PONDERING SUSTAINABLE DEVELOPMENT DIRECTION IN FIJI

In addition to my response to request for feedback about my very enjoyable stay in the Bedarra Inn on the Coral Coast of Viti Levu in Fiji, I send this information about my major interests as a tourist, which lie in the area of sustainable development policy and the related environmental, social and economic approach which is necessary to support it. Discussion about potentially related policy directions in Australia is provided later below and in attachments. Coordinated policy and investment discussions after short holidays to Singapore, China, Mongolia, Russia, Borneo and Brunei are provided in attachments.

Prior to my short holiday to Fiji, the position of Centre Director of the Pacific Islands Centre for Public Administration at the University of the South Pacific was advertised in the Australian press. The Centre is a new joint initiative between the University of the South Pacific and AusAID to assist Pacific Island countries improve public administration and public sector leadership through the provision of advice and a range of support services. In this context one naturally speculates about the potential of current and future land, water, energy and related industry and greenhouse gas management in Fiji, to protect and enhance biodiversity and to achieve related economic, social and environmental goals in cooperation with private sector organizations in tourism and other ventures. I speak as a retired public servant and lecturer in the health sciences faculty at Sydney University. More information is on my website at www.Carolodonnell.com.au.

I spent only six days in Fiji, on the Coral Coast of Viti Levu. The Australian media and Lonely Planet guides always seem to be more reliably forthcoming on environmental, political, economic and related historical and social matters than the average tourist operator anywhere, so I returned with many extra questions and no answers. (Newspapers and tour guides in Brunei and Borneo superficially appear refreshingly open and informative on economic and political matters, but perhaps I won the lucky dip.)

The Lonely Planet guide entitled 'Fiji' states that this nation made up of many islands has had four recent coups. The last was in 2006 when Commodore Frank Bainimarama staged a military takeover from the prime minister that he had appointed himself after the 2000 coup. He alleged that corruption and systemic racism was his prime motivator and disbanded the Great Council of Chiefs that had wielded considerable political clout. The 2006 coup and the proposed People's Charter underpin one of Fiji's most contentious issues – who is qualified to be a 'Fijian' and enjoy the rights to go with it. In the late 1870s Britain brought indentured Indian labourers to work the sugar cane fields. Today the tension between the ethnic Fijian landowners and the entrepreneurial Indo-Fijians is one of the key problems facing Fiji. The Lonely Planet points out that, fearful of an Indian led government, many Fijian landowners have refused to renew Indo-Fijian sugar cane farmers' land leases. Meanwhile, a declining sugar yield and the European Union decision to cut sugar subsidies is dealing a double blow to Fiji's main industry (p.20).

In the current climate, the importance for the Fijian economy of package tourism to serve the youth or aging and touring populations of richer countries like Australia is obvious.

However the global economic crisis also makes one wonder whether too many expensive hotels (such as the Outrigger?) have already been built all over the world. In this context one also wonders who will buy the many plots of land in Fiji that are currently for sale.

I personally fear most that at current rates of human breeding and development the fragile biodiversity of the world will soon be destroyed to the terrible cost of future generations. I am therefore most interested in how land policy and financial support may be developed after the global financial crisis to reverse the destruction of forests, achieve clean water and generally create a sustainable economy. In this context I regard the market as a highly political as well as economic construct. For example, from this perspective there is nothing intrinsically more valuable about spending on weapons to stockpile or murder other people, rather than spending on land on which parks or native plants and animals may be tended. Until recently, governments and the men supporting those elected have always provided their greatest incentives to those whose key mission is to destroy life more vulnerable than theirs. This is a political choice which may be reversed, rather than a natural economic order. Singapore, including its zoo and water policy direction appears to provide good lessons for both Australia and Fiji, which is discussed in the attached.

When I arrived at Bedarra Inn I booked the 'Jewel of Fiji Day Tour – the Navua River Eco Adventure and Fijian Culture Experience' for the next day then went to the Kula Ecopark, next door to the huge Outrigger hotel and its beautiful grounds. The Kula Ecopark seems a great beginning for the kind of development which should expand. I did not go to other ecoparks because I was travelling alone and thought it would be too difficult to do so cheaply and safely in the time available. However, I would have liked to see them. I love to see aquatic life, and have done so on holidays to Vanuatu and the Great Barrier Reef. However, I did not find any tours which would let me to do this easily. The Jewel of Fiji Day Tour, which involves river canoeing, a waterfall visit, bamboo rafting and touring a Fijian village, was unfortunately cancelled when I first booked, because there were too few going. When I eventually went on it I was greatly impressed in every way. The sugar train tour was not being run so I hired a car and drove to Suva instead. Unfortunately it was Sunday so I could not visit public institutions to snoop around, as is my usual practice in the capital cities of English speaking nations. The taxi I took to Sigatoka meant I came upon a 'pottery village tour', which showed me little, comparatively expensively. (I speak as a person who spent two years teaching in Northern Nigeria forty years ago. Pottery villages aren't what they used to be?)

In general, I greatly enjoyed my stay at the Bedarra Inn and my time in Fiji but feel I have come back with many more questions and no answers. The first thing I noticed at Kula Ecopark was that the blossoms that landed on the hero in the movie 'Avatar' were the same as those wafting in the air and on the ground in the ecopark. The Jewel of Fiji tour showed us country just like the country drawn for 'Avatar'. The New Zealanders made the most of 'Lord of the Rings'. Surely Fijians should make the most of 'Avatar'. The movie is becoming one of the highest money spinners of all time in part because it is so popular in China. Its making also appears to reflect political divisions and opportunities in the US as profound as those of the American Civil War. At the end of 'Avatar' the audience is invited to cheer for wounded US soldiers, natives and an

environment which are all victims of a US military leader finally staked through the heart for the vampire powers he represents. The effects of US industrial and related military power were analysed extensively by economists such as JK Galbraith, until he and others like him were eventually written out of history, just as many US Jews and others were pushed to toe the line and channel themselves more narrowly in law or other fantasies.

In Fiji I read the book 'Freefall: America, free markets and the sinking of the world economy' by the Nobel prize winning US economist, Joseph Stiglitz. Paul Krugman, another of many Nobel prize winning US economists states that Stiglitz is 'an insanely great economist' on the back of the latter's book. In the light of the global financial crisis, driven partly by the treatment of housing finance and related US risk, so many Nobel prizes being delivered to US economists seems like major irony. In Australia we have generally followed JK Galbraith's economic approach comparatively successfully in government. This is also consistent with United Nations development directions. The US view of risk management, as described by Stiglitz, depends on spreading financial risk, rather than managing a pool of funds effectively to achieve injury prevention or rehabilitation goals related to environmental, social and economic risks which result from production or environments. The US treatment of risk simply multiplies risks and costs instead of reducing them and also promotes economic instability with all its attendant ills. In the related context of English common law and statute that Australia, Fiji and other Commonwealth nations have inherited, one now wonders what Fiji intends to do with the new judges from Sri Lanka, which I read in the Australian press were recently employed.

Unfortunately I have no answers, only questions, in relation to Fiji. However, please see below and attached for related analysis of Australian and international direction. Many thanks, nevertheless, for a relaxing holiday in a lovely place. www.Carolodonnell.com.au

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UP IN THE AIR: A RESPONSE TO THE NSW PLANNING FRAMEWORK

This submission responds primarily to Recommendation 1 of the report of the Legislative Council Standing Committee on State Development entitled, 'New South Wales Planning Framework (December 2009)'. Its other six recommendations are also commented on in the light of this discussion. Standing Committee recommendation 1 is:

That the Minister for Planning establish an independent expert and representative group to undertake a fundamental review of the NSW planning framework with a view to formulating recommendations for legislative, strategic planning and system change in order to develop a planning system that achieves the best mix of social, economic and environmental outcomes for NSW. *(Let the Productivity Commission (PC) do this better and faster in consultation with all those wanting to give their views.)*

That the review group include representatives from urban, coastal and regional/rural areas and include representatives who are practitioners of the

planning system. *(Such people are generally narrower in their perspectives and less expert and experienced in the requirements of the review task, compared with the PC.)*

That the Department of Planning and other State agencies provide support to the review group in undertaking its task. *(Let the Department of Planning, the Department of Environment, Climate Change and Water and others work with the PC.)*

That the findings of the review group be subjected to broad community review and input and build on the work of this Committee's report. That the review commence in 2010. *(Good idea - the sooner the better. See related discussion below and attached.)*

Common regional boundaries and regional strategies always seem good ideas, so I agree with Recommendations 2 and 3. However, I would not blame any government representatives who are silently or noisily paralysed with incomprehension or fear about what is expected in their new Local Environment Plan (LEP) or how to achieve it. I doubt that throwing more manpower at these current problems, as suggested in Recommendations 4 and 5, is likely to resolve them. In the current confusion, one also wonders what the best practice electronic planning system suggested in Recommendation 6 is supposed to look like. Why should a mining company be asked to fund an independent committee of stakeholders as suggested in recommendation 7? Won't they simply be seen as doing the bidding of the mining company, whether they are or not? A better way forward is suggested later. (If the PC can change its spots, so may others).

In the above context also see the attached submission on superannuation and related fund management models to improve the security of funds and cut their costs. This was made to the Review of Australia's Superannuation System. Issues regarding the trust model, insurance and related matters are also dealt with. See also www.Carolodonnell.com.au

LET THE PC REVIEW THE PLANNING FRAMEWORK

Australia is a single land and economy which supports many interrelated communities and environments. As the NSW Department of Planning and others have often pointed out, the Environmental Planning and Assessment Act 1979 (EP&A Act) was groundbreaking because it recognised the importance of an integrated understanding of relevant environmental, social and economic issues when making land use planning decisions (p.6). Planning decisions about land, water or air should often refer logically to the Commonwealth policy agenda as well as involve knowledge about one or more state, regional and related local government areas. These facts necessitate a highly and broadly informed and experienced approach to the treatment of all regional environmental, social and economic matters. Nobody is equipped to do the planning review better than the PC. (However, it still has some problems which are addressed later in regard to mining and the introduction and management of the carbon pollution reduction scheme).

The PC is in the best position to carry out the proposed planning review as a result of its long history of relevant, broadly applied research and its current ongoing inquiry program into many related matters. For example, see its most recent draft report, 'Market

Mechanisms for Recovering Water in the Murray-Darling Basin'(09). The recommended planning review task is also highly consistent with the rolling reviews of regulatory burdens on business which the PC has been carrying out efficiently in a great many industries for many years. It naturally groups industries according to the Australian and New Zealand Standard Industrial Classification (ANZSIC) system. In 2010 the PC is due to review business and consumer services, which includes accommodation and food services (Div. H); financial and insurance services (Div. K); rental, hiring and real estate services (Div. L) and administrative and support services (Div. N). The PC addressed primary and manufacturing industries earlier. Mining is discussed later.

Implementation of the directions of the Legislative Assembly Standing Committee on Natural Resource Management (Climate Change) requires related consideration in all the relevant environmental, community and industrial planning contexts. The Department of Environment, Climate Change and Water is currently leading the preparation of the new Biodiversity Strategy for NSW and the Climate Change Action Plan, which is also central to the national, regional and local land planning process. Some council representatives said to the Standing Committee that 'the local environment plan (LEP) template' is too rigid to allow them to factor in biodiversity and climate change issues specific to their local areas. If so, this is a problem which must be faced in a sensible manner. The State Development Standing Committee recommended process is far less capable than the PC.

The value of production is derived from the activities of capital, labour and related communities and also from their use of land, water and air. Many citizens think that people try to become politicians in order to influence decisions about land use in a way that will economically benefit themselves, their families, their friends, or their chosen political parties, as distinct from producing environmental, social and economic benefit for the broader communities they are expected to be serving and for future generations.

In contradiction to the above common view, economists often assume that the pursuit of personal financial interests is in the interests of all in the longer run and also assume that financial interests stand for all related social and environmental interests. The fact that booms and slumps continue, that markets are widening socio-economic differences not reducing them, and that biodiversity is being rapidly destroyed in the process shows their assumptions are wrong. Nevertheless, these assumptions are also reflected in laws which normally require secrecy about commercial matters. Related bureaucrats and professionals support this and 'efficient market theory'. The theory pretends that all available information about a commodity (a share or other investment) is reflected in its price. As the recent global financial crisis has demonstrated to any but the most intellectually disadvantaged, such financial dogma is rubbish which, combined with secrecy, has led closer to perfectly ignorant markets than to perfectly informed ones.

The perception that politicians may be corrupt at worst or serving their own political affiliations at best, appears very rational in commercial contexts in which all may be sworn to secrecy by law and are thus afraid to talk to each other openly about important matters, in case they are labelled corrupt because they do so. In this context, ignorant action is

often wrongly equated with correct action and trusted mates are inevitably favoured. For example, Garnaut's interim report on climate change warned:

> Care would need to be given to the design of the institutional arrangements for administering the allocation and use of (carbon) permits. Variation in the number of permits on issue or the price would have huge implications for the distribution of income, and so could be expected to be the subject of pressure on Government. There is a strong case for establishing an independent authority to issue and to monitor the use of permits, with powers to investigate and respond to non-compliance '(2007, p.65).

Such views appear irresponsible because government is elected to govern and by giving away its power to a body established at arm's length from itself, it can only make itself more ignorant and unaccountable than it would otherwise have been. Neither does this action solve the problem that the body established may have secret drivers of its own.

Open, informed and publicly accountable decision making are the only answers to the above problems. On the other hand, legally mandated secrecy and related ignorance about the real connections between economic, social and environmental realms may render any leadership indistinguishable from the mafia, which is a problem many often face when trying to distinguish between financial behaviour which is socially acceptable and that which isn't. Lawyers are happy. Confusion just makes them more money. The PC is among the few capable of standing up to them without being dismissed. The comparative confusion, ignorance or circumspect timidity of most others is reflected in the current report on the NSW Planning Framework and the earlier NSW Department of Planning discussion paper, 'Improving the NSW Planning System' (2007).

When reading the report of the Standing Committee, one often feels one is guessing in the dark. Instead of vital information and related analysis about key legislative requirements besides the very sensible objects of the EP&A Act, the reader is provided with many comparatively uninformative pages of apparently guarded thoughts offered to the inquiry by those who appeared before it. As a former Minister for Planning, Frank Sartor set the Committee terms of reference and is quoted so often in the report that one often wishes he had written it. At least, one assumes, he has some idea, however vague, about why the current planning situation is so obviously unsatisfactory to so many people and also what should be done about it. The recommended future development seems likely to be wrong as well as glacial. The Chair, Mr Catanzariti, hits the nail on the head when he points out that any examination of the planning process must consider not only legislation but also administrative process. Related major problems are discussed later.

THE EP&A ACT AND PROBLEMS IN PLANNING AND ADMINISTRATION

The Standing Committee notes that the vast majority of inquiry participants said the EP&A Act is now complex and difficult to navigate and so needs a complete re-write. However, Mr Hadad held the view that new legislation was not necessary because he could not identify a causal relationship between the need for new legislation and the planning outcomes that are required. He said that careful thought had to be given to what fundamental difference new planning legislation could achieve that the current EP&A

Act and legislative framework is not already, or capable of achieving (p. 30). In regard to the view of Dr Peter Jensen from the Planning Law Chapter of the Public Institute of Australia, that the EP&A Act should be split into two acts which 'separate development control from strategic plan making', Mr Hadad pointed out that breaking these aspects into different acts 'would result in unnecessary tensions and complexity – as currently often occurs when different acts control different aspects of the one development' (p. 38).

Mr Hadad makes excellent points. We are already reading more and more, increasingly fragmented legal directives, by which all involved may feel more entrapped. For example, in regard to proposed development at Harold Park in Sydney, time will tell if the new planning 'gateway' process will add extra layers of confusion and bureaucracy to all existing development processes, rather than reducing delay. The main reasons for this possibility are firstly that all State Environment Planning Policies (SEPPS) and Local Environment Plans (LEPs) 'are legally enforceable documents which must be complied with like any legislative instruments' according to the paper 'Planning in NSW: Connecting the Community with the Planning System' which was produced by the Total Environment Centre (TEC 2009 p. 6). Local environment plans (LEP's) must also be made consistent with the Metropolitan Strategy which now has legal force as well.

The lawyer's perspective seeks to satisfy all requirements in the piece of legislation before him at whatever cost, regardless of whether the requirements on the page appear stupid, irrelevant to the particular case, or inconsistent with provisions in other relevant legislation which he may or may not know about. This legalistic planning approach, which is increasingly driven by more and more legislation, is as stupid as if doctors practiced by slavishly applying approved sets of past and current incomprehensible rules and instructions related to identification and treatment of various diagnoses, irrespective of any effects of this upon the huge variety of particular bodies under consideration. If doctors did this, which thankfully only the most brain dead would do, many of their clients would probably die from many idiotic over-treatments driven by other men who were 'experts' but who had never seen the patients. One cannot easily serve the public interest through increasing dependence on rule driven, pre-scientific theories and methods which encourage the secretive and related adversarial pursuit of vested interests in court. This is discussed in relation to administrative process later.

As I argued to the Victorian Competition and Efficiency Commission Inquiry into a Sustainable Future for Australia (2009), planning and evaluation should be undertaken from regional and related industry and community perspectives which seek economic, social and environmental goals. The aims and key requirements of related legislation should be openly and flexibly applied and evaluated in regional industry and community contexts to obtain the best balance of outcomes, not be driven prescriptively in their own right. To do otherwise is bureaucratic madness because the Commission points out the broad reach and complexity of Victoria's framework of environmental regulation alone, indicates 43 environmental acts and over 9000 pages of related legislation exist (p. 37). This cannot be rationally addressed in isolation from the geographical, industry and community contexts in which it is ideally applied as openly, flexibly and scientifically as possible, along with other legislation relevant to the context, to achieve all key goals.

In a country where law often has no objects at all or only very outdated and narrowly prescriptive ones, the EP&A Act objects, as outlined on page 34, seem a modern model of clarity in seeking to obtain a range of environmental, social and economic goals in an effective manner which also provides increased opportunity for public involvement and participation in environmental planning and assessment. Such 'outcomes based legislation' is the more modern, scientific and democratic approach to regulation. It ideally encourages broadly scientific and data driven approaches to activities, which are ideally also designed openly to achieve a range of integrated environmental, social and economic goals or outcomes. Old fashioned prescriptive legislation, on the other hand, applies the legal Word, as if it came from God and issues His orders, which may not be denied. Comparatively little attention is given to whether the effects of carrying out the orders would be good, ill or even possible. Keep and follow the objects of the EP&A Act as they are the best thing about it. They are not achieved for reasons discussed below.

Because of many apparently randomly placed additions to the EP&A Act since 1979, the Act appears to have lost most of the clarity and coherence it might once have had. Besides the EP&A Act, one assumes there must be much old and current legislation related to land planning which remains very powerful. However, the nature and effects of such earlier and/or surrounding legislation are almost complete mysteries to me, in spite of having read and responded to the Department of Planning discussion paper 'Improving the NSW Planning System (2007)' as well as the current report. The earlier discussion paper did not even provide a glossary to help the reader with the huge number of planning acronyms, let alone information about other legislation connected to the EP&A.

Under the heading 'Consolidate all planning control legislation into one Act' one is informed in the current report that the submission from the NSW Government noted that in addition to the need for development consent, about a quarter of all development in NSW currently require one or more approvals under other acts. The submission apparently listed 24 separate pieces of legislation that affect developments determined under the EP&A Act (p.39). It would have been helpful to have an appendix listing that legislation and some discussion of its common relationships to the EP&A Act. In general it seems a good idea to 'Consolidate all planning and control legislation' under the EP&A Act. However, to do so one first needs to know what all the relevant legislation is. This approach was taken when states introduced Occupational Health and Safety (OHS) Acts in the 1980s. These acts aim to achieve the outcome of a safe place of work. Older legislation related to occupational safety and health was updated and consolidated into regulations, codes of practice or guidance notes related to the OHS act or repealed. Define terms clearly in law or beware the lawyer's view of the nature of a code. That always takes us back to court, which is the lawyer's primary guide and intention.

What some citizens may see as regulatory measures which ideally protect their natural environment for current and future generations, other citizens may see as regulatory burdens on business. The focus on the EP&A Act in the current report largely excludes discussion of any other current or older legislation which may be related to it, so the reader has to guess what other directions may also be driving the current land plans and

related processes. The discussion of mining, oil and gas in the PC Annual Review Report of Regulatory Burdens of Business: Primary Sector (2007) provides a better research example. The PC recommended 'a broad review of the whole Australian onshore and offshore petroleum regulation framework'. Table 4.1 is entitled 'Mineral sector value chain and the impact of regulations' (p. 160). Six pages outlining key government requirements follow which are related not only to the regulatory requirements placed on key stages of the petroleum production cycle but also to key Commonwealth, state or territory government involvement in regulation of onshore and coastal waters. This is the necessary analytical approach for treating production in any geographic arena where there are competing land/water requirements. Planning and land development are early types of production. In the light of the holistic perspective taken to environmental, social and economic matters by the objects of the EP &A Act, one wonders why the NSW Department of Planning provided so little of the kind of research provided by the PC.

MORE PROBLEMS WITH PLANNING INSTRUMENTS

The EP&A Act has been amended so often it is now impossible to read. The meaning, nature and application of 'planning instruments' are central to any land planning or related decision making, yet many remain comparatively opaque. The NSW Department of Planning website appears to give no information on what the current zoning requirements are which are apparently contained in current Local Environment Plans (LEPS), or the criteria which were used for arriving at these zoning decisions before the advent of the Standard Instrument (SI) template in 2005. The current report briefly discusses the SI template which councils are supposed to use to develop new LEPs. However, neither the report nor the Department of Planning provides one with any idea of the requirements it contains or what the old ones were. This makes a mockery of the aims of the EP&A Act which include simplified administration and public involvement.

Under the circumstances, I would not blame any government representatives paralysed with incomprehension about what is expected in the new LEPs or how to achieve it. I also doubt throwing more manpower at the problem, as suggested in Recommendations 4 and 5, is likely to resolve it. In the current confusion, one wonders what the best practice electronic planning system suggested in Recommendation 6 is supposed to look like.

The discussion paper 'Improving the NSW Planning System (2007)' stated on page 3 that 'increasing the scope of 'exempt and complying' development would unclog the system, make it easier to renovate and build new homes, and free up council resources to deal with large projects'. However, the report writers never clearly explained how a proposal can be classified as both exempt AND complying at the same time, apparently with something which is never stated. At that time I could only guess that a lot of problems related to 'the perceived close relationship between developers and accredited certifiers' discussed on p.98. The current report suggests that this issue may remain some kind of running sore and points out it has recommended a fundamental review of all aspects of the planning framework (p. 141). Earlier the report states that the Council of Australian Governments is increasingly participating in planning reform through the Development Assessment Forum (DAF) and the Local Government and Planning Ministers Council

(LGPMC) The DAF has come up with the following six-track assessment plan: Exempt development; Prohibited development; Self-assess; Code assess; Merit assess; Impact assess. The explanations related to this new scheme are brief and I do not find them particularly clear or compelling. (Bring the PC into this or face a widening schemozzle.)

In 2007, the second major proposal to deal with the 'unsatisfactory regime for major development applications' was that Joint Regulatory Panels of the Planning Assessment Commission should deal with developments of regional significance, while the Commission should deal with those of state significance. How significance should be judged was not apparent to me. However, the recent treatment of the Harold Park site seemed sensible because the owners, the NSW Harness Racing Club, suggested to the Planning Minister that their proposed land sale had state significance because their pecuniary aims related primarily to the development of the racing industry. The proposal was then sent back to the City of Sydney Council to be treated as an open 'gateway' proposal. In the light of expectations in all the supposedly relevant SEPPs, and in the old and new LEPs which are required, it remains to be seen whether this will speed what should be a comparatively easy win/win/win development, or slow it down further. The Development Control Plan (DCP) requirement also bobbed up, unexpectedly for me, at Council level. (Their reports suggest the Committee on State Development, the Department of Planning and the Total Environment Centre never heard of the animal).

HELP THE PC AND OTHERS CHANGE THEIR ONE EYED VIEW OF MINING

The current Premier and former Minister for Planning, Kristina Keneally, directed on 13.11.09 that a Planning Assessment Commission be constituted to review the project application for the Bulli Seam Operations Project to look at its impact on significant natural features, built infrastructure and the values of Sydney's drinking water catchment, taking into consideration the recommendations of the Southern Coalfield Inquiry. This looks like an opportunity for more powerful and better leadership to gain the objectives of sustainable development in mining, construction and related communities. Discussion of requirements and investment incentives provided in the Superannuation Industry (Supervision) Act (1993) which is contained in the attached submission to the Review of Australia's Superannuation System is also relevant in this whole environment context.

The PC tends to change its perceptions depending on whether it is treating economic or social legislation. This can be a major problem for anybody concerned about gaining an integrated treatment of economic, social and environmental matters because the economic system is driven by multiple requirements for secrecy and 'efficient market theory' pretends that all available information about a commodity (a share or other investment) is reflected in its price. The interests of shareholders, a narrower group than stakeholders, (but broader than financial managers), supposedly drive the business. According to a 2008 PC report, economic regulations 'intervene directly in market decisions such as pricing, competition, market entry or exit'. Social regulations 'protect public interests such as health, safety, the environment and social cohesion.'(p.5). This division is problematic from the perspective of the EP&A Act and for many other reasons, including that economic activity is usually undertaken with the social aim of

supporting life and its associations. One wonders if government sees the carbon pollution reduction scheme as a preparation for economic or social legislation and fears the former.

When Hilmer wrote his report on national competition policy which led to the passing of the Competition Policy Reform Act (1995) he defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects' (1993, p.2). This could have led naturally to management partnerships using triple bottom line accounting – economic, social and environmental - for sustainable development. However, the Trade Practices Act (TPA) is silently wedded to many outdated propositions including that competition is always for money and that the greatest number of market players provides the ideal conditions for the contest, which can only do everybody good. In this paradigm, the consumer is conceived as just another trader or ignored. Adding the section on consumers to the TPA did not deal with its crazy paradigm which also endangers positive developments in health care, housing, and communication.

The government green paper position was that a carbon pollution permit would be an entitlement composed of various 'rights' contained in legislation and that carbon pollution permits would be personal property (p. 150). It is unclear how this 'right' is related to other so-called 'human' or 'property' rights. Australian governments have resisted a bill of rights partly because rights and obligations are ideally conceptualized and considered together for effective governance and decision making to occur. Relevant rights legislation does not carry a clear concept of an individual's obligation to the community of which they are a part. The idea that rights are 'inalienable' rather than forged in culturally bound democratic struggles, indicates the feudal belief that they are innate in the order long ago given by God. Nevertheless, the UN Declaration of Human Rights is the logical beginning of more scientific, protective and egalitarian community orders, based on the requirement of respect for all individuals and their environments. In the UN Declaration, rights are primarily about guaranteed minimum standards and free choice.

The World Commission on Environment and Development defined sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (Beder 2006, p. 18). However, the PC report of the review of the regulatory burden on upstream petroleum (oil and gas) sector explained 'public goods' in the following terms:

> Public goods exist where provision for one person means the product is available to others at no additional cost. Public goods are characterised by being non-rivalrous in consumption (that is, consumption by one person will not diminish consumption by others) and non-excludable (that is, it is difficult to exclude people from benefiting from the good). Given that exclusion would be physically impossible or economically infeasible, the private market is unlikely to provide these goods to a sufficient extent. The nature of public goods makes it difficult to assess the extent of demand for them. Common examples include flood-control dams, national defence and street lights (2008, p. 30).

At the time I pointed out that the above perspective is what one might expect from Daniel Plainview, the oil man in the movie, 'There Will Be Blood', rather than from Australian government in 2008. Government is established to seek the public good for current and future generations – which is economic, social and environmental. Ideally, Government does not envisage the public good as 'similar analytically' to 'externalities or spillovers'. In this report the PC appeared to be the subject of the regulatory capture by producers it deplored on earlier pages. It risks seeming like the tool of oil company shareholders thinking of their short term profits and very little else. Government ideally represents the long and short term economic, social and environmental interests of Australian communities, including investors, workers, customers and their supporting environments.

The burdens on one man's business may be another's opportunity for investment. However, the PC approach to mining was uninterested in innovation to make any production more sustainable. It tended to see regulation as a hindrance to be rid of, rather than as any potential incentive for more innovative and cleaner production. For example, on page 29 the PC discussed crude oil and condensate, natural gas, LNG, LPG and the countries to which these products are sent without providing any idea of what these products are used for, their cost, their impact on the environment, their substitutability and their level of sustainability. This disinterest in the relative merits of oil and gas products from any social or environmental perspective appeared typical of the report. Yet such information is vital for good carbon pollution trading and offset development.

In this unclear and unpromising management context, the report recommendation 5.2, was particularly disturbing. It was that governments should introduce 'lighter handed' regulation of retention leases by increasing the period of the initial lease from five years to 15 years, with renewals for a period of ten years (to reduce uncertainty and enhance the incentives to invest in exploration). Although I have no difficulty in believing there is massive dysfunctional overregulation in the upstream petroleum (oil and gas) sector, and that many of the suggestions in the report were very sensible in this context, it was difficult not to see recommendation 5.2 as merely being a request for many more cowboy-style operations which can always be assisted by secrecy, no matter what the costs to others operating in the same arena or a related one – far from good practice.

Chapter 5 stated that under Australian law, petroleum resources are owned by the Crown (i.e. by government (p. 69). Therefore government, not the private sector oil company, ideally manages all operations conducted upon the resources it owns. Government ideally also manages such operations competitively, in the public interest, by contracting mining companies to extract and market oil and gas to public interest based specifications. The first PC recommendation (5.1) was 'Governments should clearly articulate the objectives of intervention in approving the method and time of petroleum extraction and periodically assess the benefits and costs to ensure such intervention is justified'. However, this is ideally undertaken in regional contexts where competing interests in the management of land, air and water are considered to meet national and regional goals which are social and environmental as well as economic. A related response I made to the PC Inquiry into Government Drought Report accordingly urged government to plan agriculture, mining and eco-tourism in their regional land matrix contexts nationally and internationally and

to consider carbon trading and offset development in the context of the land matrix to reduce global warming and to achieve other key goals of sustainable development.

The PC stated that governments play a 'stewardship' role in petroleum resource management. However, the government's 'stewardship' of land and water ideally goes beyond the management of petroleum resources. The production chain is ideally envisaged and managed in regional arenas. In this context, where the PC appeared confused about who it was supposed to be serving, it is not surprising that industry participants found 'a lack of clarity of policy intent and definition of good oilfield practice' (p.79). One assumes good oilfield practice is ideally that which meets the stated aims of oilfield legislation. One also assumes that these aims are ideally to meet the interests in sustainable development of current and future generations of communities, workers and customers in environments which are also involved in or affected by production and consumption of oil and gas.

The PC discussion of the role of the Australian government interventions in mining, oil and gas activities states that regulation has the following objectives (p. 168):

- Managing the natural resource – providing an appropriate return to the community from the granting of exploitation rights
- Ensuring the safety of workers
- Protecting the environment

However, one wondered (and still does) how the PC, the government and industry define the community and how broad the related environment is conceptualized as being.

In short, the PC inquiry appeared to be working with an outdated model of development which was not consistent with the PC draft report of the Review of Australia's Consumer Policy Framework (2008). In recommendation 5.1 this called for the Council of Australian Governments (COAG) to instigate and oversee a review and reform program for industry-specific consumer regulation. Recommendation 5.3 called for a single consumer protection regime for energy services to be developed and implemented under the auspices of the Ministerial Council on Energy. The PC proposals for change in the industry are ideally reconstructed in this wider context of national and international legislative aims, including carbon trading and offset development.

The PC stated that coal seam methane projects could be considered a mining activity (p. 214). In this context it would be good to consider the views of Rivers SOS and others concerned about longwall coal mining. The lobby group claims this underground mining is having a devastating impact upon rivers, swamps and aquifers and calls upon government to implement a regulatory system that counterbalances mining approvals with a legislated one kilometre protection zone for rivers, streams and swamps. The group also seeks to expose the mining industry to greater public transparency and accountability, by providing greater access to all environmental reporting and standardising the community consultation process. Such concerns are important to take into consideration in any planned approach to the land and related sea matrix in order to protect biodiversity. Green corridors and clean water may protect many species.

After the global financial crisis and the G20 meeting in London, nations are now trying to emerge from much dysfunctional legal and financial control to gain more sustainable production, as befits leaders who care about democratic rights and future generations. In this context, I argued to the PC that the management structure of the ideal petroleum regulator should aim to support the regulator's legislative goals. One major difference between a statutory authority and a private sector company is that the former has the basic aim of serving regulatory goals and the board is drawn from the key stakeholders and other stakeholders. The statutory authority is not driven primarily by profits and has no shareholders. Its board reports to the appropriate ministers but normally performs independently, according to normal commercial principles, unless achieving the legislative goals clearly requires some other action, which should be made clear to all. If the elected government wishes to interfere in the board's management and related administration in any way this also must be done openly, so the action can be openly judged by all Australian communities. This kind of management structure appears to the one best designed to gain the effective implementation of competition policy, as envisaged by Hilmer, to achieve the goals of sustainable development – economic, social and environmental - by triple bottom line accounting. The requirements of carbon pollution reduction and related offset trading are ideally considered in this context.

Thank you for the opportunity to make this submission. Read the related attachment on fund management models. Check out more at www.Carolodonnell.com.au. Yours truly,

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A HOUSEHOLDER CALLS FOR MORE DIRECTION

The article entitled 'Bill of rights looks dead in the water' in the Sydney Morning Herald (17.2.2010, p.3) states the Attorney General is now preparing an education campaign promoting greater awareness of human rights instead of a bill of rights. Thank God for that. In an article in the same edition (p. 13) entitled 'The streets of Conroy are paved with gold', Peter Costello, the former Treasurer, also helpfully points out that it no longer matters what Treasury recommends on television taxes because Minister Conroy has already provided massive tax cuts to three television companies before the budget. Tax cuts are normally announced in the budget as the result of government working out how much revenue it needs and 'assessing the competing claims between, say, retirees or carers or….television stations'. The difference between such groups is that only television stations are provider groups who can also serve retirees, carers, industries and other community members by providing education and related information services for them, as well as entertainment.

The above seems the beginning of sensible industry development direction. On the other hand, the article entitled 'It's a double-cross for R&D' which states that tax credits will now be provided only to companies undertaking core research which is innovative and risky (Australian Financial Review 1.2.2010, p. 53) seems totally nuts. Why would any government program base its reward on the capacity to demonstrate high risk behaviour?

I could have discussed such issues with Nixon Apple at the AMWU and his wife at the ACTU if either had been prepared to meet me instead of literally running out of their offices and down the street when I came to Melbourne before Xmas. The last time I saw Nixon we seemed on good terms. They are lemons. What is our household direction?

Yours truly
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