Whose Neighbourhood is it Anyway?

Presented by Grant Gleeson

The Plan

- Introduction
- EP&A Act
- 2008 Reforms
- Planning v Democracy
Introduction

- Surveyors, by mapping, enable “land” to be reduced into possession
- Aggregations of separate parcels of land, linked to community infrastructure, form neighbourhoods
- Government makes Development permissible
  - By Law - coercive power of state
  - By Zoning - spatial regulations

Blight of Zoning

- Zoning makes Development “Topical”
  - range of uses/development “permissible”
- Applicant for Development selects:
  - The land on which Development is to occur
  - The type of permissible Development
- If it is not “in the zone”
  - you can’t do it!
Planning Law

- Planning Law distorts the market by interfering with the interaction of market forces
- Essentially a political exercise
- Planning is the servant of power
- Under the NSW EP&A Act, the public does not have a deliberative voice in the:
  - Making of the plan
  - Identification of the zone
  - Decisions to approve/refuse development

EP&A Act 1979

- Regulates “Development”
- Makes development “Permissible”
- Part 3A allows the Minister a wide discretion to approve “other” development
EP&A Act 2008 Reforms

- Focus on “cutting red tape”
- Sidelines Local Councils

AIM
- 50% - exempt/complying development
- No mandatory notification

NSW: Open for Business?

- Only Applicant for Development has right to Merit review
- Public right limited to:
  - Designated Development
  - Otherwise no appeal right
**JUDICIAL REVIEW**

- Administrative *not* merit review
- If 60% of decision removed then opportunity for Judicial Review limited
- If there is no administrative decision - no review
- Powerful tool - see Gwandalan Decision

**Planning -v- Democracy**

- Should planning be democratic?
- If yes - then the voice of the public must be heard. There must be:

  “Open weighing of contending opinions about how best to protect the diverse interest of society against the partial interests of any ruling group”
Planning -v- Democracy

- If no:
  - Government makes the policy decision.
  - The law implements the policy.
  - In NSW planning is NOT democratic.

Conclusion

Who owns the neighbourhood?

The Government!

The rule of law is a “tool used by the ruling class to shape society in a way favourable to itself.”

Nelson Mandela