

## Planning Services

IRF19/3253

### Gateway determination report

<b>LGA</b>	Sutherland Shire
<b>PPA</b>	Sutherland Shire Council
<b>NAME</b>	Minor Amendments: Exempt and Complying Development 2018
<b>NUMBER</b>	PP_2019_SUTHE_003_00
<b>LEP TO BE AMENDED</b>	Sutherland Shire LEP 2015
<b>ADDRESS</b>	Not applicable
<b>DESCRIPTION</b>	Not applicable
<b>RECEIVED</b>	01 May 2019
<b>FILE NO.</b>	IRF19/1922
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## INTRODUCTION

### Description of planning proposal

The planning proposal seeks to amend the Sutherland Shire Local Environmental Plan (LEP) 2015 to address a range of issues identified in the operation of the local exempt and complying development provisions of the LEP. This includes the correction of issues in Schedule 3 of the LEP relating to complying development in Zone E4 Environmental Living and to facilitate boundary fences and pool fences on land in Zone E4 as exempt development in Schedule 2, which are equivalent to the development standards for fences under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP).

### Site description

The planning proposal applies to land within the Sutherland Shire local government area (LGA) that is zoned E4 Environmental Living.

## Existing planning controls

A description of the current planning controls and how these relate to the subject planning proposal are provided in Table 1.

**Table 1 Sutherland Shire LEP 2015 provisions and current planning controls**

LEP Provision	Current planning controls
<b>Schedule 2 – Exempt Development</b>	
	Boundary fences and swimming pool fences are not listed as exempt development on land zoned E4 in the Sutherland Shire LEP 2015.
<b>Schedule 3 – Complying Development</b>	
Part 1 Types of development Division 1 Development that is complying development under this Part Part 4 Certain ancillary development (1)(j)	Section 4(1)(j) of Schedule 3 of the Sutherland Shire LEP 2015 references Clause 6.4 Stormwater management. Reference should be made to Clause 6.1 Acid sulfate soils.
Part 1 Types of development Division 1 Development that is complying development under this Part Part 4 Certain ancillary development (1)	Garages and sheds are not listed as ancillary development to a dwelling house under subsection 4(1) of Schedule 3 of the Sutherland Shire LEP 2015.
Part 1 Types of development Division 1 Development that is complying development under this Part Part 5 General exclusions from this part	Part 5 of Schedule 3 of the Sutherland Shire LEP 2015 states: <i>The following development is not development specified for this Part:</i> <i>(a) the erection of a roof terrace on the topmost roof of an existing or new dwelling house or an existing or new outbuilding</i> The above wording is considered ambiguous as it implies that outbuildings are not permitted.
Part 1 Types of development Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development Subsection 7 Setbacks 7(3)	7(3) states: <i>A new dwelling house, or an existing dwelling house that has been altered or added to, must not require a cut or fill that extends further than 900mm beyond the dwelling footprint.</i> 8(3) states: <i>Fill, for the purpose of erecting a new dwelling house, must be contained within the footprint of the dwelling house.</i> The above two clauses result in conflicting controls.
Part 1 Types of development Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development Subsection 7 Setbacks	7(3) states: <i>A new dwelling house, or an existing dwelling house that has been altered or added to, must not require a cut or fill that extends further than 900mm beyond the dwelling footprint.</i> 8(3) states: <i>Fill, for the purpose of erecting a new dwelling house, must be contained within the footprint of the dwelling house.</i> The above two clauses result in conflicting controls.

LEP Provision	Current planning controls
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>8 Earthworks and drainage</p>	<p><b>8 Earthworks and drainage</b></p> <p><i>(1) A lot on which development is carried out must have a finished ground floor level that is within 0.6m of the existing ground level.</i></p> <p><i>(2) Natural rock outcrops greater than 5m<sup>2</sup> in area must be retained on any lot on which development is carried out.</i></p> <p><i>(3) Fill, for the purpose of erecting a new dwelling house, must be contained within the footprint of the dwelling house.</i></p> <p>The Codes SEPP provides standards for earthworks, retaining walls and structural supports. These standards are not reflected in the above clause of the Sutherland Shire LEP 2015.</p>
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>8 Earthworks and drainage</p> <p>8 Earthworks, retaining walls and structural support (1)</p>	<p>Subsection 8(1) refers to a finished ground floor level (internal) but does not provide controls for finished ground level external to the building.</p>
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>8 Earthworks and drainage</p> <p>8 Earthworks, retaining walls and structural support</p>	<p>A number of issues have been identified with the controls under this part including:</p> <p>a) They do not impose any limits on intermediate cut and fill depths. This creates a risk that the controls could permit extensive removal of existing soil on the site, provided it is replaced by other fill to establish a finished ground level.</p> <p>b) They limit the extent of fill to the footprint of a new dwelling house but do not address fill associated with ancillary development. the Codes SEPP contains a control which limits the extent of filling of a site which should be used as a model at Part 2, Division 1, Subdivision 15 – 2.30 (g).</p> <p>c) There are no controls on the quality of fill which can be imported. This poses a potential risk that contaminated soils could be used which would pose a risk to human health and the environment.</p> <p>d) At present the part has no controls to limit cumulative earthworks and prevent the use of filling to exceed height limits on other development. Therefore, a control should be implemented which specifically addresses these matters. A suggested wording is provided below.</p> <p>e) Development standards are currently not specified for retaining walls and other types of structural supports.</p>

LEP Provision	Current planning controls
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>12 Additional development standards for bush fire prone land or bush interface property (4)</p>	<p>Swimming pools are not listed as a type of development that is exempt from the additional development standards for bush fire prone land or bush interface property.</p> <p>This results in the requirement for applications for swimming pools in bushfire prone areas to be accompanied by a bushfire consultant's risk assessment to establish that bushfire standards have been satisfied.</p>
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>26 Carports, gazebos, pergolas, decks and patios</p>	<p>The Complying Development provisions in schedule 3 allow the development of balconies, terraces and verandahs but do not provide any specific development standards.</p>
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>28 Swimming pools</p>	<p>The Complying Development provisions in schedule 3 allow the development of spa pools but do not provide any specific development standards.</p>
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p>	<p>The Complying Development provisions in schedule 3 allow the development of rainwater tanks but Division 2 does not provide any specific development standards.</p>
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p>	<p>Garages and sheds are not listed as ancillary development to a dwelling house under subsection 4(1) of Schedule 3 of the Sutherland Shire LEP 2015, as such, specific development standards are not provided in Division 2.</p>
<p>Part 2 Complying development certificate conditions</p> <p>Removal or pruning of trees or other protected vegetation</p> <p>(2)(a)</p>	<p>Removal or pruning of trees as complying development was intended to be limited to trees which meet specific standards and were subject to clause 5.9 of the LEP. The introduction of <i>State Environmental Planning Policy (Vegetation in non-rural areas) 2017</i> and the <i>Biodiversity Conservation Act 2016</i> saw the repeal of clause 5.9 without any change to this clause reference. The consequences for the power of the complying development provisions to remove or prune trees are not clear.</p>

### Land to which the planning proposal applies

The planning proposal applies to land zoned E4 Environmental Living within the Sutherland Shire LGA.

### Summary of recommendation

The preparation of the planning proposal is supported to proceed subject to conditions.

## PROPOSAL

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### Objectives or intended outcomes

The planning proposal seeks to amend the Sutherland Shire LEP 2015 to address a range of issues identified in the operation of the local exempt and complying development provisions of the plan (refer to Table 1). This includes the following correction of issues in Schedule 3 of the LEP relating to complying development in Zone E4 Environmental Living:

- Correct the reference in Clause 4 (1)(j) to refer to Clause 6.1 Acid sulfate soils.
- Replace a reference to repealed Clause 5.9 resulting from the introduction of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.
- Resolve the conflicting controls in clauses 7(3) and 8(3) for fill associated with a dwelling by deleting 7(3).
- There is a conflict between the general boundary setbacks and the specific boundary setbacks in various parts of Schedule 3. This is to be resolved by clarifying that the general setbacks only apply where specific setbacks have not been defined.
- Revise and rename section 8 to align the development standards for earthworks, retaining walls and structural supports with the Codes SEPP.
- Exempt swimming pools from the application of bushfire prone land controls.
- Expand Section 26 to apply development standards to balconies, terraces and verandahs.
- Expand section 28 to apply the controls to both swimming pools and spa pools.
- Apply the same development standards to rainwater tanks as would apply in Zone R2 under the Codes SEPP with flexibility to accommodate larger tanks where consistent with the requirements of bushfire advice.
- Facilitate sheds and detached garages as complying development ancillary to a dwelling house in line with the Codes SEPP.

The planning proposal also seeks to facilitate boundary fences and pool fences on land zoned E4 Environmental Living as exempt development in Schedule 2 of the LEP, to mirror the equivalent development standards for fences in the R2 Low Density Residential zone under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

### Explanation of provisions

Table 2 below provides an explanation of proposed provisions as they relate to Schedule 2 and Schedule 3 of the Sutherland Shire LEP 2015. An assessment of each proposed change to the planning control is also provided in Table 2.

**Table 2 LEP provisions, current and proposed planning controls and Department assessment**

<b>LEP Provision</b>	<b>Schedule 2 – Exempt Development</b>
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	Include boundary fences as exempt development with the same standards as boundary fences in R2 Low Density Residential under the Codes SEPP.
<b>Department assessment</b>	<p>Clause 2.35 of the Codes SEPP specify fences in various zones including environmental protection zones such as E4 Environmental Living, as exempt development.</p> <p>The development standards set out in Clause 2.36 of the Codes SEPP suit a rural character (i.e. be constructed using post and wire or post and rail) and are not suitable for the suburban lots zoned E4 Environment Living in the Sutherland Shire.</p> <p>This amended provision should proceed.</p>
<b>LEP Provision</b>	<b>Schedule 2 – Exempt Development</b>
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	Include swimming pool fences as exempt development. A development standard should be included to ensure they are not constructed of flammable materials in bushfire prone areas.
<b>Department assessment</b>	<p>There is no provision in the Codes SEPP which provides development standards in relation to pool fences on land zoned E4 Environmental Living.</p> <p>This amended provision should proceed.</p>

<b>LEP Provision</b>	<b>Schedule 3 – Complying Development</b> Part 1 Types of development Division 1 Development that is complying development under this Part Part 4 Certain ancillary development (1)(j)
<b>Current planning controls</b>	Section 4(1)(j) of Schedule 3 of the Sutherland Shire LEP 2015 references Clause 6.4 Stormwater management.
<b>Proposed planning controls</b>	Change reference from “clause 6.4” to “clause 6.1”
<b>Department assessment</b>	<p>The local complying development provisions for the E4 zone were drafted before the final LEP instrument had been prepared. Consequently, a minor clause reference was incorrectly numbered and now fails to operate correctly.</p> <p>This provision is intended to list swimming pools as ancillary development except where the development would trigger the Acid sulfate soils provisions in Clause 6.1 of the LEP. However, reference is made to clause 6.4 Stormwater management. This error does not address acid sulfate issues associated with large areas of excavation required for a pool. The reference should be to clause 6.1 Acid sulfate soils.</p> <p>This amended provision is to correct a drafting area and should proceed.</p>
<b>LEP Provision</b>	<b>Schedule 3 – Complying Development</b> Part 1 Types of development Division 1 Development that is complying development under this Part Part 4 Certain ancillary development (1)
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	<p>Include the following as ancillary development under Section 4(1) of Schedule 3:</p> <ul style="list-style-type: none"> <li>• A shed</li> <li>• A garage</li> </ul>
<b>Department assessment</b>	<p>Currently sheds and garages as ancillary development are not complying development in the E4 Environmental Living zone. This results in an extensive approval process for a relatively simple development.</p> <p>This amended provision should proceed.</p>



<b>LEP Provision</b>	<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p>Division 1 Development that is complying development under this Part</p> <p>Part 5 General exclusions from this part</p>
<b>Current planning controls</b>	<p><i>The following development is not development specified for this Part:</i></p> <p><i>(a) the erection of a roof terrace on the topmost roof of an existing or new dwelling house or an existing or new outbuilding</i></p>
<b>Proposed planning controls</b>	<p>Modify the language of Part 5(a) to clarify ambiguous wording. Council have suggested the following:</p> <p><i>(a) the erection of a roof terrace on the topmost roof of any of the following:</i></p> <p><i>i. an existing or new dwelling house, or</i></p> <p><i>ii. an existing or new outbuilding,</i></p>
<b>Department assessment</b>	<p>This proposal would change the wording of an existing clause, resulting in no legislative change. This amended provision should proceed.</p>
<b>LEP Provision</b>	<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>Subsection 7 Setbacks 7(3)</p>
<b>Current planning controls</b>	<p><i>7(3) A new dwelling house, or an existing dwelling house that has been altered or added to, must not require a cut or fill that extends further than 900mm beyond the dwelling footprint.</i></p>
<b>Proposed planning controls</b>	<p>Remove section 7(3) to resolve conflicting controls for fill related to new dwelling houses.</p>
<b>Department assessment</b>	<p>Section 7(3) of Schedule 3 of the LEP applies to both new dwelling houses and existing dwelling houses. Section 8(3) of Schedule 3 of the LEP refers to new dwelling houses only.</p> <p>The removal of 7(3) would result in no controls for existing dwelling houses.</p> <p>To address this, clause 8(5) is proposed to provide controls for existing dwelling houses (discussed below).</p> <p>Both this amended provision and clause 8(5) should proceed to provide non-conflicting controls for existing and new dwelling houses.</p>



<b>Schedule 3 – Complying Development</b> Part 1 Types of development <b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development Subsection 7 Setbacks	
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	Include a new control in Section 7 that states the setback requirements in Section 7 apply only where a specific setback for the development has not been defined elsewhere in the Part. Council have suggested the following: <i>A setback defined in 7(1) should not be applied if a specific setback for the proposed type of development is defined elsewhere in this part.</i>
<b>Department assessment</b>	There are no other clauses which relate to the setback of development. This provision should proceed.
<b>Schedule 3 – Complying Development</b> Part 1 Types of development <b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development 8 Earthworks and drainage	
<b>Current planning controls</b>	<i>8 Earthworks and drainage</i>
<b>Proposed planning controls</b>	Rename '8 Earthworks and drainage' to: <i>8 Earthworks, retaining walls and structural supports</i>
<b>Department assessment</b>	This proposed change would provide consistency with the Codes SEPP. This amended provision should proceed.

<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p><b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development 8 Earthworks and drainage</p> <p>8 Earthworks, retaining walls and structural support (1)</p>	
<b>Current planning controls</b>	<p>8 <i>Earthworks and drainage</i></p> <p>(1) <i>A lot on which development is carried out must have a finished ground floor level that is within 0.6m of the existing ground level.</i></p>
<b>Proposed planning controls</b>	<p>Amend Section 8(1) to ensure the clause applies to all complying development under the LEP. Council have suggested the following:</p> <p>(1) <i>Fill must not exceed a maximum height, measured from ground level (existing), of:</i></p> <p>(a) <i>if the fill is for the purposes of the erection or alteration of, or an addition to, a dwelling house under this code—600mm, or</i></p> <p>(b) <i>if the fill is for any other purpose under this code—600mm.</i></p>
<b>Department assessment</b>	<p>There is currently no clause that controls the level of fill permitted for new dwelling houses, alterations or additions to dwelling houses and ancillary development as part of complying development in the LEP.</p> <p>This amended provision should proceed.</p>
<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p><b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development 8 Earthworks and drainage</p>	
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	<p>Include a new subclause:</p> <p>(4) <i>Excavation for the purposes of development under this part must not exceed a maximum depth, measured from ground level (existing), of:</i></p> <p>(a) <i>if located within the footprint of a swimming pool – 2m</i></p> <p>(b) <i>in any other location more than 1m from any boundary—0.6m, and</i></p> <p>(c) <i>in any other location less than 1m from any boundary—0.3m, and</i></p> <p>(4A) <i>Despite subclause (4), the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).</i></p>

<b>Department assessment</b>	<p>There is currently no clause that controls the amount of excavation permitted for new dwelling houses, alterations or additions to dwelling houses and ancillary development as part of complying development in the LEP.</p> <p>This provision should proceed.</p>
<b>LEP Provision</b>	<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>8 Earthworks and drainage</p>
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	<p>Include a new subclause:</p> <p><i>(5) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a dwelling house or any outbuilding is limited to 50% of the landscaped area of the lot.</i></p>
<b>Department assessment</b>	<p>The present controls limit the extent of fill to the footprint of a new dwelling house but do not address fill associated with ancillary development.</p> <p>This provision should proceed.</p>
<b>LEP Provision</b>	<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>8 Earthworks and drainage</p>
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	<p>Include a new subclause:</p> <p><i>(6) if fill is imported to the site, it must be free of building and other demolition waste, and only contain virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the Protection of the Environment Operations Act 1997.”</i></p>
<b>Department assessment</b>	<p>This proposed change is consistent with clause 2.30(h) of the Codes SEPP.</p> <p>This provision should proceed.</p>

<b>Schedule 3 – Complying Development</b> Part 1 Types of development <b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development 8 Earthworks and drainage	
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	Include a new control which prevents repeat or cumulative filling of a site.
<b>Department assessment</b>	<p>Other proposed amendments in this planning proposal would rely on the definition of ground level (existing) in the Standard Instrument: <i>“ground level (existing) means the existing level of a site at any point”</i>.</p> <p>This means that successive filling of a site over time is able to alter the ground level (existing).</p> <p>Council aim to prevent the repeat or cumulative filling of a site which would result in exceeding height limits by altering the ground level.</p> <p>This provision should proceed given the sensitivity of land zoned E4 Environmental Living.</p>

<b>LEP Provision</b>	<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>8 Earthworks and drainage</p>
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	<p>Include a new subclause:</p> <p><i>(8) Earthworks under this part must be contained by a retaining wall or structural support which meets the following requirements:</i></p> <p><i>a) Must not have a height measured from the lowest to the uppermost portion of no more than 1.2m.</i></p> <p><i>b) Must be set back at least 1.5m from all property boundaries.</i></p> <p><i>c) Must be certified by a professional engineer as structurally sound including (but not limited to) the ability to withstand the forces of lateral soil load, if the height of the retaining wall measured vertically from the lowest portion of the retaining wall to its uppermost portion is more than 0.6m.</i></p> <p><i>d) Must have adequate drainage lines connected to the stormwater system for the site.</i></p> <p><i>e) Must be designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property.</i></p> <p><i>f) Must be separated from all other retaining walls, structural supports and existing building foundations on the site by at least 2m, measured horizontally.</i></p> <p><i>g) Must be installed in accordance with the manufacturer's specifications.</i></p> <p><i>h) If the structural support is a sloping embankment or batter, the maximum slope of the surface must not exceed 20 degrees from horizontal and must include erosion protection and soil stabilisation measures to permanently hold the slope in place.</i></p>
<b>Department assessment</b>	<p>The proposed addition aims to provide development standards for earthworks, retaining walls and structural support for new dwelling houses, alterations or additions and ancillary development on land zoned E4 Environmental Living. This is considered suitable.</p> <p>This provision should proceed.</p>

<b>Schedule 3 – Complying Development</b> Part 1 Types of development <b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development 12 Additional development standards for bush fire prone land or bush interface property (4)	
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	Include 'swimming pool' under Section 12(4)
<b>Department assessment</b>	<p>This proposed change is consistent with clause 3.4(1) of the Codes SEPP, that being additional standards for bush fire prone land do not apply to swimming pools under that clause.</p> <p>This amended provision should proceed.</p>
<b>Schedule 3 – Complying Development</b> Part 1 Types of development <b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development 26 Carports, gazebos, pergolas, decks and patios	
<b>Current planning controls</b>	<p><i>26 Carports, gazebos, pergolas, decks and patios</i></p> <p><i>A new carport, gazebo, pergola, deck or patio, or a carport, gazebo, deck or patio that has been altered or added to:...</i></p>
<b>Proposed planning controls</b>	<p>Include 'balconies, terraces and verandahs' under Section 26. Council have suggested the following wording:</p> <p><i>"26 Carports, gazebos, pergolas, decks, balconies, terraces, verandahs and patios</i></p> <p><i>A new carport, gazebo, pergola, deck or patio, or a carport, gazebo, deck, balcony, terrace, verandah or patio that has been altered or added to: ..."</i></p>
<b>Department assessment</b>	<p>This proposed change would apply existing development standards to balconies, terraces and verandahs which are ancillary development under the LEP. The proposed change would not apply to balconies, terraces and verandahs carried out as exempt development under clause 2.1 of the Codes SEPP.</p> <p>This proposal would ensure consistency in standards for new balconies, terraces and verandahs and those that are classified as ancillary development.</p> <p>This amended provision should proceed.</p>

<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p><b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p> <p>28 Swimming pools</p>	
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	Include 'spa pools' under Section 28
<b>Department assessment</b>	<p>The definition of 'swimming pool' in the Standard Instrument includes a spa pool. However, the two terms are referred to separately in Schedule 3 of the LEP.</p> <p>This amended provision should proceed.</p>
<p><b>Schedule 3 – Complying Development</b></p> <p>Part 1 Types of development</p> <p><b>LEP Provision</b> Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p>	
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	<p>Include development standards for 'rainwater tanks' under Division 2 of Schedule 3.</p> <p>Council have recommended development standards, these are included in <b>Appendix A</b>.</p>
<b>Department assessment</b>	<p>Clause 4 of Schedule 3 of the LEP specifies rainwater tanks as complying development if they are ancillary to a dwelling house and not otherwise exempt development.</p> <p>Clause 2.63 of the Codes SEPP specifies the construction or installation of rainwater tanks (above ground) as exempt development. Development standards for rainwater tanks are provided in clause 2.64.</p> <p>The development standards in the Codes SEPP requires a 10 metres setback on property zoned E4 Environmental Living. This is impractical in the Sutherland Shire given the lots zoned E4 are generally 18 metres wide.</p> <p>Given the impracticality of this setback in the Codes SEPP, a less restrictive control in Schedule 3 of the LEP is supported.</p> <p>This provision should proceed.</p>



<b>LEP Provision</b>	<b>Schedule 3 – Complying Development</b> Part 1 Types of development Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development
<b>Current planning controls</b>	Not applicable
<b>Proposed planning controls</b>	Include development standards for ‘sheds and garages’ under Division 2 of Schedule 3. Council have recommended development standards, these are included in <b>Appendix A</b> .
<b>Department assessment</b>	There are no provisions for sheds or garages to be carried out as exempt or complying development in the Codes SEPP. This provision should proceed.

<b>LEP Provision</b>	<p><b>Schedule 3 – Complying Development</b></p> <p>Part 2 Complying development certificate conditions</p> <p>Removal or pruning of trees or other protected vegetation</p> <p>(2)(a)</p>
<b>Current planning controls</b>	<p>(2) <i>In this clause:</i></p> <p><i>protected tree or other protected vegetation means a tree or other vegetation:</i></p> <p>(a) <i>that requires a separate permit granted by the Council under clause 5.9 of this Plan or development consent, and</i></p> <p>(b) <i>that is more than 3m away from any new dwelling house being erected or any existing dwelling house altered or added to or from the ancillary development, and</i></p> <p>(c) <i>that has a height of 6m or more.</i></p> <p><i>Note. A permit for the removal or pruning of a tree or other vegetation may be granted under clause 5.9 of this Plan. A development consent for the removal of native vegetation may be granted under the Native Vegetation Act 2003.</i></p>
<b>Proposed planning controls</b>	<p>Amend clause (2)(a) to read:</p> <p>(2) <i>In this clause:</i></p> <p><i>protected tree or other protected vegetation means a tree or other vegetation:</i></p> <p>(a) <i>that requires a separate permit granted by the Council under State Environmental Planning Policy (Vegetation in non-rural areas) 2017 or development consent, and ...</i></p> <p><i>Note. A permit for the removal or pruning of a tree or other vegetation may be granted under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. A development consent for the removal of native vegetation may be granted under the Biodiversity Conservation Act 2016.</i></p>
<b>Department assessment</b>	<p>The proposed change updates the clause to refer to the <i>State Environmental Planning Policy (Vegetation in non-rural areas) 2017</i>.</p> <p>This amended provision should proceed.</p>

### **Mapping**

There is no mapping applicable to the proposal.

### **NEED FOR THE PLANNING PROPOSAL**

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The planning proposal is needed to address issues in the Sutherland Shire LEP 2015 identified by Council officers, Certifiers and members of the public.

There is a need to provide for complying development on land zoned E4 Environmental Living in the Sutherland Shire LGA to simplify the planning approval for certain types of development which are not included in the Codes SEPP.

Schedule 3 of the Sutherland Shire LEP 2015 outlines types of development that are considered complying development. Council have identified contrasting controls and inconsistencies with the Codes SEPP. There are also certain developments that Council proposes to be included as complying development.

Council also propose to include some types of development as exempt development under Schedule 2 of the LEP in order to simplify the planning approval process for low impact development.

The planning proposal is the only means to solve the issues identified and achieve the intended outcomes.

## STRATEGIC ASSESSMENT

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The planning proposal intends to improve the functionality of the Sutherland Shire LEP 2015. The proposed amendments are administrative and minor.

### South District Plan

The planning proposal is administrative and minor in nature and does not directly address the directions and planning priorities outlined in the South District Plan. However, the planning proposal does support the plan's direction to create the conditions for a stronger economy by simplifying the planning approval process for certain development in on land zoned E4 Environmental Living.

### State Environmental Planning Policies

The planning proposal is consistent with the environmental planning instruments shown in Table 3.

**Table 3 Consistency with State Environmental Planning Policies**

SEPP	Consistency
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	The planning proposal provides controls in the LEP for exempt and complying development that are not specified in the SEPP. These controls are not inconsistent with the SEPP.  The planning proposal does not duplicate controls across the LEP and the SEPP.
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	The planning proposal is consistent with this SEPP as it does not seek to amend the applicability of the SEPP, consistent with clause 3.1(5) and Part 2 of Schedule 3 of the LEP.
Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment	The planning proposal does not seek to amend the development potential of land within the Georges River Catchment, therefore it is consistent with the aim of the SEPP to protect the environmental qualities of the Georges River.

Other environmental planning instruments are not applicable to the planning proposal.

## Section 9.1 Ministerial Directions

Table 4 provides an assessment of the planning proposal's consistency with Section 9.1 Ministerial Directions.

**Table 4 Consistency with Section 9.1 Ministerial Directions**

Section 9.1 Ministerial Direction	Consistency
2.1 - Environment Protection Zones	<p>This proposal gives effect to the objective and mandatory outcomes of the direction because it:</p> <ul style="list-style-type: none"> <li>• Does not alter the existing protections for environmentally sensitive areas;</li> <li>• Adds stricter safeguards to the local complying development provisions applying in the E4 Environmental Living zone; and</li> <li>• Deals generally with minor administrative matters that have no significant environmental impact.</li> </ul>
2.2 - Coastal Management	<p>This planning proposal gives effect to the objectives and mandatory outcomes of the direction because it:</p> <ul style="list-style-type: none"> <li>• Does not seek to affect the management of coastal areas of NSW.</li> <li>• Does not seek to make changes which are relevant to the Coastal Management Act 2016, NSW Coastal Management Manual, NSW Coastal Design Guidelines 2003 or any Coastal Zone Management Plan under the former Act.</li> <li>• Does not rezone land to facilitate more intensive land uses within a coastal vulnerability area and does not seek to amend any of the maps contained within the Coastal Management SEPP 2018.</li> </ul>
4.4 - Planning for Bushfire Protection	<p>The planning proposal triggers this direction as it would affect land which is mapped as bushfire prone.</p> <p>Complying development in zone E4 under Schedule 3 of the Sutherland Shire LEP 2015 complies with the requirements of Planning for Bushfire Protection through the application of Section 12 of Schedule 3. Section 12 provides additional development standards for bush fire prone land or bush interface property.</p> <p>The inclusion of boundary fences and pool fences as exempt development in Schedule 2 of the Sutherland Shire LEP 2015 is consistent with this direction as the proposed changes would require use of non-combustible materials.</p>

## SITE-SPECIFIC ASSESSMENT

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The planning proposal is generally administrative and minor in nature, as such the proposed changes are unlikely to result in environmental, social or economic impacts.

## CONSULTATION

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### Community

In accordance with “*A Guide to Preparing Local Environmental Plans*” prepared by the Department of Planning and Environment (2016), Council propose that the Planning Proposal will be exhibited for a period of 28 days. The Department recommends exhibiting the planning proposal for 14 days given the minor nature of the proposed changes.

It is proposed that the exhibition will include:

#### *Advertisement in local newspaper*

An advertisement will be placed in the Council page in the St George and Sutherland Shire Leader and The Liverpool City Leader identifying the purpose of the planning proposal and where the planning proposal can be viewed.

#### *Displays at the Council Administration Building and local libraries*

The planning proposal will be displayed at the Council Administration Building, 4-20 Eton Street, Sutherland and in all branch libraries (located in Bundeena, Caringbah, Cronulla, Engadine, Menai, Miranda, Sutherland and Sylvania).

#### *Advertisement on the Council website*

The planning proposal will be exhibited on the Council consultation website ([jointheconversation.sutherlandshire.nsw.gov.au](http://jointheconversation.sutherlandshire.nsw.gov.au)) with links from the home page. It is anticipated that the mapping changes will be available through Shire Maps (Council’s interactive online mapping system) which will be especially beneficial for the public to compare the existing and proposed changes for any property.

#### *Direct contact*

Interested parties will be able to contact the Strategic Planning Unit of Council directly through a telephone hotline and through a dedicated email address.

### Agencies

Agency consultation is not described in the planning proposal. It is recommended that Council liaise with the NSW Rural Fire Service to discuss the applicability of the revised edition of *Planning for Bush Fire Protection*.

## TIME FRAME

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The timeframe proposed by Council is reasonable given the administrative and minor nature of the amendments proposed. The project timeline is provided below.

Milestones	Timing
Gateway Determination	May 2019
Exhibition Start	June 2019
End Exhibition	July 2019
Review and Consideration of Submissions	July/August 2019
Report to Committee on Submissions	September 2019
Council Meeting	October 2019
Request for Draft Instrument to be Prepared	October 2019

## LOCAL PLAN-MAKING AUTHORITY

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Council has requested authority to use its delegated plan-making functions for this amendment. This is appropriate given the proposed amendments are administrative and minor.

## CONCLUSION

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The preparation of the planning proposal is supported to proceed with the following conditions:

- Include details of proposed consultation with the Rural Fire Service to discuss the applicability of the revised edition of *Planning for Bush Fire Protection*.

## RECOMMENDATION

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It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
  - Rural Fire Service
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority

  
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## Appendix A – Proposed draft planning controls

LEP Provision	Draft planning controls
Schedule 3 – Complying Development	
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p>	<p><i>32 Rainwater tanks (above ground)</i></p> <ol style="list-style-type: none"> <li>1. <i>The rainwater tank must:</i> <ol style="list-style-type: none"> <li>a) <i>Have a capacity of less than 10,000L unless a greater storage capacity is required for the development to comply with the requirements of Planning for Bushfire Protection.</i></li> <li>b) <i>be located at least 450mm from each lot boundary, and</i></li> <li>c) <i>be located behind the building line of any road frontage, and</i></li> <li>d) <i>not rest on the footings of an existing building for support, and</i></li> <li>e) <i>be fitted with a screened rain head designed to ensure self-cleaning and prevent leaf litter entering into the water tank, and</i></li> <li>f) <i>be fitted with a first-flush device incorporating an automatic resetting valve that causes initial run-off rainwater to bypass the tank, and</i></li> <li>g) <i>be constructed or installed with inlets and outlets designed to prevent mosquitoes breeding in it, and</i></li> <li>h) <i>have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners, and</i></li> <li>i) <i>have a sign affixed to it with a statement to the effect that the water in the tank is rainwater.</i></li> </ol> </li> <li>2. <i>Pumps attached to the rainwater tank must be housed in an enclosure that is soundproofed.</i></li> <li>3. <i>The rainwater tank must not be interconnected with any system supplying drinking water to the lot unless it complies with the relevant water authority's requirements.</i></li> </ol>

LEP Provision	Draft planning controls
<p>Part 1 Types of development</p> <p>Division 2 Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development</p>	<p>33 Sheds and garages</p> <p><i>A shed or garage must comply with the following requirements:</i></p> <ul style="list-style-type: none"> <li><i>(a) must not occupy an area greater than 45m<sup>2</sup>, and</i></li> <li><i>(b) must not be greater than 4m in height above ground level (existing), and</i></li> <li><i>(c) must be located behind the building line of any road frontage, and</i></li> </ul> <hr/> <ul style="list-style-type: none"> <li><i>(d) must not have a finished ground floor level more than 0.6m in height above or below existing ground level, and</i></li> <li><i>(e) garages must be constructed with vehicle access via driveways that have sufficient manoeuvring space for vehicles to leave the site in a forward direction, and</i></li> <li><i>(f) garage doors facing a road must have a width less than or equal to:</i> <ul style="list-style-type: none"> <li><i>• 3.2m – if the lot is less than 12m wide (measured at the building line) and</i></li> <li><i>• 6m – if the lot is more than 12m wide (measured at the building line), and</i></li> </ul> </li> <li><i>(g) A detached garage on a lot that has a width of less than 8m at the building line may only be erected if the vehicular access to the lot is from a secondary road, a parallel road or a lane, and</i></li> <li><i>(h) garages must provide off-street car parking spaces and vehicle access which complies with AS 2890.1:2004, Parking facilities – Off-street car parking.</i></li> </ul>