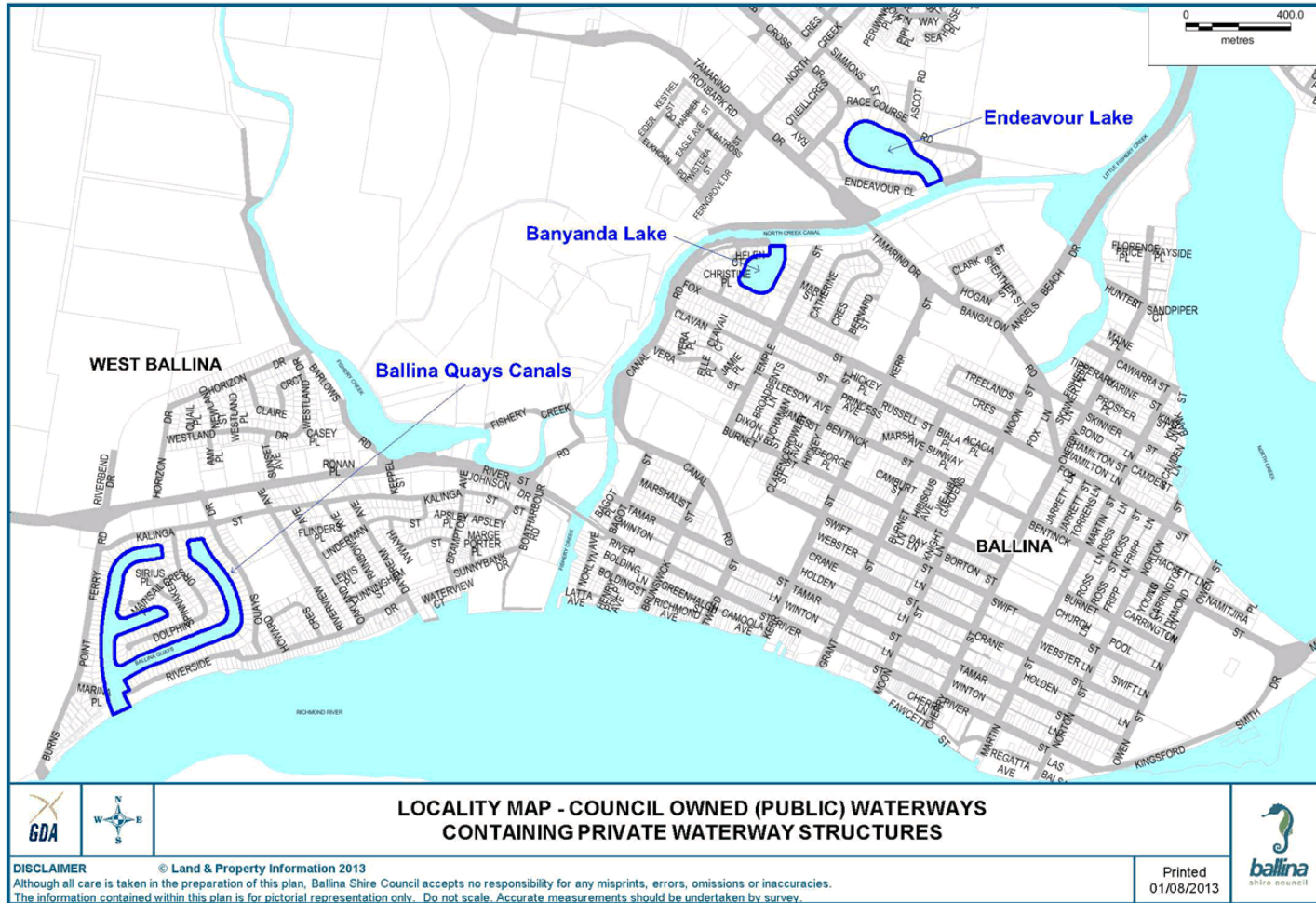


9.4 Private Structures within Council Owned Waterways - Management.DOC



Mr D Wilson

Parcel 3122

29th July 1996

HEALTH DEPARTMENT COPY

Mr J Trotter  
126 Kalinga Street  
BALLINA NSW 2478

Dear Sir

I acknowledge receipt of your application for Council approval to construct a concrete boat ramp from the rear of Lot 146, 126 Kalinga Street, Ballina into the Quays canal.

I wish to advise you that approval has been granted subject to:

1. The ramp being constructed so as to conform as closely as possible to the design profile of the canal (see attached profile plan).
2. The ramp being constructed off the top of the concrete kerb. The kerb must not be cut.
3. The ramp must not encroach past the extended side boundary of your allotment.
4. The repair and maintenance of the ramp shall remain the full responsibility of the owner of the allotment. The owner is responsible for maintaining the design profile of the canal within two (2) metres of the curtilage of the structure.
5. You are advised that should Council determine a pricing policy in the future then an annual charge may be made for structures located on community land.

Yours faithfully

G J Faulks  
**GENERAL MANAGER**  
DJW:jcg

Mr Trent De Maria

DA: 2006/503 (ph)  
PH: 02 6686 1415

Superior Jetties  
PO Box 920  
NERANG QLD 4211

**NOTICE TO APPLICANT OF DETERMINATION OF A  
DEVELOPMENT APPLICATION**  
(Issued under Section 81(1)(a) of the Environmental Planning and Assessment Act  
1979)

**Development Application No:** DA 2006/503

**Applicant:** Superior Jetties

**Subject Land:**



**Development Proposal:** Pontoon

**Building Classification under the  
Building Code of Australia:** 10b

**Determination:** The development application has been determined by Ballina Shire Council on 15 March 2006 by way of: **the grant of consent subject to the conditions specified below:**

1. **Hours of building work**  
Any building work involving the use of noisy mechanical plant or noisy equipment must only be carried out within the following hours:
  - (a) Monday to Friday - 7.00am to 6.00pm
  - (b) Saturday - 7.00am to 1.00pm
  - (c) Sunday - No noisy work at all
  - (d) During low tide

\_\_\_\_\_(initial)  
Assessment Officer

**Pontoons/Jetties/Retaining Walls**

2. ***Erosion control in accordance with DL & WC Guidelines***  
The applicant shall provide on-site, during construction, erosion and sedimentation control measures that comply with the Department of Conservation and Land Management Guidelines, Erosion and Sedimentation Control.
3. All construction work is to be carried out at low tide and in accordance with the requirements of NSW Fisheries and the Department of Land & Water Conservation.
4. The pontoon being so constructed and moored as to withstand the wash of passing vehicles, be painted in a light colour, be clearly visible above the water level and be moored in such a manner as not to obstruct navigation.
5. The length of the pontoon must be 18 metres, measured from the concrete kerb of canal to the end of the pontoon.
6. The structure is not to encroach past the extended side boundaries of your allotment.
7. The repair and maintenance of the structure shall remain the full responsibility of the owner.
8. Council advises that on the determination of the pricing policy in the future that an annual charge may be made for the location of the structure on community land.
9. The owner is responsible for maintaining the structure in a serviceable condition and maintaining the design profile within two metres of the curtilage of the structure.
10. A public risk policy is to be taken out by the owner and maintained for the life of the structure to indemnify Council against public liability.
11. Acid Sulphate Soils (ASS) found during construction should be managed appropriately. If any moist, grey, silty sands or clay are exposed during excavation, the soil should be either tested for the presence of ASS and treated accordingly or referred to Department of Land and Water Conservation for confirmation so that advice can be given on any further action.
12. Any excess soil remaining at the completion of works should either be stabilized by levelling on-site and revegetating or properly disposed of. No material is to be deposited within the confines of the waterway below extreme high tide level.

\_\_\_\_\_(initial)  
Assessment Officer

***Protection of the Environment***

13. The development is to be operated in accordance with the provisions of the *Protection of the Environment and Operations Act 1997* as it applies to issues of air quality, noise generation, water and wastewater quality.
14. The first 3 metres of a pontoon structure as measured from the revetment wall is permitted to be a fixed structure with piles, with the remaining 15 metres floating from a 3 metre demountable pivot point.
15. The walkway shall be level with the top of the revetment wall.

\_\_\_\_\_(initial)  
Assessment Officer

The consent shall lapse on **15 March 2011** unless the development has commenced in accordance with the provisions of section 95 of the Act.

**Other Approvals:**        **The following is a list of general terms of other approvals and their general terms which are integrated as part of the consent:**

None applicable.

**Signed:**                                         \_\_\_\_\_ on **15 March 2006**

R A Willis  
**Regulatory Services  
Group Manager**

On behalf of Ballina Shire Council

**Right of Appeal:**        If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice or the date on which the application is taken to have been determined under Section 82(1).

Section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for local development that has been the subject of a Commission of Inquiry.

**Review of Determination:**        Section 82A of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to request the Council to review the determination of your application. This request must be made within the time prescribed by Section 82A(2A) and be accompanied by the fee prescribed by Section 257 of the EP & A Regulation 2000. Review provisions do not apply to:

- (a) a determination to issue or refuse to issue a complying development certificate, or
- (a) a determination in respect of designated development, or
- (b) a determination in respect of integrated development, or
- (c) a determination made by the Council under Section 116E in respect of an application by the Crown.

\_\_\_\_\_(initial)  
Assessment Officer

POLICY NAME: PRIVATE STRUCTURES WITHIN  
COUNCIL OWNED WATERWAYS

POLICY REF:

MEETING ADOPTED: Resolution No.

POLICY HISTORY:

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14/33187

### OBJECTIVES

The objectives of this policy are to

- Enable the use and occupation of Council owned waterways for private boating structures,
- Address adequately Council's liability in relation to private structures within waterways under Council's ownership,
- Provide transparency and clarity in relation to the approval and licencing requirements for private waterway structures on Council owned land,
- Establish guidelines and parameters in relation to the installation and construction requirements for waterway structures,
- Maintain the function and public accessibility of Council owned waterways, and,
- Recognise the private occupation of public land in Council owned waterways.

### BACKGROUND

Council owns the freehold title to the following water bodies:

- Ballina Quays Canals (Lot 63 DP 263861 & Lot 132 DP 775228)
- Banyanda Lake (Lot 50 DP 259593)
- Endeavour Lake (Lot 72 DP 778628)

The bed (and, in the case of Endeavour Lake, the shoreline) of these waterways is owned by Council and classified as operational land in accordance with the *Local Government Act 1993*. One of the functions of these waterways is to enable adjoining properties to benefit from direct waterway access. Among these benefits are the options for adjoining owners to place private structures such as boat ramps, jetties and pontoons within the waterway.

The purpose of this policy is to establish and clarify the Council's regulatory framework where waterway structures occupy or are placed over Council owned land.

The waters to which this policy applies are navigable waterways for the purpose of the *Marine Safety Act 1998*. Consequently, the navigation of these waterways is subject to relevant State and Federal legislation governing the registration and operation of marine vessels.

### DEFINITIONS

**Adjoining landowner** means the owner of the private land which directly adjoins a Council owned waterway (e.g. the owner of a waterfront property).



**Benefiting landowner** means an adjoining landowner who benefits from an approval and authorisation by Council to place private waterway structures within a Council owned waterway.

**Boat ramp** means an inclined ramp structure constructed for the purpose of accessing the waterway and extending into the waterway from an adjoining property

**Council owned waterway** means, for the purposes of this policy, the land comprising the bed and foreshore area (where applicable) of the Ballina Quays Canals (Lot 63 DP 263861 and Lot 132 DP 775228), Banyanda Lake (Lot 50 DP 259593) and Endeavour Lake (Lot 72 DP 778628).

**Jetty** means a structure extending into the waterway generally perpendicular to the shoreline to enable access to boats and other water vessels.

**Pontoon** means a floating platform structure connected to the shore by a gangway or ramp for the primary purpose of accessing boats and other water vessels.

**Slipway** means a structure, generally in the form of two supported parallel rails, on which a wheeled cradle is run to draw a vessel out of the water by means of a manual or powered winch, a block and tackle or the like.

**Waterway structure** means a boat ramp, jetty, pontoon or slipway for private use, occupation and benefit.

### SCOPE OF POLICY

This policy applies to:

- Council employees
- Community members
- Corporate entities

### LAND TO WHICH THIS POLICY APPLIES

This policy applies to Council owned waterways.

### RELATED DOCUMENTATION

Related documents, policies and legislation:

- *Environmental Planning and Assessment Act 1979*
- *Local Government Act 1993*
- Application Form – Installation/Transfer of Private Waterway Structures
- Streamlined Assessment Procedures for Retaining Walls, Boat Ramps and Pontoons in the Ballina Quays and Banyanda Estates
- Engineering Standards and Guidelines for Maritime Structures (NSW Maritime 2005).

### POLICY

Council recognises the benefits provided to adjoining landowners through the provision of waterway structures that provide access to the greater Richmond River

estuary system. Council also acknowledges that the placement of waterway structures is consistent with the purpose of the subject waterways.

This policy has been established to define and clarify Council's requirements for the placement of private waterway structures within a Council owned waterway. Council agrees in principle to the occupation of Council owned waterways for waterway structures subject to the benefiting landowner complying with the following requirements.

### **1. General requirements applicable to all waterway structures**

- 1.1 The construction, installation and maintenance of waterway structures within Council owned waterways is to be undertaken in accordance with the provisions of this policy and relevant provisions of the Engineering Standards and Guidelines for Maritime Structures (NSW Maritime 2005), or other relevant superseding guidelines.
- 1.2 When directed, waterway structures are to be removed (at no cost to Council) to permit maintenance activities within the waterway, or for any other reason.
- 1.3 It is the responsibility of the benefiting landowner (licencee) to maintain the waterway structure in a safe and tidy condition at all times.
- 1.4 A waterway structure must not be modified, extended or changed without the prior approval of Council.
- 1.5 Any alterations and/or additions to an existing authorised waterway structure must obtain the relevant approvals in accordance with the requirements of section 2 of this policy.
- 1.6 Provision is to be made for the access of Council and its servants or contractors across any structure erected/installed within the Council owned waterway.
- 1.7 The benefiting landowner is required to pay the annual licence fee (and application and transfer fees if applicable) for private waterway structures as determined by Council.
- 1.8 A licence issued by Council for a waterway structure may be cancelled at any time with notice in writing to the benefiting landowner in circumstances where:
  - a) the structure in the opinion of Council has become unsafe or presents a danger to boating or other property or to the general public,
  - b) the benefiting landowner (licensee) does not hold the insurance coverage requirements as specified in this policy, or
  - c) the Council considers it necessary for any other reason.
- 1.9 Prior to the finalisation of any licence agreement under this policy, the benefiting landowner must take out and maintain a public liability policy of insurance in respect of any one occurrence of not less than \$20,000,000.00 which indemnifies Ballina Shire Council's, or its servants

or agents, liability for loss or damage to property and death of or injury to any person in any way connected to Council owned land the subject of the licence agreement. The insurance policy is to note the interests of Ballina Shire Council as the owner of the land.

### **2. Requirements for installation of new waterway structures (including alterations and additions to existing structures)**

2.1 Proposals for any new waterway structures or any alterations and additions to existing structures over or within Council owned land must satisfy the following requirements prior to construction or installation works commencing:

- a) An application including details (plans and specifications) of the proposed structure/s is to be submitted to Council for approval,
- b) The design and application documents for any proposed waterway structure are to comply with the requirements of Council's "Pontoon, Jetties and Boat Ramp Procedure" for waterway structures, and
- c) The documentation submitted with the application must be sufficient to satisfy any necessary approval requirements under the *Environmental Planning and Assessment Act 1979*.

2.2 Following the approval requirements in clause 2.1 and prior to the commencement of construction or installation works for any new, altered or additional structures within or over Council owned waterways, the benefiting landowner is to enter into a licence agreement with Council for the occupation of Council owned land.

### **3. Existing waterway structures with development consent (transitional requirements)**

3.1 Upon request by Council, adjoining landowners with existing waterway structures having development consent issued in accordance with the *Environmental Planning & Assessment Act 1979* will be required to enter into a licence agreement for the occupation of Council owned land.

### **4. Existing waterway structures without development consent (transitional requirements)**

4.1 Upon request by Council, adjoining landowners with existing waterway structures without written approval or consent from Council will be required to enter into a temporary licence agreement for the occupation of Council owned land.

4.2 Prior to the issue of a temporary licence agreement under clause 4.1, the benefiting landowner shall provide evidence satisfactory to Council that the private waterway structure/s:

- a) comply with Council's "Pontoons, Jetties and Boat Ramps Procedures", and
- c) have been certified as structurally sound by a suitably qualified person.

4.3 A temporary licence agreement issued under clause 4.1 is non-renewable after 12 months and is non-transferable. After 12 months, the

benefiting landowner must obtain approval under the *Environmental Planning and Assessment Act 1979*, as necessary, and to enter into a licence agreement with Council for the occupation of Council owned land, if their intention is to retain the structure.

**5. Transfer of licences**

5.1 Any licence agreement issued by Council for private waterway structures under sections 2 or 3 of this policy may be transferred to a new adjoining landowner upon written request to Council.

5.2 A request for transfer of licence agreement in clause 5.1 must be made in writing to Council and shall be accompanied by the required transfer fee.

**REVIEW**

The Private Structures within Council Owned Waterways Policy is to be reviewed every four years or as required.