

Item 3: Insert standard earthworks local provision in part 6

Excavation commonly occurs as part of construction and development in Mosman, and in some instances this may be substantial given the topography and scale of development. It is proposed to include a new clause for earthworks in part 6 to require the consideration of the impact of excavation so as to mitigate any adverse impacts relating to soil erosion, sedimentation, the natural features of the land, trees and vegetation, impacts on adjoining properties and the like. The clause would apply to all development that is the subject of a development application.

There is currently no earthworks clause included in MLEP 2012. An earthworks clause was included in the former MLEP 1998, however this was unable to be carried across into the new comprehensive LEP for Mosman when it was being drafted in 2010-11 as per NSW DPIE guidance at that time. The NSW DPIE has since released a draft model local provision for earthworks.

The proposed clause (outlined in red and underlined below) is based on the NSW draft model local provision included in many council LEPs including in North Sydney, Willoughby and Woollahra. The clause will complement existing objectives and planning controls in Mosman's development control plans relating to excavation and site management.

6.7 Earthworks

- (1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.
- (2) Development consent is required for earthworks unless—
 - (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to other development for which development consent has been given.
- (3) Before granting development consent for earthworks, the consent authority must consider the following matters—
 - (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality.
 - (b) the effect of the proposed development on the likely future use or redevelopment of the land.
 - (c) the quality of the fill or the soil to be excavated, or both.
 - (d) the effect of the proposed development on the existing and likely amenity of adjoining properties.
 - (e) the source of any fill material and the destination of any excavated material.
 - (f) the likelihood of disturbing relics.
 - (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Note. The *National Parks and Wildlife Act 1974*, particularly section 86, deals with harming Aboriginal objects.