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# RETHINKING PUBLIC 'PARTICIPATION'

## The role of non-experts in the development of third party objection and appeal in the NSW Environmental Planning and Assessment Act (1979)

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### INTRODUCTION

Public participation in planning assessment in Australia emerged in the context of social and political changes of the 1970s. Increasing criticisms of planning in the rational comprehensive model fuelled by opposition to large-scale construction and demolition, along with the perception of close alliances between developers, investors and State Governments, led to widespread calls for greater consultation in the planning process. Significant community opposition originated in battles over planned destruction of affordable and social housing and green spaces as epitomised in Sydney's Green Bans. By the end of the decade, a reassessment of planning policies at the Federal and State levels saw new directions in land use planning towards the incorporation of public opinion and third party objection and appeal processes in plan-making and planning approval processes.

The transition to participatory planning processes is one of the key characteristics of urban planning in the latter part of the 20<sup>th</sup> century. The nature and extent to which planning policy and practice have incorporated participatory mechanisms varies, as does debate over their desirability and merit (Allmendinger & Tewdwr-Jones 2002). However, the influence of participatory goals are keenly felt across planning's recent history. This is perhaps most evident in the wide-ranging contribution of planning theorists to debate around communicative rationality, deliberative democracy and agonism (Hillier & Healey 2011). But it is also evident in earlier calls for 'transactive', 'social learning' approaches embedded in Friedmann's post-Euclidean planning (1993) and Sandercock's (1998) discussion of multiple publics. A myriad of planning policies in Australia and further afield have prioritised consultative approaches since the turn of the century.

Sandercock (1998) argues that the economic and social complexity of cities along with the 'rise of civil society' and feminist and post-colonial politics set the scene for more deliberative planning approaches. The complexity of urban life challenged the idea of a coherent or absolute 'public good'. Civil protest has also formed a prevalent motif in planning histories as a trigger in the reconfiguration of planning roles from 'presumptive public interest' towards advocacy (Friedmann 1998: 20) and deliberative models (Healey, 1997). However, the relationship between non-experts and planning reform in Australia in the 1970s occupies an ambiguous position in planning history. While there is some consensus across key texts in planning history that non-experts have influenced aspects of urban governance, politics and urban environmentalism (Freestone 2010; Freestone 2007; Thompson 2007; Gleeson and Low 2000), the impact of non-experts on *planning*— including *planning policy and planning law*— remains unspecified. The implication of this ambiguity is that many of the agents gathered in the achievement of significant planning reform may remain unacknowledged. As calls for planning reform gain momentum (Steele and Gleeson 2009; Hillier 2011) an interrogation of the hidden relationships underpinning moments of significant planning reform is urgently required.

Taking as its case planning reform in NSW in the late 1970s, this paper aims to address this gap. At the beginning of the decade, significant community opposition emerged in battles over planned destruction of affordable and social housing and green spaces epitomised in Sydney's Green Bans. By the end of the decade, a reassessment of planning policies at the Federal and State levels saw new directions in land use planning towards the incorporation of public opinion and third party objection and appeal processes in plan-making and planning approval processes. Drawing on historical materials documenting the interaction between resident action groups, non-government organisations, unions, planners and politicians from 1971-1979, the paper explores the emergence of planning reform towards the incorporation of public viewpoints. Specifically, this paper argues that residents and non-experts played a key role in the reform of the NSW planning system through the centralisation of public participation in the objects of the EPA Act, and the development of third party rights.

## **SITUATING PARTICIPATORY PLANNING REFORMS IN NSW**

The case of NSW in the 1970s provides an excellent opportunity to explore the relationship between non-expertise, resident action and planning reform. Sydney in the 1970s was shaped by global flows of capital, growth in the services sector and new construction technologies. Determined to remove obstructions to property and city growth the Liberal (conservative) Askin State Government in 1967 sacked the Sydney City Council (SCC), which had been controlled by the Australian Labor Party (ALP) since 1949 replacing it with three Commissioners before the election of a council predominantly comprising members of the conservative Civic Reform Association (CRA). Under the new local planning regime, office construction proliferated with \$300 million of high-rise approved in 22 months, ten times the approval rate of the dismissed council (Sandercock, 1977). The Askin Government and the CRA also undertook several highly contested electoral rezonings to facilitate high-rise commercial development in inner-suburban areas (Rees, 2004).

The political manoeuvring reflects the urban economy at the time. While in 1967 the central business district (CBD) mostly comprised 8 story buildings, the relatively undercapitalised building stock, proved a lucrative investment for British finance and large Australian banking and insurance firms (Daly, 1982). Against the convergence of State Government and developer interests around high-rise development, commercial offices and freeway construction, the legislative terrain of planning in New South Wales in the early 1970s provided little room for contestation or debate. The New South Wales Local Government Act, 1919-1974, (NSWLG Act) required draft planning schemes to be exhibited for public comment after the plan had been prepared. Comments were also expected to be objections lodged by landowners directly affected by the plan with discretion by the Minister over the validity of alternate claims. Public housing tenants, activists, NGOs for instance, had no rights in this regard. Moreover, there was no scope under the NSWLGA Act for third party appeals to planning decisions by either local councils or planning authorities (Roddewig, 1978). Although there was a precedent for consultative practice through the Land Valuation Court (Ryan, 2001), early calls for greater consultation appear marginalised in an otherwise closed-loop between politicians and developers.

With little recourse to shape plans, the transformation of the city from 1971 to 1974 led to wide-spread urban protest. While community opposition to redevelopment at this time was a characteristic of many Western cities, the formation of resident action groups in Sydney was uncommonly sustained by the New South Wales Builders Labourers Federation (NSWBLF), which at the time, was questioning both left politics and the workers' role in the demolition of valued urban sites (Burgmann and Burgmann, 1998). Lending its support to a range of emergent and established resident action groups, the NSWBLF withdrew its labour from the demolition of sites comprising \$5 000 million of property development in Sydney. The initial Green Ban, placed by the NSWBLF on Kelly's Bush in Hunters Hill in June 1971, was followed by over 40 Bans city-wide.

The Green Bans have been celebrated for their role in protecting heritage sites (Ruming et al 2010), as an example of community unionism (Burgmann and Burgmann 1998) and as the birthplace of urban environmental politics (Australian Conservation Foundation n.d). However, they were also critical in creating spaces of debate and consultation around urban planning and development processes. While resident action in response to top-down planning approaches and urban restructuring was hardly unique to Sydney, the support of the NSWBLF meant that the stakes for developers and politicians were raised. As a result, many of the traditional roles of residents, unionists, developers, politicians and planners were unsettled. Drawing particularly on the case of The Rocks, the paper explores these relationships in more detail next.

## **MASTERPLAN VS PEOPLE'S PLANS**

In 1967 the Sydney Cove Redevelopment Authority planned to demolish public and affordable housing in The Rocks precinct and replace it with high rise commercial office towers. The Rocks were home to 300 lower income residents. Many of the residents had a long continuity of tenure, enabled in part by a range of housing policies administered by the State Government including policies of the Maritime Services Board which 'had allowed tenancies to continue in families of port employees for some generations' (Nittim 1980: 235). In order to expediate redevelopment, the NSW Parliament passed the Sydney Cove Redevelopment Authority Act (1968), establishing the Sydney Cove Redevelopment Authority (SCRA) as the manager of the site. While the activities of the Authority were overseen by a committee, its members comprised politicians and non-resident businessmen (Roddewig, 1978).

The proposal was a classic high-rise imposition in a predominantly lower density neighbourhood. Described by Robert Freestone (2000: 135) as an 'operatic ensemble' it also reflected an opportunity to generate large profits from redevelopment of public land (Roddewig, 1978). With the support of the NSWBLF and members

of the Coalition of Resident Action Groups, (CRAG), the Rocks residents formed the Rocks People's Plan Committee and drafted *The People's Plan for the Rocks*. The People's Plan appeared in stark contrast to SCRA's 1968 plan recommending that: 'the operations of SCRA must be opened up, and structures set up for full and ongoing open consultation between the Authority and residents, tenants and interested citizens' (Roddewig, 1978: 25). This included involvement by residents and workers in the area 'to the point of veto' (Roddewig, 1978: 25).

At the same time the Bans were extending across the city. Not all the Bans sought a restriction of development; in many cases there was the search for greater consultation. While the protection of sites and spaces is undoubtedly one of the key legacies of the Green Bans, it is also true that one of the key aims- and perhaps more critically, one of the key practices co-created by the NSWBLF and the resident action groups- was to enable more input and more debate about the way in which the city was to be developed (Mundey 1981). While the Bans had a limited lifespan, a number of plans for intense demolition and development were revised. Many key sites in Sydney benefited in particular from the focus of the newly elected Whitlam Government and the Department of Urban and Regional Development at the Federal level.

### *The Green Bans and Federal Planning Policy*

The financial commitment by the Whitlam Government to issues of urban affairs in 1973-1974 through the Department of Urban and Regional Development (DURD) was \$136 million, including an increase to spending on public housing programmes by 25 per cent; \$32 million (of a proposed \$700 million) for improvements to public transport systems; \$30 million for State Governments to improve urban sewerage services; \$33 million for urban growth centres ('new cities'); and \$30 million for land acquisitions. In 1974, all these budgets were increased so that total spending reached \$433 million (Troy, 1996).

While contained within a broad policy that sought to off-set the impacts of property speculation and decentralise planning power, aims to reform planning processes through non-expert participation were also apparent. The National Program for Urban and Regional Development for example, sought 'to open the processes of government and planning to effective citizen participation and to decentralise decision-making and administration' (Roddewig, 1978: 80). More deliberative approaches to planning also emerged through the Area Improvement Program (AIP), trialled in western Sydney and Melbourne in 1973-74 (Troy and Lloyd, 1984: 49). However, DURD also committed 35 million in 1973-1974 to regenerate the public housing stock in Woolloomooloo, Glebe and Emerald Hill in Melbourne (Roddewig, 1978; Sandercock, 1983b). Of these sites, Woolloomooloo had been the subject of a Green Ban and at the Glebe site DURD established a residents committee from the surrounding neighbourhoods (Roddewig, 1978:90). Marking the significance of the earlier Green Bans in the development and implementation of Federal urban policy, the organiser of the Rocks RAG, Nita McRae, was appointed by DURD at Glebe as 'a fulltime community development officer' (Roddewig, 1978:90). Indeed, a number of commentators have noted the impact of the Green Bans in shaping Federal Policy (Burgmann and Burgmann, 1998). Professor Pat Troy, director for many years of the Urban Research Unit at the Australian National University and adviser to DURD suggested:

*'it would be "hard to over-estimate the importance of the Bans" because of their "subtle influence" in transforming the culture of urban planning in ways that now evince greater sensitivity to environmental concerns, better appreciation of heritage, the need to publicise proposed developments well in advance and to seek approval from the people affected' (cited in Burgmann and Burgmann, 1998: 182-83).*

DURD also pioneered strategies that aimed to strengthen the role of non-government organisations in determining the future of the city. A critical contribution here was the formalisation of the National Estate and the centralisation of the National Trust, whose recommendations had been increasingly ignored, despite being administered by State Governments. The Whitlam administration also made attempts to centralise third party appeal. At a Federal level, Environmental Impact Statements were required before any 'major federal actions likely to affect the environment' (Roddewig, 1971: 92) including, for instance, approvals for export licenses following resources extraction.

### *A decade of reform*

The impact of the ALP's political success in December 1972 and widespread resident protest sustained by the NSWBLF had begun to force the issue of wider debate around planning across both major political parties in New South Wales. Nittim (1980) suggests, for instance, that the success of the ALP Federally led to a change in position by State Liberals who 'sought to change the party's image' (Nittim, 1980:240) including the recruitment of 'policy advisers, some with specific interests, skills and experience in urban policy' (Parkin, 1984: 28). While 'formerly unimpressed by CRAG's recommendations' (Nittim, 1980:240) in the lead-up to the NSW State Election of 1973 the Liberal Party now sought their counsel. Moreover, by the

late 1970s, State Government approaches to urban policy began to reflect the claims by residents to limit and importantly, to discuss urban growth.

A particularly vivid indication of the changing mood of the NSW State Government is evident in the latter plans for the Rocks redevelopment. The final plan 'incorporated more place-sympathetic approaches like stressing retention of existing community linkages, rehabilitation of existing buildings, respect for historic fabric, and sensitive infill on a human scale' (Freestone, 2000: 137). Importantly, in its 1973 review, SCRA noted that 'over the previous three years there had been major changes in public thinking and attitudes both here and overseas on planning generally' (Roddewig, 1978: 26) and in 1974 set-up an Advisory Committee comprised of members from the RAG, local businesses and SCRA staff.

By February 1974, the New South Wales planning system was beginning to adjust to the political imperative for more inclusive planning. The State Planning Authority was amalgamated with the state's environmental protection functions (Roddewig, 1978; Parkin, 1984; Burgmann and Burgmann, 1998), forming the State Planning and Environment Commission. Departing markedly from its approach in the early 1970s, a review of the planning system was undertaken and 15000 copies of the review were distributed to 'planners, bureaucrats, citizen groups and conservation organisations' (Roddewig, 1978:109). Critical issues identified in the review included the overcentralisation of planning controls; the lack of third party appeal; an acknowledgement of the social impacts of rezoning; and a lack of consultation, including the publication of 'alternatives and revisions... in ways which people can readily understand (including foreign languages where there are large migrant populations)' (Roddewig, 1978: 111).

A number of these concerns were retained in the NSW Government's (Coalition) draft Environmental Planning Bill 1976. Key sections of the 1976 draft relating to resident input into planning processes included a regulation requiring councils to notify the public in advance of major development (s 107); an extension of the right to object to all residents (not just home, or landowners) (s110) ; and the guarantee of third party appeal rights (s 120). The Bill was not passed however, before the ALP and the new Premier, Neville Wran (ALP), was elected in May 1976 (Roddewig, 1978).

The overtures of the Askin administration to a more open planning system, gave way under Wran's administration in 1976 to a suite of legislative reforms reflecting many of the recommendations made by DURD (Parkin, 1983; Freestone, 2000) CRAG and the NSWBLF. In addition to the New South Wales Heritage Act, 1978, which included \$10 000 fines for developers 'for demolishing historic buildings' (Burgmann and Burgmann, 1998: 282), legislative reforms favouring public input in planning through the Heritage Act 1974 and 1977 (Freestone, 2000), the Environmental Planning and Assessment Act 1979, the Legal Aid Commission Act, and the Land and Environment Court Act 1979 were in place (Freestone, 2000; Ryan, 2001). By September 1980, the Land and Environment Court was established, reflecting the formalisation of a number of pieces of legislation and the advocacies of non-government and peak bodies around environmental justice, essentially permitting non-expert, non-planning involvement in the planning process (Ryan, 2002).

For a number of commentators, the EP & A Act in particular extended the deliberative scope of the NSW Planning system. Rather than a question of 'individual entitlement', land-use decisions under the Act considered the 'use of land as a matter of public policy' (Bonyhady, 1995: 116). Ryan has also emphasised the consideration under the Act for the 'social and economic welfare of the community and a better environment' (Ryan, 2002: 302). These were matched with a series of third party rights enabling contestation through the Land and Environment Court of environmental issues with important implications for urban growth. These included: 'unprecedented third party appeal rights, Court inquisitorial powers (LECA ss 38-9) and Crown right to intervene in Court proceedings of public interest (s 64)' (Ryan, 2002: 302). For Ryan the EP & A Act 'revolutionised the land-use planning system, introduced an 'environmental' emphasis, and allowed any person (individually or through class action or with financial support) to remedy or restrain breaches of the Act (s 123)' (Ryan, 2002: 302).

Critically, with the establishment of the Land and Environment Court in September 1980, non-expert views were explicitly framed and legitimised in the institutional and legal framework governing urban development in Sydney, such that:

*'it did not confine public interest to an expert planning view, finding that attitudes of ordinary citizens in matters of local character and amenity were material' (Ryan, 2002: 305).*

Indeed, a range of deliberative components were added to New South Wales legislation frame by the Wran administration. This included the Parliamentary Inquiry. Described as 'a new growth industry in the 70s' (Ryan, 2001: 568) the Inquiry found its way into several NSW Acts, including, but not limited to the EPA Act

1979 and the Land and Environment Court Act 1979. Importantly, both these and the Heritage Act 1977 and the Local Government Act 1993 were developed through public discussion and seminars for residents and business groups. Ryan's description of the Parliamentary Inquiry, which emphasises 'broader community views and 'elements of education' resonates with contemporary accounts of consultative planning today:

*'whether through an independent focus on an unduly complex issue; gathering expert and broader community views; reviewing and defining policy, program and organisational options; assessing environmental impacts of projects, providing an avenue for public participation, Inquiries can satisfy "community principles" that include elements of education along with exploration of issues, regular and frequent consultation, and detailed feedback' (Ryan, 2001: 570)*

Thus, by the early 1980s, the planning system of New South Wales had shifted gear. Through multi-scalar and bi-partisan policy reform the discourse of non-expert participation in planning was translated and imported into the over-arching planning framework for NSW. Through requirements for the exhibition of plans and consideration of public viewpoints under the EP&A Act (1979) and the creation of a new court of appeal designed to acknowledge alternative meanings of place, the figure of the resident activist by the beginning of the 1980s was institutionalised in NSW Planning terrains. Marking a shift from the highly centralised planning system under the Askin regime, the planning system by the 1980s is characterised by deliberative mechanisms and opportunities for contestation over property development and urban growth.

## CONCLUSIONS

While participatory planning approaches proliferated in planning policy, practice and research at the end of the 20<sup>th</sup> century, the role of non-experts in shaping planning reform has attracted much less attention. Against a literature concerned predominantly with the merits and procedural aspects of deliberative planning approaches, the case of the Green Bans suggests the figure of the 'non-expert' is not simply to be 'tolerated' or 'incorporated' into planning processes. Rather, residents, unionists and non-government organisations may also be co-creators in the development of planning legislation and reforms, shaping progressive planning policies directly. Non-expertise can also sustain innovative planning responses at the Federal level. As the call for planning reform towards more adaptive models gains ground, the role of residents, non-experts and unions in shaping planning legislation towards socially and environmentally sustainable outcomes in the 1970s may provide the important clues, and cues, for planning reform in the present. To these ends, planning might look outwards, towards informal movements and mobilised residents and unions, to gain inspiration and support for the plans of the future.

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