subpoena and documents generated by the Court or judicial officer in relation to the case.  |                             |   |
| 1.1.1 |                   | Court files relating to all matters commenced in classes 4, 5, 6 and 7 of the Court's jurisdiction. This includes matters that have been heard and decided by a Judge or finalised before hearing.   | Required as State archives. | Retain in storage for 12 years, then archive. |
| 1.1.2 |                   | Court files relating to matters commenced in classes 1, 2 and 3 of the Court's jurisdiction that have been heard and decided by a Judge of the Land and Environment Court.   | Required as State archives. | Retain in storage for 12 years, then archive. |
| 1.1.3 |                   | Court files relating to the first 500 cases commenced in Classes 1, 2 and 3 after the inception of the Land and Environment Court in 1980 (01.09.1980)   | Required as State archives. | Retain in storage for 12 years, then archive. |
| 1.1.4 |                   | <p>A representative sample* of Court files (not exceeding 100 files) in classes 1, 2 and 3 of the Court's jurisdiction illustrative of significant changes to the Court's jurisdiction, practice and procedure, or the nature of the cases brought before it and their outcomes (eg the appointment of Commissioners, the introduction of Court Appointed Experts/concurrent evidence) as appropriate.</p> <p>*Retention of this sample is at the discretion of the Court where it considers retention of additional records is appropriate to complement case files already being retained as State archives in entries 1.1.1 and 1.1.2 above for the purposes of documenting significant changes to the Court's jurisdiction, practice and procedure, or the nature of the cases brought before it and their outcomes over time.</p> | Required as State archives. | Retain in storage for 12 years, then archive. |

\* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*

## Land and Environment Court of NSW

Authority no: FA228

Dates of coverage: 1980+

| No    | Function/Activity | Description  | Disposal Action   | Custody* |
|-------|-------------------|--|---|----------|
| 1.1.5 |                   | Court files relating to matters in Class 1 of the Court's jurisdiction that have been heard and decided by a Commissioner and where a Development Application has been granted or a Development Consent has been modified.   | Retain in agency  |          |
| 1.1.6 |                   | Court files relating to matters that have been heard and decided by a Commissioner of the Land and Environment Court in classes 1, 2 and 3 of the Court's jurisdiction other than those where a Development Application has been granted or a Development Consent has been modified. | Retain minimum of 12 years after commencement of matter then destroy.   |          |
| 1.1.7 |                   | Court files relating to matters that were finalised before hearing in classes 1, 2 and 3 of the Court's jurisdiction.  | Retain minimum of 12 years after commencement of matter then destroy.   |          |
| 1.1.8 |                   | Documents produced under subpoena but not tendered at hearing (includes originals or copies of documents).   | Retain for 29 days after matter finalised and then return to owner. If owner cannot be located, retain for minimum of 10 years, then destroy. |          |
| 1.1.9 |                   | Exhibits tendered at hearing that are not ordered to remain as part of the Court file at the conclusion of the matter.   | Return to the parties immediately. If that cannot be done,  |          |

\* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*



## Land and Environment Court of NSW

Authority no: FA228

Dates of coverage: 1980+

| No     | Function/Activity | Description  | Disposal Action  | Custody*   |
|--------|-------------------|--|--|--|
|        |                   |  | retain for minimum of 10 years after the commencement of the matter, then destroy. |  |
| 1.1.10 |                   | Alphabetical index cards of file registrations (Classes 1 to 5) from 1980 – 1989.                        | Required as State archives.  | Retain in agency until no longer required for reference, then archive. |
| 1.1.11 |                   | Registration index cards and registration record books for all Court files registered from 1980 onwards. | Required as State archives.  | Retain in agency until no longer required for reference, then archive. |
| 1.1.12 |                   | Matter finalisation records sheets. Hard copy 1980 to 1995.  | Required as State archives   | Retain in agency until no longer required for reference, then archive. |
| 1.1.13 |                   | Judgment records cards concerning written judgments (1980 to 1999)                                       | Required as State archives.  | Retain in agency until no longer required for reference, then archive. |
| 1.1.14 |                   | Data about parties, cases and determinations made held electronically in                                 | Retain in agency.  | Retain in operating system until                                       |

\* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*

## Land and Environment Court of NSW

Authority no: FA228

Dates of coverage: 1980+

| No     | Function/Activity | Description   | Disposal Action  | Custody*   |
|--------|-------------------|---|--|--|
|        |                   | (a) the Court's electronic DOS database Court List Controller system (1990 – 1998).;<br>(b) the File Management System;<br>(c) the eCourt system;<br>(d) all Excel spreadsheets pertaining to statistics and other operational information. |  | migration or transfer of data to new operating systems.                |
| 1.1.15 |                   | Records relating to routine aspects of case management. Includes daily and weekly listing records and case statistics.  | Retain minimum of 5 years after last action, then destroy.   |  |
| 1.1.16 |                   | Bench books or notebooks of the Chief Justice up to and including 1998.   | Required as State archives.  | Retain in agency until no longer required for reference, then archive. |
| 1.1.17 |                   | Records of judge's or commissioner's notes and decisions. Includes bench books and judge's or commissioner's notebooks 1980+ and bench books or notebooks of the Chief Justice 1999+.   | Retain until the retirement of the judicial officer or commissioner from the Land and Environment Court, then destroy. |  |
| 1.1.18 |                   | Tapes or other recordings of transcript from Court proceedings ordered by parties but not collected.  | Retain minimum of 6 months after delivery to Court registry, then destroy.   |  |

\* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*

## Land and Environment Court of NSW

Authority no: FA228

Dates of coverage: 1980+

| No     | Function/Activity           | Description   | Disposal Action   | Custody*   |
|--------|-----------------------------|---|---|--|
| 1.1.19 |                             | Tapes, compact-disc or other recordings of telephone callover proceedings.  | Retain minimum of 2 years after the date of the callover, then destroy. |  |
| 1.2.0  | <b>ENQUIRIES</b>            | The activity of handling enquiries about practice and procedure.  |   |  |
| 1.2.1  |                             | Records relating to requests for information unique to the practice and procedure of the Court. For example, enquiries by and replies to objectors.   | Retain minimum of 5 years after last action, then destroy.              |  |
| 1.3.0  | <b>POLICY AND PROCEDURE</b> | The activity of determining policy and procedure applicable to the Court's decision-making.   |   |  |
| 1.3.1  |                             | Records relating to the formulation and establishment of: <ul style="list-style-type: none"> <li>• high-level policy;</li> <li>• rules;</li> <li>• practice directions; and</li> <li>• practice notes.</li> </ul> <p>Includes minutes of the Rule Committee and signed original rule changes, practice directions and practice notes.</p> | Required as State archives.   | Retain in agency until no longer required for reference, then archive. |
| 1.3.2  |                             | Records relating to the development and issue of procedures, advices to practitioners and guidelines.   | Retain until superseded, then destroy.                                  |  |
| 1.3.3  |                             | Records relating to the development of the list of Court-approved mediators and correspondence with nominated   | Retain until list is updated annually, or until list is no              |  |

\* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*

## Land and Environment Court of NSW

Authority no: FA228

Dates of coverage: 1980+

| No | Function/Activity | Description | Disposal Action                 | Custody* |
|----|-------------------|-------------|---------------------------------|----------|
|    |                   | mediators.  | longer in use, then<br>destroy. |          |

\* SEE *HOW TO USE THE FUNCTIONAL RETENTION AND DISPOSAL AUTHORITY*