
THE TWO REALITIES ON THE BLOCK

by Elizabeth Rice in collaboration with the Aboriginal Housing Company

INTRODUCTION

The New South Wales ('NSW') Minister for Redfern-Waterloo, the Hon. Frank Sartor, MP, caused an uproar recently when he urged a prominent Indigenous leader to get off 'his black arse'¹ and talk to him about controversial NSW Government plans to redevelop the Sydney suburb of Redfern. While the comments were followed by apologies that were accepted by the leader in question, Mr Michael Mundine, Chief Executive Officer of the Aboriginal Housing Company ('AHC'), the apologies did not end the controversy. Indigenous leaders and the NSW Opposition called for the Minister to be at least removed from his responsibilities for Redfern-Waterloo.² One commentator said Minister Sartor's comments were the inevitable consequence of Governments seeking to 'lecture Aboriginal people rather than sitting down and listening to them'.³

These comments highlight the fact that the controversy in Redfern is about far more than a tasteless remark by a Minister who should know better. At the heart of the issue are competing claims for the right to control decision-making for the area. A resolution to the conflict will only be achieved if an approach is adopted which works inclusively and collaboratively to achieve outcomes which respect both Indigenous rights and state sovereignty.

THE ISSUES

In Redfern-Waterloo in 2005 a significant number of public policy issues come together - Indigenous self-determination, Indigenous housing, urban renewal and community renewal. The challenge for the NSW Government is to manage the latter two issues in a way that supports the first two. If this can be achieved, there will be benefits for Redfern-Waterloo as a whole, as the principles that underpin respect for Indigenous rights are consistent with those underpinning community participation in decision-making generally. It could even be argued that a public culture in which genuine community participation is the norm is a precondition for Aboriginal self-determination. Unless there is an inclusive system of decision making for everyone, appeals to Indigenous rights risk being perceived as special pleading, rather

than being accepted as an integral part of a rights-based decision-making culture.

At the moment, the clearest local illustration of the possibilities for rights-based decision-making - and the dangers of denying it - is the unresolved issue of Indigenous housing on The Block - a residential area in Redfern, Sydney, bound by Eveleigh Street, Vine Street, Louis Street and Caroline Street, opposite Redfern Railway Station.⁴ This article argues that the current impasse in relation to planning for The Block cannot be resolved without explicit recognition of competing claims for the right to control decision-making for the area and an understanding of the different types of rights involved and the realities on which they are based. It concludes that this resolution cannot be achieved without a planning approach which works inclusively and collaboratively to achieve outcomes which respect both types of rights.

TWO REALITIES

At the heart of these issues lie two realities. One is based on Indigenous rights (as expressed in the United Nations *Draft Declaration on the Rights of Indigenous Peoples*),⁵ the other is based on state sovereignty. Australia has never negotiated a treaty with the Indigenous peoples of the land. The consequences of this continue to be felt, and, given the centrality of land to Aboriginal culture, they affect every area of Aboriginal life.

The rights of Indigenous peoples often conflict with land use planning systems established by statute in all states and territories, and by the Commonwealth. These systems also have the capacity to affect every area of life - particularly when, as in Redfern-Waterloo, they are accompanied by a statutory body with explicit responsibility for social, environmental and economic outcomes for the area, including 'to provide and promote housing choices in the operational area (including for Aboriginal residents)'.⁶

In the absence of a treaty which recognises the first reality, other approaches are needed to promote workable solutions to the conflict between these realities. The Block in Redfern is one place where this is now a matter of urgency.

WORKING WITHIN THE TWO REALITIES ON THE BLOCK

Developing an approach to working with both realities in The Block area requires a good understanding of both the history of The Block, and the NSW Government's current approach to the area.

THE BLOCK

The Block has long been an area of significance to Aboriginal people – it was the traditional home of the *Gadigal* tribe. Throughout the twentieth century, it was an important meeting place and source of employment for Aboriginal people and was the birthplace of many Indigenous organisations. It has also played a central role in connecting kin, many of whom had been forcibly separated from their families by Government policies.⁷

Following the return of The Block to Aboriginal ownership in 1973, it has become an icon for Aboriginal people across Australia, representing the possibilities that still remain for urban Aboriginal land rights and Aboriginal self-determination. These possibilities are now encapsulated in the *Pemulhuy* Project which was developed by the Aboriginal Housing Company (AHC) and supported by the Organisation of Aboriginal Unity ('OAU') (later reformed as the Redfern Aboriginal Authority).⁸

The *Pemulhuy* Project proposes a mixed development on The Block and adjacent land owned by the AHC comprising 62 homes, a business college, a student hostel, retail and office space, a museum, a fitness centre, Aboriginal markets and a cultural centre.⁹ A key point to note in relation to working within the two realities is that some of the recent amendments to the *Pemulhuy* Project incorporate positive suggestions made by the Minister for Redfern-Waterloo (the Hon Frank Sartor, MP) about what is needed in the area, while others respond to criticisms the Minister has made about the potential reintroduction of high-dependency housing.¹⁰

THE NSW GOVERNMENT'S APPROACH

The NSW Government has taken a particular interest in Redfern-Waterloo in recent years, originally through the Premier's Department's Redfern-Waterloo Partnership Project ('RWPP') and currently through the Redfern-Waterloo Authority ('RWA') into which the RWPP has now been merged. The urban land management component of the RWA's work also intersects with the NSW Government's approach to its Metropolitan Strategy, with some of the latter's documents specifically referring to the Redfern-Waterloo approach as a potential model for urban renewal in other parts of Sydney.¹¹

These inter-connections are not accidental, as the NSW Government has promoted its approach to Redfern-Waterloo as an example of integrated, holistic planning which will allow land use to drive improved social and economic outcomes, while also taking a broader approach than statutory planning alone. In relation to The Block, this means that, as required under s 33(1) of the *Redfern-Waterloo Authority Act 2004* (NSW):¹²

The Minister... is to consult with the Aboriginal Housing Company and other relevant representatives of the Aboriginal community on issues and strategies affecting, or the long-term strategic vision for, the Block (and its immediate area).

So far these consultations have not advanced the future of The Block, as the Minister has stated publicly that he will not consider the *Pemulhuy* Project as it would involve building of 62 homes in the area. His alternative proposal is to locate most of the Aboriginal housing sought by the AHC on land near The Block, but not under the AHC's control.¹³

Reading these actions in the context of the advice attributed to the 'NSW Crown solicitor's office ... in October [2004]',¹⁴ it is difficult to escape the conclusion that the NSW Cabinet does not trust Aboriginal people to manage their own housing. It appears that its objective is to make sure that as much Aboriginal housing in Redfern as possible is under NSW Government control – or, at least, not under Aboriginal control. Given the inclusion of The Block in an area recently designated as 'state significant development' under the provisions of the NSW planning legislation¹⁵ (which means that the NSW Government, not the local council, will make the planning decisions for The Block), this is an objective that the Government could easily achieve.

This would fly in the face of Aboriginal self-determination – and the bitter irony of the situation is that this potential undermining of Aboriginal rights would be centred on a site where a former Federal Labor Government, by funding The Block's return to Aboriginal ownership, sought to uphold them.

WHERE TO NEXT?

At the time of writing, the NSW Government's official position remains as expressed in the Redfern-Waterloo Minister's Open Letter to the AHC, which challenges it to 'work together [with him] to find a shared vision for the Block'¹⁶ – but requires as a pre-condition that the AHC abandon its proposal for the 62 homes which are at the heart of the *Pemulhuy* Project. Those concerned about Indigenous housing – as an Indigenous right and as

a critical aspect of Indigenous well-being (see Wilkinson's article in this edition of the ILB) - will inevitably continue to call on the NSW Government to review both this requirement and the direction of its decision-making on Indigenous issues in Redfern-Waterloo.

Aboriginal organisations in the area have clearly indicated that for them, the principles underpinning the way forward must include:

sharing ideas with an open mind to come up with a joint agreement on the best way forward ... listening as well as speaking ... not ... telling our people what is happening after decisions have already been made.¹⁷

In this their requirements are no different from those of other Redfern-Waterloo communities (see Turnbull's article in this edition of the ILB).

CONCLUSION

Despite the NSW Government's recent promotion of the progress it has made on some Aboriginal issues,¹⁸ many Aboriginal people are still concerned at the way decisions are being made in Redfern-Waterloo. As Turnbull's article¹⁹ indicates, these people are not alone in their concern about decision-making for Redfern-Waterloo - and, unless there is a marked change in the decision-making culture in the area, all they will be able to do is hope, as the OAU expressed it last December, that:

If a genuine approach is adopted by all parties, we are confident that a plan for Redfern Waterloo could be agreed on that is in the best interests of Aboriginal people, the broader community and the state of NSW.²⁰

This change can only happen if the NSW Government acknowledges the way that the two realities affect planning in the area, and works in a positive way with the Aboriginal people of the area to achieve outcomes that respect both realities. Without this change, the NSW Government's approach to The Block - and to Indigenous issues throughout Redfern-Waterloo - risks becoming an example of *terra nullius* Mark II. In this version, we do not take the land - we just find other ways of making it impossible for Aboriginal people to determine their futures.

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The Aboriginal Housing Company Limited (AHC) is an independent non-profit charity and the first community housing provider in Australia. It provides Aboriginal housing in and near The Block.

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- 2 'Sartor: My White Derriere Needs Whipping' *Sydney Morning Herald* <<http://smh.com.au/news/national/sartor-my-white-derriere-needs-whipping/2005/09/19/1126982000882.html>> accessed 22 September 2005; Redfern Aboriginal Authority (replacing the Organisation of Aboriginal Unity), 'Sartor Must Change or Stand Aside' (Press Release, 21 September 2005).
- 3 'NSW Minister apologises for racial comment' *AM* <<http://www.abc.net.au/am/content/2005/s1463999.htm>> at 22 September 2005.
- 4 Aboriginal Housing Company, 'What is The Block?' (2005) <<http://www.ahc.org.au>> at 16 September 2005.
- 5 United Nations, *Draft Declaration on the Rights of Indigenous Peoples*.
- 6 Redfern-Waterloo Authority Act 2004 (NSW).
- 7 The Gungil Jindibah Centre, *Learning from the Past: Aboriginal Perspectives on the effects and implications of welfare policies and practices on Aboriginal families in New South Wales* (1994); Human Rights and Equal Opportunity Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal Children from Their Families* (1997).
- 8 Redfern Aboriginal Authority, 'Sol Bellear to Lead New Aboriginal Authority' (Press Release, September 21 2005).
- 9 More detail on these aspects of the project are available from the AHC website <<http://www.ahc.org.au>> at 16 September 2005; in C James, 'Revitalising Redfern' (2005) *Architecture Bulletin*, May/June, 10-11; and in C James, 'Redfern Development Blues' *New Planner* June, 10-11.
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- 11 NSW Department of Infrastructure, Planning and Natural Resources, *Metropolitan Strategy: Ministerial Directions Paper* (2004) <http://www.mctrostrategy.nsw.gov.au/dev/digitalAssets/191_1084811360209_MinisterialDirectionsPaperFinal2.pdf> at 16 September 2005.
- 12 *Redfern-Waterloo Authority Act 2004* (NSW).
- 13 Redfern-Waterloo Authority, 'An Open Letter from Frank Sartor to Mick Mundine, CEO, Aboriginal Housing Company' (2005) *Redfern-Waterloo Update*, 1 August 2005.
- 14 S Derrick, 'Land and Secrets on The Block' (2005) 3 *The South Side News* 13.
- 15 *State Environmental Planning Policy (Major Projects) 2005* (formerly known as *State Environmental Planning Policy*) (2005) NSW Government Information Service, Sydney.
- 16 Redfern-Waterloo Authority, 'An Open Letter from Frank Sartor to Mick Mundine, CEO, Aboriginal Housing Company' (2005) *Redfern-Waterloo Update*, August, 1.
- 17 Organisation of Aboriginal Unity, *Proposed Redfern Waterloo Redevelopment: Statement Sent to NSW Premier, Bob Carr and Redfern - Waterloo Minister, Frank Sartor* (2004) <<http://www.abc.net.au/message/news/stories/s1264146.htm>> at 16 September 2005.
- 18 Redfern-Waterloo Authority, above n17, 2-4.
- 19 See article by Turnbull in this edition of the *Indigenous Law Bulletin*.
- 20 Organisation of Aboriginal Unity, above n18.