

JRPP No:	2013SYE023
DA No:	DA13/0179
LGA:	Sutherland Shire
Proposed Development:	Alterations and Additions to Burraneer Bay Marina
Site/Street Address:	Lot 1225 DP 728432 - 48 Fernleigh Road, Caringbah South
Applicant:	J Parsons
Submissions:	22
Recommendation:	Approval
Report By:	Birchall A, Environmental Planner Sutherland Shire Council

Assessment Report and Recommendation

1.0 EXECUTIVE SUMMARY

1.1 Reason for Report

Under State Environmental Planning Policy (State and Regional Development) 2011, the application is referred to the JRPP as it seeks approval for development referred to in Clause 8(b) of Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being a *marina* that meets the requirements for designated development.

1.2 Proposal

The application seeks approval for alterations and additions to Burraneer Bay Marina, including increasing capacity by 34 berths, a concrete hardstand and boat lift facility, an office building and casual berthing.

1.3 The Site

The Marina is located on the north-western shore of Burraneer Bay. The development site is restricted to the wet water lease area over Lot1225 in DP728432.

The development site is bounded by the land based portion of the marina to the west, swing moorings immediately to the south and north, and the navigational channel of the Bay to the east. Adjoining the land component of the marina to the west is Fernleigh House, which is registered on the State Heritage Inventory. The Burraneer Bay environs generally are predominantly residential, with a large number of private boatsheds, jetties, pontoons and moorings along the foreshore.

1.4 The Issues

- Visual impact.
- Impact on the heritage item.
- Use, location and permissibility of the detached office.
- Overdevelopment.
- Traffic and parking
- Noise.
- Safety.

1.5 Conclusion

Following assessment, the application is considered worthy of support, subject to minor amendments and conditions.

2.0 DESCRIPTION OF PROPOSAL

The application seeks approval for alterations and additions to Burraneer Bay Marina. Specifically, it includes:

- Decommissioning of an existing twin intertidal slipway and replacement with a new concrete hardstand and boat lift.
- Replacement and an easterly extension of the existing fixed timber jetty breakwater system with a new floating marina pontoon style breakwater system, which will accommodate eight (8) additional permanent berths.
- Installation of a new north-south floating marina arm, known as marina Arm 'C', which can accommodate up to 21 vessels.
- The proposed development will provide a total of 34 new berths. This includes an additional 27 permanent berths, three (3) casual berths, two (2) work berths and two (2) on the proposed hardstand.
- Construction of a small foreshore office. This for the potential use of the NSW Department of Roads and Maritime Services (RMS), which currently berths two (2) vessels at the marina.

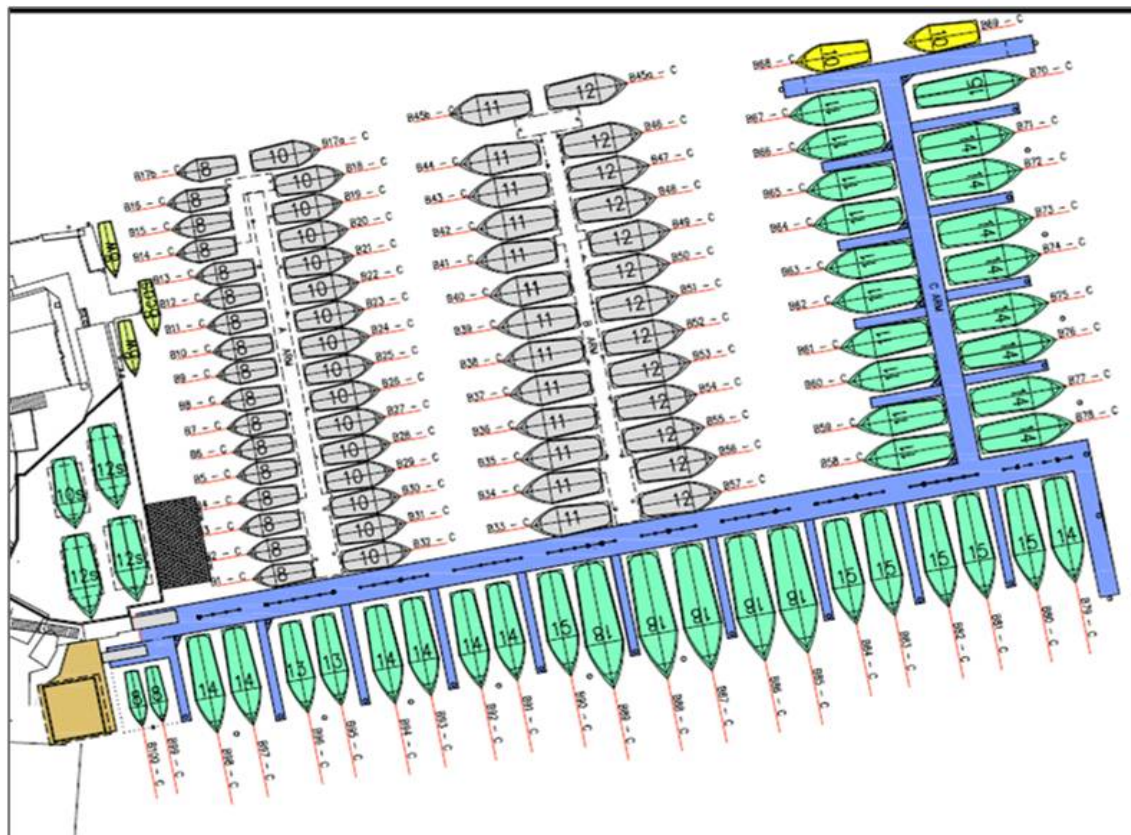


Figure 1: Proposed development

3.0 SITE DESCRIPTION AND LOCALITY

Burraneer Bay Marina is situated along the north-western shore of Burraneer Bay. Burraneer Bay is on the northern side of Port Hacking. Its opening is directly opposite the small village of Maianbar, which is located off the southern side of Port Hacking (Figure 2). The marina is some 650m north-east of the smaller Dolans Bay Marina and 1.5km west of the larger Cronulla Marina.



Figure 2: Location

The development site is generally restricted to the wet water lease area below the Mean High Water Mark (MHW) identified as Lot 1225 in DP 728432. This lot has a total area of approximately 8,000m² and is within Zone 16 - Environmental Protection (Waterways).

The development site is bounded by water on three sides, with swing moorings immediately to the south and north and the navigational channel of Burraneer Bay to the east. Immediately west of the development site is the two storey marina building and the sealed marina carpark. Adjoining the marina to the west is the State Heritage listed Fernleigh House, an existing single storey residence. Access is via a Right of Carriageway (ROC) leading down from Fernleigh Road. There is a large figtree generally immediately landward of the MHW and the southern side boundary.

There is a public boat ramp approximately 400m north, of Water Street. Burraneer Park is located off the north-west corner of the Bay. Burraneer Bay as a whole is predominantly residential, with the suburb of Caringbah South on its western shore and Burraneer on its northern and eastern shores. The majority of the waterfront is privatised and consists of a large number of private boatsheds, 'boathouses', jetties, pontoons and moorings (Figure 3).



Figure 3: Aerial photo

4.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion was held on 24 August 2011.
 - The pre-application proposal was for an additional 38 berths.
 - The applicant was informed the proposal may constitute Designated Development.
 - The proposed extension of the berthing facilities and the upgrading of the slipway were generally acceptable subject to consideration of aquatic ecology, sediment contamination, acid sulfate soils, coastal processes, Fernleigh House, noise and visual impact.
- A development application was received on 3 July 2012.
- It was placed on public exhibition and 58 submissions were received, both for and against the proposal.
- Following a review of the information by Council, it was determined that the development met the requirements for Designated Development.
- The application was consequently withdrawn on 31 October 2012.
- The subject application was lodged on 7 March 2013.
- It was placed on public exhibition from 20 March to 18 April 2013. Twenty two (22) public submissions were received. Eleven (11) of these were against the proposal and 11 were for the proposal.
- An information session for those persons against the proposal was held on 3 April 2013 and was attended by nine nearby property owners.
- On 23 April 2013, the applicant was requested to update the Aquatic Habitat Survey (as was requested prior to the previous application being withdrawn and as is required for an Environmental Impact Statement). The applicant was also requested to provide current details regarding fuel tank inspections and underground storage tanks and to confirm the number of existing berths and the number proposed new berths.
- The additional aquatic habitat survey was submitted on 5 June 2013. On 12 June 2013 an Existing Vessel Count drawing was submitted and the applicant noted

that the he was working with the EPA in terms of addressing the other outstanding issues.

- Following discussions regarding the visual impact of the additional berths on the heritage item, the layout of the proposed berths was modified and the NSW Heritage Office concerns addressed.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Environmental Impact Assessment, plans and other documentation submitted with the application and after a request from Council, the applicant has provided adequate information to enable an assessment of this application.

6.0 PUBLIC PARTICIPATION

The application was placed on public exhibition in accordance with the Environmental Planning and Assessment Regulation 2000 as it pertains to Designated Development. The exhibition period commenced on 20 March 2013 and concluded on 18 April 2013.

At the close of exhibition, Council supplied all submissions to the Environment Protection Authority (EPA) as an Integrated Development Agency and to the Department of Planning and Infrastructure.

Seventy seven (77) adjoining or affected owners were notified of the proposal and twenty two (22) submissions were received. Eleven (11) of these were letters of support while eleven (11) were letters of objection.

Objections were received from the following properties:

Addresses	Dates of Letters	Issues
7 Water Street, Caringbah South	7 April 2013	1, 2, 3, 4
42a Fernleigh Road, Caringbah South	16 April 2013	5
24 Fernleigh Road, Caringbah South	16 April 2013	1, 2, 3, 6, 7
Fernleigh House, 44-46 Fernleigh Road, Caringbah South	16 April 2013	6, 7, 8, 9
3 Coonabarabran Place, Caringbah South	18 April 2013	1, 3, 4, 10, 11, 14
2 Coonabarabran Place, Caringbah South	18 April 2013 (resubmitted)	1, 2, 4, 5, 6, 7, 12, 13
22 Fernleigh Road, Caringbah South	17 April 2013	1, 3, 5, 6, 7
2A Fernleigh Road, Caringbah South	18 April 2013	5, 6, 7
Not stated	18 April 2013	2, 3, 4, 6, 13
52 Fernleigh Road, Caringbah South	18 April 2013	1, 2, 4, 5, 6, 7, 8, 11, 14, 15
62 Grandview Parade Caringbah South	15 April 2013	1, 2, 4, 5, 6, 10, 11, 15

The issues raised in these submissions are as follows:

6.1 Issue 1 – Privatisation of the waterway

Many objections cited concerns about the additional privatisation of the waterway, some noting that the specified demand is not justified.

Comment: This matter is addressed below in the 'Assessment' section of this report.

6.2 Issue 2 – Visual impact

Many residents were concerned with the visual impact of the proposed new marina arm and the proposed boat lift.

Comment: This matter is addressed below in the 'Assessment' section of this report.

6.3 Issue 3 – Water quality from fuel and release of grey and black water

The impact on water quality was a concern for several objectors. This is related to general boat use, and some claim that patrons release their grey (and sometimes black) water directly into the bay.

Comment: Boat ownership continues to increase. This is not related to how many berths marinas provide, as boats will be moored on swing moorings or adjacent private property if fixed berths are not provided or are too expensive to lease. Burraneer Bay Marina is one of a few marinas that provide a pump out facility. The Marina operators cannot be held responsible for boat owners who do not use this facility.

This proposal seeks to upgrade the existing slipways to an EPA compliant hardstand area to better protect the aquatic environment. This is further discussed below in the 'Assessment' section of this report.

6.4 Issue 4 – Impact on aquatic flora and fauna

Many of the objectors were concerned about the potential impact on aquatic flora and fauna as the report initially provided did not provide sufficient detail.

Comment: This matter is addressed below in the 'Assessment' section of this report.

6.5 Issue 5 – Safety concern for small vessel users and location of fuel browser

Safety concerns were raised with regards to small vessel users (such as kayakers) and the location of the refuelling station.

Comment: These matters are addressed below in the 'Assessment' section of this report.

6.6 Issue 6 – Traffic, parking and use of Right of Carriageway

Several objections were received with regards to the impact of additional traffic generated by an increase in patrons, their guests and service/delivery vehicles. This was also noted as a safety concern due to street parking and the narrowness of Fernleigh Road.

Comment: This matter is addressed below in the 'Assessment' section of this report.

6.7 Issue 7 – Noise from additional traffic, patrons and guests

Along with traffic impacts from additional patrons, the noise impact from additional traffic, as well as patrons/guests coming and going, was also noted as a concern.

Comment: This matter is addressed below in the 'Assessment' section of this report.

6.8 Issue 8 – Impact on heritage listed Fernleigh House

Potential impacts on the State heritage listed Fernleigh House stem from the loss of view of open water from the house as well as its visual disconnection from the water, as well as pollution impacts on the fabric of the house from the additional traffic.

Comment: This matter is addressed below in the 'Assessment' section of this report.

6.9 Issue 9 – Location of new office building

The owners of Fernleigh house objected to the location of the proposed freestanding office building as it impedes on the only potential access to water for this property.

Comment: This is addressed below in the 'Assessment' section of this report.

6.10 Issue 10 – Overdevelopment

Many submissions felt that an increase of nearly 40% capacity was an overdevelopment of the marina.

Comment: This matter is addressed below in the 'Assessment' section of this report.

6.11 Issue 11 – Noise and fumes from extended boat repair facility

Concern was raised in relation to the increased capacity of the repair facility.

Comment: The hours of operation of this facility will be limited to normal working hours. Standard conditions of consent address noise limits and odour control associated with the use of the new hardstand area. These will also be controlled by conditions of the Environmental Protection Licence required from the EPA. 'Offensive noise' and 'offensive odours', as defined under the provisions of the *Protection of the Environment Operations Act 1997*, are an offence under this Act.

6.12 Issue 12 – Depth of channel limits large boat movement at low tide

It was suggested that moorings for larger boats are not in demand in this location due to the water depth restrictions at the mouth of the bay.

Comment: This is true for yachts that have large keels, and therefore need greater water depth. Motor boats don't have a shallower draught do not require as much water depth. The maximum proposed vessel size is 18m. Such vessels generally sit approximately 1.4m below the waterline. There is ample water depth for such a vessel to enter/exit Burraneer Bay, as they currently do.

6.13 Issue 13 – Non compliance with LEP in terms of building below the foreshore building line or objectives of Zone 2

Comment: The development is classified as a marina and is permissible in the zone. There is no development proposed within the adjoining residential zone (Zone 2) and therefore the objectives of this zone are not applicable to this application.

6.14 Issue 14 – Inadequate notification

Criticism has been received with regards to the extent of notification.

Comment: The proposal was notified in accordance with the Environmental Planning and Assessment Regulation 2000 as it pertains to Designated Development. Seventy seven (77) neighbouring property owners were notified by mail and the proposal was advertised within the local written press (the *Leader*). Mailed notification included all waterfront properties immediately to the west and north of the marina, as well as those directly opposite on the eastern shore of Burraneer Bay. It also included properties on Fernleigh Road near the entry of the marina driveway.

6.15 Issue 15 – Office for use by RMS is a conflict of interest

Several objectors felt it was a conflict of interest to provide a facility for the RMS as they require approval from the RMS for the development.

Comment: The NSW Department of Lands is the landowner. The application and works therefore require consent from this Department. The RMS is consulted only in terms of their role as the boating safety regulator of navigable waters.

7.0 STATUTORY CONSIDERATIONS

The subject site is located within Zone 16 – Environmental Protection (Waterways) pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006. The proposed development, being a marina is a permissible land use within the zone with development consent from Council.

The following Environmental Planning Instruments (EPIs), Draft EPI, Development Control Plan (DCP), Codes or Policies are relevant to this application:

- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)
- State Environmental Planning Policy (State and Regional Development) 2011
- Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006)
- Draft Sutherland Shire Local Environmental Plan 2013 (DSSLEP2013)
- Draft Subregion Strategy – South Subregion.
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)
- Port Hacking Integrated Environmental Management Plan

8.0 COMPLIANCE TABLE

The compliance table below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

Standard/Control	Required	Proposed	Complies?
Sutherland Shire Local Environmental Plan 2006			
cl.48 Urban design—general	High quality development which considers surrounds	High quality extension and upgrade which will aid in protecting water quality and visually lower the profile of the existing structure	Yes
cl.51 Ecologically sustainable development	Consider the principles of ecologically sustainable	The proposal will not have a detrimental impact on aquatic ecology and the new hardstand area will assist in	Yes

	development	protecting water quality while providing a viable facility in demand.	
cl.53 Transport accessibility, traffic impacts and car parking	Provide adequate parking and encourage alternate modes of transport	The number of existing parking spaces is above that required. Considering the supplies needed, patrons generally do not use alternate forms of transport. Nevertheless, some motorcycle and bicycle parking will be conditioned.	Yes
Sutherland Shire Development Control Plan 2006			
Car parking 1.b.22	49	56 (existing)	Yes
Motorcycle parking 1.b.2.1	2	1 (existing)	No
Bicycle parking 5.b.3	6	0	No

9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

9.1. Department of Primary Industries (Fisheries NSW)

Fisheries NSW has no objections to the development provided conditions are included to protect the surrounding environment during works and from the operation of the new facility.

9.2. Department of Planning and Infrastructure

Copies of the application and all submissions were provided to the Department of Planning and Infrastructure (DOPI) as required for a proposal lodged as Designated Development, and also as the site falls under SEPP 71 – Coastal Protection. DOPI did not provide any objection to the proposal.

9.3. Department of Primary Industries (Office of Water)

The Office of Water confirmed that a controlled activity approval was not required for the purposes of the *Water Management Act 2000*.

9.4. NSW Roads and Maritime Services (RMS)

The RMS is supportive of the proposal on the condition that the outer extremities of the structure are well lit and that the applicant pays for any relocation of swing mornings, if required.

9.5. Environment Protection Authority (EPA)

The EPA has confirmed that, based on the size of the proposed development, the premise will require an Environmental Protection Licence. The EPA provided General Terms of Approval (GTAs) indicating that it has no fundamental issues with the proposal.

9.6. Heritage

Council's Heritage Officer is not supportive of the proposed works for the following reasons.

- The extension of the marina has a negative visual impact on the significance of the heritage item (Fernleigh House) both from the item towards the water and to the item from the water. The concern is that Fernleigh House will be lost in the mass of boats.
- The only access to the water from the heritage property is via a 3m wide strip to the far south of the marina, under the fig tree. While not in use at the moment, access to the waterfront is part of the significance of Fernleigh House and those rights should not be infringed upon. The proposed office should be relocated away from this area.
- Any increase in traffic using the RoC will increase the rate of deterioration of the heritage fabric through deposition of pollution, as well as vibration from heavy vehicles.
- The application has made no attempt to address the policies or recommendations of the Conservation Management Plan for Fernleigh Estate.

9.7. Engineering

Council's Engineer is satisfied that the potential increase of vehicle movements per day, as determined by the Traffic and Parking Assessment, is insignificant for the local road network or for the capacity of the RoC. The heritage dwelling is 15m from the RoC at its closest point and so the likelihood of vibration damage is greatly reduced. The floor level of the free standing foreshore office must be raised by 140mm to be above the flood planning level, if approved.

9.8. Environmental Health

No objection to the development has been raised subject to inclusion of various conditions of consent relating to the operational impacts of the marina.

10.0 ASSESSMENT

A detailed assessment has been carried out having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979. The following matters are considered important to this application.

10.1 Visual impact

The majority of the foreshore of Burraneer Bay is in private ownership, generally consisting of low density residential dwellings and ancillary buildings. The foreshore areas open to the public in the vicinity of the marina include the boat ramp at Water Street, the unmade southern end of Dolans Road (both to the north) and the western end of Shell Road directly east, on the opposite side of the bay (Fig 4). As shown in figure 4, the marina berths currently extend some 94.5m eastward and its southern and northern extremities generally follow the prolongation of the side boundaries of the associated land. The existing marina is not visible from the boat ramp or from the end of Dolans Road.

The proposal extends the existing permanent berthing area approximately 46m further eastward. The new arm is the same north-south length as existing Arms A and B and follows the same prolongation along the boundaries (Fig 4). The proposal constitutes a moderate expansion to the marina, increasing from 69 (approved) permanent fixed berths to 96. With regards to the length of vessels accommodated, this will increase from an average of 11.2m to an average of 13.4m.

The proposal also includes replacing the fixed jetty to a floating breakwater type. This removes several structures that are currently highly visible, especially at low tide, including the breakwater walkway itself and the ramps required to access the existing arms and vessels at low tide. While no swing moorings are proposed to be relinquished, it is evident that at least three on the north-eastern extremity of the extension will be required to be removed to maintain vessel access. The removal of these has been recommended as a condition of consent as they are leased through the marina.

The Visual Impact Study prepared by Envirospace identifies key viewing locations representative of long range, mid-range and short range views. The impact of the proposal was assessed by developing a series of 3D models and photomontages and considering the four steps set down in *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

The Study acknowledges that the proposal presents a change of an existing view. From some locations, the marina becomes more pronounced. The short range views from the western shore were considered to be more cluttered in the fore and middle ground, particularly at low elevations. From most other locations, the view of Burraneer Bay accommodating a range of boating activities remains unchanged. The marina is not considered to dominate views.

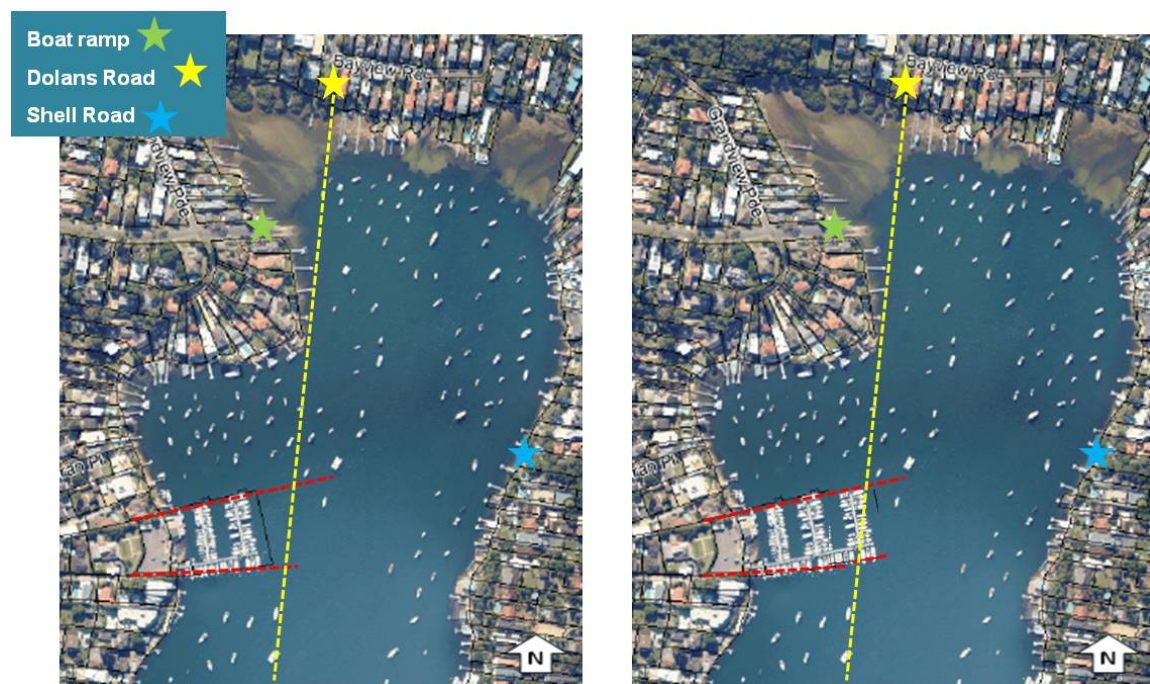


Figure 4: Extent of existing marina vs approximate extent of proposed addition

As the development is within the waterway, the view which is potentially affected is that of clear water. The extent of this impact varies dependant on the distance from the structure, as well as the elevation. As the marina constitutes a small footprint relative to the size of the bay, the character of the view for surrounding residents will remain relatively unchanged. The additional moored vessels will appear amongst the existing moored vessels. Properties to the north west of the marina may note some reduction in the amount of clear water in their mid range view however, in terms of the total water views available, the impact is considered minimal.

It could be argued that the residents more affected would be those directly north of the new structure as their direct view south will now include a fixed berthing structure where currently there is none. However, these properties are over 150m away and over 4m above the MHW. The extension is a small area of a broad water view from these properties. The impact on these properties is also considered to be minimal.

The other property to be impacted is that directly behind the marina, being Fernleigh House. This is discussed below under section 10.2.

As seen in figure 4, the extension will not be visible from the public boat ramp. A small section will become visible from the end of Dolans Road. This small section of fixed moorings is approximately 500m away and will not look out of place on a bay dominated by private jetties, pontoons and swing moorings. The view from Shell Road, and indeed the water itself, is considered to remain substantially the same (see Fig 6).

The proposed office building on the waterfront is over one of the few natural areas of waterfront interface remaining. The rock outcrop and fig tree provide a small area of visual relief and a reminder of how the land-water interface might have been. It would be unfortunate to lose this in favour of a building containing space that could be located elsewhere.

In general, Burraneer Bay is a highly urbanised bay characterised by swing moorings, private jetties and pontoons. The marina is an existing form within this landscape and an additional arm within the existing northern and southern boundaries is not considered to result in a substantial or unreasonable visual impact.

10.2 Fernleigh House

10.2.1 Visual impact

The NSW Heritage Office and Council's Heritage Architect have expressed concern that the additional layer of berths will have a negative impact on the heritage item in terms of views from the house, as well as the view of the house from the water. However, the submission talks about a 'doubling' of the marina and its extension 'some 150m further into Burraneer Bay'. Both of these assertions are incorrect. The proposal expands the marina by some 40% and 46m further into the Bay.

The photo in figure 5 shows Fernleigh House behind the hedge which separates it from the marina car park. The hedge largely shields the view of the marina from the grounds of the house while the view from the ground floor is of the current most eastern arm (Arm B). With the proposal extending the marina further east some 46m, the addition will be visible from the house and will reduce some 'blue water' views.



Figure 5: View from Arm B to Fernleigh House

NSW Heritage notes that the 'country' character view from Fernleigh House will be impacted and that this 'urban' view is not what is expected of a 'country retreat'. It is undeniable that the setting of Fernleigh House is not as it was in its early history. Caringbah South is now a highly urbanised suburb and Burraneer Bay is a highly urbanised bay.

The expansive water views which are part of the heritage value of Fernleigh House are being altered, not removed. As the house is elevated some 12m above the marina, the new arm will now form the mid range view, the short range being the ground's hedge. The space between the new arm and the eastern shoreline is more than 200m, so the long range view of clear water and the eastern shore therefore remain.

As the new arm remains within the existing north and south boundaries, the water views to either side of the berths will also remain. The altered view is a modest percentage of the total view across the water.

Prior to the subdivision of the land, the area where Burraneer Bay Marina now stands was the 'The Pines Marina'. Fernleigh House has therefore long been associated with a marina. While the proposal will increase the volume of vessels viewed from the house, this view is not considered to be out of place in this location, or in relation to the heritage value of the house.

To further reduce the visual impact on Fernleigh House, the applicant has modified the original layout. The 18m (max) moorings at the eastern end of the marina have been relocated back to the same positions that currently accommodate this size vessel. This reduction in the length of vessel on the southern side of the breakwater effectively also reduces the width of the north-south extension.

The vessels on the extreme north and south points have now been reduced from 18m to 15m and 14m respectively, reducing the visual impact in these areas. The recommended condition removing the existing large vessels from the ends of Arms A and B (see section 10.7) will also reduce the bulk of the existing structure. To further reduce the bulk of the mooring structure and ensure large boats are not moored in these locations, a condition of consent is recommended reducing the length of the supporting structures as discussed with the applicant.

With regards to the view to the heritage item, figure 6 is a photomontage of the proposed development when viewed from Shell Road, immediately east of the marina. This shows that the elevation of Fernleigh House, the extent of remaining open water, and the fact that the heritage item remains clearly visible above the marina.



Figure 6: View from Shell Road to Fernleigh House

The nature of the view to the house from the water and surrounding properties, being the heritage item with a marina in the foreground, is not being altered by the proposal.

The expansion as proposed adds to an existing view. If the marina were to expand either north or south (or both), rather than eastward, this would visually surround the heritage item and on balance, would have a much greater impact on removing the item's connection with the water. The suitability of the proposed location of the detached office and its role in severing the direct visual and physical connection of the heritage item to the water is discussed in section 10.3 below.

10.2.2 Traffic impacts

Both NSW Heritage and Council's Heritage Architect noted concern regarding the impact of additional traffic using the shared RoC upon the fabric of Fernleigh House. This impact is noted to be from additional pollution, as well as vibration from passing traffic.

As noted in section 10.5, the increase in parking demand and therefore vehicle movements is considered to be minor and limited to just a few days over the course of a year. The refuelling station is open to all boat owners, not just those having berths at the marina. An increased demand on fuel is not necessarily directly related to an increase in berth numbers at the marina, and conversely, boats berthed at the marina may use alternate refuelling stations (as discussed in section 10.8.1).

The increase in service vehicles required due to the increased capacity of the hardstand is also considered to be minor and there is nothing which indicates that larger vehicles would be required to service the operations of the marina.

With regards to the impact of vibration, Council's Engineer notes that is highly unlikely that vibration will be felt from a non-elevated road, especially as the distance is approximately 15m at the closest point of the house. In any event the RoC is existing. Most construction works relative to this application will be accessed via the waterway, eg. removal and driving of piles, etc. Construction traffic will be relatively minimal.

10.3 Detached office

The connection of the heritage item to the water includes both the visual and physical aspects. Fernleigh has always had access to the MHW and the subdivision ensured that access to the waterway was retained through a 3m wide access handle along the southern boundary of the marina. This small undeveloped area of land and the large fig tree over the rock shelf provides the last natural foreshore feature of the site, and a direct physical and visual connection to the water.

The proposal includes the construction of a detached waterfront office under the fig tree. This is proposed to be for use by the RMS, which currently berths two of their emergency vessels at the marina. There is no evidence of a proposed long term lease for the RMS to occupy this office. The applicant advises that if the RMS does not occupy the office then it would be offered to another Government agency.

This office is freestanding and located directly in front of the 3m 'handle' of land belonging to Fernleigh House. While this is not currently used to access the water, the construction of the office would not only permanently remove the owner's ability to use their only water frontage, but completely sever this direct physical and visual connection of the heritage item with the water.

The office is argued to be for the RMS, however, no solid commitment has been offered by the agency and it is understood that the maritime functions of the RMS are now being relocated to the former Fisheries site at Hungry Point, Cronulla. If additional office space is required, there is no apparent reason as to why this must be directly on the water, remote from parking and with relatively poor pedestrian access.

While the office is permissible as part of the marina, in view of the large area available to the marina, it is unreasonable, unsuitable and unnecessary to develop in front of a neighbouring property. Recognising that this would also completely remove an important aspect of Fernleigh's heritage value and that there are reasonable alternative options, Council does not support the construction of the office building in the proposed location.

10.4 Environmental impact

10.4.1 Flora and fauna

An Aquatic Habitat Survey was submitted with the Environmental Impact Statement. This was reviewed by Council's Environmental Scientist, who considered the report to be inadequate. Council requested an additional survey and an impact statement assessing any potential impact the development may have on threatened species.

The additional work included an extensive SCUBA survey of the existing structures and the seabed offshore (east) of the existing marina in the location beneath the proposed 'C Arm'. This addendum to the Aquatic Habitat Survey concluded that:

- No seagrass or algae, including the invasive species *Caulerpa taxifolia*, were observed on the soft seabed offshore of the existing marina in the area beneath the proposed 'C Arm' extension.
- The habitat on the jetty piles and breakwater was generally of the same nature across all piles surveyed, regardless of distance from shore and a diverse fish community was observed in association with jetty pile habitat.
- The presence of green sawfish, black rockcod, eastern blue devil fish and elegant wrasse at the marina site for any extended periods of time is considered highly unlikely, as the quality of their preferred habitat within this area of Burraneer Bay is deemed low.
- No impacts on the endangered population of the seagrass species *Posidonia australis* located in the north of the marina within Burraneer Bay are expected as a result of the proposed construction and demolition works.
- No syngnathiformes were identified (in the SCUBA survey) to be utilising the pile and breakwater habitat.

Council's Environmental Scientist is satisfied that the survey was adequate and the results and conclusions accurate. The proposal is not considered to have a detrimental impact on threatened or endangered aquatic life.

10.4.2 Water Quality

A large component of the proposal is to upgrade the existing slipway to the highest of industry standards. The new hardstand will be a level deck located a minimum of 2.5m above the zero tide to ensure high tides, boat wash or wave action will not wash pollutants into the water. The 150mm bund around the entire perimeter will ensure there is no chance of spillage into the water.

The proposal also includes a rainwater tank to use recycled water and a treatment tank to treat the first flush from the hardstand area. This hardstand will be constructed and operated strictly in accordance with Department of Environment and Climate Change guidelines for the Best Management Practice for Marinas and Slipways.

Council is also satisfied that any potential impact from acid sulfate soils is low and can be managed. Several conditions of consent have been recommended to ensure appropriate construction management plans are prepared and approved prior to works commencing.

Council is also aware that the applicant is working with the EPA with regards to the underground storage tanks and their compliance with the POEO (Underground Petroleum Storage Systems) Regulation 2008. While there are no works proposed in this area, the use of the fuel system is intricate to the use of the marina and appropriate storage and use will ensure protection of the environment. Conditions of consent have been recommended by both Council's Environmental Scientist and Environmental Audit Officer to ensure operations protect the environment.

10.5 Traffic and parking

Burraneer Bay Marina currently provides parking for 56 cars. Two of these are provided for staff use only and two are accessible spaces. No changes are proposed to the carpark. Halcrow undertook a parking survey and determined that the car park is currently operating at less than 30% of its capacity.

The total number of car parking spaces required under SSDCP 2006 to accommodate the proposed development is 49. This includes parking numbers to

service the fixed berths and swing moorings licensed to the marina and staff parking. This is seven (7) spaces less than currently exist on site.

The Traffic and Parking Assessment prepared by Halcrow concludes that the additional parking demand resulting from the proposal (as per Council's DCP) will generate up to 26 additional vehicle movements per day, but indicates that in reality, this is likely to be significantly less. Council's development Engineer agrees with the Traffic and Parking Assessment in that this increase is insignificant for the local road network and the capacity of the RoC.

While it is likely that the demand for parking will increase during the summer months and special events (such as Australia Day and Easter), these are limited periods over the course of a year. Considering the parking provided is above that required by Council's controls, the increase in berth numbers is acceptable in terms of parking requirements.

10.6 Noise

The Acoustic Assessment by Renzo Tonin concluded that the additional berths will not directly result in an increase in noise impact from the use of the additional berths. The report notes that noise levels from activities such as motors, social activities on board, boat maintenance, etc, will be intermittent and irregular. Additionally, the additional berths will be further from any residential property than the existing berths and any noise emanating from the new berths will be less than the noise from current berths.

The majority of additional noise impacts associated with the development will originate from the car park area when users arrive/leave and load/unload their vehicles. While this was not specifically covered in the acoustic report, the situation will be intermittent and irregular. Additional noise from these activities will generally be experienced on weekends in the warmer months and is likely to intensify during infrequent events such as Australia Day, New Years Eve, Easter, etc.

It is estimated that noise levels from marina users in general intensifies some 10-15% of the year and the increase due to the proposed development would be minor over that resulting from existing uses. On balance, this is considered to be a minor and reasonable impact.

Construction noise and that of general operations of the marina are controlled by standard conditions of consent.

10.7 Privatisation and overdevelopment

Much of the foreshore of Burraneer Bay is in private ownership and a large extent of the waterway includes private jetties, pontoon and swing moorings. Generally, the only area free from vessels is the large navigation channel.

Burraneer Bay is a relatively large bay. With the extension, the marina will extend less than half way into the bay and will occupy a small percentage of its total area. The new arm is the same length as the existing arms and will not extend beyond the existing northern and southern extremities of the fixed berths nor encroach on the large navigation channel, allowing adequate vessel movement around the bay. The marina will not dominate or monopolise the waterway.

The location of the proposed extension is logical and, as can be seen in an aerial photo, is generally within the line of where swing moorings are currently located (refer Fig 4). It is considered to be a reasonable and acceptable proposal.

10.8 Safety

10.8.1 Location of refuelling station

The existing refuelling station is located adjacent to the marina building. Access to this is along the northern edge of the fixed berths. Objections have been received regarding this location due to the restricted access and congestion in the small channel as a result of vessels waiting to access the fuel pump or manoeuvring past each other.

The owners of 42A Fernleigh Road, the property facing this access channel, have noted incidents where vessels accessing, or waiting for access to, the refuelling station have collided with vessels moored at the end of 'Arm A' or their own boats.

As seen from the aerals below (figure 7), the channel width between the marina and the closest vessel on a swing mooring during the incoming tide is approximately 30m. However, when these vessels swing to the south, this is reduced to approximately 15m. Council has been informed that the sale of fuel by Burraneer Bay Marina is not significant as there is no 'passing trade' and large vessels tend to use alternate refuelling stations with better access and cheaper fuel. The applicant has indicated that boats using this refuelling station are generally the smaller boats.

While there is no Australian Standard for this situation, as swing moorings are not stagnant, the applicant has confirmed that ideally the channel in that area would be a minimum of 18m wide to ensure the safe navigability by vessels up to 12m.

Adding to the reduced channel width in this location is the permanent mooring of relatively large (approximately 14m and 18m) vessels at the end the both Arms A and B. This reduces the channel width by up to 4.5m. While the lease area and submitted plans indicate that these moorings may be permitted through the lease, Council records confirm that this area has never been approved as berths.



Figure 7: Approximate access channel to refuelling station.

In order to improve access to both the refuelling station and Arms A and B, whilst still providing an area to load/unload, a condition of consent is recommended which:

- a) prohibits the use of the T end of Arm A for berthing of any vessel at any time,
- b) allows the use of the T end of Arm B as a casual berth for one (1) vessel no larger than 10m and for no longer than 10min.
- c) allows the use of the T end of the new Arm C as a casual berth for no more than two (2) vessels, each no longer than 10m and for no longer than 10min.
- d) prohibits the use of the L end of the breakwater for berthing of any vessel at any time, as advised by the RMS.

Appropriate signage is to be placed at each of these locations as part of the development.

10.8.2 Small craft

While the new structure will extend an additional 46m seaward, the new marina arm diverges away from the main navigation channel, creating a passive recreation zone. This allows small craft to navigate past the moored vessels without entering the main channel and competing with larger vessels. Due to the extended breakwater, the addition may also provide a larger area of calmer water within the small bay directly north of the floating structure. This proposal is therefore not considered to decrease the safe navigation of small craft around the bay.

10.9 SEPP 71

The site is located in the coastal zone and is therefore subject to SEPP 71. The proposal is considered to be consistent with the aims of this SEPP as it will manage the natural, recreational and economic attributes of the bay. The works are also considered to adequately address the relevant matters under clause 8 of the SEPP, that is, the works protect existing public access to the foreshore, aid in the protection of water quality and are not considered to have a detrimental impact on the amenity of the area, coastal processes or environmental or cultural aspects of the location.

10.10 Draft Sutherland Shire Local Environmental Plan 2013 (DSSLEP2013)

DSSLEP2013 was placed on exhibition on 19 March 2013 and is matter for consideration under S.79C(1)(a)(ii) of the EPA Act. The land is proposed to be zoned W2 Recreational Waterways. The proposed development, being a marina, would be permissible in this zone.

The following draft controls are of relevance to the proposal:

Clause	Standard	Proposed	Complies?
Draft Sutherland Shire Local Environmental Plan 2013			
5.5 Development within coastal zone	High quality development which considers surrounds and public access	High quality extension and upgrade which will aid in protecting water quality. New casual berth will provide access to the general public.	Yes
6.1 Development on the foreshore	Consider public access, foreshore character and sea level	The redevelopment replaces the fixed jetty with a floating walkway and the	Yes

	changes	new hardstand protects against sea level changes. As it is an extension, it has little impact on the existing character of the foreshore.	
6.6 Flood planning	Buildings are to be above flood planning level	The only proposed building is the free standing office. This can be designed to be above the required flood planning level.	Yes

At this stage DSSLEP2013 has limited statutory weight in the assessment of applications. Council is yet to consider its final form. The proposed development is generally consistent with the draft provisions

10.11 Draft Sutherland Shire Local Environmental Plan 2006 - Amendment 20 (DSSLEP2006 - Amd. 20)

DSSLEP2006 - Amd. 20 was placed on exhibition on 9 April 2013 and is matter for consideration under S.79C(1)(a)(ii) of the EPA Act. The amendments included within Amendment 20 are of little, if any, relevance to this proposal.

11.0 SECTION 94 CONTRIBUTIONS

Due to its nature, the proposed development will not require or increase the demand for local and district facilities within the area. Accordingly, it does not generate any Section 94 contributions.

12.0 DECLARATION OF AFFILIATION

There was no declaration of affiliation, gifts, or political donations noted on the development application form submitted with the application.

13.0 CONCLUSION

The subject land is located within Zone 16 – Environmental Protection (Waterways) pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006. The proposed development, being a marina, is a permissible land use.

The application was placed on public exhibition and twenty two (22) submissions were received, both for and against the proposal. The matters raised in these submissions have been discussed in this report and include visual impact, lack of parking, increased traffic and impact on the heritage listed Fernleigh House.

The extension recognises the bay as a recreational asset, while protecting the ecology, scenic quality and navigability of the waterway. While the eastward extension of the berthing facility will remove some 'blue water' view from Fernleigh House, the changes proposed by the applicant and the draft conditions of consent reduce this impact, adequately addressing this concern.

On balance, the extension of the berthing facilities is considered to be of a reasonable size and appropriate location. The upgrade of the slipway will be a positive step in protection of the aquatic environment. However, the construction of

the office in front of Fernleigh's only viable water access is not considered reasonable and is recommended for removal from this application.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979. Following detailed assessment it is considered that Development Application No. DA13/0179 may be supported for the reasons outlined in this report.

14.0 RECOMMENDATION

- 14.1 That Development Application No. DA13/0179 for an extension to the wet berth area to accommodate an additional 27 permanent berths, three (3) casual berths and two (2) hardstand berths and a detached office at Lot 1225 DP 728432, 48 Fernleigh Road, Caringbah South be approved, subject to the draft conditions of consent detailed in Appendix "A" of the Report.