could fill. ColeJ refused to imply a term that the Court would determine procedures and considered it was a matter for either agreement between the parties or determination by the independent experts as to the procedures to be followed.

Triarno also sought an order directing Triden to submit to and co-operate with an expert determination pursuant to clause25 of the Deed. Cole J did not think the Court had any power to make such an order. Cole J held it is a matter for each party to determine what role, if any, it will take in relation to the expert determination, if the experts determine that there is a role for either party to take apart from notification of the disputes to be determined.

Cole J also considered the question of the parties' liability for the cost of the independent experts. This was a question not explicitly dealt with by the Deed. Cole J found there was an implied therm that each party pay equally the costs of the independent experts for the reason that each party benefits by the implementation of the mechanism contained in clause25 of the Deed to resolve disagreements between them. Cole J found that other clauses in the Deed exhibited an intention by the parties that the costs of independent mechanisms necessary for the operation of the Deed were to be equally shared.

Further, each party was to bear its own costs in the expert determination, whatever the outcome. ColeJ found there was no express or implied power in the independent experts conferred by the Deed to make an order for costs.

It is understood that a notice of appeal has been filed from this decision.

- **Frank Cahill and Amrit MacIntyre, Baker & McKenzie, solicitors, Sydney.**

Development in Public Recreation Areas

Coffs Harbour Environment Centre v Coffs Harbour City Council, unreported, NSW Court of Appeal, JJA Clarke & Sheller, AJA Hope, 6 December 1991.

Facts

Section 24 of the Crown Lands Consolidation Act 1913 (NSW) provides for Crown Land to be dedicated for public recreation. The Coffs Harbour City Council attempted to build a sewage outfall on land dedicated under section 24. During the period of construction a number of areas of land would have been fenced off from the public. After completion, a number of iron grids would have remained. Such land was also zoned 6(a), in which development, if not expressly permitted, was prohibited unless generally consistent with the objectives of the zone, viz, for a use associated with recreation.

Importance

The Court of Appeal reversed a decision of Bannon J in the NSW Land and Environment Court, which had upheld the Council's decision to build the outfall, and held that the land to be used for public recreation and enjoyment must be open to the public generally as a right. The Court held that a local council or other relevant authority is entitled to impose regulatory and restrictive conditions upon an area of land which has been set aside for public recreation only if the restrictions are ancillary to an improvement which promotes the use and enjoyment of the land as a public recreation area.

It was held that the sewage works could not be regarded as promoting, or as ancillary to, the use of the headland for public recreation. This decision is of importance to councils because many areas zoned Open Space, or with similar limitations, have utility installations and public buildings erected thereon. This decision casts doubt on the lawfulness of such development.

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