

**GREEN DOUBTS**

- **Richard Travers, partner, Clayton Utz, Solicitors, Melbourne and Gina Elliot, senior associate, Clayton Utz, Solicitors, Sydney.**

Companies whose activities have an impact on the environment are finding their operations coming under increasing public scrutiny. In the 1990s companies will be exposed to greater accountability by public interest groups who now demand a greater say in the process of choosing between developments that are environmentally acceptable and those that are not.

The 1970s and 1980s saw an explosion of environmental legislation and significant pieces of legislation were passed over the last 15 years. Examples include the Australian Heritage Commission Act 1975, the Great Barrier Reef Marine Park Act 1975 and the World Heritage Properties Conservation Act 1983.

The proliferation of new laws continues, with still more environmental legislation now before the Commonwealth and State Parliaments.

Where the ultimate legislative authority lies on environmental issues remains in doubt. Conventional wisdom had it that the power to allow or refuse environmentally sensitive projects rested with the States. However, in the Franklin Dam case in Tasmania the Commonwealth Government blocked the proposed dam even though the proposal was supported by the State Government.

The Federal Government justified its intervention in that case by relying on its foreign affairs power. It argued that the Commonwealth Government was a signatory to the World Heritage Convention, it had an obligation under the convention to preserve significant world heritage sites, and that the obligation justified its legislating against the damming of the Gordon River.

More recently, the Commonwealth Government has introduced legislation abrogating existing rights to mine Kakadu stage 2, relying on its territories power, and has threatened to invoke a little used constitutional power to control corporations to justify legislation to prevent the logging of NSW forests.

What has to be assessed is whether the community would be better served if the control of the environment rested solely with the State or the Commonwealth.

On one hand, State legislatures have the advantage of a more intimate local knowledge to bring to environmental decision-making. On the other, the Commonwealth Government would offer a co-ordinated national approach if it had unfettered constitutional power over the environment.

The Prime Minister, Mr Hawke, said recently that many of today's environmental problems did not respect State and Territory boundaries, and could not be resolved piecemeal.

"Increasingly the Australian community and investors are demanding national approaches to major environmental issues," he said.

"They need to be certain that the Commonwealth can respond quickly to national or global environmental problems. They do not want as many systems dealing with these problems as there are States and Territories.

The Federal Government has also said it would consider a referendum to vest in the Commonwealth exclusive legislative powers over the environment if there was community support for such a proposal. The possibility of such a referendum succeeding must be regarded as remote.

Businesses engaged in environmentally sensitive developments will need to continue to monitor the political situation at both State and Federal levels. Indeed, in many situations, it will also be necessary to consider local government as well.

In a recent case involving land being sold in the Melbourne suburb of Ardeer, the subdivision of lead-contaminated land for residential use apparently went ahead because of confusion between the State Government and the local government as to who was responsible for dealing with lead contamination problems.

Australian business is resigned to adapting itself to different regulatory structures in each State over the broad spectrum of its activities.

In relation to the environment, however, there is at least one compelling reason for uniformity: if a uniform approach is not taken, the risk is that so called "pollution havens" will develop in the States with less vigorous pollution control standards.

#### **FEDERAL GOVERNMENT "SUSTAINABLE DEVELOPMENT" POLICY INITIATIVE**

- John Tyrill

**In an attempt to create rational guidelines to balance the industrial and resource development needed for economic growth with adequate protections for the environment, the Federal Government intends to prepare a discussion paper for review by all interested groups. It is intended that this paper define the concept of "sustainable development".**

Attempts will also be made to define objectives for sustainable development for industries such as agriculture, mining, forestry, fishing, tourism and energy.

This initiative is in response to criticism from industry groups about the lack of a consistent approach by the Federal Government to development, particularly in relation to decisions such as that on Stage III of Kakadu National Park.

Interestingly, the industry groups which met with senior Government Ministers and environmentalists included the Australian Mining Industry Council, The National Farmers' Federation and The National Association of Forest Industries. There were no construction industry representatives present; the National Building and Construction Council with its constituency of private sector clients, consultants, contractors and subcontractors or-

ganisations would have been an ideal group to represent the interests of the industry.

No doubt, defining "sustainable development" will prove to be a difficult task. However, the difficulties must be grappled with as the proposal to develop policy to avoid or deal with disputes over the competing interests of development and environmental protection is of considerable importance to the country and is likely to have significant ramifications for the construction industry.

Peter Gill's article below treats the subject in some detail.

## SUSTAINING DEBATE ON THE ECONOMICS OF CONSERVATION

- Peter Gill

**The debate on sustainable development has achieved greater prominence but the issues raised in the National Conservation Strategy in the early 1980s remain unresolved and new factors have to be considered as Peter Gill reports.**

"The real significance of the strategy proposed by the (national conservation) conference will be measured not so much by the words it contains as by the actions it generates." - the Prime Minister, Mr Hawke, endorsing the National Conservation Strategy for Australia, 1984.

The current debate over "sustainable development" brings with it a sense of *deja vu*.

After all, 20,000 people were consulted in the early 1980s, 550 written submissions were examined, and 150 delegates attended a four-day conference in Canberra in June 1983 - all of which focused on many of the same issues which now come under the all-embracing buzzword, "sustainable development".

While the concept of "sustainable development" is not new it has achieved greater prominence since the publication in 1987 of the report by the United Nations World Commission on Environment and Development (better known as the Brundtland Commission).

Sustainable development cannot yet be defined. In broad terms it is the concept which tries to balance the industrial and resource development needed for economic growth with the protection of the environment.

Put another way, it is the present use of the planet's resources in such a way that it does not erode the ability of future generations to use those same resources.

But sustainable development has only started to hit the headlines with recent major speeches by the Prime Minister and Environment Minister, Senator Richardson.

It appears to have captured the political imagination now because the Prime Minister and Senator Richardson have sniffed the electoral wind and found environmental concerns in the living rooms of middle Australia.

The one Federal Minister who has promoted the concept for years, Primary Industries and Energy Minister, Mr Kerin, was rarely heard. That was probably because Mr Kerin raised it in the context of his portfolio responsibility of resource development.

The Prime Minister and Senator Richardson are much

more oriented to a "green" agenda, as highlighted by the Kakadu National Park decision to defer mining at Coronation Hill and virtually prevent all exploration in the area now known as Stage III of the park.

With "sustainable development" now rolling easily off people's lips the *deja vu* comes in for many people who were involved in the development of the National Conservation Strategy for Australia in the early 1980s.

All of the people the Prime Minister now wants to contribute to the sustainable development exercise aired their views in the early 1980s - the 20,000 people consulted, the 550 written submissions and the 150 conference delegates were all part of the national conservation strategy process.

Virtually all the same issues which are now on the table were canvassed then and a 20-page document on the agreed strategy produced.

"Conservation" and "development" were defined, specific acute environmental problems were identified as was the need to have both protection of the environment and economic growth.

Objectives were established and factors affecting the attainment of those objectives were identified. And most of those factors are still present in the debate - the division of Commonwealth-State decision making, the fear of unemployment from implementing conservation measures, the perception by some that conservation only involves national parks and wildlife protection.

So, what has happened since that very comprehensive process was undertaken in the early 1980s and a National Conservation Strategy for Australia was developed?

No much. The rhetoric was fine but the actions did not follow.

The process certainly has not contributed to a more rational approach to resolving multiple land use disputes.

It was argued that the strategy laid down principles but did not establish ways in which those principles would be applied and this is now the role of the renewed debate.

It should also be noted that the strategy preceded the big environmental debates like those concerning the Tasmanian Wilderness and Kakadu National Park - before the environment-development debate became so polarised.

But it can also be argued that the balance sought between conservation and development in the National Conservation Strategy has not been achieved. The fact that the Government is seeking another way of resolving conflict tends to confirm such a view.

The strategy effectively disappeared from the public and political view because there was no political momentum behind it despite the Prime Minister's view that actions would speak louder than words.

But that momentum is back with an election on the horizon and with the Government keen to enhance its "green" credentials. The Prime Minister endorsed the strategy in his major Environment Statement in July and it was a factor in developing the Government's three multiple-land-use principles last year.

Developing a policy on sustainable development has appeal to middle Australia because they can feel that the