

To: Greater Sydney Parklands Joint Select Committee

Answer to Question on Notice

Friday, March 28, 2025

Dear Committee,

Here is my answer to Ms Davis' question.

**Ms DONNA DAVIS:** The review of the 2001 Act by the Morrison Government in 2019. You may want to take this on notice, but I would be interested to know what are the elements of that Act that work well, that we should be looking to in this Act in New South Wales, given I know how hard you fought to keep New South Wales' mitts off the Federation.

**LINDA BERGIN:** Right. It's turned out pretty well, I think. Since 25 years the harbour trust has been going, and it's turned out really well except for one instance in 2014. They were going to build an aged care home on Middle Head, and that is a result of having not enough money and doing things in secret. That's what's going to inevitably happen to the GSP trust, in my opinion. Now, as far as the harbour trust Act, the first thing is it has a vision statement, which the GSP Act doesn't have, right? There's no vision statement at all. It's much simpler. There are only five objects, not—how many?—20 objects and functions, so it's much simpler and it's just cleaner. I think it's a tight Act. This Act—they've made an Act on top of three other Acts, and then they had to amend the underlying Acts to match this Act. I find it very confusing and complicated, and I don't find the GSP Act legally tightly worded. I'm happy to take that on notice.

Linda Bergin OAM

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I will elaborate on the parts of the Sydney Harbour Federation Trust (SHFT) Act that I think work well.

But first, it is my opinion that SHFT succeeds due to [strong community vision and support throughout its 26-year life, which inspired the Howard government to act in 1998](#).<sup>1</sup>

Subsequently, the critical involvement of the community in substantially re-drafting the government's original SHFT Bill resulted in a very solid [original Act passed in 2001](#).

In contrast, the Greater Sydney Parklands (GSP) [came out of the blue in July 2020](#) (Berejiklian government)<sup>2</sup>, was called an "agency" when it was only an administrative arrangement, and the Minister changed-out all the Board members of the existing 3 Trusts, bar 1. There was no forewarning to the public. The GSP announcement was buried in Minister Stokes' brief 17-page [discussion paper](#). There was so little detail that an investigative journalist had to look for "[clues](#)".

In short, I believe the now-legislated GSP will continue to face major reputational challenges unless it secures public support. Even though the GSP Act will hopefully secure strong new

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<sup>1</sup> Except for the hard-fought campaign against an aged-care home on Middle Head, which had been approved by the Harbour Trust Board and federal Minister Greg Hunt. This outrageous proposal was overturned by the Abbott Government in 2015.

<sup>2</sup> although Fernhill had been purchased by NSW in 2018

amendments, detailed in the witnesses' testimony, GSP will continue to be hobbled until it honestly and transparently engages with the public.

## **A. Long Leases work far better in SHFT Act**

[GSP 21 and 22 Leases, licenses and easements, SHFT 64A-D Leases and licenses over 25 years](#)

The new and more restrictive provisions around SHFT long leases enacted in 2021 is an element of the SHFT Act that will work well in future. I believe similar provisions should be enacted in the GSP Act, because over 35 years on public land is too long.

In 2020 the [SHFT Review](#) recommended “Leases of longer than 35 years should remain possible” i.e. continue with no limits on lease terms. But due to [strong lobbying by the community](#) to obtain agreement from the government AGAINST this recommendation, leases were capped at 35 years and very strong provisions on long leases were enacted in the [2021 Amendment Act](#).

In contrast to SHFT, GSP has

1. No limit on the length of leases (SHFT maximum 35 including options)
2. No parliamentary scrutiny of “long” leases (SHFT >25 to 35)
3. No consultation mechanism for long leases (SHFT extensive detailed consultation required see below)

While GSP 22 does require an “open tender process” for leases 10 years or more, this would be well after the fact of any initial lease proposal. GSP 22(4) sets out public notice but again this is after the fact. (4) also says “prescribed by the regulations”, however the GSP itself has no regulations and the underlying trusts regulations say nothing.

Please see **Appendix 1**

## **B. Public Consultation requirements set out directly in SHFT Act**

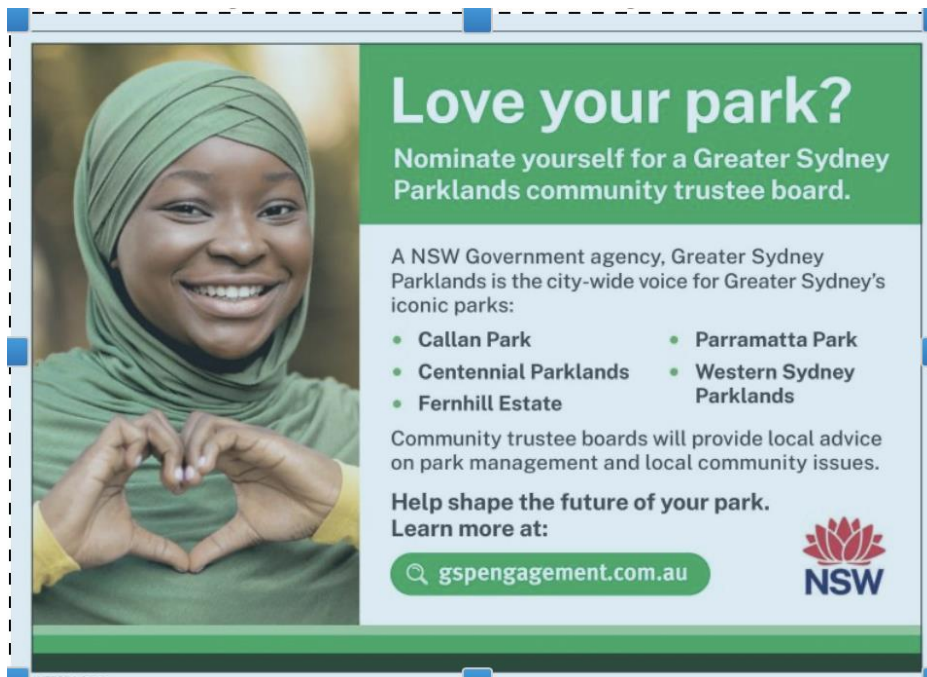
The SHFT Act specifies actual public consultation requirements directly in the Act, however the GSP Act leaves this to the “Consultation and Engagement Framework”.

In addition, the SHFT Act DEFINES “public notice” as 1. A notice published in the Gazette, 2. In a daily newspaper circulating in the Sydney region and 3. In a local newspaper circulating in the area concerned.

In the GSP Act there is no SPECIFIC METHOD of public consultation on the “Framework” (Division 1) only saying it will “consult and engage with the community”. The words “consult” and “engage” are not defined. Although this statutory document has already been approved, the provisions of the Act still apply for future amendments.

In contrast, the SHFT Act sets out specific public consultation methods.

I checked the time period, [August to October 2022](#) that the “Engagement Framework” was [consulted](#) and found no advertisements in the Sydney Morning Herald, only this:



Although a variety of engagement methods were used according to the “What We Heard” report, it is interesting that only 6 submissions and 37 survey responses were received for the consultation on the “Engagement Framework”. Here is a snapshot of the part of the consultation page, however this website no longer exists.

## Opportunities to share your feedback

### Survey

We're keen to hear your feedback on the Draft Framework. Share your thoughts and ideas in a five-minute survey. The survey will close on **10 October 2022**.

[Complete survey](#)

### Email us

Do you have more to say on the Draft Consultation and Engagement Framework? We welcome your further feedback. Send us an email or more detailed submission to:

[hello@gspengagement.com.au](mailto:hello@gspengagement.com.au)

### Webinar

Join a webinar at 6pm on Monday 26 September to find out more about the Draft Consultation and Engagement Framework and community trustee boards.

[Register here](#)

### Community trustee boards

Passionate about parklands? Visit the community trustee boards page to nominate as a member of a community trustee board.

[Learn more](#)

### C. The SHFT Act has a Preamble. SHFT also has a statutory Vision Statement in its Comprehensive Plan.

**The GSP Act has no Preamble nor any statutory Vision statement.**

The SHFT Preamble added the **last sentence** in the 2021 amendments, and it is important because many of the GSP parks have significant heritage values, which include both natural and cultural valued.

#### SYDNEY HARBOUR FEDERATION TRUST ACT 2001 - PREAMBLE

##### *Preamble*

*The Parliament intends to conserve and preserve land in the Sydney Harbour region for the benefit of present and future generations of Australians. The land is being vacated by the Department of Defence and includes land at North Head, Middle Head, Georges Heights, Woolwich and Cockatoo Island. Suitable land with significant environmental and heritage values will be returned to the people of Australia.*

*The Parliament intends to establish the Sydney Harbour Federation Trust to manage the land and facilitate its return in good order. **The Trust will protect the heritage values of the land.***

#### Sydney Harbour Federation Trust Comprehensive Plan (statutory)

*The Sydney Harbour Federation Trust has prepared a comprehensive Plan for the future use of seven unique sites on or near the foreshores of Sydney Harbour.*

*The Plan has been prepared to implement the **Trust's vision:***

***To provide a lasting legacy for the people of Australia by helping to create one of the finest foreshore parks in the world and provide places that will greatly enrich the cultural life of the city and the nation.***

**Appendix 1 - The following from the [Explanatory Memorandum of the SHFT 2021 Amendment Act](#).**

*See Items 43 – 74 in the above link as my item numbering differs*

**Leasing (Recommendation 13)**

*Background*

1. Review Recommendation 13 proposes changes to provisions related to long-term leases. The Act currently requires that the Harbour Trust must determine the proposed terms and conditions of any leases over 25 years in a legislative instrument that is disallowable by the Parliament. While this mechanism is intended as a control against inappropriate alienation of Trust land, the Review found that it is too blunt a tool and is unduly restraining potential uses of Harbour Trust sites that could further the objects of the Harbour Trust, (notably public access and amenity, and conservation and heritage).
2. Leasing plays an important role in the revitalisation and public enjoyment of Harbour Trust sites, providing the opportunity for additional investment in heritage assets and enabling diverse experiences that benefit the community.
3. Currently, section 64A of the Act provides that in addition to the requirements of section 64 (explained above), before entering into a lease or licence over Trust land for a period of longer than 25 years, the Harbour Trust must determine the proposed terms and conditions of a lease or licence. The determination of terms and conditions must be made in a legislative instrument. Under Part 2 of the Legislation Act, a legislative instrument must be tabled before each House of the Parliament and (unless exempt) may be disallowed by either House. A legislative instrument that is disallowed is taken to be repealed.

*Proposed new process of entry into long leases or licences*

4. The Bill would repeal section 64A and insert new provisions, which would provide that the Harbour Trust must not enter into a lease or licence over Trust land for a period longer than 35 years. This period is to be calculated by including any options to renew or extend the lease or licence. This would mean that options will not be able to extend the term of a lease to a total period of more than 35 years.
5. Once the tenant for a prospective lease or licence of between 25 and 35 years has been identified, a *proposal* for a long-term lease or licence of between 25 years and 35 years would be prepared. The proposal would include specific key parameters of the proposed lease and would be tabled for consideration by both Houses of Parliament, accompanied by a statement of reasons (as part of the explanatory statement).

6. The Harbour Trust must prepare the written statement of reasons explaining how the proposal is consistent with the Act and plans approved under the Act. This would include an explanation of the expected public benefits from the proposed lease, noting that the objects of the Trust (section 6 of the Act) are focused on public access and amenity, and the protection, conservation and interpretation of heritage values.
7. The Harbour Trust must consult with the public and relevant community advisory committees on the draft statement of reasons. The final statement of reasons presented to the Minister and Parliament must include details of the community's feedback.
8. This process allows the Parliament to scrutinise a long-term lease or licence proposal early in the approval process. This makes the process more workable, because the Harbour Trust and a prospective tenant will know whether or not a proposal has been allowed by Parliament before commencing detailed negotiation of terms and the community has an early opportunity to provide comment through the statement of reasons consultations.
9. A proposal would be a legislative instrument subject to the disallowance provisions set out in section 42 of the Legislation Act. As a legislative instrument, the proposal would be registered on the Federal Register of Legislation, ensuring a consistent location for public access to all proposals as other communications channels may evolve over time. The explanatory statement, including the statement of reasons, would also be published on the Federal Register of Legislation.
10. At the end of the disallowance period, if the proposal has not been disallowed, the Harbour Trust may continue negotiation of the lease or licence with the prospective tenant. The Harbour Trust must obtain the approval of the Minister before entering into the lease or licence.
11. The Minister must be satisfied that the terms and conditions of the lease or licence are consistent with the objects of the Trust in the Act, plans approved under Part 5 of the Act and the proposal before approving the lease or licence.
12. In assessing consistency with the proposal, the Minister must have regard to the statement of reasons for the proposed lease or licence. The statement of reasons will ensure that the public benefit of the proposed lease, within the context of the objects of the Act and plans approved under the Act, is considered by the Harbour Trust, Parliament and the Minister before a lease or licence may be entered into.
13. To support these revised provisions, the Harbour Trust has committed to revising its leasing policy, setting out how it would administer these provisions. This revision of the leasing

policy would be undertaken in consultation with the community and the revised leasing policy would be published on the Harbour Trust's website when finalised.

#### **Item 4 – Section 3**

14. Item 4 would insert a definition of 'statement of reasons', clarifying that the term has the meaning given by new section 64B.

#### **Item 8 – Sections 64A, 64B, 64C and 64D**

15. As noted above, item 8 would repeal section 64A and substitute new section 64A. It would also insert new sections 64B, 64C and 64D.
16. New section 64A would provide that the Harbour Trust must not enter into a lease or licence over Trust land for a period longer than 35 years. New subsection 64A(3) would provide that, in working out this period, all options or rights to extend or renew a lease or licence will be assumed to be exercised when working out this period. This means that a lease or licence cannot extend beyond 35 years through the existence of an option to renew or extend: for example, if a lease or licence was agreed to with an initial 25-year term, with two 10-year options to extend. New subsection 64A(3) would view a lease or licence drafted on this basis as totalling 45 years, and thus prohibited under new subsection 64A(1).
17. However, subsection 64A(3) is not intended to prevent an existing tenant on Trust land seeking to negotiate or enter into a new lease or licence over the currently occupied area of Trust land. As an example, if an existing tenant is running a successful operation that complies with the Act and Regulations, and comes to the end of their lease, it is reasonable to allow the tenant and the Harbour Trust to enter into standard negotiations for a new lease or licence. This process would be subject to the requirements of the Act and the Regulations, and the Harbour Trust's leasing policy.
18. New subsection 64A(2) provides that the Harbour Trust must not enter into a lease or licence for a period longer than 25 years (but not longer than 35 years, as noted above), unless the lease or licence complies with the requirements in new sections 64B, 64C and 64D (which relate to community and Parliamentary oversight).
19. New subsection 64C(1) would provide that the Harbour Trust must not enter into a lease or licence over Trust land for a period of between 25 and 35 years unless a proposal covering that proposed licence or lease has been laid before each House of the Parliament by the Harbour Trust, and the time for disallowance of the proposal has passed, and neither House has disallowed the proposal.



20. New subsection 64C(2) would confirm that a proposal is a legislative instrument for the purpose of subsection 8(1) of the Legislation Act.
21. Under new subsection 64C(3), a proposal would cover a lease or licence for the purpose of the subsection if:
- the lessee or licensee, and the land the subject of the lease or land is specified in the proposal; and
  - the period of the lease or licence does not exceed the maximum period specified in the proposal; and
  - the uses of the land permitted by the lease or licence are specified in the proposal.
22. New subsection 64C(4) would provide that a proposal, in addition to the requirements under subsection 15J(2) of the Legislation Act, must be accompanied by the statement of reasons prepared under new section 64B for the lease or licence covered by the proposal. The statement of reasons would be contained within the explanatory statement for the proposal.
23. New subsection 64C(5) would provide that the Harbour Trust must, as soon as practicable after the proposal is registered on the Federal Register of Legislation, publish a notice of this fact on the Harbour Trust's website. This is to ensure transparency and accountability in this process, so that any relevant stakeholders may be aware that a proposal for lease or licence will be laid before Parliament.
24. New section 64B would provide that the Harbour Trust must prepare a written 'statement of reasons' that sets out how a proposed lease or licence over Trust land for a period of between 25 and 35 years is consistent with the objects of the Harbour Trust, set out in section 6 of the Act, and the plans for Trust land sites, prepared and approved under Part 5 of the Act. This will include an explanation of the expected public benefits of the proposed lease, noting that the Act specifies (section 6) that the objects of the Trust are to (among other things):
- ensure management of Trust lands contributes to enhancing the amenity of the Sydney Harbour region;
  - protect, conserve and interpret the environmental and heritage values of Trust land;
  - maximise public access to Trust land.
25. New subsections 64B(2) would provide that the Harbour Trust must consult with any of the relevant community advisory committees established under Part 8 of the Act whose functions relate to the Trust land that is the subject of the proposed lease or licence, with regard to the statement of reasons. The Harbour Trust would be required to give a draft statement of reasons to the relevant committees and invite comments to be given within 28 days. New subsection 64C(3) would further provide that the Harbour Trust must publish the

statement of reasons, accompanied by an outline of the lease or licensing proposal, for public comment, giving 28 days for any comments on the statement of reasons to be made by the public.

26. For the avoidance of doubt, comments from the relevant community advisory committees and the public would only be sought on the draft statement of reasons, which contemplates how a proposed lease or licence is consistent with the objects of the Harbour Trust and the plans for Trust land sites. However, the terms of a leasing proposal itself would be considered firmly within the remit of the Harbour Trust, which would separately discharge its duty as an independent body in assessing the terms of a proposed commercial tenancy or licence.
27. New subsection 64B(4) would provide that the requirement to make the statement of reasons publicly available for comment would include publishing the statement of reasons on the Harbour Trust or the Department's website.
28. New subsection 64B(5) would provide that, in finalising the statement of reasons, the Harbour Trust must consider any comments provided by the community advisory committee under subsection 64B(2), or the public during the public consultation period under subsection 64B(3), and include an outline of consultation undertaken and comments provided during public consultation. The final statement of reasons would further include any comments provided by the community advisory committee, in full.
29. The Harbour Trust would not be required to make changes to the statement of reasons or directly address or act upon comments provided through consultation, which may be out of scope or of conflicting positions. The Harbour Trust is only required to properly consider comments received through consultation.
30. New subsection 64B(6) would provide that the Harbour Trust must give the statement of reasons to the Minister when seeking approval under section 64D, as outlined below.
31. Subsection 64B(7) would confirm that a statement of reasons is not a legislative instrument for the purpose of subsection 8(1) of the Legislation Act. This provision is declaratory of the law and is included to assist the reader. A statement of reasons is not legislative in nature. A statement of reasons would however be included in the explanatory statement to the proposal. The explanatory statement is published on the Federal Register of Legislation.
32. New subsection 64D(1) would provide that the Harbour Trust must not, except with the Minister's written approval, enter into a lease or licence over Trust land for a period of between 25 and 35 years. New subsections 64D(2) and (3) would provide that the Minister must not give this approval unless the Minister is satisfied that the lease or licence is

consistent with the objects of the Harbour Trust set out in section 6 of the Act, the plans approved under Part 5 of the Act, and the written proposal that covers the lease or licence prepared under new section 64C. In considering whether the terms and conditions of the proposed lease or licence are consistent with these matters, the Minister must have regard to the statement of reasons prepared under section 64B for the proposed lease or licence.