



Preservation of Trees and Public Open Space (Miscellaneous Legislation Amendment) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Environmental Planning and Assessment Amendment (Addressing Climate Change) Bill 2017*.

Overview of Bill

The objects of this Bill are:

- (a) to encourage the preservation of trees in urban areas:
 - (i) by requiring urban councils to consider the impact of proposed development on the maintenance or enhancement of the mature tree canopy, and to consider the health of a tree that is proposed to be removed or damaged, and the environmental, social, health and financial benefits of preserving the tree, when determining development applications or other applications, and
 - (ii) by requiring the Greater Sydney Commission to include in its district plans specific targets to increase the urban tree canopy, and to monitor the progress of councils in achieving those targets, and
 - (iii) by providing for the regulations to create guidelines about suitable plantings to increase the urban tree canopy, and
- (b) to provide for the preservation of public green open space by allowing Parliament to disallow any sale, lease or other dealing with public green open space by a council, or any vesting of Crown land that is public green open space in a council, and by requiring any Crown land vested in a council to be retained as public green open space, or for the existing proportion of public green open space to be maintained.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of legislation

Schedule 1.1 amends the *Crown Land Management Act 2016*:

- (a) to provide that either House of Parliament may disallow a proposal by the Minister to vest transferable Crown land that is public green open space in a council, and
- (b) to ensure that any vesting of transferable Crown land that is public green open space in a council is subject to a reservation that any part of the land transferred that is existing public green open space must be retained as public green open space, or that the land must be managed in such a manner that the existing proportion of public green open space on the land is maintained.

Schedule 1.2 amends the *Environmental Planning and Assessment Act 1979*:

- (a) to include in the objects of that Act the object of encouraging the maintenance and enhancement of the mature tree canopy in urban areas, and
- (b) to require a council or other consent authority considering a development application relating to land in an urban area to consider whether the development maintains or enhances the mature tree canopy, and
- (c) to require district plans prepared by the Greater Sydney Commission to specify targets to increase the urban tree canopy by at least 10% in 5 years and to provide for the monitoring of those targets, and
- (d) to provide for the making of guidelines for suitable plantings to increase the urban tree canopy, with a focus on the extent of tree cover, encouraging the choice of native flora and asset protection.

Schedule 1.3 amends the *Local Government Act 1993* to provide that either House of Parliament may disallow a proposal by a council to sell, exchange or otherwise dispose of, or grant a lease or licence of, operational land that is public green open space.

Schedule 1.4 amends the *Standard Instrument (Local Environmental Plans) Order 2006* to prohibit the ringbarking, cutting down, topping, lopping, removal, injuring or wilful destruction of any tree in an urban area without development consent or a council permit and to provide that such a development consent or permit cannot be granted unless the council or consent authority has considered both the health of the tree and the environmental, social, health and financial benefits of preserving the tree.

Schedule 1.5 amends the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to ensure that a complying development certificate for a one or two-storey dwelling house is only taken to satisfy a requirement under the Policy for a separate permit or development consent authorising the removal of a tree if the tree is less than 3 metres in height (at present the threshold is 8 metres).



New South Wales

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New South Wales

Preservation of Trees and Public Open Space (Miscellaneous Legislation Amendment) Bill 2017

No. , 2017

A Bill for

An Act to amend certain legislation to make provision for the preservation of trees in urban areas and of public green open space; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Preservation of Trees and Public Open Space (Miscellaneous Legislation Amendment) Act 2017*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of legislation	1
1.1	Crown Land Management Act 2016 No 58	2
[1]	Section 4.5 Interpretation	3
	Insert in alphabetical order in section 4.5 (1):	4
	<i>public green open space</i> means transferable Crown land that is set aside primarily for recreation, sports, nature conservation, passive outdoor enjoyment or public gatherings and includes public parks, gardens, reserves, publicly owned forecourts and squares but does not include land on which any building (other than a temporary structure) is situated.	5 6 7 8 9
[2]	Section 4.6 Vesting of transferable Crown land in local councils	10
	Insert after section 4.6 (2):	11
	(3) The Minister must not publish a notice under this section relating to the vesting of transferable Crown land that is public green open space in a local council unless:	12 13 14
	(a) notice of the proposed vesting has been tabled in each House of Parliament, and	15 16
	(b) neither House of Parliament has, within 28 sitting days of the House after notice of the proposed vesting was tabled in the House, passed a resolution (of which notice has been given), disallowing the vesting.	17 18 19
[3]	Section 4.7 Content of council vesting notices	20
	Insert after section 4.7 (2) (a):	21
	(a1) must include a reservation that any part of the land transferred that is public green open space at the time that the notice was published must be retained as public green open space, or that the land must be managed in such a manner that the same proportion of the land vested in the local council that was public green open space at the time that the notice was published is maintained as public green open space after the transfer, and	22 23 24 25 26 27 28
1.2	Environmental Planning and Assessment Act 1979 No 203	29
[1]	Section 5 Objects	30
	Insert after section 5 (a) (viii):	31
	(ix) the maintenance and enhancement of the mature tree canopy in urban areas, and	32 33
[2]	Section 75AD District plans—preparation and content	34
	Insert after section 75AD (3) (e):	35
	(e1) in relation to any district in the Greater Sydney Region—specific targets to increase the urban tree canopy by at least 10% for the 5 years after the plan is made, including rolling annual targets,	36 37 38
[3]	Section 75AD (6)	39
	Insert after section 75AD (5):	40
	(6) The Greater Sydney Commission must prepare and publish monitoring protocols with respect to the achievement of any targets specified in a district	41 42

plan under subsection (3) (e1), which may be based on a mapping tool or other method set out in any instrument.	1 2
[4] Section 79C Evaluation	3
Insert after section 79C (1) (b):	4
(b1) in the case of development in an urban area—whether the development maintains or enhances the mature tree canopy,	5 6
[5] Section 79C (6) (c)	7
Insert after section 79C (6) (b):	8
(c) urban area means land in any of the following local government areas: Bayside; City of Blacktown; Burwood; Camden; City of Campbelltown; Canada Bay; Canterbury-Bankstown; Central Coast; Cumberland; City of Fairfield; Georges River; City of Hawkesbury, except that part that is north of the Colo River; Hornsby; Hunter’s Hill; Inner West; Ku-ring-gai; City of Lake Macquarie; Lane Cove; City of Liverpool; Mosman; North Sydney; Northern Beaches; City of Parramatta; City of Penrith; City of Randwick; City of Ryde; Strathfield; Sutherland Shire; City of Sydney; The Hills Shire; Waverley; City of Willoughby; Woollahra.	9 10 11 12 13 14 15 16 17 18
[6] Section 157 Regulations	19
Insert after section 157 (1) (d2):	20
(d3) the preparation and implementation of guidelines for suitable plantings to increase the urban tree canopy, including, but not limited to, the extent of tree cover, encouraging the choice of native flora for planting and asset protection, or	21 22 23 24
1.3 Local Government Act 1993 No 30	25
Chapter 6, Part 2, Division 2A	26
Insert after Division 2:	27
Division 2A Restrictions on dealing with operational land	28
47FA Restrictions on dealing with operational land	29
(1) A council must not sell, exchange or otherwise dispose of, or grant a lease or licence of, the whole or any part of operational land that is public green open space unless:	30 31 32
(a) notice of the proposed dealing has been tabled in each House of Parliament, and	33 34
(b) neither House of Parliament has passed a resolution (of which notice has been given) disallowing the dealing within 28 sitting days of that House (whether or not those sitting days occur during the same session).	35 36 37
(2) In this section:	38
public green open space means publicly owned land, or land available for public use, that is set aside primarily for recreation, sports, nature conservation, passive outdoor enjoyment or public gatherings, and includes public parks, gardens, reserves, publicly owned forecourts and squares but does not include land on which any building (other than a temporary structure) is situated.	39 40 41 42 43 44

1.4 Standard Instrument (Local Environmental Plans) Order 2006	1
Standard instrument, clause 5.9	2
Insert after clause 5.8:	3
5.9 Preservation of trees in urban areas [compulsory]	4
(1) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree in an urban area without the authority conferred by:	5
(a) development consent, or	6
(b) a permit granted by the Council.	7
(2) Development consent must not be granted under this clause unless the consent authority has considered:	8
(a) the health of the tree, and	9
(b) the environmental, social, health and financial benefits of preserving the tree.	10
(3) A permit must not be granted under this clause unless the Council has considered:	11
(a) the health of the tree, and	12
(b) the environmental, social, health and financial benefits of preserving the tree.	13
(4) In this clause:	14
<i>urban area</i> means land in any of the following local government areas:	15
Bayside; City of Blacktown; Burwood; Camden; City of Campbelltown;	16
Canada Bay; Canterbury-Bankstown; Central Coast; Cumberland; City of	17
Fairfield; Georges River; City of Hawkesbury, except that part that is north of	18
the Colo River; Hornsby; Hunter's Hill; Inner West; Ku-ring-gai; City of Lake	19
Macquarie; Lane Cove; City of Liverpool; Mosman; North Sydney; Northern	20
Beaches; City of Parramatta; City of Penrith; City of Randwick; City of Ryde;	21
Strathfield; Sutherland Shire; City of Sydney; The Hills Shire; Waverley; City	22
of Willoughby; Woollahra.	23
1.5 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	24
Clause 3.33 Setbacks of dwelling houses, attached development and detached development from protected trees	25
Omit "8m" from clause 3.33 (1) (c) (i). Insert instead "3m".	26