REPORT SUMMARY

EXECUTIVE SUMMARY:
The purpose of this report is to detail the results of the public exhibition of the Planning Proposal - Waterways Rezoning (Amending Draft Sutherland Shire Local Environmental Plan 2013). Council’s decision in relation to these zones will become part of the final version of draft SSLEP2013.

SUMMARY OF RECOMMENDATION:
The planning proposal be amended in response to the submissions received and on the basis of the Independent Review’s findings. The Planning Proposal should also be integrated with the remainder of Draft Sutherland Shire Local Environmental Plan 2013 so that it may proceed to finalisation as a single LEP. The Revised consolidated plan requires re-exhibition if the recommendations are adopted by council.

FINANCIAL / RESOURCE IMPLICATIONS:
Exhibition will require a budget allocation.

RELATIONSHIP TO STRATEGIC DIRECTIONS:
- The negative impacts of development on the environment, people and economy are minimised.
- Protect our environment.
- Conserve natural resources.
- Respect and value our heritage and culture.

POLICY / LEGAL IMPLICATIONS:
Council’s decision in relation to these zones will become part of the final version of draft SSLEP2013.

LIST OF APPENDICES:
NIL.

PREVIOUS CONSIDERATION / HISTORY OF MATTER:
Please refer to the summary table in the report below for a full history of the matter/list of reports.

REPORT IN FULL
Purpose
At its meeting of 25 March 2013 (Mayoral Minute No. 29/12-13) and 27 May 2013 (CCL039-13), Council resolved to amend the Draft Sutherland Shire Local Environmental Plan 2013 (SSLEP2013) to change the planning approach to the Shire’s waterways from that originally exhibited. The changes involved the application of the waterways zones, the objectives of the zones and the permissibility of development.

This planning proposal commenced exhibition before Council resolved to hold a second exhibition for draft SSLEP2013. The waterway zones were not included in the second exhibition of SSLEP2013. The intention is that once Council has considered submissions to the Waterways Rezoning Planning Proposal and made its final decision, the waterways zones will be included in draft SSLEP2013 as it proceeds to finalisation.

Specifically the Waterways Rezoning Planning Proposal includes the following changes:

1. Amending the Zoning Maps to increases the size of the W2 Recreational Waterways zone to include Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay and a section of the Georges River from Tom Uglys Bridge to the north-western point of Kangaroo Point. Essentially, this increases the types of development that are permissible within these waterways to include boatsheds, charter touring boating facilities, kiosks, marinas, mooring pens and recreation facilities (outdoor).

2. Amending the objectives for the W1 Natural Waterways Zone to explicitly state that it is an objective of the zone to allow water based structures and mooring facilities where appropriate having regard to listed criteria; and to allow for multiple mooring pens to be attached to water recreation structures.

3. Adding mooring pens and boatsheds as development permitted with consent in the W1 Natural Waterways Zone. This will allow for the construction of boatshed and mooring pens in the waterways and on reclaimed land where they are currently prohibited. A mooring pen means the arrangement of freestanding piles or other restraining devices designed or used for the purpose of berthing a vessel. Such ‘other restraining devices’ can include dry dock technologies.

4. Amending the objectives of the W2 Recreational Waterways Zone to explicitly state that it is an objective of the zone to allow suitable mooring facilities having regard to listed criteria.

The draft plan was publicly exhibited for a period of 30 days between 18 June 2013 and 17 July 2013. At its meeting of 15 July 2013, Council resolved to further extend the exhibition period by 30 days. A total of 104 submissions were received relating to the planning proposal. 102 submissions were received from private land owners and commercial businesses. Two submissions were received from a Public Authority.

By far the majority of submissions oppose the planning proposal, particularly the rezoning of W1 areas to W2. However, a small number of submissions did support the proposed changes, or support the application of W1 zoning on the proviso certain additional uses (boatsheds and mooring pens) would be made permissible.

The submissions raised many issues including overdevelopment of the waterways and foreshore, congestion and navigation issues, loss of scenic quality, water pollution, noise pollution, traffic and parking related issues, as well as public access to the waterways and foreshore. A significant number of submissions drew comparisons between the planning proposal and development application DA13/0590 (Sylvania Marina). These submissions either directly related the intent of the planning proposal to the outcome of the development.
application, or any future development, at either Sylvania and / or Tom Uglys Marina.

The intent of this planning proposal makes a strong deviation to the original policy approach presented to Council by staff under the originally exhibited draft Plan. This original approach was conservative in its method to administer both zoning and subsequent development permissibility and was generally consistent with Council’s long term policy approach to waterways. The planning proposal seeks to increase development opportunities in the waterways to include additional permissible development.

In order to achieve a balance between meeting the increased demand for development on the waterways and protecting the scenic, environmental and recreation values, the following is recommended:

- Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay, Sylvania Waters and parts of Georges River remain zoned W2 Recreational Waterways as exhibited to facilitate an increased range of development. These localities are more urban in character and can better absorb more intense development.
- The application of zone W2 Recreational Waterways at Yowie Bay should be reduced to so that it does not encompass the area of E2 Environmental Conservation foreshore at Willarong point.
- The application of W2 Recreational Waterways zoning along the Georges River between Madeira Street and north-west point of Kangaroo Point should be removed and replaced with W1 Natural Waterways.
- Boatsheds and mooring pens should be removed as a permissible use from W1 Natural Waterways zone.
- The objectives of the W1 zone be amended to restore objectives that were initially exhibited in the draft Plan (LEP1).

This revised approach would allow permanent mooring, including mooring pens and marinas in six (6) specified areas. These areas are already characterised by significant numbers of swing moorings, jetties, ramps, pontoons and some berthing areas at the land/water interface, as well as existing commercial marinas.

This approach would also require boatsheds to be located on land above the Mean High Water Mark (MHWM) – consistent with current policy, except in the W2 zone where they would be permissible within the waterways. The development of jetties, ramps, pontoons would still be permissible in zones W1 and W2, while mooring pens would be permissible in zone W2 only. This approach better ensures that in the W1 Natural Waterways zone the tidal foreshore area remains predominately free from development, in line with the objectives of the W1 Natural Waterways zone.

However, this approach does not prevent potential loss of scenic quality due to the cumulative impact of increased numbers of vessels and structures along the foreshore within zone W2 Recreational Waterways areas. It also does not prevent potential congestion issues, as foreshore owners compete for waterfront space to moor their vessels. Such issues would need to be given higher order for consideration at development application stage.

This recommendation is informed by a review of submissions received and the issues they raise, the initial DSSLEP2013 approach (as originally presented to the DPI and exhibited in LEP1), the amended approach sought by way of the planning proposal (as exhibited) and the recommendations of the Independent Review.

**Background**
Sutherland Shire Council is required to prepare a new Local Environmental Plan which is consistent with the Standard Instrument Order. This has been a major undertaking for
Council which has progressed over many years. A draft plan was submitted for Council’s consideration on 3rd December 2012 (DAP040-13 and DAP034-13). Following Mayoral Minute No. 23/12-13 on 10 December Council resolved to make amendments to the draft plan, and refer the draft plan to the Department of Planning and Infrastructure for Gateway Determination. Gateway Determination, which allowed the plan to proceed to public exhibition, was issued on 8 March 2013.

In March 2013, Council resolved to proceed with amendments to the Waterways zone as a separate Planning Proposal (Mayoral Minute No. 29/12-13). It is this Planning Proposal that is the subject of this report. The comprehensive LEP has since been re-exhibited with the waterway zones excluded from the zoning maps. The intention is that Council’s decisions in relation to this report will result in the W1 and W2 zones being brought into SSLEP2013 so that it proceeds as a single plan.

The following table provides a summary of the Waterways Planning Proposal to date:

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayoral Minute No. 29/12-13 considered the proposed zoning of the Shire’s waterways in the DSSLEP2013 and resolved to amend the proposed zoning.</td>
<td>Council meeting 25 March 2013</td>
</tr>
<tr>
<td>Planning Proposal sent to the Department of Planning and Infrastructure (DPI) for Gateway Determination under s56</td>
<td>12 April 2012</td>
</tr>
<tr>
<td>CCL039-13 resolved to amend the extent of the changes proposed for the Georges River.</td>
<td>Council meeting 27 May 2013</td>
</tr>
<tr>
<td>Date Considered by DP&amp;I LEP Review Panel</td>
<td>16 May 2012</td>
</tr>
<tr>
<td>Gateway Determination received from the Department of Planning and Infrastructure</td>
<td>29 May 2013</td>
</tr>
<tr>
<td>Public Exhibition of Planning Proposal as per Gateway determination.</td>
<td>18 June 2013 to 17 July 2013</td>
</tr>
<tr>
<td>Council Resolution requesting extension of exhibition period and Public Information Session. (BWN001-14)</td>
<td>15 July 2013</td>
</tr>
<tr>
<td>Public Exhibition of Planning Proposal as per Council Resolution 15 July 2013.</td>
<td>18 June 2013 to 16 August 2013</td>
</tr>
<tr>
<td>Development Assessment and Planning Committee decision to not proceed with Public Information Session in light of its decision to hold a Public Hearing into the entire draft LEP</td>
<td>18 November 2013</td>
</tr>
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</table>

**Gateway Determination**

Gateway Determination was received from the Department of Planning and Infrastructure (DPI) on 29 March 2013 allowing the exhibition of the Planning Proposal. The Determination also specifically required Council to:

Prior to exhibition, update the planning proposal and associated maps to reflect the outcomes of Council resolution dated 28 May 2013, which extended the proposed W2 Recreational Waterways zone along the Georges River in the vicinity of Tom Uglys Bridge.

Consult with the Department of Primary Industries - Fisheries under section 56(2)(d) of the EP&A Act.
Council Report BWN001-14
At its meeting of 15 July 2013, Council resolved:

1. That the closing date for the receipt of submissions on revisions to Waterways be extended by 30 days.

2. That within the extended period, Council undertake a Public Information Session prior to the end of the extended exhibition period on this matter for the benefit of residents.

As such, the exhibition period for the planning proposal was extended to 18 July 2013. The revised date was notified to all residents and land owners by way of Council’s website, advertisement in the St George and Sutherland Shire Leader, as well as exhibition posters at all libraries and Council’s administrative building in Sutherland.

A public information session was not held during the exhibition period. Council’s Development Assessment and Planning Committee at its meeting of 18 November 2013, subsequently resolved (DAP054-14):

That the requirement for a Public Information Session in accordance with the Council resolution contained in BWN001-14 be withdrawn as this decision has been superseded by Council’s decision to hold a public hearing into Draft Sutherland Shire Local Environmental Plan 2013 as per Mayoral Minute No. 15/13-14.

An Independent Review of the plan was subsequently undertaken on behalf of the Minister for Planning and Infrastructure.

Application of Zones - W1 Natural Waterways and W2 Recreational Waterways

DSSLEP2013 as Initially Exhibited
Under the originally exhibited draft Plan, the W1 Natural Waterways zone was proposed for most of the waterways in the Shire and the W2 Recreational Waterways zone was proposed for only those areas where commercial marinas are currently permissible and Sylvania Waters. This represented a very broad brush approach to the zoning of the waterways. It did not achieve a graduation of development intensity that reflects the character of the various bays and rivers comprising Sutherland Shire’s waterways.

This approach was reluctantly used because the mandated uses in the W2 Recreational Waterways zone are far more intense development forms than are currently permissible under SSLEP2006. This occurs because of the land use definitions that form part of the standard Instrument.

Under the plan ‘a marina means a permanent boat storage facility (whether located wholly on land, wholly on a waterway or partly on land and partly on a waterway), and includes any of the following associated facilities:
(a) any facility for the construction, repair, maintenance, storage, sale or hire of boats,
(b) any facility for providing fuelling, sewage pump-out or other services for boats,
(c) any facility for launching or landing boats, such as slipways or hoists,
(d) any car parking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility,
(e) any berthing or mooring facilities’.

This definition is substantially broader than that which exists under SSLEP2006 which currently confines marinas to commercial operations and multi-berth facilities. This change is significant because it allows any person to construct a marina for any number of vessels. Many waterfront property owners are likely to pursue private marinas for the convenience offered to the boat owner. However, there is nothing to restrict the location of a marina...
extending into the views enjoyed by other property owners or restricting other owners’ access to the waterway for recreational purposes. The proliferation of marinas in the bays of Sutherland Shire waterways will erode scenic quality, compromise the environmental health of the waterways and further constrain navigation. Marinas are mandatory uses permissible with consent in W2. Hence the application of the W2 zone must be carefully applied.

Boatsheds and water recreation structures must be included as either permitted with or without consent in the W2 zone. This means that boatsheds would become permissible within the water itself and on reclaimed land, rather than being confined to the land above the Mean High Water Mark (MHWM) as they are at present. These mandated uses are considered inappropriate for the most of the Shire’s waterways because they will compromise existing environmental qualities and erode scenic value. Boatsheds forward of the MHWM will also likely to compromise views enjoyed by neighbouring properties of waterways.

The conservative use of the W2 zone in the originally exhibited plan was considered the best transfer from the existing zoning while retaining Council’s the long established policy approach for development in the waterways. The following image provides an illustration of the approach to W1 and W2 zoning under the draft Plan as initially exhibited. W2 was confined to only the leased areas of existing commercial marinas.

![Figure 1 - W1 and W2 zoning under DSSLEP2013 (LEP1)](image)

**Figure 1 - W1 and W2 zoning under DSSLEP2013 (LEP1)**

Application of W1 and W2 under this Planning Proposal
Under this planning proposal the application of the W2 zone has been proposed to be extended to incorporate most of Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay and a section of the Georges River from Tom Uglys Bridge to the north-western point of Kangaroo Point. Extract maps below highlight the application of the W2 zone. The remaining parts of the waterways previously zoned W1 remain unchanged. However, additional development permissibility in the W1 zone is proposed by allowing boatsheds and mooring pens with consent.
Given the increasing levels of development permissibility available in the W2 zone (including but not limited to commercial and private marinas, kiosks, recreation facilities outdoor and charter and tourism boating facilities) the extended application of the W2 zone presumes that these waterways can accommodate higher intensity of use on the waterways and of development along those foreshore areas. W2 was applied because generally these areas are already characterised by more intense forms of development.

W1 has been used for those waterways that adjoin the E3 Environmental Management zones, while the W2 zone has been allocated to the waterways that adjoin the E4 Environmental Living Zone. The E3 and E4 zones apply to land with special environmental or scenic values. The E3 Environmental Management zone is applied to the most environmentally sensitive low density residential land located on the waterfront/foreshores. Land within the zone is generally characterised by low impact development nestled amongst predominantly native vegetation. In these localities the landform remains largely unmodified and natural elements of the landscape are dominant when the land is viewed from the waterway or from adjoining land/foreshores. This land is subject to an inherent risk from development. The intensification of development can have a significant impact on the natural environment and its scenic value. If the environmental and scenic qualities of these areas are eroded over time through the cumulative impacts of redevelopment, the unique sense of place that characterises Sutherland Shire will diminish. The W1 zone is the more restrictive waterway zone and therefore works to support the E3 zone.

In contrast, the E4 Environmental Living zone is applied to areas where there is development of a more suburban character within a natural landscape setting. The W2 zone has been applied to adjoining waterways in recognition that these bays can accommodate more development because it will have a lesser impact on scenic quality.

Figure 2 - Gunnamatta and Burraneer Bay zoning under Planning Proposal
Zoning and Development Permissibility
A key issue with the application of either the W1 or W2 zone is the implications this has for permissible development in the zone. The following table provides a comparison between development permissibility for the Shire’s Waterways under Sutherland Shire Local...
Environmental Plan 2006 (SSLEP2006), the draft Plan as initially exhibited and this Planning Proposal.

The Standard Instrument Order does not identify any mandatory uses for the W1 Natural Waterways zone. It does, however, identify kiosks and marinas as mandatory uses permitted with consent in the W2 Recreational Waterways zone. Boatsheds and water recreation structures must also be included, either as permitted without consent or permitted with consent in the W2 zone. It is important to note that under the SSLEP2006 permissibility of marinas relates only to commercial marinas. Under the new LEP it includes both commercial and private boat storage facilities.

<table>
<thead>
<tr>
<th>Zoning and Development Permissibility</th>
<th>SSLEP2006</th>
<th>Initial DSSLEP2013</th>
<th>Waterways Rezoning - Planning Proposal</th>
<th>Initial DSSLEP2013</th>
<th>Waterways Rezoning - Planning Proposal</th>
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<tbody>
<tr>
<td>Zone 16 Environmental Protection (Waterways)</td>
<td>W1 Natural Waterways</td>
<td>W1 Natural Waterways</td>
<td>W2 Recreational Waterways</td>
<td>W2 Recreational Waterways</td>
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<td>Aquaculture</td>
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<td>Beach and foreshore protection works (if carried out by a public authority and authorised by a plan of management under the Local Government Act 1993)</td>
<td>Environmental protection works</td>
<td>Environmental protection works</td>
<td>Environmental protection works</td>
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<td>Berthing areas</td>
<td>Mooring pens</td>
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<td>Ferry Operations</td>
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<td>Marinas (commercial)</td>
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<td>Marinas (private and commercial)</td>
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<td>Passenger transport facilities</td>
<td>Passenger Transport Facilities</td>
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<td>Public pedestrian</td>
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<td>access to facilitiate recreational use of the waterway</td>
<td>Scientific research associated with native habitats</td>
<td>Environmental facilities</td>
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<td>Utility installations (except for gas holders or generating works)</td>
<td>Environmental facilities</td>
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<td>Watercraft facilities</td>
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<td>Water recreation structures</td>
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<td>Recreation facilities (outdoor)</td>
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**Table 1 - Zoning and Development Permissibility**

Key comparisons to note from table one (1) above include:
Berthing areas (SSLEP2006) achieves much the same development outcome as mooring pens under the Planning Proposal however; the definition is wider and includes “other restraining device” which could be used to permit new dry dock technologies which have more significant impacts. There are a variety of modular and dry dock technologies available, including the Jetslide, Candock G2 Line Cubes and Seapen products patented by Candock. These products allow for boats to be berthed either by driving into/onto the dock or by tying up to fender piles attached to the Candock cubes. These arrangements are illustrated in the pictures below. The key point is that these technologies have greater visual and environmental impacts than traditional berthing areas.

Figure 5 - Jetty formed from Candock G2 Line Cubes

Figure 6 - Jetslide Dry Dock System
Utility installations have not been carried over as a separately defined use from SSLEP2006 to the DSSLEP2013 or by way of the planning proposal. This use is facilitated across the State by way of State Environmental Planning Policy (Infrastructure) 2007.

Boat Sheds become permissible in zones W1 and W2 by way of the Planning Proposal. At present boatsheds must be confined to the land based zone. Under the draft plan boatsheds they would become permissible in the water itself and on reclaimed land. Please note that reclaimed land is typically zoned waterways because it is below the MHWM.

The permissibility of Marinas is not carried over from Zone 16 (SSLEP2006) to Zone W1 (DSSLEP2013 & Planning Proposal). This is because the new definition is significantly wider and allows private marinas.

Submissions
Council has a statutory duty to consider all public submissions received in relation to the exhibition of the Planning Proposal. Over 1000 affected land owners were individually notified of the proposal. Any other resident or interested parties were invited to make submissions via Council’s website and through notices in the St George and Sutherland Shire Leader. At the conclusion of the submission period, a total of 104 public submissions were received (including late submissions up to the time of writing this report). Submissions were also were received from Roads and Maritime Service (RMS) and Fisheries NSW.

A number of submissions were received prior to the formal exhibition of the planning proposal. These submissions either respond to Mayoral Minute No. 29/12-13 or CCL039-13. These submissions have been considered as if they were lodged during the exhibition period.

The largest proportion of submission (approximately 77%) came from the suburb Sylvania, predominantly within the bay area immediately West of Tom Uglys Bridge. These included submissions from Tara Street, Corea Street, Koorooma Place, Harrow Street, Clare Street, Florida Street and Snowy Place.

In addition to Sylvania, submissions were received from other Shire suburbs including Burraneer (3%), Yowie Bay (2%), Miranda (2%), Cronulla (2%), Caringbah (1%), Dolans Bay (1%), Bundeena (1%), Sylvania Waters (1%) and Gymea (1%). Submissions were also received from residents and organisations outside the Shire, including Hurstville (1%) and Blakehurst (1%).
A large number of submissions were received objecting to the planning proposal on the perceived basis that its intent is to benefit the increasing demands for commercial marina development and to facilitate the expansion of existing marinas (namely that of Tom Uglys Marina and Sylvania Marina). An analysis of submissions shows a strong correlation between this issue and the submissions received from the area near these two marinas. The fact that the development application to expand Sylvania Marina was current during the submission period has clearly added to the number of submission form the locality. The same degree of interest and concern with the changes is not demonstrated in other localities.

Overall the majority of submissions received objected to the proposal. In general, many of these submissions believed that the planning proposal seeks to benefit only the commercial interest of a few land owners at the expense of preserving the Shire’s amenity, the lifestyle of residents, and the protection of the natural environment. Specifically, submissions raised a number of issues including overdevelopment of the foreshore and waterways; loss of scenic quality; water, noise and other environmental pollution; traffic and parking issues, navigation and congestion on the waterway, expansion of commercial development (including existing marinas), public access to waterways and foreshores and the consultation process. These issues are dealt with in the remainder of this report.

Key Issues
The following sections summarise the issues raised in submissions and make recommendations in relation to each issue. In making recommendations the aim has been to find an appropriate balance between facilitating appropriate development in the waterway, while maintaining residential amenity and protecting the environment. Given competing and often conflicting aspirations across the community, it is not possible to achieve consensus on every aspect.

Issue (a) - Consultation Process
Residents were concerned about the length of the exhibition period, the need for more information, the complexity of the plan and the transparency in decision making by Council. Some submissions highlight the need for a public hearing. Submissions questioned Council’s motives and highlight that proposed changes are against Council staff recommendations (EHR039-13).

One submission stated that the process of amendment and formation of the standard instrument be separated to allow for appropriate studies and stakeholder consultation to occur as opposed to being rushed to meet the LEP timeframes.

Another submission questioned whether waterfront development would be advertised for public comment and be assessed as complying or code assessed development without opportunity for objections.

Response
In response to community concerns, Council extended the exhibition process by 30 days. Many submissions that raised these issues were received prior to Council extending the exhibition period.

Council has gone beyond its statutory consultation requirements. The submissions calling for further consultation programs to be carried out are noted, but do not warrant further exhibition of the planning proposal. However, it should be noted that on 30 September 2013 Council resolved to hold a Public Hearing into the making of draft SSLEP2013. In response, the Minister for Planning and Infrastructure established an Independent Review into the draft plan. This review provided a further opportunity for interested parties to make further submissions in relation to planning for the waterways.
Given that the Independent Review gave a further opportunity for consultation, the extent of community engagement for this Planning Proposal has been acceptable and well beyond statutory requirements.

In relation to concerns that residents will not be notified of developments, it is significant that neighbour notification requirements are prescribed under the Sutherland Shire Development Control Plan 2006 (SSDCP2006). These requirements however, do not apply to designated development, ‘Exempt Development’ or ‘Complying Development’.

Designated development will require public exhibition under the requirements of the Environmental Planning and Assessment Act 1979. Designated development includes all development involving the consent of Crown Lands (as owners of the waterways) and specifically includes marinas with more than 15 berths.

Under clause 1.19(6)(f) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, complying development must not be carried out on land in a foreshore area. This removes permissibility for complying development on foreshore land. A development application will be required for this work, and notification will be undertaken in accordance with the DCP provisions.

Issue (b) - Development Application DA13/0590 and Tom Uglys Marina
A number of submissions raise specific reference to the development application (DA13/0590) for the extension of Sylvania Marina, which was current at the time the planning proposal was exhibited. These submissions were generally from the Sylvania area near the existing marina, particularly Harrow Street, Tara Street, Koorooma Place, Clare Street and Florida Street. Submissions questioned the intent of the proposal and the expansion of W2 zoning to facilitate the expansion of Sylvania and Tom Uglys Marina. Submissions raised concern as to potential fire hazards from increased numbers of boats and fuel storage, questioned what safety precautions and procedures would be put in place, as well as impacts associated with scenic quality, water and noise pollution, loss of biodiversity and tidal flows.

With respect to the proposed relinquishing of swing moorings in the Georges River by Sylvania Marina, submissions questioned the validity of this commitment. Submissions are critical of this being described as a benefit as the swing mooring leases may be made available for other leaseholders. If this occurs there would be no freeing up of space within the waterways.

Response
Both Sylvania and Tom Uglys Marina operate as commercial marinas. Commercial marinas are currently permissible within zone 16 of SSLEP2006. This same level of permissibility is carried over into zone W2 under the planning proposal.

The application of zone W1 across all other areas removes this existing permissibility. This approach more appropriately protects localities in areas with more natural settings. This issue is more significant under SSLEP2013 than SSLEP2006 because the definition of marinas has been widened to encompass private facilities. Unlike the definition of marinas in SSLEP2006, the standard instrument definition of marina does not differentiate between commercial or private marina. This means that while the use is effectively carried over into W2 areas, there is an increase in the potential for an increase in marinas under the draft plan. Resident views in relation to Sylvania and Tom Uglys Marina are indicative of the issues that will be raised for new marinas made permissible under the draft Planning Proposal.

The claim that the planning proposal facilitates the expansion of Sylvania and Tom Uglys Marina is true. The increased application of zone W2 around these existing developments
does mean their expansion would be more readily obtainable. However, it must be noted that this is no different to existing permissibility under SSLEP2006.

The operation of swing mooring leases is governed by the RMS. This is not a matter that is relevant to the consideration of the Planning Proposal.

Issues made in relation to water and noise pollution are addressed as separate issues under (g) and (h) of this section respectively. Scenic quality is addressed under (e) while loss of biodiversity and impacts on tidal flows are addressed under (i).

Issue (c) - Objection to W1 and W2 objectives
Submissions received highlight concerns with changes to the land use table for zones W1 and W2. They also make particular reference to the objectives and standard definitions. One submission specifically notes that changes to the standard instrument definitions are being used as a secondary approach to allow greater development, rather than rezoning W1 areas to W2.

Response
The land use definitions applied to both zones W1 and W2 are prescribed by the Standard Instrument Order 2006 (the Order). The definitions cannot be changed. Council has, however, added mooring pens and boatsheds as being permissible in both the W1 and W2 zones. This will allow for the construction of boatsheds and mooring pens in the waterways and on reclaimed land. This was to be prohibited in the originally exhibited version of DSSLEP2013, and is currently prohibited under SSLEP2006.

A mooring pen means the arrangement of freestanding piles or other restraining devices designed or used for the purpose of berthing a vessel. Such “other restraining devises” can include dry dock technologies. It also must be remembered that boatsheds are currently confined to the land based part of a site. These are significant changes being introduced by the draft plan which will change the land water interface making it more urban in character and will detract from its scenic value and natural qualities. The cumulative impact of such structures may erode the scenic quality of the Shire’s waterways and negatively impact on the environmental health of waterways.

As originally exhibited, the construction of the land use tables for the W1 Natural Waterways and W2 Recreational Waterways worked with additional permitted use provisions to allow mooring pens in specified areas where they could be reasonably accommodated. This is considered to be a more appropriate strategy that better balances competing objectives for waterways because it better protects the scenic quality of the most sensitive foreshore areas of Sutherland Shire from the cumulative impacts of development.

Issue (d) - Loss of Scenic Quality
Many submissions saw the Planning Proposal as facilitating the degradation of the scenic quality of the waterways and foreshore areas. Submissions noted the addition of mooring pens, marinas, boatsheds, wharves, jetties, pontoons and an increasing number of boats as the major cause of this loss of scenic quality.

Submissions noted that the increased development opportunities of W2 rezoning would be damaging to the scenic quality and would reverse years of policy that sought to protect the natural characteristics of the waterways. These submissions also found the original approach to W1 zoning under the draft Plan as more securely protecting the ecological and scenic value of the waterways.

Again, a number of submissions that raised this issue were from Harrow Street, Clare Street and Koorooma Place Sylvania who noted the W2 rezoning as having a dramatic impact on residents of these specific streets. One submission stated that any increase in visual
obstruction would hurt eco-tourism operators or future operators.

**Response**

Scenic quality concerns are considered warranted. A greater number of boats on the waterway, proliferation of private marinas, increased use of dry dock technologies, boatsheds within the waterways themselves as well as more intensive foreshore development will increase visual clutter and impact upon on existing views and vistas from both private property and public vantage points. Of particular concern is the permissibility of mooring pens, which allow the mooring of individual boats in fixed positions. This permissibility is dramatically increased with mooring pens being included as a permissible use in W1 and the expansion of zone W2. Because the positions of vessels are fixed, far greater density of vessels can be achieved when compared to the use of swing moorings. Fixed moorings also have more significant environmental impacts due to overshadowing of the riverbed.

A proliferation of boats will detract from the scenic quality of waterways as they will become more cluttered. Views from private dwellings will be diminished if large expanses of open water are taken up with boat storage. It should also be noted that residents do not have any rights to control what happens on the water in front of their properties. Many waterfront properties have fairly small frontages to the waterway itself. Every property cannot accommodate a boat directly adjacent to it. Where residents have particularly large boats or multiple vessels, it is highly likely that they will seek to lease water directly in front of neighbour’s properties, impeding their neighbour’s views and their ability to access the waterway for recreational use.

In some localities where water levels are shallow, the minimum water depth required for mooring facilities can be achieved only by locating the mooring pen some distance from the shoreline. However, such design solutions not only create additional navigation obstructions, but will further diminish the scenic qualities of the waterways.

It is important that Council have regard to the cumulative impact of development to be permitted under the draft plan. The land water interface is where the potential impacts of new development are greatest because it can be viewed from so many places. The draft plan as exhibited allows for foreshore houses to be higher at 9m, potentially having 3 storeys, with significantly increased floor space ratios and reduced landscaped area. These changes combined with the changes to permissibility in the waterways will significantly change the visual qualities of the waterways, eroding natural qualities and resulting in a more urban setting. This represents a dramatic policy shift for Council and a departure of the policy approach of the last 30 years which was based on maintaining and restoring the natural qualities of the waterways. Council’s existing approach has served the Shire well. The scenic value of the waterways has been strengthened over time due to a strong planning framework and consistent decision making. The existing quality of the waterways is the legacy of this commitment. The Planning Proposal should not jeopardise this legacy.

**Issue (e) - Heritage**

A number of submissions noted impacts on heritage as a result of the planning proposal, particularly if public access (land and water) to heritage areas or buildings becomes difficult. Concern is also raised that the natural integrity of the Shire’s foreshores will be eroded. This will threaten the undisturbed context of many waterfront archaeological sites (protected by the foreshore building line).

Concern was also raised that the submerged archaeological heritage of the Georges River and the Shire’s bays in the inter-tidal zone will be threatened by dredging and pile driving for moorings and boat access.

In particular, one submission from Dolans Bay made reference to a 20m buffer zone being
applied to the Royal Motor Yacht Club that will block neighbouring heritage boatshed water access. This same submission noted that slipway access to heritage boatsheds should be granted a special purpose heritage zoning and their P.O. / lease area be extended to the centre of the waterway.

Response
Increased development potential in the waterways and foreshore zone will place additional pressure on heritage items and archaeological items. Each case must be judged on its merits and the heritage provisions at development assessment stage; however, it is accepted that it is harder to get good heritage outcomes as density increases.

The concern that the Royal Motor Yacht Club has restricted access to heritage listed boatsheds draws attention to the flow on consequences of accommodating more vessels on the waterways, particularly in fixed positions. The draft LEP cannot do anything to preserve assess for vessels to boatsheds.

Issue (f) - Water Pollution
Submissions noted potential increases in water pollution as a result of increased development and commercial practices as well as due to an increased number of vessels on the waterways. Specifically submissions noted increased water acidity and sulphation from both dissolved CO$_2$ and sulphur dioxide sourcing from fuels vented underwater in exhaust silence; increased sewerage pollution from leaking tank valves; increased algae and bacteria counts; increased oil pollution; plastic particles from marine hull paints; illegal dumping of sewage; as well as increased debris and rubbish.

Submissions noted that increases in opportunities for mooring pens and marinas would allow for dry dock facilities that do not readily have the ability to capture pollutants.

Response
Many of the risks in relation to water pollution raised by residents are warranted, however they are also subjective in nature. Submissions raised these issues without evidence to demonstrate the impacts or likely occurrence, either existing or as an outcome of the planning proposal. Without any such documentation to support these submissions Council is unable to factually develop any conclusive evidence to support these claims.

Concerns relating to the commercial use of the foreshore and the inappropriate management of waste associated with these uses are of concern. However, as part of Council’s commitment to the environment and waste management, audits of such commercial facilities as marinas are undertaken. Further, if residents have concern as to the mismanagement of existing facilities there are processes in which they may make these enquiries for investigation, both with Council and the Environmental Protection Authority (EPA).

The concerns that greater opportunities for dry docking attached to private mooring pens would allow the cleaning and maintenance of vessels by private owners is a valid concern. If used in this way there would be increased opportunities for pollutants to enter the waterway unchecked and unnoticed by neighbouring residents and Council.

Issue (g) - Noise Pollution
A number of submissions discussed potential noise pollution impacts as a result of increased use of the waterways and development along the foreshore as a result of the planning proposal. These submissions noted increased noise from diesel vessels; commercial development, including marinas and activities associated with their workshops and operational practices.

Again, submissions (particularly those from Sylvania) drew comparisons with existing noise
pollution suffered from both Sylvania and Tom Uglys Marina. This included noise from public access, workshop, commercial operations as well as vessel use (i.e. parties/music). One submission also raised these same issues based on experiences from the Royal Motor Yacht Club marina, Dolans Bay.

Response
It is an expectation that noise will emanate from the use of the waterway. Any increases in waterway use and foreshore development particularly that of a commercial nature would see potential increases in noise and activity. Concerns relating to noise pollution and the inappropriate use of approved commercial or private uses are of concern. However, if residents have concern as to the mismanagement of existing facilities and as an outcome noise pollution, there are processes in which they may make these enquiries for investigation, both with Council, the Police and the Environmental Protection Authority (EPA).

Issue (h) - Other Environmental concerns
The majority of submissions that raised environmental issues were from Georges River residents. Many of these submissions linked environmental damage to Sylvania Marina and Tom Uglys Marina. However, Port Hacking residents also raised a number of environmental concerns brought about by the potential increase in waterway activity and foreshore development the proposal would deliver. These concerns related to such things as wave wash erosion; increased siltation; impacts upon existing seagrass beds from siltation and overshadowing; tidal flows and flushing of intertidal areas; litter and rubbish; loss of fish nurseries and fish stocks as well as damage to rocky outcrops and intertidal platforms.

Response
Community concerns that increased development, particularly those that involve fixed moorings, would lead to increased levels of environmental degradation are plausible. There are significant environmental and planning issues particularly associated with the permanent mooring of vessels in either mooring pens or marinas. Marinas and mooring pens can result in the overshadowing of sea grasses which leads to the loss of fish nurseries, disturbance of sediments in shallow water, severance of the intertidal zone which results in the public being restricted from accessing public land which overall lessens the recreational values of waterways. Furthermore, moorings and marinas require a minimum water depth to allow the vessel to access either the fender piles or dry dock technologies. In areas of shallow water this results in jetties of excessive length which exacerbate visual impacts and the extent of obstruction to movement in the public space. Additionally, moorings in shallow water can result in the disturbance of sediment on the riverbed, which settles over sea grasses and other aquatic organisms.

It was consideration of theses impacts that informed staff recommendations on the application of the E1, W1 and W2 zones.
Issue (i) - Congestion/ Navigation Issue
Submissions raised potential congestion and navigation issues as a result of the Planning Proposal. Submissions saw increases in development on the waterways and in foreshore areas as cause for concern particularly due to increased vessels and permanent mooring structures, in addition to swing moorings. In particular, it was noted that the proposal would see navigation channels becoming subject to a private competitive free-for-all; over length vessels berthed in marinas would project into open navigation channels, and there would be increased disputes over access to waterways and berthing areas. Submission also noted that proposed changes would reduce recreational space due to overcrowding and watercraft traffic activity.

Response
The increased proportion of fixed vessels in the waterway may see a cumulative cluttering of waterways. This could also lessen the recreational value of the waterways, making it harder for people to negotiate safe passage - particularly young people learning aquatic skills. Fixed structures may restrict navigation in the waterways, particularly in areas where there is limited space for navigation purposes e.g. narrow bays, the heads of bays etc.

Under the original draft Plan, these issues were given careful consideration. Care was taken with the mapping to ensure that fixed structures are not permissible in the navigation channels, in narrow bays or generally in the heads of bays due to the potential for creating obstructions to navigation. This same approach is not reflected in the Planning Proposal which would leave these issues to be determined on merit at development application stage. The recommendations to this report do, however, go some away to addressing this issue.

Issue (j) - Traffic and Parking
A significant number of submissions raised concern in relation to traffic and parking issues associated with waterway development. These submissions generally reflect impacts associated with the operation of commercial marinas. These included early morning and late night access; limited parking facilities for vehicles and boat trailers; traffic congestion caused in nearby narrow streets due to parking.
Residents in the Sylvania area, particularly Harrow Street and those surrounding, discussed at length the traffic concerns they had and those already experienced due to the operation of Sylvania and Tom Ugly’s Marinas. In addition to the abovementioned issues, these submissions also raised concern as to access for emergency service vehicles where narrow streets were already congested with traffic and parked cars.

**Response**

Many of the submissions that raised this issue relate their concerns back to the expansion of existing commercial marinas. This was the case for those submissions from Sylvania who objected to the current development application for the expansion of Sylvania Marina and potential future expansion of Tom Ugly’s Marina. However, this issue was not isolated to this area west of Tom Ugly’s Bridge. Applications to expand existing marinas must be assessed on merit. While the draft plan makes expansion permissible, this is consistent with SSLEP2006. It is highly unlikely that a new commercial marina at a virgin site would be developed in the Shire’s waterways due to the environmental impacts of such development, traffic and access issues and land costs.

**Issue (k) - Public Access**

Concern was raised in a number of submissions that the W2 rezoning would reduce reasonable public access to sandy beaches and rock platforms.

**Response**

Residents’ concern relating to potential reduction in public access to intertidal zones is warranted. With the expansion of W2 zoning and the inclusion of mooring pens and boatsheds into W1, there is an increased opportunity for development to be constructed over intertidal areas. Such development could be below the Mean High Water Mark (MHWM). Through the cumulative impacts of incremental development the natural character and openness of the foreshore area can be lost, impacting upon residents’ ability to readily access this area.

Development such as marinas, mooring pens and boatsheds are permanent structures that when attached to the land can sever the intertidal zone. They are therefore not appropriate in areas where the public has reasonable access to the intertidal zone to enjoy sandy beaches or rock platforms which can be used by residents for recreation or to gain access to the water. Such outcomes are not in the public interest.
Issue (I) - Overdevelopment
Submissions raised concerns that the policy approach pursued by the Planning Proposal seeks to encourage overdevelopment of the Shire’s waterways. This is reflected in the widening of permissible development to include mooring pens and boatshed into zone W1 and the increased permissibility of private marinas due to the expansion of zone W2. Specifically, submissions noted that marinas and other commercial activities will be able to legally establish in areas that up until now have been protected from them and that their expansion would become legal, irrespective of residents’ objections.

Residents see increased development on the waterways and foreshore areas as leading to the gradual deterioration of the Shire’s waterway. Residents also noted their concern that the changes enabling ‘overdevelopment’ would destroy the existing character of these waterways and upset the balance between scenic, environmental and recreational values. Specific reference in this regard was made to Gunnamatta Bay, Yowie Bay and the Georges River. It was noted that the greater application of W2 zoning would generate pro-development attitudes and activities by foreshore landowners.

A submission received by Connells Point Sailing Club highlighted a concern that more intensive development along the Georges River will have a detrimental impact on the activities of Connells Point Sailing Club, which include the racing of small sailing dinghies on courses registered with the RMS. They have noted that these courses extend into and along the length of the area on the southern shore of the Georges River proposed to be rezoned W2. This submission also noted that the Mayoral Minute defines the area between Tom Uglys Bridge and Kangaroo Point as being suitable for more intensive development.

Response
Under SSLEP2006 a private marina is prohibited, however commercial marinas are permissible, including applications for the expansion of existing marinas. If private and public marinas (as defined by the Standard Instrument Order) are widely permissible under
SSLEP2013 it is likely that there will be change in the form and intensity of development in those waterway areas where zone W2 is proposed. It would allow waterfront landowners to permanently moor multiple boats (their own vessel or others boats) near their dwellings. The definition would also allow groups of landowners to propose joint marinas accommodating many boats across multiple frontages. This is particularly likely where a number of battleaxe lots share limited water access or where multi-dwelling house development are located on foreshore lots. An example of which is shown in image 10 below. However, these lots benefit from their wide lot width at the land water interface. The visual impact would also be far more significant if this form of development was repeated along the waterfront.

Many large boats are wider than some lots of land. Allowing the permanent berthing of multiple vessels adjacent to narrow lots will lead to marinas that are sited in front of neighbouring lots and houses. It needs to be remembered that foreshore owners do not have any rights to the water directly adjoining their land. This land may be leased to any party for permissible development. Such outcomes will affect views currently enjoyed by foreshore properties.

![Figure 10 - Example of private marina](image)

The inclusion of boatsheds in a waterways zone is also a major policy change as previous and current planning instruments restrict the permissibility of boatsheds to the land above the mean high water mark. Under the planning proposal, the W1 and W2 zone facilitates boatsheds being sited over the water and on reclaimed land, resulting in far greater visual and environmental impacts.

Under SSLEP2006 ‘berthing areas’ are permissible with development consent. However, very few applications have been approved by the Council and/or the Land and Environment Court, and these have been at Sylvania Waters (maintained as proposed W2 zone) and at Holt Road, Taren Point where there are already a number of existing facilities. Reasons for the refusal of applications have generally been the excessive length of jetties needed to reach deep water; encroachment on the intertidal zone; and interference with the adjoining neighbours waterfront access. The original approach to prohibiting mooring pens in the W1 zone therefore reflected the reality that in most locations applications for these structures fail a test of merit.
Furthermore, there are significant environmental and planning issues associated with the permanent mooring of vessels in either mooring pens or marinas. Marinas, mooring pens, and now the inclusion of boatsheds in the waterways, can result in the overshadowing of sea grasses which leads to the loss of fish nurseries, disturbance in sediments in shallow water, severance of the intertidal zone which results in the public be restricted from accessing public land, destruction of rocky outcrops, and obstruction of navigation routes which lessens the recreational values of waterways. Consideration of these impacts informed the application of the E1, W1 and W2 zones to the waterways as presented to Council by staff under the originally exhibited DSSLEP2013.

It is reasonable to expect that increased permissibility will result in increased development within the W1 and W2 zones. For W1 this will see increased development of boatshed and mooring pens, while in zone W2, it may result in the increased development of private marinas. This no doubt would see increased opportunities for perceptions of overdevelopment by the general public.

![Figure 11 - Georges River, natural foreshore](image)

**Support for W2 Rezoning**
A number of submissions supported the W2 rezoning and expanded permissibility of uses within the W1 zone. These submissions noted that the proposed amendments will make a boatshed permissible in the most appropriate location on a site. Rezoning areas of the Georges River, specifically Kangaroo Point, to W1 would be a restriction on the capacity of residents in that area to fully enjoy their properties.

**Response**
There are several waterfront lots that include within their property boundaries portions of reclaimed land currently zoned waterways. The rezoning of W1 to W2 and the introduction of boatsheds and mooring pens to W1 will benefit these landowners as the construction of such structures can be carried out on this reclaimed land (below the MHW) under the draft plan. In some cases the siting of a boatshed below the MWHM on reclaimed land may be a more appropriate position. However, in other locations it will obstruct the views enjoyed by neighbours.

Boat ownership has been increasing in the Shire over time, with the trend towards larger, longer boats. This places questions on the overall purpose and the demand for boatsheds as larger boats cannot be accommodated within these structures.
Waterfront owners should be aware that the planning proposal seeks to modify development permissibility on the waterways and not on privately owned land. For many foreshore properties, there is an intrinsic link between the waterway and their land, however, their right to use the waterway, and “fully enjoy their properties” as one submission has stated, should not be at the expense of the whole community. Waterfront landowners do not own the waterway. The waterway is public land. Waterfront landowner’s opportunities to use the land water interface should not be at the expense of any other resident or user of the waterway.

Specific Site Requests
Two submissions were received that requested specific amendment to the plan for their individual lots (Attunga Rd properties). These included a review of the foreshore building line (FBL) and a redefinition of the Mean High Water Mark (MHWM) as it relates to a portion of reclaimed land zoned waterways.

Response
These submissions were considered to have no relevance to this planning proposal because it relates only to the water zones. However, to ensure that each submission is given full consideration, they have been incorporated into submissions received for the re-exhibition of the DSSLEP 2013 (LEP2).

Response to Issues raised in Submissions
The submissions received highlight the importance of finding a balance between allowing for the reasonable development of land and preserving the environmental and scenic qualities of Sutherland Shire. Sutherland Shire Council has maintained a strong planning framework over a forty year period that has been aimed at protecting the scenic qualities of the Shire’s waterways and enhancing and restoring their natural qualities. The strategy has been successful. Council’s consistent hand has given a valued natural legacy to Shire residents. The Shire’s waterways are part of the sense of place that helps define the Shire. The waterways are enjoyed by all residents, not just those who enjoy direct access to the land water interface.

It is acknowledged that Council wants to shift the balance of its planning framework so that residents can realise greater development potential from their land. This will express itself in larger houses with less landscaping to offset building bulk. These larger scale dwellings will be most obvious around the waterways because views are gained from many angles across the water. Council needs to be very careful that it does not take shift the balance too far. The Planning Proposal significantly adds to the range and scale of structures that can be constructed in the waterways which will be read in conjunction with the larger dwellings. The cumulative impact of such development has the potential to erode the scenic qualities of the Shire’s waterways. As such it is considered that the strategy embodied in the planning proposal will result in poor planning outcomes.

This approach makes a significant departure from the application of the W1 and W2 zones as initially exhibited which was informed by analysis of the character of each bay. In the more urban contexts, it was concluded that more intensive development of the waterway is appropriate, while in very natural waterways, even limited forms of development can have significant impacts and therefore development potential in these areas is more limited. This approach meant that all the waterways were zoned W1, except for existing commercial marinas which were zoned W2. Mooring pens were made permissible in Gunnamatta Bay, Burraneer Bay, Yowie Bay and part Kangaroo Point as an additional permitted use.

Council is provided with limited opportunity for zoning under the standard instrument format as it applies to the Shire’s waterways. The use of zones W1 and W2 should act to achieve two distinctive outcomes in line with their objectives. The planning proposal as exhibited, fails to make this differentiation.
In order to achieve a balance between meeting the increased demand for development on the waterways and protecting the scenic, environmental and recreation values, a revised approach is recommended as follows:

- The W2 Recreational Waterways zone is confined to the more urban waterways of Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay, Sylvania Waters and parts of Georges River.
- The application of zone W2 Recreational Waterways at Yowie Bay be reduced so that it no longer encompasses the area adjacent to the foreshore reserve at Willarong Point zoned E2 Environmental Conservation because low intensity development is appropriate given the scenic quality of the adjacent land.
- The application of W2 Recreational Waterways zoning along the Georges River between Madeira Street and north-west point of Kangaroo Point be removed and replaced with W1 Natural Waterways. This would better protect the natural cliff face and bushland at the land water interface which make a significant contribution to the scenic quality of this section of Georges River.
- Boatsheds and mooring pens should be removed as a permissible use from W1 Natural Waterways zone because of the potential for cumulative impacts on scenic quality and the environmental health of the waterways resulting from these forms of development.

This approach would allow permanent mooring, including mooring pens and marinas in the six (6) specified areas. These areas are already characterised by a significant numbers of swing moorings, jetties, ramps, pontoons and some berthing areas at the land/water interface. Despite the permissibility, it is highly unlikely that a new commercial marina will be approved in these areas; however, opportunities for private boat mooring may reasonably exist.

This approach would also see the removal of boatsheds from waterways zoned W1 and instead require their development on land above the Mean High Water Mark (MHWM). The development of jetties, ramps, pontoons and mooring pens would still be permissible. This approach is deemed more appropriate to foreshore areas in terms of preventing the destruction of the intertidal zone and ensuring it remains predominately free from development, in line with the objectives of the W1 Natural Waterways zone.

If Council accepts the removal of mooring pens and boatshed from zone W1, the proposed changes to the objectives for W1 are no longer necessary. The restoration of W1 objectives back to that originally exhibited under draft Plan pursues an approach to W1 that ensures the waterways natural qualities are given greater priority.

The amendments to objectives for zone W2 are considered acceptable given the permissibility of mooring pens in this zone. Although it would be desirable to also remove boatsheds from the W2 zone, to prohibit them in the waterways as is currently the case, this cannot be achieved as ‘boatsheds’ must be included in the W2 zone as either ‘permissible with consent’ or ‘permissible without consent’.

**Conclusion**

The key challenge for Council is to set a policy approach in its LEP that balances the insatiable demand for boat storage and recreational use of the waterways with the protection of the waterways scenic, environmental and recreational values. Failure to get the balance right will set in motion the gradual deterioration of the Shire’s waterways. Through the cumulative impacts of incremental development, the openness and natural state of the waterways has the potential to be lost. This has the potential to impact on residents’ ability to readily access the water and foreshore for recreation, eroding the scenic and environmental health of the waterways and obscuring views currently enjoyed by residents.
and users of the waterway.

In pursuing the recommended approach, Council must be aware that this will allow increased opportunities for private marinas and mooring pen development within zone W2 areas. However, with the removal of boatsheds and mooring pens from W1 as well as amendments to the application of W2 zoning, the recommended approach is considered to provide for a more balanced outcome in terms of meeting increased demand for development and recreational opportunities of the waterway whilst preserving the natural qualities that characterise large parts of the Shire’s waterways.

**Independent Review Recommendation**

**Recommendation 17:**

Sutherland owes much of its unique character to its waterways and any changes affecting those waterways needs to be very carefully managed. When the Council considers the responses to the exhibition of the Waterways Planning Proposal, it should reconsider its earlier position and find a better compromise between its desire to eas way for waterways development, while still preserving the original objectives of the waterways zoning. The following changes to the Waterways Planning Proposal (some of which return to the original version contained in LEP1) should be considered.

- Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay and Sylvania Water and parts of the Georges River should remain zoned W2 as exhibited in order to facilitate an increased range of development. These localities are more urban in character and can better absorb more intense development.
- The application of the W2 zone at Yowie Bay should be reduced so that it does not encompass the area of E2 Environmental Conservation foreshore at Willarong Point.
- The application of the W2 zone along the Georges River between Madeira Street and the north-west point of Kangaroo Point should be replaced with W1 zoning.
- Boatsheds and mooring pens should be removed as permissible uses from the W2 zone.
- Boatsheds should be removed as a permissible use from the W2 zone.
- The objectives of the W1 zone should be restored to the original ones in the first version of draft LEP to reflect the name and purpose of this zone.
- The Planning Proposal should be re-integrated with LEP2, as the waterways area is too significant a part of the Shire to be considered separately.

The above approach would allow permanent mooring pens and marinas in seven specific areas. These areas are strongly characterised by significant numbers of swing moorings, jetties, ramps, pontoons and some berthing areas at the land/water interface as well as commercial marinas. The approach would also see the removal of boatsheds as a permissible use in waterways and require their development on land above the Mean High Water Mark. The development of jetties, ramps and pontoons would still be permissible in zones W1 and W2, while mooring pens would be permissible in the W2 zones only. This approach would make it more likely that the tidal foreshore area remains predominantly free of development, in line with the objectives of the W1 zone.

**Implications of the Independent Review’s recommendation**

The Independent Review gave specific attention to the Waterways Planning Proposal. The conclusions of the Review are copied above. Essentially Recommendation 17 requires Council to reconsider the following matters:
· The application of the W2 to Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay and Sylvania Waters and parts of the Georges River.

· The permissibility of boatsheds and mooring pens within the W1 zone.

· The permissibility of boatsheds within the W2 zone. The Panel has recommended that boatsheds be removed from the permissible uses in the W2 zone. However, this cannot be acted upon, as the Standard Instrument Template requires boatsheds to be permissible (either with or without consent) in the zone.

· The objectives of the W1 zone.

· The integration of the Waterways Planning Proposal process with the finalisation of draft SSLEP2013.

The Independent Review has considered written and oral submission on this issue. The review has supported the logic of the officers’ recommended approach to the waterways. It has concluded that “Sutherland owes much of its unique character to its waterways and any changes affecting those waterways needs to be very carefully managed.”

The Review finds that the exhibited Planning Proposal threatens the scenic and environmental qualities of the waterways. Specifically it states that “a proliferation of boats detracts from the scenic quality of waterways as they become cluttered. Views from private properties are diminished if large expanses of open water are taken up with boat storage. The cumulative impact of the cluttering of the waterways will also result in a lessening of their recreational value, making it harder for people to navigate safe passage”.

The Review recommends Council “should reconsider its earlier position and find a better compromise between its desire to ease the way for waterways development, while still preserving the original objectives of the waterways zoning”.

The application of the W1 and W2 zones is the basis of the Planning Proposal. There should be a difference in character and permissible uses in areas designated W1 and those which are designated W2. W1 Natural Waterways should be used for areas where the natural qualities of the waterway are the basis of its scenic and environmental character. In comparison the W2 Recreational Waterways should be used where boating activities dominate the character of the bay.

There also needs to be a distinction in the application of the two zones and of the uses permissible in each zone. The essential distinction between the two waterway zones is that the W2 zone allows permanent mooring in mooring pens and marinas, while these are prohibited in the W1 zone. Traditional swing moorings are permitted in both.

In order to get a better balance between meeting the increased demand for development on the waterways and protecting the scenic, environmental and recreation values, it is recommended that the W2 zone be used to differentiate the bays and stretches of river that have a more urban character. Such localities can better absorb boat storage and waterfront structures because scenic quality is based on the relationship of houses to the waterways. They generally have narrower foreshore building lines and as a result do not have a strong natural character. This approach represents a significant departure from the more conservative approach exhibited in LEP1 and responds to Council’s desire to allow residents to realise greater development potential from their land.

To implement this approach requires the following changes:

· The W2 Recreational Waterways zone is confined to the more urban waterways of
Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay, Sylvania Waters and parts of Georges River.

- The application of zone W2 Recreational Waterways at Yowie Bay be reduced so that it no longer encompasses the area adjacent to the foreshore reserve at Willarong Point zoned E2 Environmental Conservation because low intensity development is appropriate given the scenic quality of the adjacent land.
- The application of W2 Recreational Waterways zoning along the Georges River between Madeira Street and north-west point of Kangaroo Point be removed and replaced with W1 Natural Waterways. This would better protect the natural cliff face and bushland at the land water interface which make a significant contribution to the scenic quality of this section of Georges River.

In order to achieve a clear distinction between the W1 and W2 zones it is also recommended that boatsheds and mooring pens should be removed as a permissible use from W1 Natural Waterways zone. Both forms of development have the potential for significant cumulative impacts on scenic quality and the environmental health of the waterways.

The Review has found that: ‘There are significant environmental and planning issues associated with the permanent mooring of vessels. Marinas and mooring pens can result in overshadowing of sea grasses which leads to the loss of fish nurseries, disturbance in sediments in shallow water, severance of the intertidal zone which results in the public being restricted from accessing public land, destruction of rocky outcrops and the obstruction of navigation routes.’ As such mooring pens should not be a permissible use in the bays where its defining feature is its natural and scenic quality.

It is also recommended that boatsheds be prohibited in the W1 zone because they will detract from scenic and environmental qualities of the bays and are better accommodated on the land above the MHWM as is the case under the current LEP. The development of jetties, ramps, pontoons and swing moorings would still be permissible. This approach is deemed more appropriate to foreshore areas in terms of preventing the destruction of the intertidal zone and ensuring it remains predominately free from development, in line with the objectives of the W1 Natural Waterways zone.

The recommended approach would allow permanent mooring, including mooring pens and marinas in the six (6) specified areas. These areas are already characterised by a significant numbers of swing moorings, jetties, ramps, pontoons and some berthing areas at the land/water interface. Despite the permissibility, it is highly unlikely that a new commercial marina will be approved in these areas; however, opportunities for smaller private boat mooring may reasonably exist.

If Council accepts the removal of mooring pens and boatshed from zone W1, the proposed changes to the objectives for W1 are no longer necessary. The restoration of W1 objectives back to that originally exhibited under the draft LEP pursues an approach to W1 that ensures the waterways natural qualities are given greater priority.

The amendments to objectives for zone W2 are considered acceptable given the permissibility of mooring pens in this zone. Although it would be desirable to also remove boatsheds from the W2 zone, to prohibit them in the waterways as is currently the situation, this cannot be achieved as ‘boatsheds’ must be included in the W2 zone as either ‘permissible with consent’ or ‘permissible without consent’.
That the planning proposal be amended in response to the submissions received as follows:

1. That Gunnamatta Bay, Burraneer Bay, Dolans Bay, Yowie Bay, Sylvania Waters and parts of Georges River remain zone W2 Recreational Waterways.

2. That the application of zone W2 Recreational Waterways at Yowie Bay be reduced so that it no longer adjoins the area of E2 Environmental Conservation foreshore at Willarong point.

3. That the application of W2 Recreational Waterways zoning along the Georges River between Madeira Street and north-west point of Kangaroo Point be removed and replaced with W1 Natural Waterways.

4. That ‘boat sheds’ and ‘mooring pens’ be removed as permissible uses from W1 Natural Waterways zone.

5. That Council amend the objectives of the W1 zone to delete proposed amendments as per the planning proposal and restore objectives as per the original exhibition of the draft Plan (DSSLEP2013).

6. That the Waterways Planning Proposal - waterways rezoning (Amend Draft Sutherland Shire Local Environmental Plan 2013) be re-integrated with the DSSLEP2013.

COUNCIL RESOLUTION

That the report “Results of Public Exhibition - Planning Proposal - Waterways Rezoning (Amending Draft Sutherland Shire Local Environmental Plan 2013)” be received and noted. (The Recommendations from this report were considered in CCL007-15).

(The Mayor, Councillor Simpson / Councillor Schreiber)