



## Whose Neighbourhood is it Anyway?

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## 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

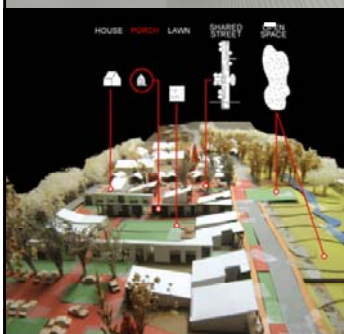


- Administrative not merit review
- If 60% of decision removed then opportunity for Judicial Review limited
- If there is no administrative decision – no review
- Powerful tool – see Gwandalan Decision

## 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