

GREATER SYDNEY PARKLANDS TRUST BILL 2021

SUBMISSION BY THE HEADLAND PRESERVATION GROUP

The Headland Preservation Group (HPG) was formed in 1996 to ensure the protection of parkland of national significance, being ex-defence lands surrounding Sydney Harbour. These lands were designated by the Department of Defence for housing development.

HPG was instrumental in the establishment of the Sydney Harbour Federation Trust, the drafting of the Sydney Harbour Federation Trust Act 2001 (SHFT Act), its supporting plans and subsequent amendments to SHFT Act in 2021. HPG recognises the importance of public parkland to all Sydneysiders and the need for protection of public open spaces for all to enjoy.

Protection and preservation of parkland values is an imperative.

Due to the impact of the Covid pandemic, parklands are more important than ever. They have provided and must continue to provide a place for respite, solace, contemplation, exercise, social and community interaction. They are green open spaces that offer respite from a highly dense urban environment. The parklands that comprise the proposed Greater Sydney Parklands Trust (the Trust) parklands also have nationally important environmental, heritage and cultural values which must be protected and preserved.

HPG is of the opinion, which we consider is supported by most in the community, that there is no place for business activities and facilities that do not enhance the environmental, heritage, cultural, recreational and health values of a park. Parkland is a scarce and precious resource which must be protected at all costs for the well-being of current and future generations of Australians.

As stated in the '50-year Vision for Greater Sydney's Open Space and Parklands', *'People in Sydney love spending their leisure time outdoors: they agree that outdoor recreation is great for physical and mental wellbeing and that open space and parklands help bring communities together'*.

HPG has reviewed the proposed Greater Sydney Parklands Trust Bill 2021 (the Bill) and comments in respect of the following:

FUNCTIONS OF THE TRUST

Trusts are vehicles of ongoing protection and management of lands on behalf of the beneficiaries, in this case the people and communities of Greater Sydney. The purpose of setting up the Trust should be to create the protective framework where this can be carried out in perpetuity, and in a manner neutral to the views of the Government of the day, not simply functioning as a body to execute licences, leases and easements and to maintain the parks and its infrastructure. The community has a right to be assured that the government of the day cannot be influenced by commercial and other interests to alienate public land by agreeing to long leases and inappropriate use.

Part 3 Functions of the Trust

Division 1 Section 15

We draw your attention to inadequacies in General Functions of the Trust as detailed in the draft Bill:

1. Many of the parks within the Trust estate and associated Trusts have important heritage, cultural and environmental values. The Bill lacks any reference to the primacy and the need for the **protection and preservation** of these values. The protection and preservation of heritage, cultural and environmental values of the parklands should be a stated function of the Trust.

To enable the mandated protection and preservation, a neutral assessment of the significance of each park, its buildings and their settings should be undertaken. If the cultural and natural heritage values of the park are summarised and agreed in a Statement of Significance, a point of reference is established in perpetuity. Conservation work intended to enhance and improve the parkland assets (Part3 Div1 s15 (a) (b)) can then be carried out with assurance that the inherent values are not compromised.

2. A key function of the Trust must be meaningful engagement with the community. The draft Bill sets up the real possibility for the Trust to fail in this most fundamental of requirements (Part3 Div1 s15 (h)). The Trust will have the function to 'consider advice received from community trustee boards'. It is important that the Trust work not against but *with* the Community, and there is firstly no guarantee the Trust will establish Community Trustee Boards for each, or indeed any, parkland estate (Part4 Div2 s36 (1)) and secondly no onus on the Trust to adopt the advice received from any Community Trustee Board.
3. The requirement of the Trust pertaining to management and operation of the Trust estate (Part3 Div1 s15 (i)) to align with the Government's plans provides no security that the parklands will be protected. Management of the GSPT estate is at the behest of the Minister of the day.

'The Trust is subject to the control and direction of the Minister in the exercise of its functions, (Part2 Div1 s7). The power of the Minister is also unfettered without accountability in respect to long leases (or privatisation), approval of plans of management, the details of the consultation and engagement framework, the appointment and removal of board members. This concentration of Ministerial power leaves parks vulnerable to politics, lobby groups and associated developers.

The voice of the community who fought for these community parks is whittled away.

4. Inappropriate commercialisation is made possible by the draft bill. The Trust is given the green light (Part3 Div1 s15 (l)) to 'undertake or facilitate business activities and facilities' without appropriate checks and balances and which do not reflect the values of the respective parklands.
5. Furthermore, there is no requirement in the provision of food or other refreshments to ensure such provision is tied to the values of the parks (Part3 Div1 s15 (m)). Such use must complement and enhance the historical, environmental and recreational values of the park. For example, a destination restaurant or a function centre is most likely to be an inappropriate use.

LEASES, LICENCES AND EASEMENTS

Part 3 Division 2 Section 20

S.20 provides that the Trust may grant a lease, licence or easement for a term greater than 25 years with Ministerial consent. This provision encourages inappropriate commercialisation of the assets of the parklands and risks privatisation of the lands. It means that leases of terms up to 99 years and beyond can be entered into by the Trust. A 99-year lease is de facto privatisation and is equivalent to the sale of land.

- HPG recommends that leases including options should be capped at 35 years and leases between 25 and 35 years be subject to community consultation, Ministerial approval and Parliamentary disallowance provisions.
- Most private sector investors would always prefer a long lease, but it is not likely to be in the best interest of Trust parklands. The higher the intensity of use and capital expenditure incurred the longer the lease term and this will result in a greater risk of alienating the parkland from the public.
- The advantage of a lease ceiling of 35 years is that the Trust will not be burdened with a use which may over time become inappropriate and fail to meet the objects of the Bill. The Trust should not burden future generations with leases which after 35 years may not suit community expectations.
- Only in exceptional circumstances is a lease of more than 25 years required for commercial purposes, such as 6-star hotels and airports. Even supermarkets have leases of 25 years or less. Of course, such a use would be inappropriate in parklands. Most if not all of the parklands within the Trust estate have exceptional heritage, cultural and environmental values which must be conserved and protected. Limiting lease terms to a period of up to 25 years (with up to 35 years possible only with community consultation, Ministerial approval and Parliamentary disallowance provisions) would avoid approaches for inappropriate development of these sites and ensure that these important values of the parklands are protected.

An appropriate reference for leasing provisions for the protection of public parklands can be found in s64A, 64B, 64C and 64D of the Sydney Harbour Federation Trust Amendment Act 2021. HPG suggests that these provisions, appropriately amended, be adopted in this instance.

COMMUNITY CONSULTATION

Part 4 Community consultation

1. Division 1 Consultation and engagement framework.

- (a) The provisions regarding the **consultation and engagement framework** and the appointment of **community trustee boards** are contradictory.

S.28 requires the Trust to have an approved **consultation and engagement framework** for the parklands.

The framework is to:

- set out how and about what issues the Trust will consult and engage with the community.
- include matters in relation to **community trustee boards** including appointment of members, procedure for meetings and reporting.

There is a contradiction in Part4 Div1 s31(a), however, which states that ‘in preparing the **consultation and engagement framework**, the Trust must consult and engage with.....**community trustee boards**’. This begs the question: which comes first – the consultation and engagement framework or the community trustee board?

- (b) The Trust is not required to have an approved **consultation engagement framework** in place until the expiration of 2 years from the date of enactment of the Act.

Div2 s37(2) states that members of the community trustee boards are to be chosen “**in accordance with the approved consultation and engagement framework**”. If this is applied, then the trustee boards can’t be appointed until the framework has been approved by the Minister. This creates a hiatus in community engagement for potentially 2 years because the trustee boards cannot be consulted until after the framework is approved. Consequently, the opportunity for community advice or response to Trust proposals or public scrutiny of Trust decisions during this period is removed and the community is shut out.

2. Division 2 Community trustee boards

- (a) S.36(1) provides that ‘*The Trust **may** establish trustee boards.*’ There is no obligation on the Trust to establish community trustee boards for each park. This means that the Trust’s engagement with the community is arbitrary and makes a mockery of the claim that the Trust is obliged to listen to the advice of the community. The ‘White Paper – Parklands for People’ states that the legislation will ‘include robust mechanisms for local voices and recognising needs of local communities’. The Bill has failed to do this. The Trust must have an obligation to establish community trustee boards for each park.
- (b) Furthermore, the community trustee boards are *advisory only*. The Trust is to consider the advice received from the boards, (Part3 Div1 s15(h)). However, the consultation and engagement framework will determine how the Trust deals with the board’s advice and recommendations, (Part4 Div1 s30(2)(c)(ii)). There is no surety that the community trustee board’s advice will carry any substantial weight.

- (c) The **members** of the **community trustee board** are at the mercy of the Trust. The Trust can appoint members and dismisses them at any time and can also dissolve the board at any time. In both instances, the Trust can do so without publicly declaring the grounds for doing so (s39 and Schedule2 Part2 s4(2)). This section should be deleted due to failure to ensure transparency in process and decision making by the Trust.
- (d) Proper community consultation under Part 4 of the Bill is arbitrary and at the whim of the Trust. To ensure full and proper community involvement in the management of parks, a Trust should be created for each parkland, with accountable local representatives on each Trust board.

FINANCE

A function of the Trust is to provide financial and operational management in relation to Trust lands. How the Trust is to be funded is not made clear. There is no mention in the Bill of whether the Trust is to be self-funded or will receive regular capital injections from Government.

- S.41(2) says that payments “may be made” out of a fund established under the Environmental and Assessment Act 1979. It does not specify under what circumstances funds would be made available or whether any funds allocated would be one off, or ongoing.
- S.41(3) specifies that funds received by an associated trust is to be paid into a separate account within the fund. It does not specify whether each associated trust would have the authority to spend money within its own income constraints, or if there would be cross subsidies from parks such as Centenary that generate a lot of money.
- In any event the board only has to consider “advice” from a community trustee board (Part 3, Div1 s15(h)), so it's not clear whether or not these boards are purely advisory or would have authority to commit funds. If not, one wonders what is the point of having separate trust accounts.
- To compound the financing ambiguity the Trust is not compelled to establish community trustee boards for one or any of its parks (Div 2 s36 Establishment).

In summary, the Part 5 Finance section is unacceptably vague. It makes no attempt to detail exactly how the Trust is to be funded. It is not known if the intention is for self-funding or, if not, what funds would be injected from the Environmental Planning and Assessment Fund. No other possible government funding source is mentioned.

As we know, if it is to be self-funded, it puts the Trust under enormous pressure to raise funds through commercialisation. In addition, there doesn't appear to be any requirement for initial audits of each park to see what funds are required for ongoing maintenance and any overdue infrastructure upgrade.

What we do know is that the Trust has power to ‘undertake or facilitate business activities and facilities within the GSPT estate’. This power, together with the unfettered power of the Trust to enter into long leases equivalent to the sale of land, risks inappropriate and over commercialisation of Trust lands.

Our public parks should be open for public access to both heritage buildings and precious green open spaces. Our parks should not be for sale or privatisation by stealth in order to fund their maintenance and management.

POWERS OF THE TRUST BOARD

The Trust Board has sweeping powers without proper accountability. The Trust will be a government agency as well as a corporation. The Bill allows that the Trust will have the power to 'compulsorily acquire' land. The Bill allows decisions of the board to stand even if there has been a failure by a board member to declare a pecuniary interest in the matter being considered. The Trust can delegate or assign any of its functions to another private corporation.

There is no obligation on the part of the Trust Board to publish notice of meetings, agendas and minutes in a timely manner, nor to require that Board meetings be open to the public. Failure in the Bill to provide measures requiring Trust Board accountability is a breach of corporate governance principles, is unacceptable and must be rectified.

CONCLUSION

HPG believes that the Bill

- fails to protect the Trust parklands against inappropriate commercialisation due to long leases, commercial partnerships and joint ventures,
- fails to provide for adequate and meaningful consultation with the community,
- gives unfettered powers to the Trust Board without adequate transparency with ultimate power resting in the hands of the Minister requiring no accountability for decisions made,
- fails to adequately detail the financial and operational management of the Trust.

In short, the Bill fails to provide adequate protections for these iconic parklands of Sydney and should be rejected.



Jill L'Estrange

President

Headland Preservation Group

29 October 2021

AMENDMENT OF CALLAN PARK (SPECIAL PROVISIONS) ACT 2002 NO 139

The 61-hectare Callan Park is a small heritage urban park bounded on one side by the Parramatta River. Much of the precinct was bought in the 1873 as a place for mental healing and respite and has continued as such in an unstructured capacity until the present time. This park has been a place of respite in a natural setting for thousands of people during the recent lockdown.

In 2002 the Callan Park (Special Provisions) Act was legislated to protect the unique values of this park. It seeks to safeguard the legacy of the cultural and social values of the park, its heritage and historic significance to NSW and the nation. This is the core character of the Park (its moral imperative) and the purpose of the Callan Park Act.

How the proposed Bill will affect a specific park may be seen below in the example of Callan Park. HPG supports the submission by Friends of Callan Park, made in respect of the Greater Sydney Parklands Trust Exposure Bill.

The provisions in the draft Bill will seriously threaten, if not remove, the moral imperative of the Callan Park Act. The 2002 Callan Park Act has protected the park from sell-off, privatisation and commercialisation for 20 years.

Protections of the Callan Park (Special Provisions) Act will be abolished.

1. Local government control removed.
 - a) At present parliament must be shown the details of any lease longer than 10 years. Under the proposed Bill this protection will be abolished and the power put in the hands of the Minister. Community Trustee Boards will come wholly under the control of the Trust Board regarding priority spending and finance.
 - b) Currently any development application or activity in the park must be determined by the local council as the consent authority. Councils provide controls to exclude inappropriate activities that would undermine the 'moral heart' of the park which has always been wellness and mental health.

Under the proposed bill, this consent and decision-making power will rest with the Minister and Trust Board. This effectively undermines local Council' s authority to consult and citizens to comment, influence and determine development applications. Parks must be owned by the community.

2. Extending leases from 10 up to 50 years is an effective privatisation of buildings, particularly the very important historic buildings of Kirkbride, The Convalescent Cottages and Broughton Hall.

These buildings are the victims of 'demolition by neglect'. Clearly, they must be used and activated but stringent protections of permitted uses and length of leases must be in place to preserve their historic character.

Permitting unregulated commercialisation and effective privatisation through 50-year leases and commercial uses of buildings must not occur. HPG advocates length of leases including options should be up to a maximum of 25 years, as this is a generally accepted term for a commercial lease. Only in exceptional circumstances after public consultation and approval of both houses of Parliament and the Minister should a longer term of lease be considered.

Leases should be capped at 35 years. A lease of 50 years or more is considered the privatisation of land and is equivalent to the sale of land and is unacceptable to the community.

3. Social purpose of Callan Park.

Since the mental hospital closed, Callan Park has had an essential public use as an area dedicated to reflection, recovery and wellness. As such, the priority has been mental health along with some education and community use. Not-for-profit organisations have had priority as tenants over business.

Yet the NSW Government has not yet signed the lease for a not-for-profit consortium which was successful in the government initiated EIO process over a year ago, winning a bid for Kirkbride.

Opening Callan Park up to commercial uses will mean much needed community health and social enterprises will not be able to compete commercially with corporations.

The Bill does not have a Statement of Objects incorporating appropriate activities to overcome the umbrella GSP one-size-fits all approach and to exclude activities that will have a negative effect on the moral compass of the park. The Bill does not mention the Heritage Act and yet the precinct has been listed with the NSW State Heritage since 2008. Nor does the Act make mention of protection of the indigenous history of the park.

There is no commitment from the NSW Government for any funding and no Business Case or financial modelling or 'innovative funding solutions' provided. There is no protection against a business park being created to fund the park.

4. No dedicated Callan Park Trust

A fully funded Callan Park & Broughton Hall Trust to manage the whole of the park is appropriate for a heritage site that is so important to the state and nation. This has been a repeated request for 20 years. Instead, the Bill puts Callan Park under the control of the Greater Sydney Parklands Board, with members appointed from the legal and developer industry. There is no provision in the legislation to make this Board accountable to the public.

It is not a provision of the Act that a Community Trustee Board **must** be appointed. Further the powers of such a Community Trustee Board if appointed are very limited. The Act provides that a 'Community Trustee Board **MAY** be established '. **IF** there is a Community Trustee Board for Callan Park, certain regulations will apply. The members will be appointed by the Greater Sydney Parklands Trust Board and can be dismissed by the Trust Chair with no grounds provided in the Bill. There is no guarantee of any genuine community voice.

The Trust is not required to have an approved consultation and engagement process for **2 years after** the establishment of the Trust, thus removing any public scrutiny of its decision-making and actions for this period. Much can happen in two years to change the heritage value and purpose of the Park. A Community Trustee Board is needed from day one.

5. Confusion in the Bill's provisions

In 2020 the Minister divided the Park into two divisions – 62% vested in the Centennial Park & Moore Park Trust controlled by the Trust and 38% by the NSW Health. The historic buildings of Kirkbride, Convalescent Cottages and Broughton Hall at present do not come under the control of the Trust Yet the Bill extends those powers to sections not owned by the GSP. This is a constant danger and threat.

6. Unnecessary Changes to the Act to remove protections.

The Callan Park Act stipulates that new development must stay within the footprint and envelope of the existing buildings. The proposed Bill seeks to amend this condition to allow accessibility ramps and minor modifications to be added outside the footprint. This is not necessary – such modifications would not be blocked by the current administration.

Cafes and coffee carts are presently permitted under the Act. The changes to the Act to allow much larger commercial enterprises are designed to allow for commercialisation and profit.

The change to the Act will allow the 'substratum' of Callan Park to be sold. This is highly suspicious and smacks of secret future planned developments.

7. The exposure draft is difficult for the public to decipher and the online feedback process inadequate.

The amendments to the Callan Park Act are not mentioned. Genuine community comment is not sought. Instead, it is a tick-the-box exercise guiding the public to a predetermined result.

In summary, the draft legislation does not properly reflect the stated intentions of the Minister to 'enhance our park as a place for rest and respite, a place to experience adventure and discovery as well as a place to connect with others, connect with nature or just switch off.'

The 50-year Vision and White Paper and outcomes of the Report are not translated into the Bill. The provisions of the Greater Sydney Parklands Trust Bill, setting up an overarching agency through legislative administrative arrangements, will gut the present 20-year protections of Callan Park.