

**Submission
No 35**

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

Organisation: Inner West Council

Date Received: 24 December 2021



24 December 2021

The Director
Select Committee on the Greater Sydney Parklands Trust Bill 2021
Parliament House
Macquarie Street, SYDNEY NSW 2000
BY EMAIL: parklands@parliament.nsw.gov.au

Inner West Council Submission to NSW Legislative Council's Select Committee Inquiry into the Greater Sydney Parklands Trust Bill 2021

The NSW Legislative Council's Select Committee is currently conducting an Inquiry into the Greater Sydney Parklands Trust Bill 2021 (the Bill). The terms of reference for the Inquiry are that the Select Committee inquire into and report on the provisions of the Bill. The Inquiry has asked for submissions from interested parties.

The Inner West Council (the Council) makes this submission in respect of the Inquiry which supplements its initial Submission on the Draft Exposure Bill, a copy of which is attached. In making this submission the Council agrees to the publication on the Committee's website.

The Submission

The Council has carefully reviewed the Bill and continues to raise the fundamental issue that there should be no changes to the *Callan Park (Special Provisions) Act 2002* (the Act). This remains a serious concern to Council in respect of the proper management of Callan Park. In considering the Bill (and those further amendments made in the Legislative Assembly), the following submissions are made:

No Change to the Act

1. The initial Submission emphasised the importance of Callan Park as both a local and State public asset of NSW having profound public qualities with those qualities enshrined in the Act. The Council re-emphasises the fundamental concern that there should not be any change to the Act. The Bill, as it is proposed with amendments, does not guarantee that Callan Park remain in public ownership with open space areas accessible to the public. Put simply the Act should not be subject to any change as it provides important protections to the profound public qualities of Callan Park. Council's position is that Callan Park must be given the highest protection as a public space and that the amendments considered in the Inquiry should be rejected as superficial and lacking proper governance in the management of public lands. There should be no change to the Act.

Commercial Leases in Callan Park

2. Despite the Bill allowing Council to remain the consent authority for Callan Park, there remains a concern as to the power of the Minister to approve (without tabling in Parliament) 50 year leases for commercial purposes in respect of the "*relevant premises*" (i.e. Kirkbride, Broughton Hall and the Convalescent Cottages). Although section 6A of the Act - "*Power to grant certain longer leases*" has been deleted, such

leases will now to be dealt with under the current section 6 of the Act and subject to the following amendments:

- (a) The 50 year maximum period for leases of the *relevant premises* is still proposed but these premises cannot be leased on a commercial basis; yet
- (b) A lease for an arts or cultural event maybe for a commercial purpose (proposed section 6(5A) of the Act); and
- (c) All leases with 10 plus year terms, are to be subject to an open tender process; yet
- (d) There will be no Parliamentary oversight for those leases of the *relevant premises*.

The Council has an ongoing concern that the current protections for the leasing of the *relevant premises* have been removed and maybe subject to long term commercial use and thereby excluding the use of those building from members of the public. Further there should be assurances that the current tenants' rights and obligations will be safeguarded.

3. The Council raised in its initial Submission that commercial uses in Callan Park such a high-end restaurants should not be permitted. Further, that "*the priority to*" not-for-profit uses in the absence of any decision-making criteria was inappropriate. In the main, the public nature of existing uses of Callan Park has now been addressed in the Bill with the express prohibition of function centres and hotels and the deletion of section 6B dealing with the priority to not-for-profit. Yet, there still remains a concern that a lease for an arts or cultural event maybe for a commercial purpose and as such the proposed section 6(5A) of the Act should be removed. The Council asks the Inquiry to exclude the possibility of any and all commercial leases from Callan Park.

An independent Trust for Callan Park

4. The initial Submission also supported the need to establish an independent trust called the "Callan Park and Broughton Hall Trust" where the trust would be local, community-based and be compromised of members with diverse expertise and govern Callan Park as one park. The Council's request for a standalone trust has not been addressed. The Bill only proposes to amend the Act to require the GSP Trust to consult with a community trustee board for Callan Park. This is a disappointment to the Council as a "Callan Park and Broughton Hall Trust" would be representative body for the future management of the Park. Equally disappointing is the fact that despite these amendments, there is no mandatory requirement to appoint a councillor from the Inner West Council as a stakeholder and member of the proposed community trustee board. The Select Committee must consider for the public benefit the establishment of such a trust as of paramount importance.

Planning Controls

5. The Bill continues to propose the deletion of section 7(1) of the Act. Any planning controls should not be unfrozen and as such this raises the question as to what controls will now be in place for the future development of Callan Park. There is a need to clarify:

- (a) which environmental planning instruments will apply to Callan Park,

- (b) whether the proposed permissible developments in the new section 7(3) of the Act are exhaustive;
- (c) whether development that does not need consent can be carried out as such; and
- (d) whether there is any guarantee that a State Environmental Planning Policy will not be made to add uses to those proposed in the new section 7(3) of the Act.

As there are no other changes proposed in the amended Bill, Council raises a serious concern in respect to the future planning controls applying to Callan Park.

Clarification of permissible development

- 6. The replacement of section 7(3) of the Act with additional forms of permissible development is an issue which fails to be addressed in the amended Bill. No definitions of those additional forms of development are proposed in section 7(9) of the Act. Council is concerned that this ongoing lack of interpretational definitions in the legislation will water down the nature and extent of permissible development having the effect of allowing development which excludes the public use of Callan Park.

Assurances for Community access

- 7. Council has repeatedly sought assurances that the sport and recreational areas of Callan Park are to be used as community-based recreation areas. In its initial Submission, clarification was sought as to what impact the Bill would have on maintaining community access and enjoyment of the parklands and Council's continuing management of key sporting ground infrastructure. This issue has not been addressed in the amended Bill. Council requires this important issue to be properly considered with appropriate amendments incorporated into the legislation.

Reinstatement of the Parkland and its Boundaries

- 8. Council in its initial Submission raised the concern that it opposed any changes to the Callan Park boundaries. The Bill remains silent on this issue and the community concerns continue to be ignored. As such, the Council does not support these changes and again requests that the original geographical management boundaries of the parkland as a whole are reinstated, and that management of the parkland and its governance is transferred to a locally appointed Callan Park Trust.

Should you require further information, please contact Council's General Manager – Peter Gainsford

MATTHEW PEARCE
GENERAL COUNSEL

Encl.

Inner West Council Submission Draft Exposure Bill: Greater Sydney Parklands Trust Bill October 2021

Please accept this submission on behalf of Inner West Council on the Draft Exposure Bill: Greater Sydney Parklands Trust Bill October 2021. This submission was prepared by the staff of Inner West Council following consideration of a report to 26 October 2021 Ordinary Council Meeting where Council resolved as follows.

THAT Council:

1. *Writes to the Minister for Planning thanking him for agreeing to meet with Councillors in regards to the Draft Greater Sydney Parklands Trust Bill;*
2. *Seeks to engage positively with the Minister;*
3. *Seeks assurances from the Minister that the values of Callan Park as a former mental health institute, known for its healing environment and as a place of sanctuary and wellness are always central to discussions about Callan Park;*
4. *Asks that the piece of Callan Park (38 hectares) that was handed over to the Greater Sydney Parklands Trust in 2020 be returned to Callan Park and that Callan Park be governed and managed as one park under the Callan Park and Broughton Hall Trust; and*
5. *Makes a formal submission to the Draft Greater Sydney Parklands Trust Bill by October 29 2021 which includes:*
 - a) *Make no changes to the Callan Park (Special Provisions) Act 2002.*
 - b) *Commit to no future commercial uses at Callan Park.*
 - c) *Opposes 50 year leases (potentially commercial leases) on Kirkbride, Broughton Hall and the Convalescent Cottages.*
 - d) *Retain Callan Park (Special Provisions) Act in its entirety.*
 - e) *Establish the Callan Park and Broughton Hall Trust.*
 - f) *Maintain community, recreation open space access to Callan Park in its entirety.*

The submission covers the details and reasoning that supports Council's resolution.

Callan Park Act

In recognition of the importance of Callan Park as both a local and State public asset for the people of NSW, the *Callan Park (Special Provisions) Act 2002* ('*Callan Park Act*') was enacted. The profound public qualities of Callan Park are recognised in the following provisions:

- s.4 – the objectives, which make it clear that Callan Park is to remain in public ownership control, with the open space areas to be open to the public, while the heritage of the Park is retained;
- s.5 – which prohibit the sale or lease of Callan Park other than as per the Callan Park Act;
- s.6 – the obligation to table any lease longer than 10 years in both Houses of Parliament for 15 sitting days; and
- s.7 – which:

- preserves the development scope of Callan Park by “freezing” the zoning of the Park to the planning rules applicable at 2002;
- gives primacy to local development considerations by designating Council as the consent authority for all development;
- allows a limited amount of public development forms, such as health and community facilities and not for profit educational facilities;
- preserves the existing building forms by disallowing development outside the existing foot prints or any increase in overall floorspace; and
- prohibits any reduction in open space area.

The Draft Exposure Bill makes significant changes to key important protections within the Callan Park Act and substantially weakens and undermines many of these protective measures as follows:

Leasing

The Draft Exposure Bill proposes to remove Parliamentary oversight of leases greater than 10 years for three significant buildings by replacing the need to table such leases before Parliament. Instead the relevant Minister is given a discretionary power to approve leases for a commercial purpose for these buildings for a significantly increased term of up to 50 years.

The fact that the purpose must be consistent with the Greater Sydney Parklands Trust’s (*Trust*) functions and there are extremely wide functions of the Trust as set out in s15 of the Exposure Bill means there is no obligation to promote the special qualities of Callan Park.

Further, the proposed notification requirements for such leases, do not recognise the important public nature of Callan Park. They are no greater than in many statutes and similar to those required for the lease of general community land in the *Local Government Act 1993*. The Minister must only be given a copy of submissions, there is no requirement that the Minister consider the submissions. Only the Trust is required to consider the submissions (Schedule 5, proposed s6A(3)(c) of the Exposure Bill).

Planning Control

“Unfreezing” the planning controls, which raises questions as to what controls will now be in place for the future development of Callan Park and how Callan Park’s special qualities will continue to be protected. This includes the real possibility that a subsequent planning instrument can permit development that is not in keeping with the essential public nature and special qualities of Callan Park, and raises the spectre of large commercial exploitation of the Park, particularly given the Trust’s wide functions under s15 of the Draft Exposure Bill.

The Guidelines state that the Draft Exposure Bill ‘*updates the planning arrangements for how the park will be managed under local planning instruments that are current, rather than those that were in place 20 years ago.*’ The current 2013 and the draft 2020 LEP do not apply to Callan Park and it is unclear whether LEP 2000 will continue to apply.

Removing s7(2) from the Callan Park Act means that the Council will no longer necessarily be the consent authority for development. The Council’s role in approving future development in

Callan Park should not be diminished. It has exercised its role under s7(2) over the past 20 years to protect the important values of Callan Park and it should continue to do so.

The removal of ss7(1) and (2) of the Callan Park Act also raises questions as to whether the uses identified in s7(3) are intended to be exhaustive. If not, what other uses are intended to be permissible and what instruments under the *Environmental Planning and Assessment Act 1979* are intended to apply?

If clause 7(3) is not exhaustive, what guarantee does the Council have that a SEPP will not be introduced, or an existing one, such as *SEPP (State Significant Precincts) 2005* amended, to permit uses other than those specified in clause 7(3) or to permit such uses in a greatly expanded manner?

It is unclear whether uses that do not require development consent can still be carried out.

Community Consultation

The Draft Exposure Bill proposes to obscure the community consultation processes by having the Trust (and not Council) prepare the Community Consultation and Engagement Framework, and by not making the establishment of Community Trust Boards compulsory.

Proposed Additional Permissible Development

The proposal to amend s7(3) of the Callan Park Act to introduce additional forms of permissible development is concerning. Only two of the additional uses are defined in s7(9) of the Callan Park Act.

Although the object of both the Exposure Bill and the Callan Park Act would place some limitations on development, the broad nature of the uses (assuming the definitions set out in the Standard Instrument, made under the *Environmental Planning and Assessment Act 1979* apply) together with the broad functions of the Trust leave open the possibility for numerous commercial uses for example a high-end restaurant. Such uses contravene the public attributes of Callan Park.

It is not appropriate to rely upon the definitions set out in the Standard Instrument, made under the *Environmental Planning and Assessment Act 1979* as these definitions can be changed by the Minister.

In considering Council's position on this matter please note our key objections to the Draft Exposure Bill:

1. Council opposes any changes to the Callan Park Act.

The proposed amendments to the Callan Park Act as set out in cl 5.1 of Schedule 5 of the Exposure Bill should be removed and the Callan Park Act retained in its entirety.

The Callan Park Act has provided immense protection of the public interest in Callan Park for the last two decades. It does not need to be changed and certainly not changed in a manner which weakens those protections.

The Exposure Bill amends the way Callan Park and other Sydney parklands such as Centennial Park and Moore Park, Parramatta Park and the Western Sydney Parklands will be administered and what is permitted in the park. Unlike the three later parklands, the Callan Park Act does not

establish a specific Trust to manage Callan Park. As a result, under the Draft Exposure Bill, Callan Park does not have the additional protections these parklands are given. In light of the exceptional historical significance of Callan Park, it is not appropriate that Callan Park have any less protection than Centennial Park and Moore Park, Parramatta Park and the Western Sydney Parklands.

2. Council opposes any changes to the Callan Park boundaries.

The management precinct changes which were enacted by Government in December 2020 without community engagement must be reinstated to ensure the parklands are managed as one entity. Council seeks clarification from the Minister as to whether the proposed Act applies to the whole of the park and not just Precinct 1.

3. Council opposes any commercial uses at Callan Park.

The Exposure Bill introduces the likelihood of commercial exploitation of Callan Park by applying current planning laws (as noted above), by removing Council as the consent authority and by envisaging 50 year leases that can be approved by the Minister without having to be tabled in Parliament.

The current protections in the Callan Park Act ought to be retained, as they have prevented the intrusion of adverse commercial interests into the public spaces of Callan Park.

4. Council opposes 50-year leases (potentially commercial leases) on Kirkbride, Broughton Hall and the Convalescent Cottages.

The Exposure Bill seeks to change the lease, licences and management agreements under Section 6 of the Callan Park Act.

The removal of Parliamentary scrutiny and ability of the Minister to exercise Ministerial discretion to approve leases of up to 50 years reduces transparency and renders Callan Park subject to the intent of the government of the day.

The proposed requirement to “*give priority to*” not for profit (NFP) uses as set out in the draft s6B(2) is insufficient protection to protect the public nature of uses at Callan Park. Council notes that there is ambiguity on how this section of the draft legislation will function. We note that there is no established criteria for evaluating priorities, nor is any clarity over what weighting would be afforded to a not-for-profit use. Clarity is required on the weighting factors associated with any proposed evaluation of non for profit applications as opposed to a commercial expression of interest. Evaluation in this context should be consistent with the main objectives of the Callan Park Act for the purposes of education, recreation and health.

Council notes that there are a number of existing long-term tenants within Callan Park which are aligned with approved uses as prescribed by the Callan Park Act. Council is concerned as to the impacts that the Exposure Bill have on these tenants moving forward and seeks assurances that the current tenants rights and obligations will be safeguarded. Council refers in this respect to current tenants on the site including, the NSW Writers Centre, We Help Ourselves, Foundation House, the NSW Ambulance Centre, the University of Tasmania and the NSW Nurses and Midwives Association. The impacts on any reversal of these tenants rights would also incur economic impacts on the local Rozelle Community.

5. Council calls for confirmation that it will continue as the consent authority.

The Draft Exposure Bill removes the explicit statement in Section 7(2) of the Act that Council is the consent authority for all development at Callan Park. In line with Council's comment at item 1, s7(2) should remain.

Council is concerned that the Minister may become the consent authority for all development. Larger projects are of particular concern as these may be determined by the Minister or other authority. This places the Minister in the position of potentially being the consent authority for development and responsible for approving long term leases. This gives rise to a clear conflict and must be avoided.

6. Council calls for confirmation that the community access to recreation open space within Callan Park is maintained in its entirety.

The Draft Exposure Bill should not proceed in its current form. Council seeks assurances that the sport and recreation areas of Callan Park are to be continued to be used as community based recreation areas. Council has leases continuing to year 2030 for the sporting grounds, the refugee welcome centre, the parklands and associated amenity facilities.

Over the past several decades Council has consulted the community and significantly invested millions of dollars in a number of these community, recreation and open space access projects. The draft legislation has created uncertainty on the future of these facilities and their continued availability for community recreation and wellness. In addition, unstructured recreation activities including companion animal walking, picnicking, heritage appreciation also need to be safeguarded. Clarification is required as to what impact the Draft Exposure Bill will have on maintaining community access and enjoyment of the parklands and Council's continued management of key sporting grounds and supporting infrastructure.

7. Council calls for the establishment of the Callan Park and Broughton Hall Trust.

The Exposure Bill does not provide certainty that Council is retained as the consent authority and that the local community as the key stakeholder will be consulted, engaged and have an active role in the further management and development of the parkland. Importantly the lack of a community based trust model for the parkland also raises probity issues in relation to the appropriate allocation of funding for the parklands into the future.

Council supports a governance arrangement which will enable the establishment of a local Trust which is community based. A Parkland Trust or Park Advisory Board would ensure the future protection, management and enhancement of the Callan Park. Expertise should therefore be focused on skill sets which include heritage expertise, indigenous representation, legal expertise, local Council representation, recreation and health expertise.

Council has previously advocated for local community representation on any future management agency of Callan Park. The Callan Park Special Provisions Act 2002 includes the need for a Community Consultation committee within Part 8 of the Act. Specially, the regulations may establish and provide for the functions and procedures of a community consultation committee for Callan Park. The establishment of a local trust, with local expertise to oversee the management of Callan Park would be a far better option than the larger Greater Sydney Parklands Trust whose concerns will inevitably be drawn away from local interests due to its cross-Sydney focus.

Council maintains the position expressed in previous submissions that a Callan Park and Broughton Hall Trust should be established to administer and manage Callan Park. The



community consultation committee, provided for under s8 of the Callan Park Act, should also be established.

Should you require further information please contact Council's General Manager Peter Gainsford

Aaron Callaghan
Parks and Recreation Manager

