

**Submission  
No 60**

## **INQUIRY INTO CROWN LAND IN NEW SOUTH WALES**

**Organisation:** Save Bondi Pavilion

**Date received:** 20 July 2016

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Hon Paul Green MLC  
Committee Chair  
Legislative Council General Purpose Standing Committee no. 6  
**Inquiry into Crown Land**

Dear Chair,

**RE: Submission to Inquiry into Crown Land**

Thank you for the opportunity to make a submission to the Inquiry into Crown land being held by NSW Parliament. Our submission is in regard to the Bondi Pavilion and will focus on all four aspects of the Inquiries' Terms of Reference.

*Inquire into Crown land in New South Wales, and in particular:*

- (a) *the extent of Crown land and the benefits of active use and management of that land to New South Wales,*
- (b) *the adequacy of community input and consultation regarding the commercial use and disposal of Crown land,*
- (c) *the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations, and*
- (d) *the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.*

## **Introduction**

Bondi Park is classified as Crown Land and was dedicated for the purposes of public recreation in January 1938.

The Bondi Pavilion is located on this land and is an iconic cultural building which contributes to the unique heritage of Bondi Beach. This public building is part of the community and cultural heritage which is inextricably and legally linked to the usage of this Crown Land. The park and pavilion are listed on the State and National heritage lists.

The Park is governed by the Bondi Park Reserve Trust under section 92 of the *Crown Lands Act 1989*. Waverley Council manages the affairs of the Trust and is responsible for the care, control and management of the Park on behalf of the Minister for Lands.

As the appointed trustee of the land, and in accordance with requirements of the Crown Lands Act, Waverley Council prepared a 2012 Plan of Management (PoM) for the Bondi Park, Beach and Pavilion. The PoM is to ensure that the land is managed for public interest and benefit, this plan of management was approved by the Minister responsible for such plans and adopted by council in November 2014.

In April 2016 Waverley Council effected a motion to spend \$38 million on the Bondi Pavilion Upgrade Project.

There is significant community concern that the current \$38 million Bondi Pavilion upgrade proposal fundamentally changes the purpose of the building from a community centre consistent with the key objective of the Crown Lands Act - *"to ensure that Crown land is managed for the benefit of the people of New South Wales"* - to an overwhelmingly commercial purpose that is not in line with the purpose of Crown Lands Act.

Further, a project of this scale and for this purpose is not consistent with the objectives outlined in the Plan of Management's "Bondi Pavilion Purpose Statement", particularly the objective relating to it being *"the centre of community life, accommodating a vibrant mix of cultural, community and commercial uses."*

Bondi Pavilion is the only community cultural centre for much of Sydney's most densely developed Local Government Areas. It is the home to countless activities, including but not restricted to dance, karate, gymbaroo for tiny tots, pottery, soccer, meditation and yoga classes, drawing clubs, Alcoholics Anonymous and Men's Groups.

It houses a unique 220 seat theatre that has seen the emergence of many new Australian actors, directors and playwrights. Bondi Pavilion hosts a world class music program that mentors and teaches many local musicians. Music recording studios have provided the start to musical careers for many well known musicians who return to share their experience with the rising talent. Thousands of young people and Senior Citizens have been privy to the unique community music classes over three decades.

The PoM statement above must be understood in this context – the cultural facilities at the Bondi Pavilion are what make it the “*centre of community life*”. Commercial uses are an adjunct to that core purpose, especially when those restrict public access to the large and culturally valuable upper floor of the Pavilion, as appears to be the case with the current proposal.

If the Council's plans proceed in their current form, these uses will be lost not only to the Pavilion but to our whole community. We live in a very densely populated area. Our community space is not plentiful and must be safe guarded. For up to 4 years, while the ‘upgrade’ progresses, these classes will be homeless with little or no care taken to the importance of continuity for these small time operators and to the wider community. The notion that such long-established uses can be “re-installed” after that time fails to appreciate the social nature of this place.

### **History of the Bondi Pavilion**

Built in the 1920's mainly for beach goers, Bondi Pavilion has had a colourful history which has included a mix of beach and local arts culture. It was home to cabaret, socials and fund-raisers during war time and an important local place for health, fitness and the arts.

It officially became a Community and Cultural Centre in 1974 with the opening of the theatre, pottery and art studios, and has had a thirty-year community music program with new studios built in 2001. It has housed many cultural and community festivals in the decades since, becoming a much loved local creative cultural hub. It houses Australia's biggest short film festival FlickerFest (which has already been given notice and is currently without a home), many music and cultural festivals and hundreds of weekly classes and workshops across all art forms with an emphasis on active participation. Many of Australia's music legends as well as hundreds of local musicians have and continue to record in the music studios.

We believe that, contrary to the spirit of the Crown Lands Act, the council's trustee role and it's own PoM, the current council has been gradually reducing its capacity to deliver a community cultural program in favour of plans to redevelop and commercialise the pavilion as a retail and tourist centre.

### **Bondi Pavilion \$38million Upgrade Plan**

Originally the Bondi Pavilion upgrade project was anticipated to provide for much needed maintenance, restoration and enhancement of the facilities at the Pavilion. A cost estimate of \$9 million was made and Waverley Council made budget provision for this amount. This plan is consistent with the PoM, the statutory document approved by State Government to manage Bondi Beach, Park and Pavilion. This sensible approach, based on community consultation, enjoyed widespread support in the community.

The events of concern to the community, we believe are relevant to the Inquiry took place after Waverley Council decided to invite tenders from Architects to undertake these works in February 2015, and then to accept the tender of TZG in April 2015.

Without further consultation with either Councillors or the community and seemingly inexplicably, in December 2015 the delivered “concept plans” for the project showed a cost blowout to a \$38 million extravaganza, well outside the budget provisions and with no details on why or how the plan had changed so dramatically.

In June 2016 it was revealed that other more modest plans which would see improvement of existing facilities, were rejected by Council staff in approximately September 2015 in consultation with Mayor Sally Betts, and not made available to the community or councillors for consideration.

The quadrupling of the expected project cost is primarily due to a decision to facilitate the privatisation of the entire top floor and make the preparation required to lease it out to private operators.

The top floor theatre will be demolished. Rooms available for Community hire will become private space. The beachfront balcony, currently accessible to all, will be included in the leased area and locked away from the community.

To accommodate the need for a “theatre” space, a very expensive multi-function glass hall will be built in the southern courtyard, which in turn necessitates the demolition of the much loved and used music and recording studios, and a multi-function hall already in existence. Smaller rooms will be added in an attempt at compensation for this loss of community space, also at additional project cost, but there will be an overall loss of approximately 40% of the floor space presently available to community cultural purposes.

These concept plans were placed on public exhibition over the summer holiday period. Despite the difficulties and lack of information regarding alternatives, the Waverley community has overwhelmingly rejected this expensive plan, with over 700 written submissions against the \$38 million plan received by Waverley Council. These have effectively been ignored by Council.

Subsequently, both Randwick and Woollahra Councils have voted to contact the Minister for Local Government with concerns about this project and the potential massive debt they will inherit as a result of this change of purpose of the Bondi Pavilion in the event that these councils are merged as planned by the NSW Government.

### **Adequacy of Community Input and Consultation**

There has been no cultural analysis of the community and no business case supplied by council.

There is increasing community concern that the current plan being pursued by Waverley Council does not retain the Bondi Pavilion space as a public recreation space, in line with its dedicated purpose under the Crown Lands Act, and will result in significantly less space for community use and a significant increase in dedicated commercial space.

The Bondi Pavilion is also on the State Heritage Register due to its “*State significance as an iconic representation of the Australian beach experience*”. The State Heritage Register is maintained by the Office of Environment and Heritage and any “*major changes*” to a heritage item requires approval by the Heritage Council of NSW.

The Crown holds a responsibility not only to look after the physicality of the building, but also the cultural activities that occur within the building.

Save Bondi Pavilion represents thousands of people who are concerned at the loss of our community space to private interests.

We suggest to the Inquiry that this could be easily solved by Waverley Council abandoning the current \$38m redevelopment plan and putting in place a plan to restore and repair Bondi Pavilion to ensure the community and cultural purpose of the building is maintained, as required by the Plan of Management. This approach will save ratepayers money and ensure the site remains consistent with the purpose of the Crown Land Act.

We believe that the actions of Waverley Council as trustee of the Bondi Park and Pavilion demonstrate that either the existing Crown Lands Act provisions ensuring adequate consultation on new commercial re-purposing have been ignored or are ineffective and must be strengthened to guard against this kind of irresponsible planning.

We would also like to bring to your attention attempts by different Councils to develop Crown Land with function centres both of which exhibit similarities to the current planned development of Bondi Pavilion:

1. An inquiry conducted by Commissioner Frank Willan into Port Macquarie-Hastings Council's management of the Glasshouse project which commenced in 2001 and resulted in the dismissal of the council in 2008. Commissioner Willan's report provides a detailed examination of best-practice in how NSW Councils should manage large scale public projects. It highlights many procedural flaws in how the Glasshouse project was undertaken by the Council. Attached is a comparison brief on this project and Bondi Pavilion

Willan report: <http://www.olg.nsw.gov.au/sites/default/files/PMHC-Public-Inquiry-final-Report.pdf>

2. Friends of King Edward Park challenged a development consent granted by Newcastle City Council for the development of a "function centre" on land reserved for public recreation under the Crown Lands Act 1989. In 2015 the Land and Environment court confirmed that land reserved for 'public recreation' must not be developed for a purpose that excludes the public.

<https://www.caselaw.nsw.gov.au/decision/554ac56ce4b0fc828c996ed4>

### **Proposed measures to protect Crown Land**

We propose that the Inquiry's report should make specific recommendations in the following areas:

- That the existing Act's requirement to manage Crown Land in the public interest must be retained. It must continue to ensure public access for all is maintained, and object to moves towards privatisation of Crown Land and respect the environment, cultural and heritage significance.
- That NSW government and local Councils responsible for the management of significant Crown Land must actively support existing public interest protections for Crown Land. Bondi Pavilion is an example of a case

where the push by Waverley Council to increase the commercial aspect has dominated a more reasonable understanding of the public interest in having a vibrant community centre. This includes the implicit exclusion of public access to land designated for public recreation by the pursuit of commercialisation of public buildings such as Bondi Pavilion.

- That there needs to be substantially more transparency of any financial/commercial benefits in the consultation processes to ensure that the public interest can be properly determined. Waverley Council's processes to date demonstrate that it is apparently possible to keep crucial financial and other information in confidence when making public interest assessments in a way that erodes public confidence and may create the appearance of corruption of the process.
- That it is opposed to plans to move the responsibility for the management of Crown Land to a newly established Crown Lands Division as part of a public trading enterprise because it will inevitably promote economic growth over social and environmental concerns. We hold concerns that the likely overhaul to the ownership of Crown lands, could potentially result in their widespread sale or commercialisation.

### **Aboriginal Heritage and Involvement**

The PoM declares that *“Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our local government area.”*

*“The history of use by Indigenous people in this place deserves special mention and requires careful protection, investigation and research and interpretation where required.”* and *“Council has commissioned a thematic history of Bondi Park in consultation with La Perouse Local Aboriginal Land Council and Local Studies Librarian including a timeline and a list identifying key images.”* and *Council has committed to a consultation process with the La Perouse Local Aboriginal Land Council and the Eastern Region Local Government Aboriginal and Torres Strait Islander Forum, include a discussion of recognising prior and continuing Aboriginal connection to country in the Bondi Pavilion design...”*

We note that despite these welcome statements, the \$38m proposal contains no acknowledgement of any Aboriginal element. It even fails to ensure that the mosaic installations on floors and walls of the Pavilion by Arone Raymond Meeks are retained. His works are held in collections of the National Gallery and the Australian National University in Canberra, and in State galleries in Sydney, Melbourne, Brisbane, Adelaide and Perth, and by the National Gallery of Japan.

Irrespective of whether this is the result of an accidental oversight or a deliberate rejection of the processes and the values set out in the PoM and in other heritage controls, we argue that the absence in the \$38m proposal of any significant indigenous reference is reason for it to be rejected.

We ask the Inquiry to recommend that explicit Aboriginal custodianship provisions should be added to the Act in relation to all Crown Land, but particularly lands which have identified or potential Aboriginal heritage significance. The consideration of Aboriginal custodianship is a vital component of determining the public interest in decisions relating to management of Crown Lands.

### **Conclusion**

We hope this submission assists in ensuring Crown Land remains true to the long established principles of Crown Land and to the specific purpose of the Act which is to ensure that Crown Lands be used for the primary purpose of benefiting the broad public interest, not short-term economic and narrow corporate interests.

We would be happy to address the inquiry in person to provide more information and evidence on this important issue.

Yours sincerely

Kilty O'Brien  
Convenor  
Save Bondi Pavilion

Attached - Advice prepared for Randwick Council on comparison between Bondi Pavilion and Glasshouse project