

Submission on the *Greater Sydney Parklands White Paper*

16 July 2021

Group Deputy Secretary, Place, Design and Public Spaces
NSW Department of Planning, Industry and Environment
PARRAMATTA (Locked Bag 5022), NSW 2124

Contact: **Simon Bruck**
President, NSW Young Lawyers

Peter Clarke
Chair, NSW Young Lawyers Environment and Planning Committee

Contributors: Amelia Cook, Caitlin Cleary, Jarrod Mitchell

Coordinators: Kah-Mun Wong and Ola Moucharrafié

The NSW Young Lawyers Environment and Planning Committee (**Committee**) make the following submission in response to the *Greater Sydney Parklands White Paper (White Paper)*.

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

NSW Young Lawyers accepts the science and wide-ranging effects of climate change, including as outlined by the United Nations Intergovernmental Panel on Climate Change in its leading expert reports. NSW Young Lawyers considers that Australia has the ability and a responsibility to rapidly reduce emissions and actively help to keep the world's emissions within its remaining 'carbon budget'.

NSW Young Lawyers recognises that there is a climate emergency, posing an unprecedented challenge for human rights and the rule of law. In order for there to be intergenerational equity and climate justice, as well as interspecies equity and ecological sustainability, the law needs to enable and require Australia to rapidly decrease CO₂ (and other greenhouse gas) emissions and to be legally accountable for their adverse contributions to the impacts of climate change.

The NSW Young Lawyers Environment and Planning Committee comprises of a group of approximately 250 members interested in our natural and built environment. The Committee focuses on environmental and planning law issues, raising awareness in the profession and the community about developments in legislation, case law and policy. The Committee also concentrates on international environment and climate change laws and their impact within Australia.

Introduction

The Committee welcomes the opportunity to comment on the Greater Sydney Parklands White Paper. This submission addresses:

- City-wide planning
- Community trustee boards
- First Nations community participation.

The Committee acknowledges the traditional custodians of the lands and rivers on which Greater Sydney Parklands are situated and pays respects to the elders past, present and emerging.

Summary of Recommendations

1. That planning legislation be amended to provide for mandatory contributions as part of conditions for development consent, where development is being undertaken in proximity to parklands.
2. That GSP legislation provides a clear basis for the community trustee boards and the requirement for the GSP Trust to consider the boards' advice in decision-making.
3. That the membership of community trustee boards reflects a balance of local community voices, diverse expertise and minority or 'hard to reach' groups that will allow greater access and use of the parks.
4. That the Consultation and Engagement Framework prioritises meaningful engagement with First Nations people through: emphasising community education on First Nations traditional knowledge, providing for representation on community trustee boards, and implementing a Reconciliation Action Plan.
5. That the First Nations community engagement principles be supported by a formal policy to set out the detail of the GSP Trust's approach to engagement and negotiation with First Nations people.
6. That GSP legislation includes a statutory obligation to negotiate with First Nations people in good faith in relation to significant changes to use and development.
7. That the GSP Trust provides detailed historical information about the traditional owners of the parklands on its website.

City-wide planning

What are some of the opportunities that could be realised under a city-wide approach?

1. The Committee considers that a consolidated approach to the management and conservation of the great parklands of Sydney provides important opportunities to bolster community spirit, promote wellbeing and happiness, and encourage unity across the city. Community events, such as park runs, markets, and fair days, could be hosted simultaneously at all or multiple of the parkland locations to

promote accessibility and a sense of union in an otherwise sprawled and varying city. Connection, variety, exploration and cohesion are healthy and impactful notions for the Sydney community, and are values that the Greater Sydney Parklands Trust (**GSP Trust**) would be ideally placed to endorse and encourage with its shared resources across the greater Sydney region.

How do we ensure that local values and aspirations are recognised and respected?

2. The objects of any legislation relevant to the parklands must focus on the preservation of the natural environment and the promotion of local values for the common good, such as the shared enjoyment of the outdoors and family friendly spaces with properly managed facilities for domestic animals.
3. If the existing legislative framework is to stay, a great amount of work is required to ensure that the voices of each local parkland remain prominent in decision-making and the unique local values and aspirations of each parkland and its community are recognised and respected within the new GSP consolidated framework. Sweeping legislative change would be required to align the legislative purposes of each parkland under the GSP's purview, such that the decisions made by the GSP can be made with unified purposes in mind. Without significant legislative change, the GSP's decision making may fail to give justice to the legislative purpose of one park's legislation in attempting to further the aims of another park's development.
4. However, it must always be kept in mind that any legislative action to bring uniformity to the legislated purposes of geographically and culturally distinct parklands runs the risk of diminishing the individuality which makes each park unique. The risk associated with a consolidated management structure is that, in practice, the unique attributes of particular spaces can be overlooked. Instead, the spaces are viewed together, as one, and solutions are applied in a "one size fits all" approach. This neglects the individual needs of a space and its community and leads to lack of diversity.

Are there other changes to existing legislation that would support the city-wide approach and access to similar opportunities across the Parklands Estate?

5. The parklands are an invaluable community resource that must be protected from commercial ventures. Where nearby commercial development is inevitable, for example, as a result of the Integrated Transport Plan for Parramatta CBD¹ and the Parramatta CBD Planning Proposal² near Parramatta Park, legislation such as s. 7.11 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**) offers support for the integrity of the parklands that are in close proximity to public and private development. Section 7.11 provides for contributions (either monetary contributions or dedications of land) towards the provision or improvement of amenities or services as a condition of development consent. Councils can make contributions plans for the purpose of imposing such

¹ City of Parramatta, *Integrated Transport Plan for Parramatta CBD* (Web Page, 2021) <<https://participate.cityofparramatta.nsw.gov.au/ITP-Parra-CBD>>.

² City of Parramatta, *Parramatta CBD Planning Proposal* (Web Page, 2021) <<https://participate.cityofparramatta.nsw.gov.au/cbd-planning>>.

conditions³, and cl. 27 of the *Environmental Planning and Assessment Regulation 2000* (NSW) (***EPA Regulations***) sets out the particulars that the plan must contain.

6. Contributions plans are a powerful mechanism that could significantly increase the endurance and vitality of green space in Greater Sydney. To ensure the parklands are appropriately maintained and, as a result, endure throughout times of developmental change, the terms of s. 7.11 of the *EPA Act*, or the terms of its application in cl. 27 of the *EPA Regulations*, could be bolstered to explicitly include mandatory contributions to be directed to the various parklands governed by the GSP.

Recommendation 1: that planning legislation be amended to provide for mandatory contributions as part of conditions for development consent, where development is being undertaken in proximity to parklands.

Community trustee boards

How do you see the community trustee boards interfacing with the overall GSP umbrella trust?

7. The Committee agrees that a 'one-size-fits-all' approach should be avoided and an appropriate method would be to implement community trustee boards to advise and assist the GSP Trust in decision making processes. Community trustee boards could provide valuable insights related to community uses of particular parklands. They would also provide a platform for community concerns and feedback to be shared, and ultimately considered by the GSP Trust.
8. The Committee understands that the legislation will require the GSP Trust to develop the Consultation, Engagement and Advocacy Framework (**Framework**), which will set out the establishment and constitution of the community trustee boards. The Committee considers that there would be a stronger footing to the community trustee boards if there were specific legislative provisions establishing the boards and stating their core functions. For example, Part 3 Div 2 of the *National Parks and Wildlife Act 1974* (NSW) constitutes and describes the functions of regional advisory committees under that Act. With a statutory basis for the community trustee boards in the legislation, further detail about the operation of the boards could then be described in the Framework. The legislation should also require the GSP Trust to consult with the community trustee boards, once formed, in each 5-year review of the Framework.
9. Transparency will be crucial to ensure that community views are properly considered. As such, the Framework should describe the outputs that the community trustee boards will produce – for example meeting minutes, specific pieces of advice on plans/policies - and require that these outputs be published on the website. Similarly, the Framework should require the GSP Trust to identify how the advice of the community trustee boards has been taken into account.

³ *Environmental Planning and Assessment Act 1979* (NSW), s 7.18

Recommendation 2: that the GSP legislation provides a clear basis for the community trustee boards and the requirement for the GSP trust to consider the boards' advice in decision-making.

How long should community trustee board membership be in place? When should it be refreshed?

10. Consistent with the term period for members of planning bodies under the EPA Act⁴, it is suggested that community trustee board memberships be for a term of 3 years, with the option to be reappointed for another 3 years. To ensure that board members reflect the voices of the community, it is recommended that board members not be appointed for a period of longer than 6 years in total.

Who are some of the diverse groups who should be involved to reflect the broad range of interests relating to each park? / Should specific demographic groups within the community be appointed to these boards, and if so, which ones?

11. The Committee stresses the importance of allowing equal access and use of the parks by all people. A well-rounded board membership will include a balance of both local community voices and minority or 'hard to reach' groups that will allow greater access and use the parks.
12. In particular, the White Paper identifies the need for equal access to the parks and their facilities. Accordingly, disabled access and use of parks is a universal consideration for all trustee boards. Depending on the locality of the respective parks, it may also be necessary for board members of different cultural and age demographics to be appointed in order to accurately represent the community's voices.
13. A range of expertise could also be garnered through diverse membership – for example, through representation of First Nations people, heritage conservationists, environmentalists, biodiversity and native species advocates, human health advocates, social welfare advocates and local town planners.

Recommendation 3: that the membership of community trustee boards reflects a balance of local community voices, diverse expertise and minority or 'hard to reach' groups that will allow greater access and use the parks.

First Nations community participation

What approaches do you consider essential if we are to engage meaningfully with the community and First Nations People?

⁴ *Environmental Planning and Assessment Act 1979* (NSW), Sch 2 cl 11

14. Communities across NSW have identified the need for greater involvement of First Nations people and communities when making decisions regarding public spaces, including parks. The White Paper acknowledges the need for relationships with local custodians who will “embed their knowledge in the management of parks”,⁵ however it does not indicate how this will transpire. On this basis, it is suggested that education of traditional First Nations knowledge and relationship with the respective parks be included in the aims and objectives of the Framework. In addition to this, it is appropriate that First Nations people be appointed and appropriately resourced as community trustee board members in all areas and/or consulted with when advice and input is being provided to the GSP Trust.
15. The GSP Trust should develop a Reconciliation Action Plan (RAP) to progressively realise meaningful engagement with First Nations people. Reconciliation Australia guidance outlines a staged approach to reconciliation, with a different RAP model for each stage. In this respect, a “Reflect RAP” would allow the GSP Trust to spend time scoping and developing relationships with First Nations stakeholders before committing to specific actions or initiatives.⁶

Recommendation 4: that the Consultation and Engagement Framework prioritises meaningful engagement with First Nations people through: emphasising community education on First Nations traditional knowledge, providing for representation on community trustee boards, and implementing a Reconciliation Action Plan.

What elements would you like to see in the new Consultation and Engagement Framework?

16. The Committee welcomes the proposal to include First Nations community engagement principles in the Framework. In particular, the Committee underscores the importance of early and ongoing engagement with First Nations people in relation to significant changes to use and development in the greater Sydney parklands. In order to ensure that genuine engagement and negotiation occurs, the Committee encourages the adoption of a formal policy on the GSP Trust’s engagement and negotiations with First Nations people. At a minimum, it would be appropriate for the policy to detail:
 - who will be consulted;
 - the time period in which those people will be able to make written submissions;
 - the obligations on the GSP Trust to take those submissions into account when making relevant decisions;
 - the requirement to record consideration of those submissions in written reasons; and
 - the right to an internal review in the event that a person is not satisfied with the consultation process.

⁵ Department of Planning, Industry and Environment, *Parklands for People – a proposed legislative framework for Greater Sydney Parklands* (White Paper, May 2021) 24.

⁶ Reconciliation Australia ‘Which RAP is right for you?’, *Reconciliation*, (Web page) <https://www.reconciliation.org.au/wp-content/uploads/2018/02/rap-framework- v2.pdf#page=2>

17. For the purposes of transparency and accountability, the policy should be published along with the Framework on the GSP Trust's website, as a part of the Trust's continuous disclosure obligations under the *Government Information (Public Access) Act 2009 (NSW)*.
18. The Committee agrees that the GSP Trust should negotiate with First Nations people in good faith. The Committee considers it appropriate for the good faith obligation to be enshrined in statute and that decisions of the GSP Trust should be susceptible to merits review in the event that the Trust fails to negotiate in good faith. Having regard to the complexity of good faith obligations, it is not appropriate for such an obligation to be defined in statute, but rather to rely on the common law definition.
19. Finally, the Committee notes the importance of ongoing community education in relation to the history of First Nations people in the greater Sydney parklands. In addition to community education programs, it is appropriate that the website for each of the parklands recognises the traditional owners of the land and includes a brief history of their experience of first contact. To the best of the Committee's knowledge, only the Western Sydney Parklands and Parramatta Parklands have published information on their website about the traditional owners of the land. This should be rectified as a matter of urgency. Any information published about the traditional owners of the land should be supported by academic research.
20. In summary, the Committee welcomes the proposed First Nations community engagement principles and highlights that accountability measures are required to ensure their implementation. The first of these measures is a public policy on the GSP Trust's approach to engagement and negotiations with First Nations people. The second is a statutory obligation to negotiate with First Nations people in good faith in relation to significant changes to use and development. Finally, the Committee calls on the Trust to publish detailed historical information about the traditional owners of the greater Sydney parklands on its website, which would be consistent with the principles expressed in the white paper.

Recommendation 5: that the First Nations community engagement principles be supported by a formal policy to set out the detail of the GSP Trust's approach to engagement and negotiation with First Nations people.

Recommendation 6: that GSP legislation includes a statutory obligation to negotiate with First Nations people in good faith in relation to significant changes to use and development.

Recommendation 7: that the GSP Trust provides detailed historical information about the traditional owners of the parklands on its website.

Concluding Comments

NSW Young Lawyers and the Committees thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

Contact:



Simon Bruck

President

NSW Young Lawyers

Email: president@younglawyers.com.au

Alternate Contact:



Peter Clarke

Chair

NSW Young Lawyers Environment and Planning Committee

Email: envirolaw.chair@younglawyers.com.au