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Introduced by Ms Lee Rhiannon, MLC

Draft

**Warning note: This is a draft version of a Non-Government Bill.**

New South Wales

## Save Graythwaite Estate Bill 2009

### Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to require the Graythwaite Estate to be retained in public ownership and subject to public control, and
- (b) to preserve areas of open space at the Graythwaite Estate and to allow public access to such areas, and
- (c) to preserve the heritage significance of the Graythwaite Estate, and
- (d) to impose appropriate controls on the future development of the Graythwaite Estate.

### Outline of provisions

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

**Clause 2** provides that the proposed Act is taken to have commenced on 10 September 2009 (being the date that notice for the introduction of the Bill for the proposed Act was given in the Legislative Council).

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Save Graythwaite Estate Bill 2009

Explanatory note

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**Clause 3** defines the term *Graythwaite Estate* by reference to a lot in a Deposited Plan registered by the Registrar-General and also defines the terms *development* and *environmental planning instrument*.

**Clause 4** sets out the objects of the Act in terms similar to those set out in the Overview above.

**Clause 5** prohibits the sale or other alienation, or the encumbering, of the Graythwaite Estate or any part of it, but allows it to be transferred to a statutory body representing the Crown that is subject to the direction and control of a Minister.

**Clause 6** provides that any lease of, or a licence allowing the use of, the Graythwaite Estate to a person other than a public or local authority must include terms that require the grounds of the Graythwaite Estate to always remain open to the public.

**Clause 7** restricts the development that may be carried out at the Graythwaite Estate. Development for the purposes of health, educational or community facilities is permitted with the consent of North Sydney Council.

**Clause 8** provides that the regulations under the proposed Act may set up a community consultation committee for the Graythwaite Estate.

**Clause 9** authorises the Governor to make regulations for the purposes of the proposed Act.

**Clause 10** prevents the proposed Act from affecting rights conferred by any easement, lease or licence that was in force immediately before the proposed Act commences.

**Clause 11** makes it clear that the proposed Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

**Clause 12** makes it clear that the proposed Act has effect despite certain decisions of the Supreme Court relating to the Graythwaite Estate.

**Clause 13** makes it clear that the provisions of the proposed Act apply on and from from 10 September 2009 (being the date that the proposed Act is taken to have commenced). The clause provides that any sale, transfer or other specified disposal of the Graythwaite Estate that occurred on or after 10 September 2009 but before the date of assent to the proposed Act, and that is contrary to the provisions of the proposed Act is null and void. A contract voided by the proposed clause may be held by a Court to be frustrated at common law.

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## **Save Graythwaite Estate Bill 2009**

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New South Wales

## **Save Graythwaite Estate Bill 2009**

No , 2009

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### **A Bill for**

An Act to preserve the Graythwaite Estate in public ownership; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Save Graythwaite Estate Act 2009*.

**2 Commencement**

This Act is taken to have commenced on 10 September 2009 (being the date that notice for the introduction of the Bill for this Act was given in the Legislative Council).

**3 Definitions**

In this Act:

**development** has the same meaning as in the *Environmental Planning and Assessment Act 1979* (and includes a project under Part 3A of that Act).

**environmental planning instrument** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**Graythwaite Estate** means the land at North Sydney comprised in Lot 2, DP 539853 and includes all buildings and other fixtures situated on that land.

**4 Objects**

The objects of this Act are:

- (a) to ensure that the whole of the Graythwaite Estate remains in public ownership and subject to public control, and
- (b) to ensure the preservation of the areas of open space at the Graythwaite Estate in existence immediately before the commencement of this Act, and
- (c) to allow public access to the areas of open space at the Graythwaite Estate, including for public recreational purposes of both an active and passive nature, and
- (d) to preserve the heritage significance of the Graythwaite Estate, including its historic buildings, gardens and other landscape features, and
- (e) to impose appropriate controls on the future development of the Graythwaite Estate.

**5 Continued public ownership of Graythwaite Estate**

- (1) The Graythwaite Estate can not be lawfully sold, transferred, leased, mortgaged, charged or otherwise alienated or encumbered, except as provided for in this Act.

- (2) The Governor may, by order published in the Gazette, transfer the Graythwaite Estate to a statutory body representing the Crown (whether in right of New South Wales or the Commonwealth), but only if the statutory body is subject to the direction and control of a Minister.
- (3) This section applies to each part of the Graythwaite Estate in the same way as it applies to the whole of the Graythwaite Estate.

**6 Restrictions on grant of leases and licences**

- (1) A lease of, or a licence allowing the use of, the Graythwaite Estate granted to any person that is not a public or local authority must include terms that require the grounds of the Graythwaite Estate to always remain open to the public.
- (2) Subsection (1) applies to each part of the Graythwaite Estate in the same way as it applies to the whole of the Graythwaite Estate.

**7 Development at Graythwaite Estate restricted**

- (1) Subject to this section, the provisions of environmental planning instruments that apply to the Graythwaite Estate are the provisions of those instruments that so applied immediately before the commencement of this Act.
- (2) Development carried out at the Graythwaite Estate is not, and cannot be declared to be, a project under Part 3A of the *Environmental Planning and Assessment Act 1979*.
- (3) Despite any other Act or environmental planning instrument, the consent authority for any development application relating to land within the Graythwaite Estate is North Sydney Council.
- (4) Development may, with development consent, be carried out at the Graythwaite Estate for the following purposes:
  - (a) health facilities,
  - (b) educational facilities,
  - (c) community facilities.

- (5) In this section:

**community facility** means a facility (not being an educational facility or health facility) providing services to the community on a not for profit basis.

**educational facility** means a university or other facility providing educational services on a not for profit basis, but does not include a primary school or secondary school.

**health facility** means a building or place used for the medical or surgical treatment of persons, whether public or private.

**8 Community consultation committee**

The regulations may establish and provide for the functions and procedures of a community consultation committee for the Graythwaite Estate.

**9 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**10 Savings**

This Act does not affect any easement, lease or licence that was in force immediately before the commencement of this Act or affect the granting of a further lease under an option provided for in such a lease.

**11 Act binds the Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

**12 Act has effect despite certain Supreme Court decisions**

This Act has effect despite the decisions of the Supreme Court in *Northern Sydney and Central Coast Area Health Service and anor v The Attorney-General for New South Wales and anor* [2007] NSWSC 881 and *Northern Sydney and Central Coast Area Health anor v Attorney-General for New South Wales 7 ors* [2008] NSWSC 1223.

**13 Retrospective invalidation of transfer etc**

Any sale, transfer, lease, mortgage, charge or other alienation or encumbrance of the Graythwaite Estate:

- (a) that occurred after 10 September 2009 (being the date that this Act is taken to have commenced), but before the date of assent to this Act, and
- (b) that is contrary to this Act,  
is null and void.