

**Submission
No 28**

**INQUIRY INTO GREATER SYDNEY PARKLANDS TRUST
BILL 2021**

Organisation: Friends of Rushcutters Bay Park

Date Received: 31 December 2021

To NSW Parliamentary Parklands Bill Select Committee

From
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Friends of Rushcutters Bay Park

31st December 2021

<https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=275#tab-submissions>

bill and readings

<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3917>

1.0 Locus standi and executive summary

2.0

1.1 The Friends of Rushcutters Bay Park groups is a non-profit, non-incorporated group of local community members who generally reside in the eastern suburbs and in the Elizabeth Bay, Rushcutters Bay, Potts Point, Darling Point, Edgecliff, Paddington and Woollahra council areas who cherish this state-heritage listed park and its green open spaces.

It was established in 2018 to protect and conserve the park.

It has been responsible for nominating the heritage park as state-significant, promoting the park's indigenous heritage significance and requesting a state government blue heritage plaque for its curtilage.

Its convenor is a heritage planner of 20 years' experience with two relevant post-graduate degrees.

We are aware the Bill prima-facie seems to focus on Callan Park and other specific areas but are acutely aware it has wider, state-wide ramifications which would adversely affect both the quality and quantity of all NSW parks, including Rushcutters Bay Park (est. 1885), and can involve compulsory acquisition of other unknown areas.

1.2 Executive Summary

The proposed Bill calls for alterations to Acts of Parliament, creating of a big autocracy, a new Trust answerable to a Minister but financially benefitting its members and property developers, land acquisition powers. No land is exempt. The Bill covers "other purposes" unknown suggesting other ideas are proposed.

The Bill seems open to corruption.

We object to the Bill and **seek an exemption for state-heritage listed Rushcutters Bay Park.**

1.3 We therefore respectfully ask Committee to consider our submissions, conclusions and recommendations

1.4 Our main points and concerns are emphasised in bold text below.

1.5 We request permission to speak to the Committee in person at any hearing.

1.6 Conflicts of interest: none.

We have been approached by a state MP to make a submission. Our submission is independent.

1.7 We have read the following documents provided by the Committee:

Explanatory notes (EN) - 8

pages: <https://www.parliament.nsw.gov.au/bill/files/3917/XN%20Greater%20Sydney%20Parklands%20Trust%20Bill.pdf>

Second draft text - 60

pages: <https://www.parliament.nsw.gov.au/bill/files/3917/Second%20Print.pdf>

Amendments for consideration - 2

pages: <https://www.parliament.nsw.gov.au/bill/files/3917/c2021-174H.pdf>

and 3 pages: <https://www.parliament.nsw.gov.au/bill/files/3917/c2021-155H.pdf>

Amendments agreed to and passed in the Legislative Assembly 17th November 2021 - 5

pages: <https://www.parliament.nsw.gov.au/bill/files/3917/LA%20agreed%20amendments%20-%20Greater%20Sydney%20Parklands%20Trust%20Bill.pdf>

2.0 SUBMISSIONS:

2.1 The long title of the Bill is: **“An Act to establish the Greater Sydney Parklands Trust and to provide for the management of the Greater Sydney Parklands Trust estate; and for other purposes.”**

The phrase “and other purposes” creates uncertainty, lacks clarity and creates inconsistencies, all the criteria good legislation requires.

It implies there is a further longer agenda to the Bill yet to be revealed which may well involve all of NSW parks.

2.1 **This phrase should be removed** and replaced with “and for better management of public parklands, particularly heritage items, in NSW.”

3.0 Other legislation

3.1 The Explanatory Notes [EN] state the Bill’s objects are to “make amendments to certain other legislation.”

However, it is not made clear which legislation this refers to, apart from those briefly mentioned, or whether the Local Government Act, the Environmental Planning and Assessment Act or the Heritage Act in particular is proposed be abolished, downgraded, made subservient or otherwise amended, and if so, how.

3.2 **We oppose any amendments to the Heritage Act** other than to strengthen its provisions which now form a cornerstone and bullwark against inappropriate over-development of cherished open green space parklands, including state-heritage-listed Rushcutters Bay Park.

It is also not clear whether this phrase refers to the Local Government Act and councils’ legislative obligations and powers regarding its LEPs, DCPs and Plans of Management for parks under its control.

The Bill is difficult, complex, misleading and too obscure for the general public to comprehend.

3.2 **This phrase “other legislation” should be deleted** as it creates uncertainty, lacks clarity **and** creates inconsistencies, all the criteria good legislation requires.

The specific details of any amended legislation to any Act referred or possible referred to needs to be carefully articulated.

We note that Schedule 5 of the EN *does* refer to changes to:

- the Callan Park (Special Provisions) Act 2002
- the Centennial Park and Moore Park Trust Act 1983
- the Centennial Park and Moore Park Trust Regulation 2014
- the Parramatta Park Trust Act 2001, including amendments
- the Western Sydney Parklands Act 2006

However, there is no indication that the boards of these parks agree to such changes.

There is no evidence there is any groundswell of community support for the Bill.

And importantly, the EN do not indicate **what other changes to any “other legislation” or Acts or regulations are proposed at a later date.**

This creates ambiguities and uncertainty, which are to be avoided.

We **recommend** the phrase be added that **“no other Acts or regulations are to be altered with respect to the aims of this Bill except by way of additional legislation.”**

3.3 The Bill seems to be an ambit claim for future unknown events.

4.0 The EN state there is proposed to be a Trust, its board, (seven members), an authorised individual to whom it delegates powers, an advocacy committee and a private corporation for a "joint venture" and rangers. The Trust's powers can be exercised by a private corporation, some of whom can be board members, either separately or in conjunction with developers.

4.1 Extract:

"Division 2 Board of Trust

Clause 8 establishes the Board of the Trust as an advisory body for the Trust. The Board consists of the chief executive and 7 members **adn concerns** , including a chairperson of the Board."

"Division 3
Powers of Trust

Clause 10 enables the Trust to delegate its functions to an authorised person, and, if authorised by the Trust, enables the authorised person to subdelegate a delegated function to another person.

4.2 Clause 11 provides that **a function of the Trust may be exercised by** any of the following-

- a) the Trust,
- (b) a private subsidiary corporation,
- (c) the Trust or a **private subsidiary corporation**, or both, in a partnership, joint venture or other association with another person or body.

“Clause 12 enables the Trust to establish a committee (the Blue-Green grid committee) to advocate for a long-term vision for and outcome of quality parklands across Greater Sydney and advisory committees to assist in the exercise of the Trust's functions or for the purposes of public consultation. Members of a committee may include representatives of government sector agencies and local councils, persons who have **relevant expertise** and other persons

who are not Board members. The Trust or the committee is to decide the procedures in relation to meetings of a committee.

“Clause 9 provides that, in appointing Board members, the Minister must ensure the Board, as a whole, has experience and skills in **certain areas**. The Minister must also have regard to the desirability of the Board having members with a diverse background.”

“Part 6

Enforcement and legal proceedings

Division 1 Authorised officers

Clause 44 enables the Trust to appoint certain persons as rangers.”

“Clause 37 provides for the membership of a community trustee board and requires members to agree to and sign a Code of Conduct approved by the Trust.”

5.0 Comments:

a) **These provisions deeply politicise the Board such that the public can have no confidence in its independence of any government minister** or that the Minister is therefore acting in the public’s best interests.

5.1 The Bill is therefore fundamentally flawed, misconceived and otiose.

b) Which Minister is to be responsible? The Heritage Minister? The Premier of the day?

c) **How much will this new body, its board, staff, CEO, joint ventures, offices, bureaucracy, rangers, staff bonuses etc. cost the public? \$75 million per annum?**

Will they be housed in another glossy glass high-rise CBD building with magnificent views of the harbour with chauffeur-driven government cars on stand-by?

d) Is there any cap on costs or sunset clause on this ministerial megatherium?

e) **Why won't this new body-politic be another financial impost on an already weakened state economy?**

Can we afford this grandiose blimp of a Bill?

f) **We submit the proposed Bill is financially irresponsible.**

It comes with no Financial Impact Statement from any credible analysts showing. It is unsustainable.

g) the delegation and sub-delegation provisions are nothing more than an evasion of public responsibilities.

This provision should be deleted.

h) clause 37 appears to be nothing more than an attempt to coerce community trustees into agreement. Any such behaviour is already covered by the ICAC Act.

i) it is not clear what “relevant experience” or “certain areas” really mean. Is this relevant political experience or relevant financial donor experience? Or previous safe-seat threat experience?

After all, the previous Premier has stated unequivocally that pork barrelling is OK.

Source:

<https://www.theguardian.com/australia-news/2021/nov/02/gladys-berejiklian-says-pork-barrelling-would-not-be-a-surprise-to-anybody-but-its-not-democracy-either>

j) the phrase “private subsidiary corporation” should be deleted.
Cui Bono? This encourages an effective take-over of public spaces for private profit.

Many of our public spaces were given to the public for their public enjoyment in perpetuity. The proposed Bill is an antithesis of this.

The Bill will alienate public land and is counter to objects of the Centennial Park Trust Act to “improve Trust lands, increasing recreational uses and maintain the right of the of [all] the public to use the lands (section 8).

Open space is not a free market, but a limited and precious resource for the public’s enjoyment.

And the Bill does not restrict any use whatsoever.

Public parks generally, except perhaps Callan Park, could too easily be turned into a forest of high-rise apartments, massive grand arena sports complexes, Formula one race tracks, function centres, hotels, retirement villages, high- rise carparks casinos, schools, universities, hospitals, tennis stadia, tollways, Disneyland or Luna Park or a mega skateboard structure such as that proposed for our much-cherished, state heritage-listed Rushcutters Bay Park, a \$1.4 million scheme. This scheme is currently, oddly, supported by The Greens Party Woollahra councillor, Matthew Robertson. It is opposed by the community.

Such general uses could well be counter to heritage recommendations for each site and would easily create noise and anti-social problems in their communities.

They would be ecologically unsustainable and contrary to the aims and objectives of the Bill.

And there is no suggestion that profits from such joint ventures would be directly returned to communities in any form whatsoever.
It's a smash and grab raid.

Cui Bono? Developers. Especially those with government influence.

Section 8 ICAC Act would be triggered creating controversy.

These joint ventures or private subsidiary corporation projects would become a “grab-and-run” free-for all money scam.

We therefore oppose this Bill in this form.

6.0 We have read the amendments agreed to at:
<https://www.parliament.nsw.gov.au/bill/files/3917/LA%20agreed%20amendments%20-%20Greater%20Sydney%20Parklands%20Trust%20Bill.pdf>

They are not satisfactory and appear to be tokenistic. Number one relates to licences and ten-year leases, which do not satiate our concerns one iota.

Number two relates to an invasion of committees by local MPs. Why can't they read meeting Minutes? Will they be allowed to interpose their views onto committee members?

We oppose this concept.

7.0 We have read the proposed amendments for consideration at:
<https://www.parliament.nsw.gov.au/bill/files/3917/c2021-174H.pdf>

which do not satiate our concerns one iota.

8.0 We have read the document: provided at:

<https://www.parliament.nsw.gov.au/bill/files/3917/LA%20agreed%20amendments%20-%20Greater%20Sydney%20Parklands%20Trust%20Bill.pdf>

which does not satiate our concerns one iota.

9.0 We have read the document, the proposed 60-page Bill, at:

<https://www.parliament.nsw.gov.au/bill/files/3917/Second%20Print.pdf>

9.1 Our general concerns are outlined above.

Our specific concerns with the Bill in its specific provisions are as follows:

9.2 section 3 of the Bill will *not* deliver ecologically sustainable projects as claimed: they will become a land/cash grab for developers. The Bill will not guarantee "world class" facilities. This is a euphemism for Olympic-size complexes which will traduce green open spaces.

First Nations recognition is tokenistic and gives no right of veto to protect sacred or significant sites.

The word "adaptive" is a short-hand for any money-making development re-use that adds cash to the government's bottom financial line but will not necessary conserve heritage.

9.4 section 7 of the Bill gives the Minister too much power.

9.5 The proposed Trust amendments are not acceptable.

9.6 section 9 of the Bill appoints members of the board but includes "Property managers" a term undefined, ie. real estate agents and property developers. This group are currently prohibited election donors. So why are they acceptable here? Cui bono?

No members of the National Trust of Australia (NSW), the NSW Aboriginal Land Council, the NSW Heritage Council, The NSW Ombudsman or an individual community representative are required to be appointed, an oversight.

We request this oversight be corrected.

9.7 section 10 allows too much delegation such that the train of responsibility is lost.

9.8 section 11 devolves too much power to private corporations without adequate public oversight. There is no restriction on whether Trust Board Members can also be linked to private corporations thus creating conflicts of interest and nepotism.

Public parks are being given over to private enterprise.

This Bill will not deliver any long-term open green space increases or benefits and will probably require **removal of trees, some heritage-listed.**

9.9 P-A-R-K is not a four-letter word.

It is a space of for people to enjoy. But not at their expence.

Parks are the lungs which cleanse our environment.

They provide green open spaces such as state heritage-listed Rushcutters Bay Park which provide trees which provided the following benefits:

Trees give off oxygen that we need to breathe. Trees reduce the amount of storm water runoff, which reduces erosion and pollution in our waterways and may reduce the effects of flooding. Many species of wildlife depend on trees for habitat. Trees provide food, protection, and homes for many birds and mammals.

- **Increase biodiversity** – A variety of trees provides a range of food and habitat, for a myriad of microorganisms that live around the roots in the soil, insects living under bark, birds, lizards and small mammals living in tree hollows and within the canopy.
- **Carbon sequestration** – Trees can absorb CO² which will help reduce the amounts contributing to climate change.
- **Provide shade** – Residents walk more on streets with trees as they shade our walkways in summer and provide protection from the rain in winter. Shade from trees can reduce local temperatures reducing household energy consumption for cooling. By shading heat-absorbing surfaces such as bitumen and masonry, trees reduce the heat island effect that leads to higher urban temperatures.
- **Improve air quality** – Trees intercept and filter harmful gases and airborne particle pollution, such as from car fumes, and improve air quality and our health by producing oxygen through photosynthesis.
- **Protect our water** – The tree canopy captures rainwater, water is absorbed into the tree, and can be returned to the air through transpiration. Some of this water will also percolate through the soil and return to the water table. Tree roots also keep soil porous so that surface water can be easily absorbed. The roots of trees also prevent soil erosion, keeping sediment out of our water ways.

Other benefits include:

- **Reduce energy use** – A shaded area needs less air conditioning, and less heating is needed in homes that have wind breaks. Reduced energy consumption has environmental benefits of saving fossil fuels and reducing pollution, as well as economic benefits which means direct cost savings to residents.
- **Reduce drainage infrastructure** – Trees capture up to 60% of rainfall, reducing surface water runoff entering our drainage systems, reducing flooding potential. About 30% of rainfall is absorbed by the canopy and the moisture never hits the ground, another 30% of rainfall is absorbed back into the ground and taken up by the root structure of the tree.
- **Traffic calming** – Research has shown that traffic moves more slowly on areas and street lined with trees.
- **Create a sense of place** – Trees contribute to our communities' character; provide seasonal interest, a link to nature and a source of delight.
- **Visually appealing** – Trees provide seasonal interest and natural beauty through their interesting colours, shapes and textures of bark, foliage, canopy, flowers and fruit.
- **Enhance liveability** – Trees create wind breaks along foreshore and in dense urban areas. They reduce the impact of traffic noise, screening unwanted views and reduce glare.

9.10 section 12 provide for a "Blue-Green Committee" which appears to be nothing

more than a PR machine. It should not be necessary if the Bill has merit.

We request this section 12 be removed.

9.12 section 15 provides for a large range of conflicting functions of the Trust and its purposes for parks including sporting, entertainment, tourism and business uses (for effective management).

Where these uses conflict the Bill is silent.

This needs to be corrected to ensure no heritage item will be altered without NSW Heritage Council and Local Government Council approval and the Heritage Minister's approval.

The committee should be renamed the Red-Green committee to indicate a colour-coded warning that the Trust has no regime for such conflicts.

9.13 section 12 (n) provides for a **new regime of entrance fees**. In some cases these fees will be new. These need to be articulated in full clearly.

They should not be discriminatory

The individual fees are not provided but could easily become prohibitive for families wishing to enter parks that previously cost nothing to enjoy.

Fees should not be imposed on traditional owners whose land the parks have always been part of their inheritance.

9.14 section 15(2) provides for providing annual reports. Such reports must be tabled in Parliament within three months of 30th June annually in our view.

19.15 section 16(2) notes that the Trust's functions "include providing **financial and operational management** in relation to the associated Trusts estate"

So the Trust is to financially manage funds. It then can deal in interest-bearing deposits, shares, investment banking, property trusts held by its joint venture partners (a conflict of interest) and overseas short-term money markets.

It becomes a government investment banking arm.

This is alarming.

This is not acceptable or best fiduciary practice.

19.16 section 17 allows for the Trust to acquire land or "by a compulsory process" as per (s 3(b)).

This is not acceptable.

The Trust will be motivated to buy and sell land for profit's sake alone and could force eviction of families from their homes.

The Trust will become a property developer.

And as the government knows, for developers a, good block is an empty block. 19.17 section 19 (1)(b) encourages the Trust to develop land, but it does not restrict developments subject to section 3 of the Bill, **building-in a conflict of uses.**

This needs correction.

19.17 section 20 allows for leases of up to 24 years without the Minister's consent. This is excessive and may well mean the responsible Minister will not be aware of what leases have been granted over which sites, this evading public oversight.

We request this clause be deleted.

19.18 section 21 allows for tender process. However, this creates a bidding war with no guarantee the best-on-merit outcome is achieved.

The government's abacus mentality will mean it will be able to "bought off" with swathes of land sold to the highest bidder and not for the highest public good.

This is morally repugnant.

19.19 section 23 is flawed and does not define what "appropriate consultation or consultation frame work" mean in real terms.

It notes that "(5) The Minister may approve, with or without changes, a plan of management submitted to the Minister" but no avenue of appeal is provided for. The public will be kept in the dark about what plan is in force at any one time.

This is not workable.

19.18 section 22 provides for consideration of overshadowing but other issues such as noise, social impacts, heritage impact, traffic impacts and flora and fauna impacts are ignored.

These should be added.

19.19 section 28 notes

"28 Private subsidiary corporations etc

(1) **The Trust** may—

(a) with the Minister's approval, form, or **participate in the formation of, private subsidiary corporations, and**

(b) **acquire interests in private corporations, and**

(c) sell or otherwise dispose of interests in private corporations."

We object to these provisions for the following reasons:

1. The Trust cannot be determine and be engaged with land sell offs and acquisitions independently if it is intimately linked to the financial outcome
2. The Trust cannot be determine and be engaged with land sell offs and acquisitions independently if it is intimately linked to the financial outcome.

This section should be deleted.

19.20 sections 29-32 require “community consultation”. However, there is nothing to indicate how or when this is to occur or in what form.

Will a notice be put in each park for 48 hours only?

Will every inhabitant within a one kilometre radius be individually notified with public meetings held and Motions passed which are binding on the Minister?

This section should be amended.

19.21 sections 30 and 35 refer to a framework for public consultation but this is not provided. To give the Bill credibility this **framework needs to be seen and scrutinised by those it affects. It should not be later amended without prior community approval.**

19.21 section 43(2) allows for the Trust/s to top up funds by raiding funds already allocated under the Environmental Planning and Assessment Act 1979, Part 7, Division 7.1, section 7.28

This depletes those funds allocated for a specific purpose.

We request this section be deleted.

19.22 section 49 states rangers “may” request driver details but then creates a legal ambiguity by suggesting at 49(4) this becomes an offence if not provided.

This requires correction. Rangers are not the NSW Police Force.

19.23 sections 54-55 allow for legal proceeding on the basis of fines issued by a ranger. However, a ranger is not required to produce evidence they have been duly appointed (55c) = bizarre. **This needs correction** as in a court of law their evidence will be dismissed.

19.23 section 59 **Regulations should be made via changes to the Act.**

20.0

Schedule 1 Constitution and procedure of Board

20.1 part 2 clause 2 Five years is excessive we submit.

We request two year maxima with no extensions or further duplications.

The same rules should apply as for Community Consultation Committees as per Schedule 2 part 4, namely:

- (1) The office of a member becomes vacant if the member-
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by written instrument addressed to the Chairperson of the Trust, or
 - (d) is removed from office by the Chairperson of the Trust or Minister, or
 - (e) is absent from three consecutive meetings of the board of which reasonable notice has been given to the member personally or by post, except on leave granted by the board chairperson or unless the member is excused by the board chairperson for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member’s creditors or makes an assignment of the member’s remuneration for the creditors’ benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere other than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

20.2 clause 4 Remuneration should be strictly in line with public service rates, and not at the largesse and free will of any Minister as he thinks fit. **Otherwise the public is right to think appointees are being purchased by way of favouritism.**

20.3 clause 8 pecuniary interests.

Any notice of a conflict of interest by a member, either before, during or after a decision being given is to be publicly notified with 48 hours of notice being given.

Three notices from the same person requires their resignation.

21.0 CONCLUSIONS

21.1 The proposed Bill has more holes than a piece of Swiss cheese. We have noted and suggested 41 changes, all of which are required before the Bill should be presented to Parliament in a satisfactory manner and which could satisfy public probity concerns.

21.2 The Bill is misconceived and fails to achieve its declared aims and objectives. It contains many contradictory element and consistencies.

21.3 The Bill does not satisfy its onus of proof: it is not in the public interest.

22.0 RECOMMENDATIONS

22.1 The Bill be withdrawn and/or

22.2. The time allowed for consideration of any Bill be extended to April 2022 to give the public adequate time to comment. Many people are currently on holidays.

22.3 Public meetings be arranged to further discuss its contents in public forums.

22.4 State heritage-listed Rushcutters Bay Park be exempt from this Bill.

22.5. **We request permission to address the committee in person.**

Thank you for your consideration.

Andrew Woodhouse

Friends of Rushcutters Bay Park

Potts Point NSW 2011