

JRPP No:	2013SYE053
DA No:	DA13/0590
LGA:	Sutherland Shire
Proposed Development:	Alterations and Additions to the Berthing Facilities at Sylvania Marina
Site/Street Address:	Lot C DP 327350 - 25 Harrow Street, Sylvania
Applicant:	Marina Investments Pty Ltd
Submissions:	50 – 38 Objections, 11 In Support & 1 Other
Recommendation:	Approval, Subject to Design Changes
Report By:	Greg Hansell - Environmental Assessment Officer (Planner) Sutherland Shire Council

Assessment Report and Recommendation

1.0 EXECUTIVE SUMMARY

1.1 Reason for Report

Pursuant to the requirements of State Environmental Planning Policy (State and Regional Development) 2011, this application is referred to the Joint Regional Planning Panel ('JRPP') as it seeks consent for a particular class of 'designated development' as prescribed in Schedule 4A of the Environmental Planning and Assessment Act 1979 ('EP&A Act'). In this regard, development for the purpose of marinas which meet the requirements for designated development under Schedule 3 to the Environmental Planning & Assessment Regulation 2000 is prescribed for the purposes of Schedule 4A of the EP&A Act.

1.2 Proposal

The application seeks development consent for a northward extension of the existing floating pontoon structure and relinquishment of all of the existing commercial swing moorings, to provide for a total of 66 rentable berths and 5 work/pump-out berths. No changes are proposed with regard to the land-based facilities and fuelling/sewage pump-out facilities.

1.3 The Site

The marina is located about 300 metres south-west of Tom Ugly's Bridge on the southern shores of Georges River. On the foreshores immediately to the east, west and south are a mixture of detached dwelling houses, dual occupancies, townhouses and low-rise apartments. Another smaller marina (Tom Ugly's Bridge Marina) is located about 230 metres to the north-east, adjacent to Tom Ugly's Bridge.

The marina currently consists of 53 rentable fixed berths, 18 commercial swing moorings and 3 work berths. The land-based facilities of the marina include a chandlery, workshop, slipways and car park.

1.4 The Issues

The main issues identified are as follows:

- View loss and visual impacts.
- Car parking demand and traffic impacts.
- Impacts on the marine environment.
- Noise impacts.
- Status of swing moorings.
- Alienation of waterways for private interests.

1.5 Conclusion

Following detailed assessment of the proposed development, the application is considered worthy of support, subject to a reduction in the size of the extension so as to reduce its visual intrusiveness and impact on the river views of adjacent residents. This modification can be adequately addressed by way of a condition of consent requiring such design changes to be included on the subsequent construction certificate drawings.

2.0 DESCRIPTION OF PROPOSAL

The application seeks development consent for alterations and additions to the marina berthing facilities. No changes are proposed with regard to the land-based facilities and fuelling/sewage pump-out facilities.

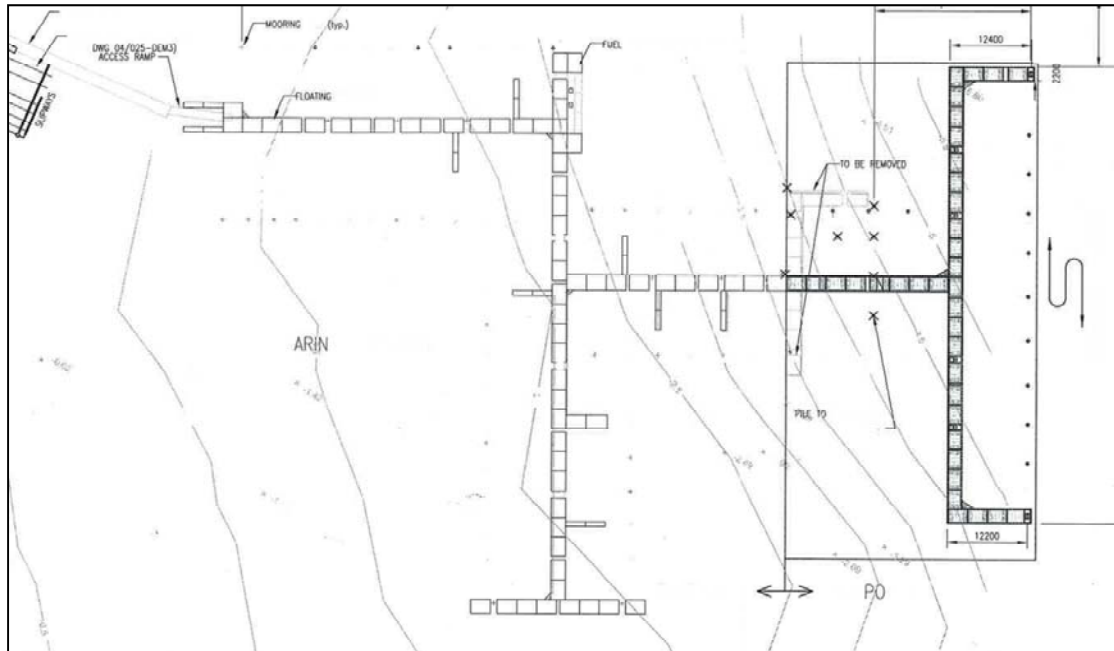


Figure 1: Plan of Proposal

The proposal includes the following:

- The existing floating pontoon structure is to be extended 36 metres northwards into the river.
- The T-shaped addition will accommodate 18 berths.

- The proposed new berths will cater for a range of larger boat sizes up to 20 metres in length.
- All of the commercial swing moorings (18 in total) currently licensed to Sylvania Marina and located generally to the north-west of the marina are to be relinquished and removed.

As a result of removing the swing moorings and replacing some existing rentable berths with additional work berths, the rentable berthing capacity of the marina is reduced from 71 berths to 66 berths (i.e. a reduction of 5 berths). However, as detailed in the following table, the size of the boats able to be accommodated is being increased.

Berth Lengths/Types	Number of Berths (Existing)	Number of Berth (Proposed)
6m	15	14
7m	2	1
8m	7	6
9m	9	9
10m	12	12
11m	3	3
12m	0	4
14m	1	0
15m	2	12
16m	2	2
20m	0	3
Sub Total	53	66
Swing Moorings	18	0
Total	71	66

3.0 SITE DESCRIPTION AND LOCALITY

The marina is located about 300 metres south-west of Tom Ugly's Bridge, in a small embayment on the southern shores of Georges River. Another smaller marina (Tom Ugly's Bridge Marina) is located about 230 metres to the north-east, adjacent to Tom Ugly's Bridge. A 50 metre long private jetty extends towards the marina from the eastern shoreline of the embayment.

Immediately to the east and west of the marina car park are detached dwelling houses generally orientated towards Tom Ugly's Bridge and Shipwright's Bay and therefore overlooking the fixed berthing facilities of the marina.

The southern side of Harrow Street consists of a mixture of detached dwelling houses, dual occupancies and townhouses. Many of these overlook the marina and enjoy expansive river views and long distance views of the city skyline.

Further east of the marina are a large townhouse complex and two (2) low-rise apartment complexes. Many of these are adjacent to the waterfront and

orientated towards Kangaroo Point and Bald Face Point or towards Shipwright's Bay. These dwellings overlook the fixed berthing facilities of the marina.



Figure 2: Location of Site

The existing land-based facilities of the marina include:

- A main building comprising of a chandlery, workshop and office.
- A car park with 22 marked parking spaces.
- Amenities block comprising of male and female toilets and a shower.
- Two (2) slipways with careening cradles for boat maintenance and repairs.
- Underground fuel storage tanks and waste water treatment facilities.

The existing water-based facilities of the marina include:

- A timber jetty connecting the fixed berthing facilities to the land.
- A floating pontoon system comprising of 53 rentable berths together with stabilisation and mooring piles.
- Fuelling and sewage pump-out facilities including three (3) associated work/service berths.
- 18 commercial swing moorings.

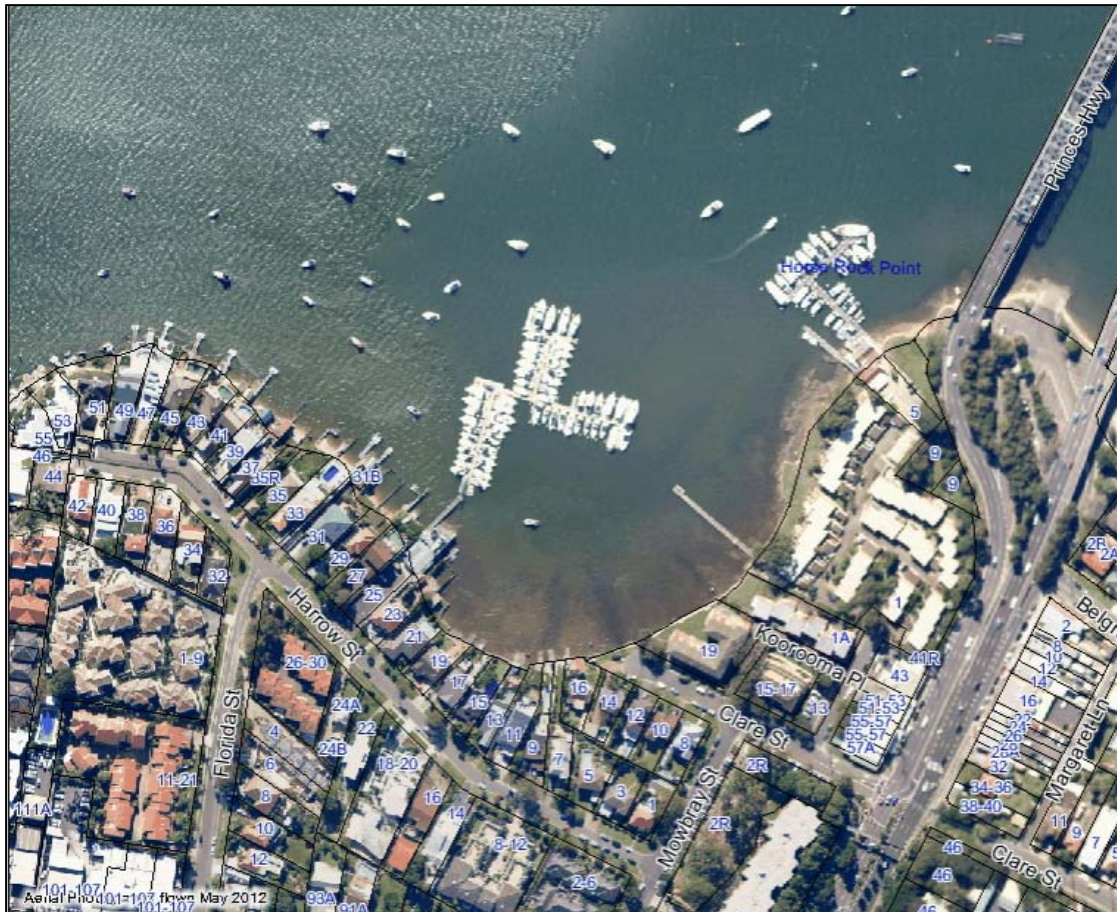


Figure 3: Aerial photograph of Sylvania Marina (in the centre) and Tom Ugly's Bridge Marina (in the top right hand corner)



Figure 4: Westerly view of Sylvania Marina with Tom Ugly's Bridge Marina in the foreground



Figure 5: North-westerly upstream view of Georges River from the shoreline immediately south of Tom Ugly's Bridge Marina

Note: The northern extremity of the fixed berthing facilities of Sylvania Marina are just visible on the far left and the western extremity of the fixed berthing facilities of Tom Ugly's Bridge Marina are just visible on the far right.

4.0 BACKGROUND

The property known as No. 25 Harrow Street and the adjacent waterway held under lease from the state government have been used for commercial boatshed and boat mooring activities since the late 1920's.

The site was used for residential purposes and the hiring of boats from 1929 onwards. By 1974 the marina, under various applications, had expanded to 20 fixed berths and a large boatshed had been built and fuel tank and bowzers installed. In 1972, the boat hire fleet was reduced from 26 to 13 boats and by 1975 the hiring of boats had ceased. During the 1970's, the house at the front of the site was demolished and a car parking area was provided in its place. In 1974, an in-principle approval was granted for a maximum of 60 berths at the marina, but this consent was not implemented and lapsed.

In 1979, an approval (DA688/79) was granted for the expansion of the marina to include a maximum of 53 fixed berths and a reduction in the number of commercial swing moorings to 17 moorings. This development was subsequently constructed.

In 1982, Council refused a development application (DA41/82) for a northerly extension of the fixed berthing facilities including an additional 10 berths. At the time, the marina operations included 17 commercial swing moorings and the applicant proposed to surrender 10 of these moorings in conjunction with the proposal. Council's decision to refuse the application was upheld by the Land & Environment Court on appeal. In his written judgement, Justice

Cripps stated that *“In my opinion the marina has reached its acceptable maximum limit”*.

A major refurbishment of the fixed berthing facilities of the marina, including its modification to a floating pontoon type design and installation of a sewage pump out system (DA94/1818), was approved in 1995. This approval was subsequently amended by Council in 1996, by way of the relocation of the sewage pump out system to be adjacent to the boat fuelling facilities. The approval included a condition to the effect that no more than 53 boats be berthed at the marina at any point in time. This development was subsequently constructed.

In 2004, an environmental audit of the marina was conducted by Council officers. As a result of this audit, an ‘action plan’ was issued to the marina. This action plan required the installation of capture drainage on the boat repair area of the slipway and treatment/re-use or appropriate disposal of all associated liquid waste. Works to install the capture drainage had not commenced when the marina was inspected again in 2005 and a follow-up action plan was issued.

In 2008, Council approved a development application (DA07/0986) for the demolition of an awning and part of the workshop and an extension to the sliprails. These works were necessary for the installation of pollution control measures in accordance with a Pollution Prevention Notice issued by Council. These works were subsequently carried out.

A brief history of the current development proposal is provided as follows:

- A similar development application (DA12/0384) was received by Council on 15 May 2012. The application was publicly exhibited and 55 submissions (including 11 submissions in support of the proposal) were received. The application was reviewed and it was concluded that the proposal was ‘designated development’. The application was subsequently withdrawn on 28 February 2013.
- Pre-application discussions regarding a similar proposal (supported by an environmental impact statement in draft form) were held with Council officers on 12 March 2013 and written advice followed on 15 April 2013. A full copy of this written advice is provided in Appendix “C”.
- The pre-application written advice concluded that the proposed relinquishment and removal of the commercial swing moorings were generally supported, particularly if there was permanency attached to this outcome. It also concluded that the expansion of the fixed berthing facilities may be supported, if it could be demonstrated that car parking demands were not increased and public and private views were not unreasonably affected.
- The current application was received by Council on 3 July 2013.
- The application was placed on exhibition, with the last date for receipt of public submissions being 15 August 2013. Fifty (50) submissions were received.

- An information session was held on 30 July 2013 and 21 people attended.
- The applicant was requested by letter dated 9 August 2013 to submit further information regarding the work/pump-out berths, visual impacts, environmental issues and hydrological issues.
- The JRPP was briefed on the application on 22 August 2013.
- The requested additional information was submitted on 30 August 2013, 2 September 2013 and 12 September 2013.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the environmental impact statement, plans and other supporting information submitted upon lodgement of the development application and after written requests from Council, the applicant has provided adequate information to enable a full and proper assessment.

The following supporting information accompanied the application upon its lodgement:

- Visual Impacts Assessment prepared by Richard Lamb & Associates
- Aquatic Ecology Assessment prepared by Marine Pollution Research
- Land Transport, Traffic, Parking & Servicing Impact Assessment prepared by McLaren Traffic Engineering
- Noise Impact Assessment prepared by Atkins Acoustics
- Environmental Management and Operational Plan for Sylvania Marina
- Environmental Protection Plan for Fuel Storage and Fuelling System

During the processing of the application, the applicant submitted the following additional information:

- Clarification as to the purpose of the proposed work/pump-out berths.
- Supplementary visual impact assessments addressing viewing point locations from residential properties along the waterfront to the east and west of the marina and from the waterfronts of the townhouse and low-rise apartment complexes between Clare Street and Tom Ugly's Bridge Marina.
- Supplementary information addressing construction management, acid sulfate soils, groundwater monitoring, aquatic vegetation, threatened species, hydrological impacts and potential contamination.
- Certification of the structural adequacy of the berthing facility in the event of significant floods, storm surges and sea level rises.
- Responses to the issues raised in the public submissions received from local residents.

6.0 PUBLIC PARTICIPATION

The development application was publicly exhibited in accordance with the designated development provisions of the Environmental Planning and

Assessment Regulation 2000. The exhibition period commenced on 16 July 2013 and concluded on 15 August 2013.

An information session between Council officers and interested residents was also held during the exhibition period. Potential issues raised by those present included noise, visual impact, traffic, parking, land use compatibility, fire hazards, cumulative impacts, pollution and general concerns over the potential for the swing moorings to be reinstated after their relinquishment. Concerns were also raised over the proposed draft planning controls for the waterways.

All public submissions received within the exhibition period were referred to the NSW Department of Planning & Infrastructure and NSW Department of Primary Industries (Fisheries) in accordance with the provisions of the Environmental Planning & Assessment Regulation 2000.

571 property owners/occupants in the vicinity of the marina were notified of the proposal and 50 submissions (including some late submissions) were received. Thirty-eight (38) submissions (two from the one property) object to the proposal and eleven (11) submissions support the proposal. One (1) submission does not object to the proposal, but objects to any expansion of Tom Ugly's Bridge Marina, particularly having regard to its vehicular access being off a blind bend on a busy highway and its limited off-street car parking facilities.

The submissions in support of the proposal originate from local businesses, local residents, Shire residents with boating interests, a local boating industry association and a metropolitan insurance company specialising in maritime insurance. The reasons offered in support of the proposal include improved visual outlook, marina efficiency, safety and better environmental outcomes.

The submissions objecting to the proposal originate predominantly from owners/occupants of dwellings located along the shoreline in the vicinity of the marina and dwellings located on the high side of Harrow Street and overlooking the marina and embayment. Almost half of the objectors own and/or reside in dwellings in the townhouse and low-rise apartment complexes across the bay to the east of the marina.

A full list of the submissions objecting to the proposal (including a summary of the key issues raised in each submission) is contained in Appendix "B" of this report. The key issues raised in these submissions are addressed as follows:

6.1 Issue 1 – View Loss and Visual Impacts

A common theme amongst all but one of the objections is that the extension and associated moored boats will be visually intrusive and have an adverse impact on the river views of adjacent residents as well as from public places. Many objectors also express concern over the cumulative visual impact of the two (2) marinas.

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

6.2 Issue 2 – Car Parking Demand and Traffic Impacts

A common theme amongst the submissions objecting to the proposal is that the existing car park is inadequate to cater for the car parking demands of the existing marina operations. Many submissions also argue that the proposal will result in increased traffic generation and that traffic congestion in surrounding streets will be exacerbated as a result.

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

6.3 Issue 3 – Impacts on the Marine Environment

A common theme amongst many of the submissions is that the sandy riverbed along the shoreline to the east of the marina has gradually been blanketed with sediment since the establishment of the marina and further expansion of the fixed berthing structure and its associated boat moorings will exacerbate this hydrological process and its environmental impacts.

Some objectors raise a general concern that the increased numbers of boats moored on the berthing structure and associated boat movements in and around the marina will lead to increased water pollution in the embayment from fuel leakage and spills, rubbish, sewage and the like.

Some objectors are also concerned about the on-going loss of biodiversity and potential adverse impacts upon marine life and water birds that use the area.

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

6.4 Issue 4 – Noise Impacts

Some objectors raise concern over noise impacts from the existing operations including noise from early morning and late evening boat movements, boat maintenance and repairs, gatherings on moored boats, use of the car park and the like and argue that these impacts will be exacerbated by the proposal. Some objectors argue that the larger boats will bring much greater noise impacts due to their potential use for social gatherings by larger groups.

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

6.5 Issue 5 – Status of Swing Moorings

Some objectors are concerned that the relinquished swing moorings could return in the future, despite assurances from the applicant, on the basis that NSW Roads & Maritime Services has ultimate control over the allocation of such mooring facilities.

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

6.6 Issue 6 – Alienation of Waterways for Private Interests

Some submissions object to the further alienation of the waterways for the benefit of a private commercial interest and argue that the combined footprint of both marinas already occupies a disproportionately large amount of the surface area of the embayment.

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

6.7 Issue 7 – Fire Risk

Many objectors are concerned about the potential fire risk associated with the increased number of boats to be moored, as a result of fuel storage on the boats and their close proximity to one another.

Comment: In response to this issue, the applicant advises that the marina is equipped with fire hose reels, fire extinguishers and other fire prevention equipment, in accordance with the relevant Australian Standards and the requirements of NSW Fire Brigades. More recently, the marina operators have installed eight (8) new fires hoses and two (2) new motorised fire fighting pumps as per models recommended by NSW Fire Brigades. The marina also has emergency response procedures in place to deal with fires, accidental spills and other emergencies.

In terms of access for emergency services vehicles and personnel, it is important to consider that the difficulties imposed by the surrounding road system and the site layout are not recent developments, but have been in existence for decades. On the other hand, the residential population in the locality of the marina has increased in that time due to on-going townhouse developments and this has placed greater pressures on the road system in terms of traffic movements and kerbside parking demand.

Subject to adequate fire prevention measures (such as those outlined above) being in place, it is considered that the issue of increased fire risk potential is not of such significance to warrant refusal of the proposal.

6.8 Issue 8 – Impact on Property Values

Some objectors are concerned about the impact of the proposal on residential property values in the locality, particularly having regard to the available river views being a major selling point of these properties.

Comment: The impact of the proposal on property values is not a relevant matter for consideration in the assessment of the development application. The impact of the proposal on the available river views from residential properties in the locality of the marina is assessed elsewhere in this report and is considered to be generally acceptable, subject to a reduction in the size of the berthing facility extension.

6.9 Issue 9 – Incompatible with Residential Character

Some objectors are concerned about the commercial nature of the proposal and its incompatibility with the prevailing residential character of the locality.

Comment: The berthing facilities (as existing and proposed) are permitted with consent within the zone. The land-based facilities have been in existence for many decades and operate under 'existing use rights'. Both Sylvania Marina and Tom Ugly's Bridge Marina are an integral part of the established character of the embayment. In coming to this conclusion, it is important to recognise that the shores of Georges River at Sylvania and Blakehurst have a long historical association with maritime activities. In the circumstances, it is considered that the issue of land use incompatibility is not of such significance to warrant refusal of the proposal

6.10 Issue 10 –Overdevelopment

Some objectors argue that the proposal, along with the approved expansion of Tom Ugly's Bridge Marina, results in an overdevelopment of the small embayment within which both marinas are located.

Comment: There are no specific planning controls in Council's local environmental plan and development control plan limiting the number, extent or berthing capacity of marinas throughout the waterways of Sutherland Shire. As such, there are no prescriptive benchmarks addressing the density and scale of marinas and whether an individual marina proposal ultimately constitutes an overdevelopment of a particular locality. The capacity and footprint of such berthing facilities are largely determined by merit considerations such as visual impacts, impacts on views and car parking provision.

6.11 Lack of Demand for Moorings

Some objectors question the need for the additional fixed berths, arguing that the applicant has not adequately demonstrated that such a demand exists.

Comment: Boat ownership has been increasing in Sutherland Shire and as the trend is towards larger boats, boat storage facilities are increasingly in demand. In a recent report to Council's Development Assessment & Planning Committee, the following comments were provided with respect to trends in boating:

"Data from the NSW Department of Roads and Maritime Services indicates that new vessel registrations for vessels over 10m in length are increasing at approximately 9% p.a. in NSW. Also, vessels are tending to become larger, with 12m and 15m vessels increasingly common. Vessels over 18m vessels are also not uncommon.

Within Sutherland Shire...there has been a significant increase in boat ownership, reflecting in part, the increasing net wealth of local residents. Vessels larger than 10m require a permanent storage facility – swing mooring, fixed floating berth or out-of-water storage."

In response to this issue, the applicant also advises that demand for the additional fixed berths will be satisfied by the relocation of a number of the boats from the relinquished swing moorings to the fixed berthing facility.

Having regard to the anecdotal evidence, it is apparent that there is a real demand and need for additional fixed berthing facilities suited to larger vessels (such as is proposed by the current application).

6.12 Obstruction of Waterway Access

Some objectors are concerned about the berthing structure extension making boat access between both marinas more difficult.

Comment: At present, the berthing facilities of both marinas are separated by a minimum distance of about 90 metres at the closest points. The proposed extension of the berthing facilities of Sylvania Marina will reduce this distance to about 70 metres. Following the expansion of the berthing facilities of both marinas, this distance would be increased to about 80 metres. Under either future scenario, boat access between the berthing facilities of both marinas will remain more than adequate, even in the situation of two-way boat traffic movement.

6.13 Lighting Impacts

Some objectors refer to occasional glare nuisance from existing external lighting at the marina and raise concerns over increased obtrusive effects from the additional external lighting on the berthing structure extension.

Comment: This is a legitimate concern given that such lighting will be essential for the purposes of security and occupational health and safety between sunset and sunrise each day. In response to this issue, the applicant advises that the berthing structure extension will be fitted with downcast lighting and light spill will be limited to the pontoons and adjacent moored boats.

The proposed external lighting on the berthing structure extension will need to be designed and operated so that its obtrusive effects are minimised to an acceptable level, in accordance with the provisions of Australian Standard AS4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting*. This may be readily addressed by suitable conditions of consent.

6.14 Ecological Sustainability

Some objectors argue that the proposal does not comply with the objectives of the relevant state pollution control legislation regarding ecological sustainability. Both intergenerational equity and the precautionary principle should be considered.

Comment: No issues have been raised by the public authorities having an interest in the management of the waterways or Council's Environmental Health and Science Units regarding the ecological sustainability of the proposal. Subject to appropriate environmental controls being imposed and

implemented, there will be no significant risks to human health or the natural environment.

The application of the 'precautionary principle' means *"if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."* Having regard to the scientifically based information submitted by the applicant and few concerns raised by Council's internal specialists and relevant public authorities following their review of this information, it is concluded that the proposal does not pose any threats of serious or irreversible environmental damage. Precautions to avoid environmental damage can be effectively implemented through the imposition of conditions of consent.

The application of the concept of 'intergenerational equity' means that *"the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations."* Given the urban context of the proposal, its minor scale relative to the Georges River catchment and the environmental controls to be imposed and implemented, it is considered that the health, diversity and productivity of the environment will, at the very least, be maintained for the benefit of future generations. It is concluded that the proposal satisfactorily addresses the concept of intergenerational equity.

7.0 STATUTORY CONSIDERATIONS

The site of the berthing facilities is located within 'Zone 16 - Environmental Protection (Waterways)' pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006 ('SSLEP 2006'). The proposed development, being for the purpose of a 'marina', is a permissible use within this zone with consent.

The allotment comprising the land-based component of the marina is located within 'Zone 2 - Environmental Housing (Scenic Quality)' pursuant to the provisions of SSLEP2006. Development for the purpose of a 'marina' is prohibited within this zone. However, the land-based component of the marina enjoys the benefit of 'existing use rights' pursuant to the provisions of the Environmental Planning and Assessment Act 1979.

Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment ('the Georges River Catchment REP') also applies to the site of the berthing facilities and adjacent waterways of Georges River. Marinas, being defined as 'development for the purpose of a pontoon, jetty, pier or other structure or apparatus providing berths for boats and use of adjoining land for any support facilities', are allowed with consent. Pursuant to the provisions of the Georges River Catchment REP, a range of matters aimed at maintaining and enhancing the water quality of the waterways and protecting the associated marine environment and adjacent riparian lands must also be considered in the assessment of marina proposals.

In addition to the provisions of SSLEP 2006 and the Georges River Catchment REP, the provisions of the following environmental planning instruments and development control plans are also relevant to this application:

- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 62 – Sustainable Aquaculture
- Sutherland Shire Development Control Plan 2006 ('SSDCP 2006')

The provisions of the exhibited draft Sutherland Shire Local Environmental Plan 2013 ('DSSLEP 2013') are also relevant to the proposal. The portion of waterways in which the proposal is located is zoned 'W2 Recreational Waterways' under the latest exhibited version of DSSLEP 2013. Within this zone, the proposal remains permissible with consent. The provisions of DSSLEP 2013 as they relate to waterways are not imminent or certain and should be given little weight in the assessment of this application.

8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The development application was referred to internal and external specialists for assessment. No comments were received from NSW Roads & Maritime Services (Maritime) and NSW Department of Planning and Infrastructure. The following comments were received:

8.1 NSW Department of Primary Industries (Fisheries)

The development application was nominated by the applicant as 'integrated development' for the purposes of the Fisheries Management Act 1994. General terms of approval were sought from NSW Department of Primary Industries (Fisheries), following which no objections were raised subject to a requirement that environmental safeguards be used during construction to ensure no escape of turbid plumes into the aquatic environment. A full copy of this advice is provided in Appendix "D".

8.2 NSW Environment Protection Authority

The development application was nominated by the applicant as 'integrated development' for the purposes of the Protection of the Environment Operations Act 1997. General terms of approval were sought from NSW Environment Protection Authority, following which advice was received to the effect that the proposal does not require an 'environment protection licence' and is not integrated development and no further comment is necessary. A full copy of this advice is provided in Appendix "E".

8.3 NSW Department of Primary Industries (Office of Water)

The NSW Department of Primary Industries (Office of Water) has been consulted and advises that a 'controlled activity approval' is not required for the purposes of the Water Management Act 2000 and no further assessment is necessary. A full copy of this advice is provided in Appendix "F".

8.4 Environmental Science & Policy Unit

Concerns were raised initially over the adequacy of the information submitted with regard to the impacts of the proposal on the marine environment. Following review of the further information submitted in response to those concerns, the proposal is now considered acceptable subject to conditions of consent addressing construction management, acid sulfate soils, sediment waste classification and ground water monitoring.

8.5 Environmental Health Unit

Council's environmental health officer has reviewed the proposal and raises no objection subject to conditions of consent addressing construction noise, air pollution, hazardous materials, odours, fuel storage, sewage disposal, external lighting and plant noise.

8.6 Traffic & Transport Unit

Council's traffic engineer has reviewed the proposal and the accompanying traffic and car parking demand assessment submitted with the application and advises that the assessment is soundly based and its opinions are supported. In order to improve the safety of pedestrians using the footpath area, it is recommended that the existing footpath crossing be reconstructed to current standards.

8.7 Assessment Team Engineer

Council's assessment team engineer, in consultation with Council's Civil Assets and Traffic & Transport Units, has reviewed the existing off-street car parking arrangements and advises that the car park layout does not comply with the relevant standards in terms of its dimensions. Further, the parallel parking spaces along the eastern boundary have never been formally approved by Council.

The 15 perpendicular parking spaces along the western boundary are acceptable in terms of the relevant standards provided the parallel spaces are deleted. Subject to this modification to the car park layout and the reconstruction of the existing footpath crossing to meet current standards, no objections are raised to the proposal.

8.8 Communities Unit

Council's community places manager has undertaken an assessment of the application in terms of crime risk and accessibility for people with disabilities. The location has been assessed as having a low crime risk rating and it is not anticipated that the proposal will significantly increase the crime risk. No objection is raised to the proposal subject to conditions of consent addressing the relevant standards for access for people with disabilities and installation of security devices.

8.9 Stormwater Management Unit

Concerns were raised initially over the adequacy of the information submitted with regard to the structural adequacy of the marina in the event of significant flooding and taking into account sea level rises and storm surges. Following review of the further information submitted in response to those concerns, the

proposal is now considered acceptable, subject to the height of the mooring and stabilisation piles being designed to account for the above events.

9.0 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.

9.1 View Loss and Visual Impacts

A common theme amongst all but one of the submissions objecting to the proposal is that the berthing structure extension and associated moored boats will be visually intrusive and have an adverse impact on the river views of adjacent residents along the shoreline in the vicinity of the marina.

There are very few objectives and controls relating to marinas in SSLEP 2006 and SSDCP 2006, particularly with regards to view loss and visual impact.

One of the objectives of the Environmental Protection (Waterways) zone, in which the proposal is located, is *“to ensure development is carried out in a way that protects the ecology, **scenic value** or navigability of the waterways”*.

Whilst there are no specific controls related to marinas in the ‘Foreshore & Waterfront Development’ provisions of Chapter 9 of SSDCP 2006, there are overall objectives that have some relevance to the proposal. These objectives are as follows:

- *To minimise the visual impact of development when viewed from adjacent land and waterways by integrating developments in the foreshore and waterfront environment by using design and materials which complement the natural landscape*
- *To minimise the obstruction of water views from public land*

Additionally, the introductory commentary of those provisions recognises the importance of the visual qualities of the waterways by stating as follows:

“The maintenance of the natural beauty of the waterways and the foreshores is important to the scenic quality of the Shire. The objective of these provisions is to ensure that the visual and environmental qualities of the foreshore and waterfront areas of Sutherland Shire are maintained and enhanced.”

The environmental impact statement submitted with the application was accompanied by a visual impacts assessment (‘VIA’) prepared by Richard Lamb & Associates. The VIA has since been supplemented by the inclusion of a number of additional view point assessments relating to waterfront properties along the shoreline to the east and west of No. 25 Harrow Street

and the townhouse and low-rise apartment complexes across the embayment to the east of the berthing facilities. The VIA has been reviewed and is considered to be adequate in terms of its coverage of representative view points.

None of the individual view point assessments undertaken in the VIA arrive at a high rating (on a sliding scale of low, medium and high) in terms of the visual impact of the proposal. However, the VIA does recognise in its conclusions that the townhouse complex is the most impacted and the view blocking effect of the proposal is a major contributing factor in arriving at the overall 'medium impact' rating for this particular view point. In overall terms, the VIA concludes that *"...in the context of the balance of what may be lost against what will be gained, although there is a small net loss for a small number of residences, the overall loss considered over the whole visual catchment is not so significant that the proposal ought to be refused on that ground."*

The individual view point assessments and conclusions contained within the VIA are generally supported, in so far as views from public areas and views from detached housing in the vicinity of the marina are concerned. However, with regard to the visual impact of the proposal on the townhouse and low-rise apartment complexes, the conclusions reached are not supported. There is no certainty at this point in time that the approved expansion of the berthing facilities associated with Tom Ugly's Bridge Marina will proceed. Accordingly, the visual impact benefits from the proposed northerly re-orientation of this facility cannot be given much weight in the assessment of visual impact.

From public areas on the northern side of Georges River at Blakehurst and from the walkway on the western side of Tom Ugly's Bridge, the visual presence of the proposed extension will largely recede into the background, due to the heavily built-up character of the foreshores and the existing visual clutter created by existing moored boats. Apart from the walkway on Tom Ugly's Bridge and the western end of Clare Street, there are no readily accessible public vantage points that have a direct view of the existing berthing facilities of the marina. The vast majority of the waterfront to the east and west of No. 25 Harrow Street is in private ownership.

In terms of the views from the end of Clare Street, the VIA demonstrates that there will be negligible visual impact as a result of the proposal. The long distance view available from this vantage point, between the berthing facilities of both marinas towards Shipwright's Bay, will be maintained.

With regard to private properties immediately to the east and west of No. 25 Harrow Street, the proposed extension will result in the removal of some of the view of the waterways beyond the existing berthing facilities. However, it is relevant to consider that the boats moored on the existing berthing facility in the foreground will have some effect in screening the boats moored on the proposed extension, particularly when viewed from lower elevations. Further, many of these properties otherwise enjoy broad views across the river

towards Tom Ugly's Bridge and Shipwright's Bay and upstream towards Bald Face Point.

With regard to private properties on the elevated slopes to the south of the marina and overlooking the river, the proposed berthing structure extension will represent a relatively minor element in the panoramic river views enjoyed from many of these properties.

As mentioned earlier in this report, the surrounding properties that are most sensitive to the visual intrusiveness of the proposal are the town house and low-rise apartment complexes to the east of the marina. The VIA indicates that approximately one third of the existing unobstructed view across the waterways to the opposite shoreline of Georges River will be blocked with respect to the most impacted waterfront dwelling within the townhouse complex. The VIA concludes that the overall impact of the proposal on views from the nominated viewing points of the townhouse and low-rise apartment complexes range from low to medium. These conclusions are not supported.

The broad views enjoyed by the waterfront residents of the townhouse and low-rise apartment complexes vary considerably in terms of their individual compositions. The views to the west and south-west are largely dominated by the densely concentrated built forms on the foreshores and the moored boats associated with the existing berthing facility. Due to these elements, it is considered that the westerly and south-westerly aspects are of relatively low scenic quality.

In contrast, views to the north-west and north are largely dominated by open water with some boats on swing moorings as well as longer distance views of the main channel and across the river to the heavily vegetated foreshores at Blakehurst. Due to these elements, it is considered that these aspects are of relatively high scenic quality.

The much higher quality, north-westerly and northerly views available from the waterfronts of the townhouse and low-rise apartments are restricted to a relatively narrow view corridor between the existing berthing facilities of both marinas. The width of the view corridor between the berthing facilities from these vantage points varies from 30 to 40 degrees. The view corridor represents less than one third of the overall view in the case of some vantage points in these complexes. As the higher quality north-westerly and northerly views represent a relatively small proportion of the overall view, the importance of their retention is heightened. The quality of the existing view upstream towards the bend in the river at Bald Face Point and Kangaroo Point, from waterfront dwellings in the townhouse complex, is further enhanced by virtue of the considerable boating activity that would be visible on the main channel of the river, for long durations on weekends.

The proposed design of the extension, such that it intrudes upon a sizeable proportion of the north-westerly and northerly views between the berthing facilities of both marinas (up to one-third in the case of one of the waterfront dwellings in the townhouse complex), is considered to represent an

unreasonable visual impact having regard to the circumstances mentioned above.

If the additional north-south arm comprising of the eight (8) berths was deleted and the proposed east-west arm comprising of the 10 new larger sized berths was relocated such that it aligned with the existing T-head at the northernmost point of the existing berthing facilities, the impact of the proposal on views from the waterfront dwellings in the adjacent townhouse and low-rise apartment complexes would be negligible and acceptable. The visual impact of the proposal would be little different from that imposed by the current fixed berthing facilities. At the same time, the marina operators will be able to meet the increasing need for fixed berths suited to larger vessels, albeit to a slightly lesser extent.

To further protect the important northerly view between both berthing facilities, it would be appropriate that the proposed berth located on the outside of the existing T-head at the eastern extremity of the facility be deleted, given its unnecessary intrusion into the field of view.

It is recommended that the berthing structure extension be reduced in its north-south extent by way of removal of the 25 metre length of pontoons comprising berth numbers 43, 44, 45, 46, 53, 54, 55 & 56. In addition, it is recommended that berth number 21, located on the outside of the existing T-head at the eastern extremity of the facility, be deleted. To compensate for the loss of these additional fixed berths, the applicant should be permitted to retain nine (9) of the existing commercial swing moorings located in the waterways to the north-west of the fixed berthing facilities. These modifications can be adequately addressed by way of conditions of consent.

9.2 Car Parking Demand and Traffic Impacts

A common theme amongst the objections is that the existing car park is inadequate to cater for the car parking demands of the existing marina operations. As a result, cars are parked either side of Harrow Street on weekends, reducing it to a one way thoroughfare and creating difficulties for motorists in negotiating the street and residents in entering and exiting their properties. It is claimed that the proposal will exacerbate these problems.

With regard to car parking demand and traffic impacts, the pre-application advice stated as follows:

“The proposal will need to demonstrate that the change in the proportions of swing moorings and fixed berths does not result in increased car parking demand, especially given that off-street car parking is already limited and opportunities to improve the situation are not readily available...”

The claims of the objectors that the marina is already generating overflow parking in the surrounding streets cannot be readily confirmed or denied. Even if this claim is accepted on face value, it must be recognised that any such overflow parking and associated impacts are a consequence of what has

already been approved by Council, in terms of both the capacity of the marina and its off-street car park.

Chapter 7 of SSDCP 2006 prescribes a car parking requirement for marinas of *“1 space for every 3 berths (wet and dry) plus 1space for every 2 employees on duty at any one time”*.

If the above car parking rate was applied to the overall proposal, 24 off-street parking spaces would be required. This figure is arrived at based on a peak staffing level of 4 staff and 66 rentable berths. The 22 space capacity of the existing car park is clearly deficient if the car parking requirement was imposed in this manner. However, this is considered to be an unreasonable approach given that the proposal seeks alterations and additions to the existing berthing facilities and not a complete redevelopment of those facilities.

The marina currently comprises of a total of 71 berths, including 53 fixed berths and 18 commercial swing moorings. The marina, as currently proposed, comprises of a total of 66 fixed berths and this represents a reduction in the berthing capacity of the marina of five (5) berths. As a result, there is actually a reduced car parking requirement of 1-2 parking spaces.

The applicant has also mounted a case to suggest that the existing off-street car parking area and its capacity is sufficient to cater for the car parking demands of the proposal as a whole. The traffic impact and car parking demand assessment submitted with the application, which includes previous extensive research on the car parking demands of various marinas (including Dolan's Bay Marina), indicates that the car parking requirement prescribed in SSDCP 2006 is excessive. Based on the lesser parking rate determined in that study, a car parking requirement of approximately 15 parking spaces is arrived at for the proposal as a whole.

The applicant claims that the existing car parking facilities, consisting of 22 car spaces, are in accordance with previous Council approved plans. In dispute are the seven (7) parallel parking spaces located along the eastern boundary of the site. A search of Council's records has failed to locate any such approved plans. To the contrary, Council's records indicate that in the early 1980's, the seven (7) parking spaces were line-marked on the site without any development consent from Council.

An assessment of the car park layout by Council officers the following year (1983) concluded that the width of the site was not adequate to accommodate perpendicular parking adjacent to the western boundary and parallel parking adjacent to the eastern boundary, in accordance with the dimensional standards that applied at the time. This assessment concluded that no more than 13 perpendicular car parking spaces (or 12 car spaces if a landscape strip was included along the frontage) could be accommodated on the site.

The applicant has submitted further information seeking to demonstrate that the existing 22 car space layout complies with the current standards as

prescribed in the latest version of AS2890.1. However, contrary to the applicant's claims, the nominated 2.1 metre width of the parallel parking spaces is deficient, taking into account the adjacent obstructions such as the crash barrier. According to the standards, these spaces must be 300mm clear of any adjacent structure greater than 150mm in height.

Council's assessment team engineer has reviewed the existing car park layout against the current standards and advises that only 15 perpendicular car spaces could be adequately accommodated within the car park. Coincidentally, this level of provision is consistent with that found to be acceptable by the car parking demand and traffic impact assessment submitted with the application.

Based on the information provided in the traffic impact and car parking demand assessment submitted with the application, the proposal does not result in any additional adverse impacts in terms of traffic generation on the surrounding road system and delivery vehicle access arrangements. Further, no advice to the contrary has been received from officers of Council's Traffic & Transport Unit.

Having regard to the car parking requirement prescribed in SSDCP 2006 and the reduced berthing capacity of the marina, it is considered that additional car parking provision is not warranted in the circumstances. The car park layout should be modified to include 15 perpendicular parking spaces and an access aisle, so as to comply with the current Australian Standard. It is also recognised that this modified car park layout will allow for easier access for service vehicles and the like.

9.3 Impacts on the Marine Environment

A common theme amongst many of the submissions is that the once sandy riverbed along the shoreline to the east of the marina has gradually been blanketed with sediment since the establishment of the marina. These submissions express concern that further expansion of the fixed berthing structure and its associated boat moorings will exacerbate this hydrological process and its environmental impacts. It is claimed that the berthing structure and associated moored boats is affecting tidal movements to the extent that the water does not flow freely in the embayment, leading to sediment, rubbish, pollution and the like accumulating along the shoreline to the east of the marina. Some objectors blame the operations of the slipway for the siltation problem, citing sediments being disturbed by boats accessing the slipway and being carried eastwards along the shoreline.

No scientific based evidence has been submitted by the objectors to support their claims. Although the marina may have contributed to localised sedimentation and pollution within the embayment in the past, it is not likely that it has been a primary cause. The waterways and catchment area of Georges River and its tributaries are considerable and there are numerous potential sources for the sedimentation and pollution that has occurred in the embayment. It is also relevant to consider that the shoreline in the vicinity of the marina is in an embayment on an outer bend of the river and therefore

conducive to the accumulation of sediment, having regard to the natural hydrological processes of estuaries.

Historical evidence suggests that the tidal mudflats in the vicinity of the marina have been in existence for decades, well before the marina was established. The applicant also advises that the floating pontoon structure and berthed vessels have minimum draft and therefore do not have any significant effect on the circulation of waters within the vicinity of the marina.

With regard to the concerns over the environmental impacts of the slipway operations, the applicant advises that vessels are moved onto or off the slipway cradles at high tide levels only and vessels do not utilise their propellers to assist slipping operations.

Some objectors raise a general concern that the increased numbers of boats moored on the berthing structure and associated boat movements in and around the marina will lead to increased water pollution in the embayment from fuel leakage and spills, rubbish, sewage and the like.

Vessels berthed at the marina represent a small proportion of the overall number of vessels occupying and utilising the waterways of Georges River. The marina has facilities available for the collection of waste and sewage from vessels. The marina operators cannot be held responsible for the impacts of other boat owners/users not berthed at the marina and who do not take advantage of the pump-out facilities provided by the marina. The applicant also mentions that previous works undertaken within the slipway area have reduced the risk of water pollution from boat maintenance and repair activities and a recent environmental audit carried out by Sutherland Shire Council in 2010 assessed the marina to be compliant.

Some objectors are also concerned about the on-going loss of biodiversity, potential adverse impacts from siltation and pollution upon marine life and water birds that use the area and the exacerbation of these impacts by the proposal.

No scientific based evidence has been submitted by the objectors to support their claims. To the contrary, some residents believe that the health of the mudflats has improved, with some fauna that previously existed returning to the area. The further information submitted in response to concerns raised by Council's Environmental Science & Policy Unit indicates that the proposal will not have an adverse impact on the marine environment and associated habitat and fauna and flora species. Council's Environmental Science & Policy Unit has not raised any concerns regarding the conclusions reached by the applicant's consultants.

In terms of the specific matters for consideration that apply to marinas under the provisions of the Georges River Catchment REP, it is considered that the proposal generally satisfies these matters having regard to the positive comments provided by Council's Environmental Health and Science Units and the information accompanying the environmental impact statement addressing those matters.

In conclusion, it is considered that the proposal will not result in any adverse impacts on the marine environment having regard to the absence of concern from relevant public authorities. Additionally, officers from Council's Environmental Health and Science Units raise no concerns in this respect, subject to appropriate environmental controls being implemented as conditions of consent.

9.4 Noise Impacts

Some objectors raise concern over noise impacts from the existing operations including noise from early morning and late evening boat movements, boat maintenance and repairs, gatherings on moored boats and use of the car park and argue that these impacts will be exacerbated by the proposal. Some objectors argue that the larger boats will bring much greater noise impacts due to their potential use for social gatherings by larger groups.

The applicant advises that boat repairs and maintenance are carried out during normal business hours and are generally minor in nature, of short duration and primarily carried out using hand-held tools and equipment. No changes are proposed with respect to the operations of the slipway which only recently were upgraded to include noise attenuation measures.

With regard to noise from occupants of vessels berthed at the marina, the applicant advises that they have operational management guidelines in place that are monitored by marina staff and patrons are obligated to adhere to the marina's guidelines as part of their berthing lease agreement.

The berthing facilities are accessible for registered users of the berths outside normal business hours by way of secure access. The hours of operation of the office are from 7.30 am to 6.00 pm, 7 days a week and the hours of operation of boat maintenance and repairs are from 8.00 am to 5.00 pm, Mondays to Fridays. During these hours of operation, there are strict limitations on the levels of noise that can be produced, so as to protect the amenity of adjacent residents.

In terms of noise impacts from the existing marina operations, the applicant advises that they have not received any complaints directly from residents. Further, no recent complaints regarding noise have been received by Council.

No concerns have been raised by Council's Environmental Health Unit in terms of noise impacts from the proposal, subject to appropriate noise controls being imposed as conditions of consent. Having regard to the recommended conditions and the powers conferred on Council by the relevant state pollution control legislation, it is considered that noise impacts from the proposal can be adequately managed. In coming to this conclusion, it is noted that the berthing capacity of the overall marina is not being increased. Additionally, whilst the larger boats may attract larger gatherings, these are likely to be an infrequent and irregular occurrence.

9.5 Status of Swing Moorings

With regard to the removal of the swing moorings, the pre-application advice stated that:

“Supporting information to demonstrate these intentions and thus allay the fears of the residents and ensure the ongoing environmental health of the waterway would contribute to the merits of the proposal.”

In response to the pre-application advice, the owners/operators of the marina have provided a written commitment to Council (as an addendum to their environmental impact statement) to the effect that they will relinquish their eighteen (18) commercial swing moorings and that they have no intention of re-applying for such moorings once the existing moorings are relinquished.

Despite the assurances provided by the applicant, residents remain concerned over the potential for the swing moorings to reappear in the embayment. It is argued that the removal of the commercial swing moorings will increase demand for private swing moorings in the embayment, on the basis that the new fixed berths will be unaffordable for some of those existing users of the commercial swing moorings. Some objectors argue that the environmental impacts of the relinquishment and removal of the swing moorings should be disregarded in the assessment of the merits of the application.

To allay those concerns, the applicant has undertaken further consultations with NSW Roads & Maritime Services (Maritime) with a view to seeking a firmer position on the status of the eighteen (18) commercial swing moorings following their relinquishment and removal.

The Manager of Operations (Botany Bay/Port Hacking) of NSW Roads & Maritime Services (Maritime) has since formally advised the applicant that the authority does not intend to re-issue the mooring licences once cancelled and that the total number of commercial mooring sites would be reduced upon completion of the proposal. Further, current private and commercial moorings (excluding Sylvania Marina) would be maintained and could change licensee and vessel if required.

In the absence of any contrary position, the most recent advice from NSW Roads & Maritime Services and the intentions and commitments of the marina operators must be accepted on face value. Suitable conditions of consent are recommended so as to ensure that the relinquishment and removal of the swing moorings occurs in conjunction with the proposal and is carried out to completion.

9.6 Alienation of Waterways for Private Interests

Some submissions object to the further alienation of the waterways for the benefit of a private commercial interest and argue that the combined footprint of both marinas already occupies a disproportionately large amount of the surface area of the embayment.

With similar applications in other parts of Sutherland Shire in the past, there has been concern about public waterways being taken over exclusively for private commercial operations. In those situations, the proposed berthing facilities have been located in much narrower, elongated bays and in close proximity to ferry transport routes and in such a manner that there would be a loss of freely navigable water that is currently available to the community. However, none of the above conditions exist in this case and the proportion of the total navigable area of water available to the community in the locality that would be 'privatised' is extremely small.

No comments have been received from NSW Roads & Maritime Services (Maritime) with regard to any potential navigational impacts arising from the location and design of the proposal, notwithstanding Council's consultations with that public authority. It is also relevant to note that in consultations carried out by the applicant prior to the lodgement of the previous withdrawn application, the above public authority raised no objections to the proposal on navigational grounds subject to standard conditions.

Viewed in plan, it is evident that the general configuration of the berthing structure extension and the extent to which it intrudes into the river is reasonable from a navigational perspective, given that it is well removed from the main navigational channel of the river and the existing and proposed berthing facilities of the nearby Tom Ugly's Bridge Marina.

10.0 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.

11.0 DECLARATION OF AFFILIATION

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

12.0 CONCLUSION

The site of the berthing facilities is located within 'Zone 16 - Environmental Protection (Waterways)' pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006 ('SSLEP 2006'). The proposed development, being for the purpose of a 'marina', is allowed within this zone with consent.

In response to public exhibition, 50 submissions (including 38 submissions objecting to the proposal and 11 submissions supporting the proposal) were received. The matters raised in the submissions objecting to the proposal have been addressed in detail in this report and dealt with by conditions of consent where appropriate.

The visual impact of the proposed extension is unacceptable in its current form.

Following detailed assessment of the proposal and having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979, the application is considered worthy of support, subject to a reduction in the size of the berthing facility extension so as to reduce its visual intrusiveness and impact on the river views of adjacent residents.

It is recommended that the berthing structure extension be reduced by way of removal of the additional north-south arm, comprising berth numbers 43, 44, 45, 46, 53, 54, 55 & 56 as well as the removal of berth number 21. To compensate for the loss of these additional fixed berths, the applicant should be permitted to retain nine (9) of the existing commercial swing moorings located in the waterways to the north-west of the fixed berthing facilities. These modifications can be adequately addressed by way of a condition of consent requiring such design changes to be included on the subsequent construction certificate drawings.

13.0 RECOMMENDATION

1. That Development Application No. 13/0590 for Alterations and Additions to the Berthing Facilities at Sylvania Marina located adjacent to Lot C DP 327350 (No. 25) Harrow Street, Sylvania be approved, subject to the draft conditions of development consent detailed in Appendix "A" of the Report, including the following design changes:
 - "i) The additional north-south arm comprising of proposed berth numbers 43, 44, 45, 46, 53, 54, 55 & 56 is to be deleted and the proposed east-west arm comprising of the ten (10) new berths is to be relocated southwards such that it aligns with the existing east-west arm adjacent to existing berth numbers 44 & 50.
 - ii) Proposed berth number 21 is to be deleted."
2. To compensate for the loss of these additional fixed berths, the applicant should be permitted to retain nine (9) of the existing commercial swing moorings located in the waterways to the north-west of the fixed berthing facilities.