



Exposure draft Sydney Harbour Federation Trust Amendment Bill 2020

Have Your Say

Preamble:

The Mosman Parks & Bushland Association (MPBA) was formed in 1964 to protest against the destruction of bushland at Bradleys Head. The Association's main objective continues to be the protection of bushland, parks and open space in Mosman for the benefit of current and future generations. Fundamental to this objective is the belief that urban and foreshore bushland and parks have a public benefit.

The Association played a part in the community action which resulted in the formation of the Sydney Harbour Federation Trust. The Harbour Trust lands are priceless. They contain indigenous, convict, military and natural heritage which must be protected, preserved, and interpreted for the nation.

The MPBA's summary to the Review of the Harbour Trust was:

1. The life of the Trust should be extended in perpetuity
2. The Trust should be maintained in its entirety
3. Its sites should not be handed over to other agencies
4. The two protections of the SHFT Act and the EPBC Act should be maintained for these nationally important sites. Changes other than those needed to allow the Trust to exist in perpetuity should not be necessary.
5. The Commonwealth should provide the funding required to remediate the Trust's assets
6. Commercialisation that interferes with the heritage value of the sites is unacceptable

The Association was extremely pleased and relieved that the outcome of the Review of the Harbour Trust was the extension of the Harbour Trust's life in perpetuity and we now appreciate this opportunity to comment on the Exposure draft of the Sydney Harbour Federation Trust's Amendment Bill 2020.

Schedule 1 – Amendments

1. **Preamble** - Agreed
2. **Preamble** - Agreed
3. **Section 3** - Agreed **Repeal Part 10 of Act** - Agreed
4. **Subsection 11(4)** – NSW Board members - Agreed with an addition “or who can add value by bringing a whole of Sydney or whole of Sydney Harbour perspective”

2.

5. **Subsection 12(3A)** – Local government perspective and experience.

In the interest of greater transparency, the local government representative should be an elected person. There is a danger that a council officer from a single council would express the interests of a single council. An elected representative, albeit from a single council, would represent the views of the general Harbour Trust communities.

6. **Section 64** – Contracts – Repeal and amend – Agreed

Section 64A - Leases and licences over 25 years

The Mosman Parks & Bushland Association does not agree with leases and licences over 25 years even with ministerial approval

The association believes that this is a widely held and expressed community view.

If a 25-year lease (including options) is working in the public interest and is in accordance with the Trust's Objects and Comprehensive Plan, the lessee may re-tender. Such a system would allow the Trust to retune the terms of the lease if necessary, for the greater public advantage. There are examples where current leases of 25 years are working successfully for Trust and tenant.

Section 64B(1) – Leases and licences over 35 years

If this limit of 25 years is not applied in the Bill to amend the Sydney Harbour Federation Trust Act 2001, then:

Leases over 35 years (including options) are opposed with the same comment and for the same reasons.

The draft amendment bill has no upper limit on leases over 35 years or more. This is dangerous!

- Conditions change over a period of 35 years making a lease that is suitable at its commencement, inappropriate 35 years later
- Consideration should be given to the principle of intergenerational equity
- Leases longer than 35 years are tantamount to a privatisation of land or asset. A lessee's interest may, over time, vary from those of the Trust and its objects, and from the public interest

For the ongoing protection of heritage and the public interest, a lease that has been in existence for 35 years **must** be put out to public tender, no matter how appropriate the tenancy might seem.

Section 64B (1) and 64C – if applied to Leases between 25 and 35 years (including options)

The Mosman Parks & Bushland Association opposes leases between 25 and 35 years. However, if an amended draft Bill includes that possibility then:

3.

1. The proposed lease should obtain written ministerial approval in the first instance
2. Then, only with ministerial approval, the proposed lease with terms and conditions, should go to parliament as a legislative instrument (ie subject to parliamentary disallowance and appearing on the Federal Register of Legislation)
3. A “written proposal” (Section 64B(1) (a)
 - is insufficient for consideration by Parliament.
 - And, as a proposal is not a legislative instrument (Section 64B(4) it will not be subject to the processes of disallowance required by the Legislation Act.
 - Further – because proposals are not legislative instruments, material subsequent changes to a lease would not be resubmitted to Parliament for disallowance, as there is no provision for this in 64C.

The process for leases between 25 and 35 years would be simplified if the existing S64A of the Sydney Harbour Federation Trust Act 2001 were retained **64A Leases over 25 years** (1) “.....before entering into a lease or licence over Trust land for a period of longer than 25 years, the Trust must, by legislative instrument, determine the proposed terms and conditions of the lease or licence” and (3) The terms and conditions of the lease or licence must accord with the determination.

CONCLUSION: Long-term leases and the danger that they will travel through parliament and past the public without adequate scrutiny, are the major shortcomings of the draft Sydney Harbour Federation Trust Amendment Bill 2020. As the draft is currently written, it puts these nationally prized and important lands and their heritage at risk.

With appropriate Commonwealth funding, there should be no call for long leases.

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President
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