

BALLINA SHIRE COUNCIL

SEPARATE ATTACHMENT TO ITEM 9.6

PLANNING PROPOSAL  
RECLASSIFICATION OF COUNCIL OWNED  
WATERWAYS

Ordinary meeting 27 March 2014



**Lachlan Sims**

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**From:** Pamela White [pamelamwhite@hotmail.com]  
**Sent:** Wednesday, 23 October 2013 10:24 AM  
**To:** Lachlan Sims  
**Subject:** re change to classification to waterways

As a concerned resident I would like to protest against the proposal to change the classification of artificial waterways from community land to operational land.

Pamela M. White  
10 Dolphin Drive  
West Ballina

24 Dolphin Drive  
West Ballina 2478

Ballina Shire Council,

23-10-2013

BSCPR 13/008 - Reclassification Council Owned Waterways (13/60200)

Dear Mr Sims,

I wish to leave the reclassification  
as "Community Land".

yours sincerely  
Betty M. S. Connot.

RECORDS  
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24 OCT 2013

Doc No.....

Batch No.....

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24 OCT 2013  
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Batch No.....

169. Fox St 3

Ballena 2478

66867096

Sir

I wish to object to your plan to change the waterfront properties to operational land.

my Objection

In my 80 plus years every change means an extra rise in the cost of living.

But of course this means little to the people we elect to help us.

Your Sincerely,

Keith Nelson

Oct 22nd 2013 4

Attention Lachlan Sims Council's Strategic & Community Facilities Group

Reclassification of Ballina Quays Canals & Banyanda Lake

We would like you to note that we most strongly object to the proposed reclassification from "community land" to "operational land" by Ballina Council. The reclassification would impact greatly on our land value. The only reason we feel that council wishes to change the act after 20 years is to allow them to raise revenue at the expense of us waterfront ratepayers. We currently pay higher rates than dry blocks in the area.

Yours sincerely,



Noel & Jan Warr

Noel & Jan Warr  
26 Quays Drive  
Ballina NSW 2478  
Australia

RECORDS  
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24 OCT 2013

Doc No.....  
Batch No.....

24th October, 2013.

Ballina Shire Council,  
P.O. Box 450,  
Ballina. N.S.W. 2478.

FOR ATTENTION LACHLAN SIMS

<b>RECORDS SCANNED</b>  <b>25 OCT 2013</b>	
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Dear Sir,

Re: BSCPP 13008- Reclassification Council Owned Waterways.

My wife and I, Barbara and Bruce Roper of 56 Dolphin Drive, Ballina Quays, wish to object strongly to Ballina Shire's proposal to reclassify Council owned waterways (Ballina Quays Canals and Banyanda Lake) from community land to operational land.

It appears from your "information sheet" that your ultimate intention is to lease or license private structures such as pontoons, boat ramps and the like.

It is also likely Council's existing obligation to maintain the navigability of the canals will be dumped on the owners of waterfront properties.

These alleged privileges are now paid for in existing rates which are significantly higher than "dry blocks" in the estate.

Also the statement in your information sheet that the reclassification "will not affect adjoining land holders and residents and will not affect the ongoing use of existing private structures within the waterways" is a blatant misrepresentation of Council's intentions.

My wife and I will vigorously oppose anything that will impose an extra financial burden on our resources.

Yours sincerely,

Barbara E. Roper

Bruce Roper

## Lachlan Sims

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**From:** Carolyn Hart [cmhart@internode.on.net]  
**Sent:** Sunday, 27 October 2013 12:29 PM  
**To:** Ballina Shire Council; Carolyn Hart  
**Subject:** Ballina Quays Waterways Proposal

Dear Sir

As a long term rate payer in this Shire, I am very concerned about the Council's proposal to reclassify the Ballina Quays & Banyanda Lake Canals. I strongly object to this proposal to reclassify the land from 'Community Land' to "Operational Land". This **can only be to the detriment of all of the owners in those areas.**

I have pointed out below some of the reasons for my very strong objection to this proposal.

- The community land classification of the canals has **always been used** by the wider community, for boating pleasure and fishing
- Your reference to "**private structures such as pontoons cannot be placed on community land**" seems contradictory to me. As far as I am aware, **pontoons have always been erected here** at Ballina Quays, with Council permission, for as long as we have owned our block
- When we purchased our place **there was certainly already both jetties and pontoons on several of the occupied blocks.** As each block nearby was purchased and built on, we witnessed lots of 'slipways' and new pontoons being erected.
- Council already **has full control over the type** of pontoon structure that can be built in the waterways and that if we or anyone else were to replace this structure (jetty/pontoon) in the future, that we full under that requirement and have to 'wear' the high cost of the new structure
- As Rate payers, we already **pay significantly more rates** than on a dry block, purely for the benefit and privilege of owning a waterfront
- I firmly believe **if the reclassification were to be passed from Community to Operational land,** that the Council **will jump at the chance and opportunity to charge rate payers** for such things as levy fees, maintenance costs, administration costs and other miscellaneous charges, regarding the upkeep of our waterways
- I also believe that the Council's **prime objective** is to also start charging leasing or licensing of private structures (eg pontoons) with no other logical reason
- There is absolutely **nothing in Council's proposal to make me believe that this is for the good of our community or the current and future rate payers of this area.**
- **In my opinion, this proposal is only designed for the good of the Council**
- There is an old saying '**if it ain't broke, why fix it?**'
- If this reclassification goes through, it will certainly have **serious ramifications to the resale, land value and amenity value to our waterfronts,** for which we have certainly paid heavily for in the past
- **I firmly believe that this can be the only reason behind this proposal**
- We are the people who vote you into Council **in the hope that you have our best interests in hand NOT just the best interests of the Council itself.**

On this basis **I strongly object to the Ballina Council's proposal to to reclassification of Ballina Quays and Banyanda Lake** and I am **extremely disappointed that you wish to pursue this matter.**

There are many residents that I have spoken to and they are all of the same opinion that it is just a 'money making thing for the Council and that our property values will diminish significantly'. The value of our properties have dropped significantly since the two GFC's and this will just further decrease our land value and



in some situations reduce the equity value for many residents who have built quality houses in this region.

If Council are really serious and want to really improve our waterways, then they should send a delegation up to have a good look at the Tweed River and ask their Council what they are doing right and find out how they maintain their magnificent river. We were there a few weeks ago and the river was so crystal clear that you could see the fish swimming almost to the banks. Our river is so silted up that every time we have excess rain, the toxins from upstream cause huge fish kills, because the water cannot get flushed away to the sea quickly enough. My husband used to sail many a race on the Richmond River and now at low tide, the silting up of sand is so bad that you could almost walk across to south Ballina.

So PLEASE WAKE UP and abolish this proposal before it is too late.

I would like this to be noted on your 'books' as a very strong objection to the current proposal.

Carolyn HART

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**Managing Private Waterway Structures  
Ballina Quays and Banyanda Lake  
INFORMATION SHEET**

The Ballina Quays canals and Banyanda Lake are artificial waterways owned and managed by Ballina Shire Council. These waterways are managed as public land under the Local Government Act

1993. This Act contains the legislative requirements for the management of public land, which includes the Ballina Quays canals and Banyanda Lake. To meet its obligations under the relevant legislation, Council is currently proposing to reclassify the land containing the Ballina Quays canals and Banyanda Lake from community land to operational land. This information sheet outlines why Council is proposing to reclassify the land and what it means for landowners and residents whose properties front these waterways.

**What is land classification?**

The Local Government Act 1993 requires a council to classify land in its ownership as either 'community land' or 'operational land' depending on the intended or proposed use and purpose of the land.

**What is the difference between 'community land' and 'operational land'?**

In general terms, the community land classification is applied to land such as parks, sports grounds, natural areas or other areas of land set aside for the use of the wider community. The operational land classification is applied to land owned by a council either as an asset or investment or land not generally open to the public used for the carrying out of functions such as (but not only) a works depot, waste water treatment works or other similar public infrastructure.

**What will it mean for the Ballina Quays canals and Banyanda Lake if the land is reclassified?**

The reclassification of the waterways from community land to operational land will not result in any physical changes to the current usage or accessibility of the waterways. The land will remain in Council's ownership and will be managed as a public waterway facility.

**Why can't the waterways remain classified as community land?**

One of the features of the Ballina Quays canals and Banyanda Lake is the opportunity for

25/10/13

Lachlan Sims  
Strategic Planner  
Ballina Council

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David Harmon  
62 Dolphin Dr  
Ballina 2478

Reference: BSCPP 13/008

Dear Lachlan

I wish to raise my concern regarding the reclassification of Ballina Quay's water way from Community Land to Operational Land.

Council has not been transparent in informing residents of the Quays to the future effect this reclassification may have on them. Some of these concerns are;

Will we have to pay a lease or licence fee for pontoons?

Will we be charged a levy or charge for maintenance and upkeep of the waterway?

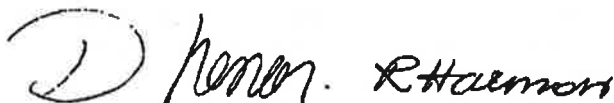
My wife and I only purchased our property this year and are aware that the rates charged on the Quays water front blocks are significantly more than the average. Furthermore, we are concerned that the proposed change could have a detrimental effect on land value.

Thus, considering the above concerns I would like to object to the proposal.

If in the future council can address the above concerns in a favourable manner we may look at supporting the reclassification

Sincerely

David & Robyn Harmon



48 Dolphin Drive  
West Ballina 2478  
25/10/13

Lachlan Sims  
Strategic Planner  
Ballina Shire Council

Dear Mr Sims, RE: BSCPP 13/008 RECLASSIFICATION COUNCIL OWNED WATERWAYS

I am writing in reference to your letter re the canals in Ballina Quays. We bought this property with the understanding the canals were the responsibility of Ballina Shire Council. We understood the Lands Department approved the canals on condition Ballina Council maintained them.

It appears Ballina Shire Council is trying to push that responsibility on to the property owners who already pay higher rates than dry blocks for the purpose of council maintaining the canals.

I have recently been widowed and will be looking at having to sell up as I will not be able to afford to live here – also selling will also be a problem if prospective buyers realise there are higher fees on this area.

I will be attending the meeting to protest about this proposal.

Yours faithfully,

*Dorothy T. Saines*

Dorothy T. Saines

<p>RECORDS SCANNED</p> <p>28 OCT 2013</p> <p>Doc No.....</p> <p>Batch No.....</p>
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To - Ballina Shire Council.  
From- John & Julia Beaver, 3 Spinnaker Crescent West Ballina 2478

Attention - Lachlan Sims.

Regarding BSCPP 13/008 - Reclassification Council Owned Waterways (13/60200  
Dear Sir, Regarding the Reclassification of Community to Operation Land.

My Wife ( Julia Marjorie Beaver) & Myself ( John Barry Beaver) Do Object to any changes regarding this Proposal to change to Operation Land

Up till now the Council has been responsible, when these Canal Subdivision originally was passed by the Ballina Council .This is for the Maintaining, and a 5 year Dredging to take place. At the present this Dredging is well over due.

We already pay significantly more rates than properties without canal waterfronts. The extra rate costs were for the upkeep of the Canal Waterways Properties.

We have relations & Friends that have waterfronts properties with pontoons & wharfs on to the Richmond River who are paying exorbitant amount of rates to the Maritime Services Board for these privileges.

We can see in the future, if this new Proposal is changed to Operational Land We Canal Properties could end up paying the same to the Council.

We think this New Proposal by the Ballina Council, is so they can remove their responsibility regarding the Maintenance & Dredging of the Canals Properties, as it is well overdue.

Signed & Dated John B Beaver 24/10/2013  
J. M. Beaver 24/10/13

RECORDS  
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1/12 Dlophin Dr  
Ballina NSW 2478

29<sup>th</sup> October 2013

Mr Lachlan Sims  
Strategic Planner  
Ballina Shire Council

**Re: Planning Proposal BSCPP 13/008**

Dear Sir,

Thank you for your letter of 9<sup>th</sup> October advising the Council's intentions re the subject Planning Proposal.

I wish to advise that, as an affected landholder, I object to the proposal. Any change to the present zoning and the Council's obligations re the maintenance and management of the Ballina Quays estate are not in the interests of the landholder.

Yours faithfully,

*Rod Fayle*  
Rod Fayle

52 DOLPHIN DR  
BALLINA.

26.10.13.

Mr. LACHLAN SIMS  
STRATEGIC PLANNER  
BALLINA SHIRE COUNCIL.

REF: BSCPP 13/008

DEAR SIR.

In reply to your letter of 9.10.13. regarding proposed reclassification of land in Ballina Quays canals. I fail to see any justification in such a reclassification. I am a great believer in the old adage "If it aint broke, dont try to fix it".

I therefore respectfully submit my objection to the proposed planning.

Yours faithfully

R. J. Sewell

W. Bowen  
34 Quays Dr  
Bellinon . 23-10-13

Lachlan Sims  
RE. Reclassification of Water Ways.

As a rate payer & living on the Quays for the past 25 years. I strongly object to the proposed Reclassification. During those years we have lived in harmony with the Council and have paid the privilege of owning a water front block. We do not want a change.

Yours Sincerely  
W.L. Bowen

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RECORDS  
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29 OCT 2013  
Doc No.....  
Batch No.....

26th October 2013

Attention: Lachlan Sims

Re: Proposed Reclassification of Council Owned Waterways

I am a concerned property owner and object to the proposal of reclassifying the waterways as per letter received on 9th October, 2013.

Veronica Gill  
Owner of: 88 Temple St, Ballina

66815526





34 Dolphin Drive,  
BALLINA. 2478.

26<sup>th</sup> October, 2013.

Mr. Lachlan Sims,  
Strategic Planner,  
Ballina Shire Council,  
P.O. Box 450,  
BALLINA. 2478.

<b>RECORDS SCANNED</b>	
<b>29 OCT 2013</b>	
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Dear Mr. Sims,

re: Public Exhibition – Planning Proposal BSCPP 13/008 reclassification of Council Owned Waterways.

We acknowledge receipt of your letter 9<sup>th</sup> inst., proposing to reclassify the land parcels from community to operational. This aspect does not unduly worry us.

The part that concerns us (refer your information sheet) is Council may consider options in the future relating to the leasing or licencing of private structures within the waterways which will be subject to further consultation if and when it occurs. We would object to this. What you would be doing if Council went along this way would be retrospective. Completely unfair. No doubt you would render fees etc.

Our pontoon construction was approved by Council on 22/1/1993 for the previous owner. Please refer copy of approval attached.

Council records would show that at the outset of the project being completed, Council gave an undertaking that all maintenance would be completed at their expense. At its meeting on 23/3/2000 Council required Pontoon owners to contribute \$75 towards the works for sand reclamation. Refer copy of letter dated 25/9/2000. Rejection by the owners resulted in Council deleting this aspect.

Yours faithfully,



G. A. Ross.



C. M. Ross.

B.A. 213/88

Mr D Wilson

595-85770

HEALTH DEPARTMENT COPY

22nd January, 1993

V A & B C Cooper  
34 Dolphin Drive  
BALLINA NSW 2478

Dear Sir/Madam

I acknowledge receipt of your application for Council approval to erect a floating pontoon jetty in The Quays Canal in front of Lot 83, No. 34 Dolphin Drive, Ballina.

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

1. The pontoon being so constructed and moored as to withstand the wash of passing vessels, be painted white, be clearly visible above the water level and be moored in such a manner as not to obstruct navigation.
2. The pontoon must have a maximum length of 18m, measured from the concrete kerb of canal to the end of the pontoon.
3. The structure is not to encroach past the extended side boundaries of your allotment.
4. The repair and maintenance of the structure shall remain the full responsibility of the owner.

Yours faithfully

G J Faulke  
SEALING CLERK

DJW:lh

# Ballina Shire Council



Cnr Cherry & Tamar Streets  
P.O. BOX 450, BALLINA, N.S.W. 2478  
DX 27789, BALLINA  
TELEPHONE: (02) 6686 4444  
FAX: (02) 6686 7035  
EMAIL: council@ballina.org.au  
ABN: 53 929667369

ENQUIRIES REFER

**Mr P Busmanis**  
IN REPLY PLEASE QUOTE

2124

25 September 2000

GA & CM Ross  
34 Dolphin Dr  
WEST BALLINA 2478

Dear Sir/Madam,

**RE: Your Property at 34 Dolphin Dr, West Ballina  
Lot 83 DP 711406**

Council is proposing to undertake canal sand maintenance works shortly. This work will involve sand reclamation using a hydraulic excavator at low tide.

At its Ordinary Meeting on 23 March 2000, Ballina Shire Council endorsed the works proceeding, with the following conditions:

7/10 Pontoon owners will be required to contribute \$75.00 towards the works for sand reclamation works within 2 metres of the pontoon curtilage. (This maintenance work is ordinarily required to be undertaken by the pontoon owner as a condition of approval for the installation.) NO

- Pontoon owners shall be responsible for removal/replacement of walkways and pontoons and tethering of same in advance of excavation sand reclamation works.
- Boatramps will need to be investigated regarding access requirements for the excavation.

Council staff will make contact with you regarding the works program. Should you have any enquiries, please contact Mr Paul Busmanis of Council's Engineering Department.

Yours faithfully

Stewart McPherson  
**GENERAL MANAGER**

PVB:rc





BSCPP 13/008 - Reclassification  
Council Owned Waterways (13/60200)

To: Lachlan Sims

I Jean Hill of 54 Dolphin Drive,  
West Ballina

absolutely do not agree with your  
change of reclassification to the  
Ballina Quays canals and Banyenda  
Lake.

yours sincerely

miss J. Hill

<p>RECORDS SCANNED</p> <p>29 OCT 2013.</p> <p>Doc No.....</p> <p>Batch No.....</p>
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Lachlan Sims

Strategic Planner

Ballina Shire Council

55 Dolphin Drive

West Ballina

re: Reference No: BSO PP 13/008

Dear Lachlan,

We wish to bring to your attention our objection to your proposal to reclassify Council owned waterways from Community land to Operational land.

We have recently moved to Ballina Quays and at the time of purchase we were aware of the higher rates levied on water front blocks but we were willing to pay the higher rates in the belief that Council maintained the canal which has been the case since the canals were first built.

We would like to know why Ballina Council has suddenly decided to change a law that has been in existence for over 20 years and what is Councils hidden agenda?

Regards

ROBERT & JENNIFER MARTIN

per Jennifer

28-10-2013

enquiries refer

Lachlan Sims

in reply please quote

BSCPP 13/008 – Reclassification Council Owned Waterways (13/60200)

DEAR SIR

I wish to LEAVE RECLASSIFICATION AS "COMMUNITY LAND"

9 October 2013

A.V. Darroch



ballina shire council

Ms S V Darroch  
26 Dolphin Drive  
WEST BALLINA NSW 2478

RECORDS  
SCANNED

29 OCT 2013

Doc No.....

Cat No.....

Dear Ms S V Darroch

**Re: Public Exhibition – Planning Proposal BSCPP 13/008  
Reclassification of Council Owned Waterways**

Council has ownership of a number of artificial waterways in the Ballina area that are subject to the requirements of the *Local Government Act 1993* (the Act). Some of these waterways, such as the Ballina Quays canals and Banyanda Lake, are presently classified as community land in accordance with the Act.

A recent review of the management requirements for these waterways has identified the need to reclassify the land parcels from community land to operational land in accordance with the Act. The classification and reclassification of land is explained in detail in the attached information sheet.

To enable the reclassification of the subject land, an amendment to the *Ballina Local Environmental Plan 2012* is required. As such, Council has prepared a planning proposal (BSCPP 13/008) to enable this amendment. This proposal affects the land identified on the attached maps and includes the water bodies containing the Ballina Quays canals and Banyanda Lake.

You are being informed of the proposal as a resident/landowner adjoining the identified waterways. The planning proposal will be on public exhibition between 9 October and 8 November 2013 and the applicable documents may be inspected at Council's Customer Service Centre between 8.30am and 4.30pm Monday to Friday (public holidays excepted). The planning proposal is also available for viewing at Council's Community Access Points and on Council's website at [www.ballina.nsw.gov.au](http://www.ballina.nsw.gov.au). Members of the public are invited to make a written submission in relation to the proposal. Submissions close on 8 November 2013.

In addition to the above, the *Local Government Act 1993* also requires Council to hold a public hearing in relation to the land reclassification proposal. Details of the public hearing will be subject to a separate notification process after the public exhibition of this planning proposal.

50 Dolphin Drive

Ballina NSW 2478

*28th October 2013.*

<p>RECORDS SCANNED</p> <p>29 OCT 2013</p> <p>Doc No.....</p> <p>Batch No.....</p>
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Reference BSCPP 13-008-Reclassification Council Owned Waterways

Attention: Mr. Lachlan Sims

Strategic Planner

Council's Strategic & Community Facilities Group.

Dear Sir,

With reference to your letter dated 9<sup>th</sup> October 2013, we as property owners of the above address situated on the Ballina Quays canal object to the council proposal to re-classify the land parcels from community land to operational land.

Our objection to the change from community land to operational land would only be satisfactory if council would arrange to have proper structures installed along the banks of the canals throughout the Quays Estate to prevent erosion entering into the canal. This has proved to be successful in other canal frontages throughout Australia.

Our present council rates are high and should cover the cost to carry out the usual dredging . The last dredging of the canals was carried out in 2008 and is long overdue to be done again .

When the proposed council meeting regarding the above is known, we hope to be advised and will attend.

Yours faithfully, William Malcolm

Shirley Malcolm

Ballina Shire Council BSCPP

19

Barry Lester,  
28 Quays Drive  
Ballina

Mr. Lachlan Sims  
Sir.

Regarding your letter to me in relation to the proposal of re-classification of tidal waterways which make up the Ballina Quays canals and Banyanda Lake complex.

I wish to make a strong objection to this submission on a number of grounds.

① The original developer Frank Burke constructed the then Shire Council that the maintenance of the waterways would be the full responsibility of the Shire.

This was fully investigated by Council Officers when a previous proposal was considered in early 2007. A letter from a local resident (Mrs Neal Laine) was produced and Council agreed that its obligation were to fully maintain the depths of the canals and all easements which drain into to them. A half ~~hour~~ <sup>day</sup> ~~long~~ <sup>long</sup> attempt was made by a contractor to clear a build up of silt with an excavator under Council supervision resulted in damaged boat ramps and private structures. To my knowledge no fees or charges were levied by the Council to the local residence affected by this work.

If what is proposed (reclassification) is an attempt to alter the previous agreement



between them and the residence I strongly object on a number of grounds.

"A" Siltation is carried into the waterways by drains, easements and pipe lines from council owned roads, parks and reserves.

"B" The general public use of the waterways by boating and leisure activity causing the erosion of the bank forming the canals should be the responsibility of all residents, not only those most affected by it.

"C" As for the future leasing of private pontoons and jettys this should have been advised by council when application were first submitted to fix these structures.

Rate payers in the affected areas pay higher charges already than nominal dry docks, for the benefit of a waterfront lot. The consideration of options in the future of leasing or licencing private structures for such will be strongly objected to if and when it should occur.

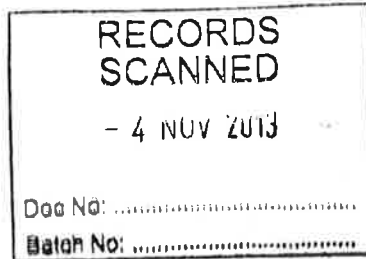
I am looking forward to your answer to the legal and third independent party's views if this proposal is to go ahead.

Yours  
Barry John Luthers.  
28 Grays Lane Bellin  
2478.

28. 10. 13

P.O. 66 868982.

30 October 2013



Ms. Joan Organ  
84 Dolphin Drive  
West Ballina NSW  
2478

**Mr Lachlan Sims  
Strategic Planner  
Strategic and Community Facilities Group  
Ballina Shire Council  
PO Box 450  
Ballina NSW  
2478**

**Re: Public Exhibition-Planning Proposal BSCPP 13/008  
Reclassification of Council Owned Waterways**

Dear Sir,

In reference to your letter dated 9 October 2013 relating to the above Council proposal; I wish it noted for the record that I **Strongly Oppose** the reclassification from "community land" to "operational land" of Ballina Quays Canals and Banyanda Lake.

This reclassification would convert the land/canals/lake into an asset of the Council which would open the door for Council to charge a levy, charges or leasing fees to me as an adjoining property owner. This fact you have clearly stated in your own information sheet.

I have paid a premium in rates for owning a waterfront block for many years and do not wish to be faced with the prospect of further Council charges. This clearly would be "double dipping" by Council against a select group of Rates Payers on land that is available to and used by the Public at no cost.

Yours faithfully,

Joan Organ

36 Dolphin Drive  
Ballina 2478  
N.S.W

28 Oct 13.

Lachlan Sims.  
Ballina Shire Council.

**BSCPP 13/008 - Reclassification Council Owned Waterways (1360200)**

Dear Sir,

We are concerned about the reclassification of the Ballina Quays Canals. We feel that there is a possibility in the future that the Council will be able to levy fees and charges for administration and maintenance cost for the up keep of the waterways.

Council gave an undertaking that all maintenance would be completed at their expense when the canals were developed and we bought the land.

This would be in breach of the original agreement. We therefore object to this reclassification.

Yours faithfully,

*R.A. Dawkins*

R.A.Dawkins.

*H.M. Dawkins*

H.M.Dawkins.

<p>RECORDS SCANNED</p> <p>- 4 NOV 2013</p> <p>Doc No: .....</p> <p>Batch No: .....</p>
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58 Dolphin Drive  
Ballina 2478  
1/11/13

REF.- BBSCPP 13/008 RECLASSIFICATION COUNCIL OWNED WATERWAYS

Dear Mr. Sims,

Upon reading "information" sheet relating to the above matter, I feel outraged. Ballina Quays was never, is not, and never will be a private water way. I would estimate that 90% of the water craft that use these canals are not residents of the canals. Therefore if this space is used mostly by the wider community how could there be consideration given to changing its classification?

The original agreement signed by Ballina Council and the developer states that Ballina Council will be responsible for the maintenance of the canals, and rightly so, as it is used by numerous members of the community and boating visitors to our town.

It is stated in the "information" sheet that operational land is not generally opened to the public. Well I invite you to observe who uses these canals and it most certainly is mostly the public and not the residents of the canals.

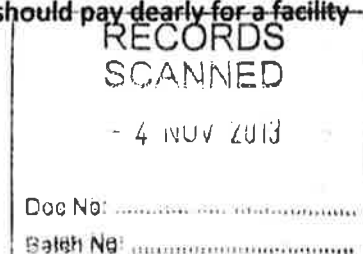
The "information" sheet neglects to state that residents fronting the canal already pay approx. 1/3 more in rates than residents on dry blocks. I am a 72 year old female single pensioner and would find any further financial imposition a huge burden.

Does council intend to levy a charge on people living adjacent to any park, reserve, sporting field, rock wall, river, beach etc? These are community facilities and Ballina Quays is equally as much a community facility.

The "information" sheet states that the canals and lake will remain in council's ownership and be managed as a public waterway facility. If council, by its own admission, deems it a public waterway, then how can it, in all fairness, consider changing its classification?

The "information" sheet states that pontoon structures cannot be placed on community land. Upon viewing the council aerial photo, I observe many pontoons and jetties on the Richmond River and I believe this to be the case in most rivers and lakes in Australia. This photo totally contradicts the statement in the "information" sheet. The vital information which council has chosen not to include :- Does it wish to hand over all costs associated with maintaining these waterways to the residents of these canals and divest the council of any responsibility in maintaining a facility which is mostly used by the wider community?

Do you think it is just and fair that we few residents should pay dearly for a facility used by the wider community?



**Do you believe that it is fair, when we bought our properties in good faith, believing they would be maintained according to the original agreement, that Ballina Council shed the responsibility of maintaining this public facility?**

**I don't.**

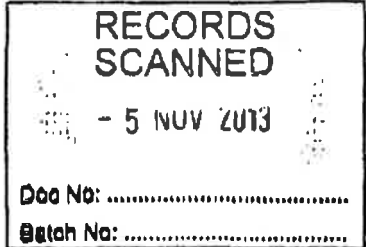
**I am hoping for a response to my correspondence at your earliest convenience.**

**Yours faithfully,**

A handwritten signature in black ink, appearing to read "M. A. Gardnr". The signature is written in a cursive, slightly slanted style.

**Margaret Gardnr**

**(One of the many outraged residents of Ballina Quays)**



1<sup>st</sup> November 2013

Ballina Shire Council  
40 Cherry Street  
BALLINA NSW 2478

Attention: Mr Lachlan Sims

Dear Sir

**Re: Reclassification of Council Owned Waterways**

As owner occupiers of a water front property on Ballina Quays, we object strongly to the reclassification of our/the canal from community land to operational land.

We purchased our property some twelve or more years ago with an approved jetty, pontoon and boat ramp in place. Also, on purchasing our property we were assured that each and every five years the council carried out canal maintenance at no expense to water front property owners.

We were and are aware that we pay higher rates, we paid a higher property price and expect one day our resale will also reflect this because of the waterfront position.

We wish the canal to remain under community land as operational land is one day likely to attract leasing or licensing costs on our jetty, pontoon and boat ramp.

If this did one day happen, we are sure there would be no compensation for the high rates in the past or a lowering of rates in the future and detrimental to our resale value.

We have no hesitation in stating that the canal remains as community land.

Yours Faithfully

RE & JL Binney  
18 Quays Drive  
Ballina NSW 2478

Per: RE Binney

RJ & JF Webber

PO Box 1078

Innisfail QLD 4860

Mr Lachlan Sims

Ballina Shire Council

PO Box 450

Ballina NSW 2478

Re BSCPP 13/008 - Reclassification Council Owned Waterways (13/60200)

Dear Sir,

We are in receipt of your correspondence of 9th October 2013 as indicated above re Councils proposal to reclassify the waterways referred to as the Ballina Quays canals.

As the owners of property described as lot 41, DP 263861 , 30 Quays Drive, we hereby register our objection to Councils proposal to reclassify the waterway from "Community land" to "Operational land" as outlined in your correspondence.

Our objection to Councils proposal is based on the following:

Prior to purchasing our property at 30 Quays Drive investigations showed that Council was committed to all future maintenance of the Ballina Quays Canal system as part of the original development.

It was also our understanding that our property attracted a higher rates payment due to Councils maintenance of our canal frontage.

We believe that Council will use the changed classification to levy additional unspecified charges for canal use from our property.

Any such additional fees and charges will have an adverse effect on our property value and all property values on the Ballina Quays canals.

If Ballina Shire Council should reclassify as proposed, and implement additional fees and charges, we could not rule out our participation in any proposed class legal action against Ballina Shire Council that may result.

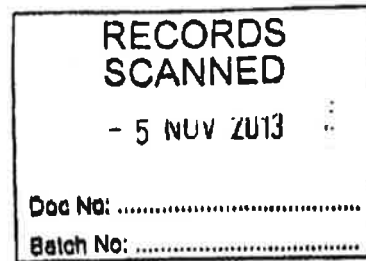
Yours sincerely

RJ & JF Webber.

46 Dolphin Drive,  
BALLINA

4<sup>th</sup> November, 2013

Strategic Planner,  
Strategic and Community Facilities Group,  
Ballina Shire Council,  
P.O. Box 450,  
Ballina NSW 2478



Dear Sir,

**Re: BSCPP 13/008 – Reclassification Council Owned Waterways (13/60200)**

I refer to your letter dated 9<sup>th</sup> October, 2013, advising the Council's intentions to reclassify Council owned waterways.

My wife and I, residents of 46 Dolphin Drive, wish to lodge our **objection** to the reclassification of Ballina Quays from "community land" to "operational land".

It appears the Council is looking for a way of abrogating its responsibility for maintenance of the canal, by reclassification of the waterway to "operational". By so doing, Council will be discharged from any responsibility in regard to future interest in the canals. If reclassified, Council could create a levy upon the property owners on the canal, or alternatively, once the Quays becomes an asset of the Council, it could be sold off to say a dredging company, who will then take the responsibility for canal maintenance and charge the property owners accordingly. ( Don't forget Council will still get extra rates because of higher valuations). So it becomes a double whammy to the Quays ratepayers.

The rates paid by the property owners living on the canal is more than that paid by most of Ballina Island ratepayers or owners of "dry" blocks within the canal subdivision. This was pointed out in a report to Council by the then Council Engineer dated 14<sup>th</sup> December, 1972, wherein he stated :

***"I consider the higher rating on these canal blocks will more than cover the yearly costs."***

In a letter dated 30<sup>th</sup> July, 1979, from the then Shire Clerk, George Pearce, to Anthony Todd & Partners, Consulting Engineers, wherein it was stated:

**Re Ballina Quays Estate:**

***You are advised that following completion of the proposed canals which form part of the above referenced development and the normal contract maintenance period, Council will assume responsibility for continuing maintenance.***

***Any maintenance dredging which may become necessary, will of course be carried out with Council's own dredge. (LONG GONE?)***



The timing of the ongoing maintenance was determined at an ordinary meeting of Council on 23<sup>rd</sup> March, 2000, on a resolution of Councillors Dakin & Felsch:

***That review/monitoring of maintenance requirements be conducted at a maximum of the 4<sup>th</sup> year anniversary of works conducted, to enable estimates to automatically be included in the 5<sup>th</sup> budget year. Such to be recorded in the long term capital works program.***

Maintenance has not been carried out since early 2007, nearly 7 years ago. (So much for the long term capital works program,.) Council obviously does not have a Management program for the canals, as it does for all other parks etc. covered in "Community land"

The fact that many of the 135 structures have been **approved by council**, in Ballina Quays, makes a mockery of the fact that the structures are illegal because they are private structures on council land (a public reserve). If they are illegal, will council reimburse the full cost of the structures to all property owners that need to have the illegal structures removed, when Council has already approved same, or has Council erred in approving them? (BIG LEGAL PROBLEMS)

Council should commit to maintenance of the canal under "community lands" and prepare a proper Management program as outlined in the minute above. The canals should remain as "community lands".

Yours faithfully,

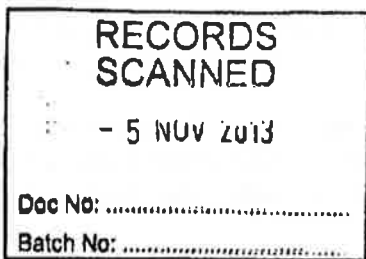


Ron Suffolk

Old Mica Road  
Mt. Isa Q'ld 4825

4<sup>th</sup> November, 2013

The General Manager  
Ballina Shire Council,  
P.O. Box 450,  
Ballina NSW 2478



Dear Sir,  
**Attention: Strategic Planner**  
**Re: BSCPP 13/008 - Reclassification Council Owned Waterways (13/60200)**

I refer to your letter dated 9<sup>th</sup> October, 2013, advising the Council's intentions to reclassify Council owned waterways.

I own a property at 24 Quays Drive, on the canal. I don't have any structures that are in the public reserve, however, when I occupy the premises in the future I will be constructing a ramp or a jetty and pontoon or both (with Council approval).

I wish to lodge my objection to the reclassification of Ballina Quays from "community land" to "operational land".

It appears the Council is looking for a way of removing its responsibility for maintenance of the canal, by reclassification of the waterway to "operational". By so doing, Council will be discharged from any responsibility in regard to future interest in the canals. If reclassified, Council could create a levy upon the property owners on the canal, or alternatively, once the Quays becomes an asset of the Council, it could be sold off to a company who will then take the responsibility for canal maintenance and charge the property owners accordingly. ( Don't forget Council will still get extra rates because of higher valuations). So it becomes a double whammy to the Quay's ratepayers.

The rates paid by the property owners living on the canal is more than that paid by most of Ballina Island ratepayers or owners of "dry" blocks within the canal subdivision., so the extra rates should be sufficient to cover maintenance every 5 years.

Maintenance has not been carried out since early 2007, nearly 7 years ago.

The fact that many of the 135 structures have been approved by council, in Ballina Quays, makes a mockery of the fact that the structures are illegal because they are private structures on council land (a public reserve). If they are illegal, will council reimburse the full cost of the structures to all property owners that need to have the illegal structures removed, when Council has already approved same, or has Council erred in approving them?

Council should commit to maintenance of the canal under "community lands" and prepare a proper management program . The canals should remain as "community land".

Yours faithfully,

A handwritten signature in cursive script, appearing to read "Warren Olley", written in dark ink.

Warren Olley

**Lachlan Sims**

---

**From:** Stan Golding [stanleygolding@bigpond.com]  
**Sent:** Tuesday, 5 November 2013 9:11 AM  
**To:** Ballina Shire Council  
**Cc:** Sharon Cadwallader; Ken Johnston; Paul Worth; Robyn Hordern; Jeff Johnson; Councillor Keith Johnson; Councillor Sue Meehan; Councillor Ben Smith; Councillor David Wright  
**Subject:** Reclassification of Council Owned Waterways

The General Manager. Att. Strategic Planner. We are in receipt of your letter dated 9th October, 2013. Whilst you seem to assert the Ballina Quays are to be included in a reclassification programme it would seem reasonable to ask a few questions. 1) Has there been a written determination from a suitably qualified Lawyer / Barrister sought to guarantee your statement. 2) Is the reclassification absolutely necessary under the act. Can application be made for a variation. 3) Is it Councils real intention to introduce fees and charges to cover dredging, pontoons and ramps. If it is intended to introduce such charges why was the original decision made by Council to classify the waterways Community Land. 4) I would suggest the matter of classification was well discussed originally and its intention fully recorded and as a result implemented with full record being made in Council minutes. It should also be noted that a decision was made by Council to adopt and implement the boundary extension of each waterfront block to the water, by approx. six (6) meters. from the gutter into the water at high tide. Surely this must complicate matters. There was also a conscious decision made for Council to accept responsibility for dredging and other works, plus not to charge for pontoons and ramps. These costs were apparently offset by special arrangements and higher land rates based on higher than than normal valuations. I must object strongly to the reclassification proposal, based on the foregoing. Regards. S & M Golding, 108 Kalinga Street.

**Lachlan Sims**

---

**From:** Ken and Shirley Campbell [tooloonki@hotmail.com]  
**Sent:** Tuesday, 5 November 2013 10:47 AM  
**To:** Ballina Shire Council  
**Subject:** Planning Proposal BSCPP 13/008 Reclassification of Council Owned Waterways

The Campbell Family of 127 Riverside Drive object to the change of the Title of this address. This will not only restrict residential use, but public access as well, which is not to the betterment of Ballina.

Council decisions for the West Ballina area in the past few years have not been made for the whole Community and have been very divisive.

With the proper Council management plan for our waterway these changes are not required.

Sent from my iPad

R & E.P ECCLESTON  
129 RIVERSIDE DRIVE  
BALLINA

TO BALLINA SHIRE COUNCIL

RE: RECLASSIFICATION OF WATERWAYS

WE WOULD LIKE TO LODGE OUR OBJECTION  
TO THIS PROPOSAL AS WE ARE VERY  
CONCERNED ABOUT THE EXTRA RED TAPE  
AND COSTS TO US WE ALREADY PAY  
HIGH RATES AND THIS PROPOSAL  
WILL ONLY MEAN MORE CHARGES.  
PLEASE LEAVE AS COMMUNITY LAND.

YOURS FAITHFULLY

*R. Eccleston*



RECORDS  
SCANNED

6 NOV 2013

Doc No.....

Batch No.....

30 October 2013

Mrs Margo E Doyle  
86 Dolphin Drive  
West Ballina NSW  
2478

Mr Lachlan Sims  
Strategic Planner  
Strategic and Community Facilities Group  
Ballina Shire Council  
PO Box 450  
Ballina NSW  
2478

**Re: Public Exhibition-Planning Proposal BSCPP 13/008  
Reclassification of Council Owned Waterways**

Dear Sir,

In reference to your letter dated 9 October 2013 relating to the above Council proposal; I wish it noted for the record that I **Strongly Oppose** the reclassification from "community land" to "operational land" of Ballina Quays Canals and Banyanda Lake.

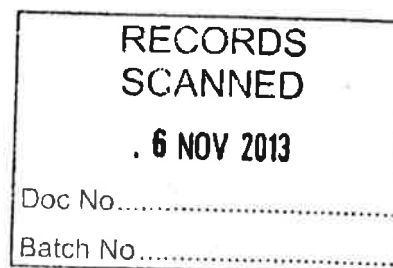
This reclassification would convert the land/canals/lake into an asset of the Council which would open the door for Council to charge a levy, charges or leasing fees to me as an adjoining property owner. This fact you have clearly stated in your own information sheet.

I have paid a premium in rates for owning a waterfront block for many years and do not wish to be faced with the prospect of further Council charges. This clearly would be "double dipping" by Council against a select group of Rates Payers on land that is available to and used by the Public at no cost.

Yours faithfully,



Margo E Doyle



30 October 2013

<p><b>RECORDS SCANNED</b></p> <p><b>. 6 NOV 2013</b></p> <p>Doc No.....</p> <p>Batch No.....</p>
--

Mr & Mrs L Parr  
 80 Dolphin Drive  
 West Ballina NSW  
 2478

**Mr Lachlan Sims**  
**Strategic Planner**  
**Strategic and Community Facilities Group**  
**Ballina Shire Council**  
**PO Box 450**  
**Ballina NSW**  
**2478**

**Re: Public Exhibition-Planning Proposal BSCPP 13/008**  
**Reclassification of Council Owned Waterways**

Dear Sir,

In reference to your letter dated 9 October 2013 relating to the above Council proposal. We wish it noted for the record that we **Strongly Oppose** the reclassification from "community land" to "operational land" of Ballina Quays Canals and Banyanda Lake.

This reclassification would convert the land/canals/lake into an asset of the Council which would open the door for Council to charge a levy, charges or leasing fees to us as an adjoining property owner. This fact you have clearly stated in your own information sheet.

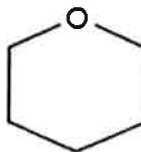
We have paid a premium in rates for owning a waterfront block for many years and do not wish to be faced with the prospect of further Council charges. This clearly would be "double dipping" by Council against a select group of Rates Payers on land that is available to and used by the Public at no cost.

Yours faithfully,




Lyal and Paulene Parr





**Flavone Pty Ltd**

ACN 064 737 613

8 Sirius Place  
Ballina, NSW 2478  
Tel: (02) 6686 4328

Mobile: 041 7540698  
Email: [rwjemison1@bigpond.com](mailto:rwjemison1@bigpond.com)

**Lachlan Sims**  
**Strategic Planner**  
**Ballina Shire Council**  
**40 Cherry st**  
**Ballina 2478**

**Subject: Planning Proposal BSCPP13/008**  
**Reclassification of Council Owned Waterways**

**03/11/13**

Dear Sir,

Thank you for your letter of 9<sup>th</sup> October advising me of the Councils intentions on this matter. The reclassification seems to be of no benefit to the residents of the Quays and would only be of benefit to the Council in that once the rules change they may be able to put charges and levies on the residents which they cannot now do.

I would not support any change to the status quo unless the Council in general meeting pass a motion to the effect that the residents of the Quays will never be the subject of any future levies or charges which they currently do not pay and that whatever rights they currently hold are preserved.

When the developer of the Estate negotiated for planning permission, the Council would have received payment and the developer would have been committed to pay for roads, sewerage, electricity, open spaces and a host of other things. These costs would have been passed by the developer to me and other residents of the Quays when we purchased our property. In consideration of the payments received by the Council, the Council would have assumed certain obligations-for example dredging the canals. Any future cost impositions put on the residents by Council means we are paying twice.

I look forward to hearing you putting forward your case at the meeting.

Yours Sincerely

R W Jemison

RECORDS  
SCANNED  
. 6 NOV 2013  
Doc No.....  
Batch No.....

The General Manager  
Ballina Shire Council  
PO Box 450 BALLINA  
NSW 2478

5<sup>th</sup> November 2013

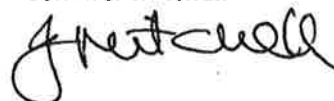
To whom it may concern,

I, Paul Mitchell, and my wife, Jennifer Mitchell, of 128 Kalinga St West Ballina, strongly object to the reclassification of council owned waterways, including that of the Ballina Quays and Banyanda Lake, and wish for these to remain community land.  
(Proposal BSCPP 13/008)

Sincerely,  
Paul Mitchell

and

Jennifer Mitchell



RECORDS  
SCANNED  
. 6 NOV 2013  
Doc No.....  
Batch No.....

6<sup>th</sup> November, 2013

Mrs Karen L Moore  
32 Quays Drive  
West Ballina 2478

Mr Lachlan Sim  
Strategic :Planner  
Ballina Council  
Ballina 2478



Dear Lachlan

I wish to formally lodge my objection to Council's proposed reclassification of the canal area from "Community Land" to "Operational Land". My property at 32 Quays Drive, West Ballina was brought on the basis that there would be no fundamental changes to the arrangement with respect to pontoon placement, leasing charges, canal maintenance etc. The proposed reclassification has the capacity to materially change my use and enjoyment of the canal as well as increase charges levied against me as a waterfront landowner

I would ask Council to reconsider this proposed reclassification and maintain the current classification as it stands.

Regards

A handwritten signature in black ink that reads "Karen L Moore".

Karen Moore  
Owner: 32 Quays Drive, Ballina

RECORDS  
SCANNED  
6 NOV 2013  
Doc No.....  
Batch No.....

10 Quays Drive  
BALLINA 2478  
3/11/13

Lachlan Sims  
Strategic Planner  
Strategic and Community Facilities Group

Dear Sir

Re: Public Exhibition - Planning Proposal BSCPP 13/008  
Reclassification of Council Owned Waterways

I object to the reclassification from *Community Land to Operational Land*.

When we purchased land and built a house in 1986 it was because of the sandy beach to the water where my grandchildten could play and swim.

In 2008 dredging of the water put black pug on my beach and after much consultation with appropriate Council Officers nothing was done other than to tell me it would go back as it was. NEVER. Only weeds grow and make the beach unsightly and walking to water is like walking in mud. We did not want the water deepened as it was alright but the other canals nearer to the river entrance did. When the machine got near my beach it had a change of operator who had no idea of what was required and put black pug on the beach. Now I can only use my pontoon and not able to enjoy the beach or walk in the water so I feel it is not necessary to put a charge on this as we always pay more than dry blocks so I object to carrying out the proposal.

Yours faithfully



RECORDS  
SCANNED  
. 6 NOV 2013  
Doc No.....  
Batch No.....

113 Riverside Dr  
BALLINA 2478  
2 November 2013

General Manager  
Ballina Shire Council  
PO Box 450  
BALLINA 2478

Dear Sir

**RECLASSIFICATION OF BALLINA QUAYS WATERWAYS**

I hereby object to the reclassification of the Ballina Quays canals from community land to operational land. The canals have always been provided, like reserves, for the use of the wider community.

The council has always accepted responsibility for the continuing maintenance of the canals from general rates. I see this reclassification as one step closer for the council to double dip and charge for approved pontoons and maintenance of canals that drain storm water from the road. The council has admitted in its information sheet that operational land is "not generally open to the public". This is shameful that council could consider such a reclassification after all these years.

History and council documentation supports the fact that higher waterfront rates would more than cover any canal maintenance.

Yours faithfully



Will Maxwell

RECORDS  
SCANNED

. 7 NOV 2013

Doc No.....

Batch No.....

12 Sirius Place,

Ballina 2478.

4<sup>th</sup> November, 2013.

Mr Lachlan Sims,  
Strategic Planner,  
Ballina Shire Council,  
PO Box 450,  
Ballina 2478.

Dear Mr.Sims

Planning Proposal BSCPP 13/008.

Further to your letter of the 9<sup>th</sup> October, 2013 regarding this proposal

I am a little concerned that the clarifying notes attached to your letter do not make any mention as to the future maintenance costs of maintaining the Ballina Quays structure.

As you will be aware Council gave assurances to the Maritime Services Board in October 1968 and subsequently confirmed this assurance to the Department of Works in 1970 when the canal structure was being first considered for construction, that "Council will assume responsibility for continuing maintenance". The Council Engineer reported to Council on the 14/2/72 that "I consider the higher rating on these canal blocks will more than cover yearly costs."

Council in a letter dated 22/3/93 stated "The canals are public reserves and Council is the organisation responsible for maintenance of canals."

In these circumstances I would appreciate Council commenting on the future maintenance costs associated with maintaining the canals if the current proposal was to be enacted.

I would like to attend the public meeting to be held to discuss this proposal and look forward to your advices as to the date of this meeting *in due course*.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'A.T. Wilson', written in dark ink.

A.T.Wilson.

123 Riverside Drive  
Ballina NSW 2478

7<sup>th</sup> November 2013

Strategic Planner,  
Strategic and Community Facilities Group,  
Ballina Shire Council,  
P.O. Box 450,  
Ballina NSW 2478

<b>RECORDS SCANNED</b>	
<b>. 7 NOV 2013</b>	
Doc No.....	.....
Batch No.....	.....

Dear Sir,

Re: BSCPP 13/008 – Reclassification Council Owned Waterways (13/60200)

I wish to lodge my objection to the reclassification of Ballina Quays from “community land” to “operational land”.

In the proposed reclassification Council is looking for a way to relinquish its responsibility for the continued maintenance of the canal. Council currently has a commitment to maintain the canal as Community Land and should be doing so as part of a Plan of Management for the waterways. If a Plan of Management is not in existence then it should have been undertaken long ago as required under the Local Government Act 1993 (“the Act”):

“The use and management of community land is to be regulated by a plan of management. Until a plan of management is adopted, the nature and use of the land must not change”.

The letter to owners of land adjoining the Ballina Quays waterway states

“ The Local Government Act 1993 restricts the use of community land for private purposes. These restrictions mean that private structures such as pontoons cannot be placed on community land. To allow the structures under the Local Government Act 1993, the land must be reclassified as operational land.”

This statement may be true, however, if a plan of management for the waterways is in place, or had been put in place years ago, over this community land then “the Act” gives a means of granting leases, licenses and other estates over such land.

“The Act” No 30 Chapter 6 Part 2 Div.2 – Section 46A states:

“A plan of management is to specify, in relation to the community land to which it applies, any purposes for which a lease, licence or other estate may be granted”.

The issue of pontoons etc. could have been handled under this section of “the Act”.



It appears to me that there is no compelling reason to change the reclassification of the land from "community" to "operational", if it can be dealt with under another area of 'the Act'.

As stated earlier, such a reclassification allows Council the ability to relinquish its responsibility for the continued maintenance of the canal, a requirement it has under the classification as "community" land. On reclassification to "operational" land, council has an option to levy a fee to land owners such as a leasing or licencing of private structures fee in the future.

The owners of the land in the Ballina Quays canals development currently pay higher rates because the Office Of State Revenue "OSR" values the land high as the land adjoins the waterways. The rates are levied on the unimproved capital value of such land as assessed by the OSR. As such, the land owners pay higher rates to the Council because of the waterways, and these increased rates should be set aside in a fund to pay for the continual maintenance of the waterway. There should be no need to reclassify the land to allow Council the means to levy owners further for using the waterway.

Council should leave the land with the classification as "community" land and should prepare a proper Plan of Management over the waterway to enable the maintenance to be carried out under a well documented maintenance program. The rates currently paid would more than pay for such a program.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kevin J McGregor', written over a circular stamp or mark.

Kevin J McGregor

C.B. Hagne

59 Dolphin Dr

Ballina

6/11/13

Reference: BSCAP 13/008

Ballina Council.

As a ratepayer I wish to "strongly" object to your attempt to reclassify Ballina Quays from Community Land to Operational Land.

As we already pay additional rates your attempt is unclear as do charge levys or maintenance & upkeep of waterways.

We shall attend any meetings that pertain to this subject.

Sincerely



J B Hague  
59 Dolphin Dr  
Ballina

6/11/13

Reference: BSCPP 13/008

Ballina Council

As a rate payer of Ballina Quays that already have additional fees for the pleasure I strongly object to your attempt to reclassify Ballina Quays from Community Land to Operational Land

Your agreement in writing in the past to maintain our water ways has fallen by the way.

I shall attend your future meetings on this subject.

Sincerely

James Hague

139 Riverside Drive  
Ballina . NSW 2478  
6<sup>th</sup> November 2013

RECORDS  
SCANNED  
. 7 NOV 2013  
Doc No.....  
Batch No.....

Mr. Lachlan Sims  
Strategic Planner  
Ballina Shire Council

**Re: Planning Proposal BSCPP13/008**

Dear Sir,

I refer to your letter dated 9<sup>th</sup> October advising the Council's intentions to reclassify Ballina Quays from "community land" to "operational land".

We, the undersigned , wish to advise Council we **OBJECT** to this proposal.

Council's reclassification will change the present zoning, Council's obligations and responsibilities to the management and continued maintenance of the Ballina Quays. This is not the interests of the undersigned.



Phillip Ross



Felicity Ross

**CONSULTING ENGINEER**

ABN 38 661 073 379

55 BURNS POINT FERRY RD.  
BALLINA  
NSW 2480

RECORDS  
SCANNED

. 7 NOV 2013

Doc No.....

Batch No.....

2<sup>nd</sup> November 2013

General Manager,  
Ballina Shire Council.  
P.O. Box 450  
Ballina NSW 2478

Attention Mr. Lachlan Sims Strategic Planner

Ref: Planning Proposal BSCPP13/008 – Reclassification of Ballina  
Quays & Banyanda Lake.

Dear Sir,

I refer to Council's letter dated the 9<sup>th</sup> October 2013 advising the  
Council's intentions as abovementioned reclassification .

My wife & myself, residents of 55 Burns Point Ferry Road, **object  
emphatically** to the above proposal on the following grounds.

Reclassification of "Community " to "Operational " land would see  
Council relinquished from its responsibilities to manage & continually  
maintain the waterways of Ballina Quays & Banyanda Lake. I refer to  
Council's letter - DA 3/74 dated 30<sup>th</sup> July 1979 , copy attached, and  
the Local Government Act 1993 No30 Chapter 6 Part2 Div.1  
Section30.- being

Reclassification of Community land to operational

*"A local environmental plan that reclassifies community land as operational  
land may make provision to the effect that, on commencement of the plan, the  
land, if it is a public reserve, ceases to be a public reserve, and that the land is  
by operation of the plan discharged from any trusts, estates, interest ,  
dedications, conditions, restrictions and covenants affecting the land or any  
part of the land."*

I am of the opinion, should this proposal be successful, Council would  
be able to contract the management & maintenance of Ballina Quays  
waterways to a private contractor leaving the subject landowners to the  
mercy of private enterprise . It should be noted Council would still be  
collecting the additional rates now paid by the landowners because of  
the higher valuations of property fronting the canal.

Council's letter to subject residents on Ballina Quays, dated 1<sup>st</sup> November 1993 copy attached, and Local Government Act 1993 No 30 Chapter 6 , Part2 being.

#### Public Land

*"The use and management of community land is to be regulated by a plan of management .Until a plan of management is adopted, the nature and use of the land must not change."*

I am of the opinion, had Council proceeded in preparing a Plan of Management for the subject waterways, being Councils intentions in 1993, this current situation of "Illegal structures" would have been addressed in the Plan and this "current problem" would not risen.

Again I draw your attention to Local Government Act 1993 No30 Chapter 6 Part 2 Div.2 – Section 46A – being :

#### Means of granting leases, licenses and other estates

*"A plan of management is to specify, in relation to the community land to which it applies, any purposes for which a lease, licence or other estate may be granted."*

I am still of the understanding that all current approvals for the existing structures issued under Council's LEP Sec 81(1)(a) are valid.

I trust Council will give the matters raised in this letter due consideration. Should Council require further explanation or discussion on these matters please do not hesitate in contacting me. ,

Yours faithfully,



Richard Crandon CPEng. MIEAust. LGE NSW. JP.



Lyn Crandon

8



# Shire of Ballina

P.O. BOX No. 240  
BALLINA, N.S.W. 2478  
TELEPHONE No. 88 2099 (STD 066)

All communications should be  
Addressed to the Shire Clerk

IN REPLY PLEASE

D.A. 3/74

QUOTE THIS NUMBER

30th July 1979

Antony Tod & Partners,  
Consulting Engineers,  
Cherry Street,  
BALLINA. 2478

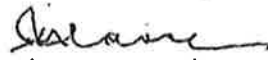
Dear Sir,

re: BALLINA QUAYS ESTATE

You are advised that following completion of the proposed  
canals which form part of the above referenced development and  
the normal contract maintenance period Council will assume  
responsibility for continuing maintenance.

Any maintenance dredging which may become necessary, will  
of course be carried out with Council's own dredge.

Yours faithfully,

  
(G.L. Pearse)  
SHIRE CLERK.

FJW.tt

Be.352

Copy to Mr. P. Maguire, P.O.  
aw 30/7/79

FOR YOUR NEXT VACATION, VISIT BALLINA SHIRE - HOLIDAY CENTRE OF SUMMERLAND

Encl:

D. A. ARDILL.

19.



**Ballina Council**



Cnr. Cherry & Tamar Streets  
P.O. Box 450, BALLINA, N.S.W. 2478  
DX 27789, BALLINA  
TELEPHONE No. 86 4444 (STD 086)  
FAX No. (066) 86 7035

Dear Resident/Ratepayer,

Following representations by residents of Ballina Quays Estate, Council has decided to investigate the matter of regular maintenance of the tidal canals at Ballina Quays Estate. Maintenance to be considered would include restoring private beaches, deepening the canal and improving water access to private buoys at low tide. Council accepted the canals for maintenance requirements many years ago but, as always, requires an allocation of funds for maintenance purposes. As with the maintenance of any public facility or amenity, the level and extent of maintenance is subject to availability of funds. For this reason many roads remain unsealed, even though the residents/ratepayers have been waiting for many years for this work. In this climate of financial constraint, priorities are essential to enable the best use to be made of the limited amount that is available.

Council believes that a plan of management should be developed for the Ballina Quays canals. The plan should consider the extent and frequency of maintenance attention and consider the question of the financing of the work. In that regard the alternatives that present themselves are:-

- (a) The work be financed from General Rate revenue, i.e. rate pool.
- (b) The work be financed by a Special Local Rate covering either the total cost of the work or part thereof and charged on properties with a canal frontage or direct canal access.
- (c) The work be arranged through private contractors and paid for only by those requesting and receiving the work. (Similar to the system at Tweed Shire.)

You are invited to make written submissions regarding this matter and the submission should be forwarded to the General Manager by 19th November, 1993.

**G.J. Faulks,**  
**GENERAL MANAGER.**

1st November, 1993.



Mr David Hobson

DA: 2007/84 (sl)  
PH: 02 6686 1415

15 SEP 2006



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 2007/84  
**Applicant:** Superior Jetties  
**Subject Land:** Lot 5 DP 847691, No. 55 Burns Point Ferry  
Road, West Ballina  
**Development Proposal:** Pontoon  
**Building Classification under the  
Building Code of Australia:** 10a

**Determination:** The development application has been determined by Ballina  
Shire Council on 4 September 2006 by way of: **the grant of  
consent subject to the conditions specified below:**

**General Manager**

**Ballina Shire Council**

**Ballina**

**Reclassification of Ballina Quays Canals**

I acknowledge, with thanks, the opportunity to meet with Council's officers on 28<sup>th</sup> October, 2013.

Since that meeting, I have been made aware of the opinions of three professionals, expert in the Local Gov't Act and town planning area. Their opinion is at odds with the advice given to me by Council's officers, who stated that, although the pontoons were approved by Council, they were illegal structures under the Act, and could only be "legalised" by the proposed reclassification.

Council's officers stated that a change to the Management Plan, would not suffice, as the Act overrode any apparent conflict in that regard,[which appears logical]. However, notwithstanding this, the three professionals are apparently unanimous that this is not correct.

The real issue, in my mind, is not the reclassification itself, but rather what would ensue as a result of same. There is a general feeling in the Quay's community that the whole purpose of the reclassification is to give Council the opportunity to charge licence fees, to recoup some or all of the costs of maintaining the canals,[including dredging]. Whether this is right or wrong, it would be beneficial, at this early stage, for Council to indicate what it's policy will be. This would give certainty to the whole question of why reclassification is necessary.

I believe that a clear statement by Council, as soon as possible, is required.

**Barry Wappett**

**27 Burns Pt Ferry Rd**

**Ballina**

**7<sup>th</sup> November, 2013**

**Ballina Council: Submission on planning proposal BSCPP 13/008**

**We the undersigned ratepayers wish to inform you that we agree that the Local Government Act 1993 forces a change to the classification of the canal structure in Ballina Quays to legitimise Councils' prior approval for structures and to allow for approval of new structures.**

**However we will watch very carefully how Council exercises its 'ownership' of what is essentially a public asset, i.e. the 'deep' water and some of the beach).**

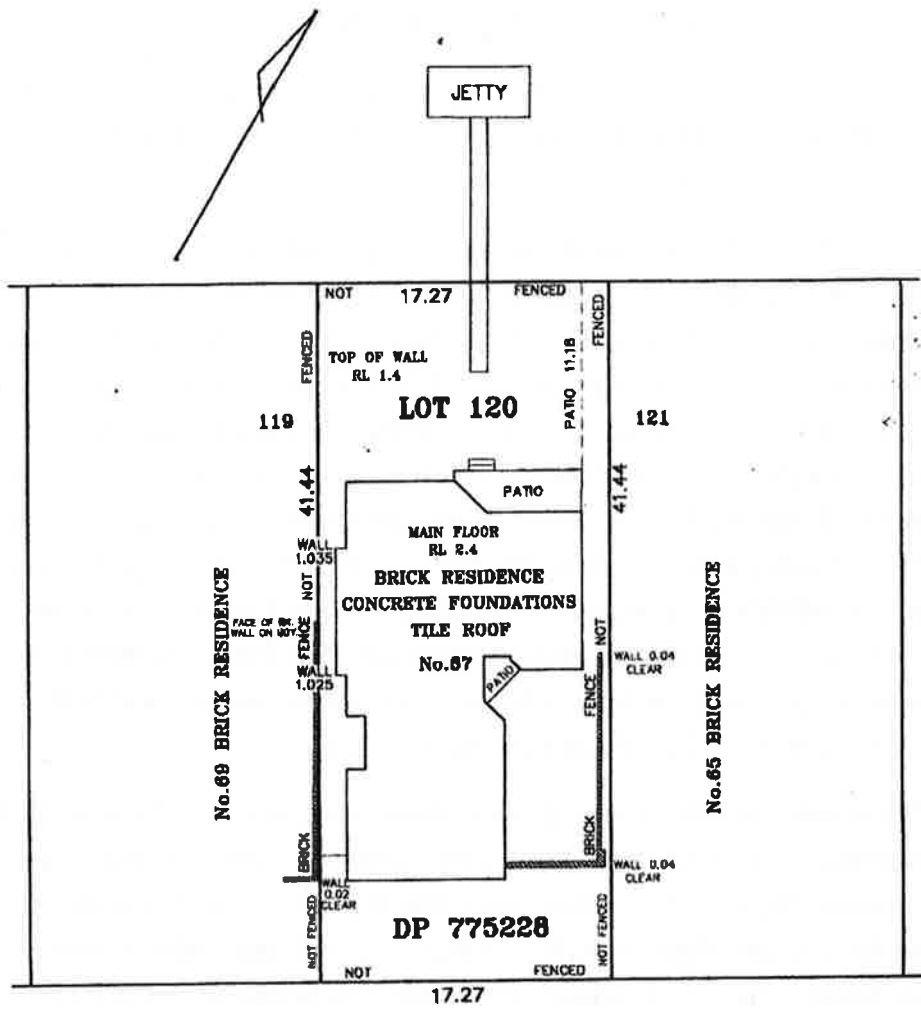
**We find that the preamble to this change raises some issues of definition that may result in confusion in the minds of some Council members. Namely that the Council's ownership of the canals as defined appears to be at variance to the ownership as defined in the plan attached to and forming part of our 'Certificate of Title', a copy of which is attached. From S.E. to N.W. our property is 41.44 meters in depth which takes in a portion of an access structure (board walk) to our pontoon. This mark may be below the Mean Average High tide level. The use of Mean Average High Tide as a basis to divide ownership is somewhat old fashioned in view of rising sea levels. Our Title shows more accurately that from our front boundary (road verge) as used in official surveys our ownership extends to 5.0 m. from the outer edge of the revetment curb.**

**Please note that from my observations since arriving here in 2000, as the operator of several deep draft yachts, the navigable depth of our canal has not been improved. Furthermore the depth on approaching our pontoon has been made significantly less due to a 600 mm ridge pushed up by the extended articulated action of mechanical dredging. This ridge alone has severely limited the useful tidal range necessary for navigation to our pontoon.**

**Signed:**

**Mr Ross Barnett and Mrs Suzanne Barnett**

**67 Dolphin Drive**



**DOLPHIN DRIVE**

RECORDS  
SCANNED  
. 7 NOV 2013  
Doc No.....  
Batch No.....

4<sup>th</sup> November 2013

Mr Lachlan Sims  
Strategic Planner  
Ballina Shire council  
Post Office Box 450  
BALLINA NSW 2478

Dear Sir

Re BSCPP 13/008 – Reclassification Council Owned Waterways ( 13/60200)

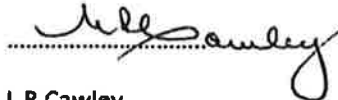
I am writing to strongly object to your proposal in your letter dated 9<sup>th</sup> October 2013 for the reclassification of our waterfront block from Community land to Operational land.

In your letter you have indicated your intention of charging a leasing/licencing fee in the future.

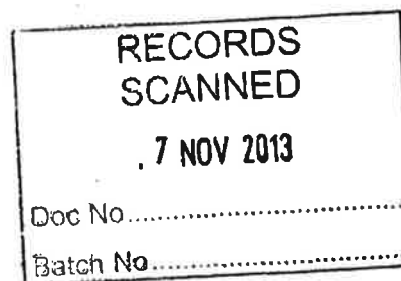
We believe we already pay sufficient Council rates for our waterfront block compared to dry blocks in the immediate area. These additional leasing or licencing costs not to mention other miscellaneous costs in the future could cause intending purchasers of homes with pontoons attached to seriously reconsider purchasing such due to additional charges this "Operational Land" classification will involve. It might also in time cause a devaluation of such homes.

Hoping you can give this objection due consideration

Yours faithfully



L R Cawley  
8 Quays Drive  
Ballina NSW 2478



4<sup>th</sup> November 2013

Mr Lachlan Sims  
Strategic Planner  
Ballina Shire council  
Post Office Box 450  
BALLINA NSW 2478

Dear Sir

Re BSCPP 13/008 – Reclassification Council Owned Waterways ( 13/60200)

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We believe we already pay sufficient Council rates for our waterfront block compared to dry blocks in the immediate area. These additional leasing or licencing costs not to mention other miscellaneous costs in the future could cause intending purchasers of homes with pontoons attached to seriously reconsider purchasing such due to additional charges this "Operational Land" classification will involve. It might also in-time cause a devaluation of such homes.

Hoping you can give this objection due consideration

Yours faithfully

A handwritten signature in black ink, appearing to read "P L Cawley". Below the signature is a horizontal dotted line.

P L Cawley  
8 Quays Drive  
Ballina NSW 2478

RECORDS  
SCANNED

7 NOV 2013

Doc No .....

Batch No .....

47

Ballina Shire Council

Attention: Lachlan Sims  
Strategic Planner

7<sup>th</sup> November 2013

Dear Sir

Re: Proposed Reclassification of Ballina Quays Canals  
& Banyanda Lake

I strongly disapprove of Council Planning Proposal BSC13/008

- We already pay higher rates on Water front blocks
- Jeties have had Council Approval & paid appropriate fees & charges
- It is already "Community Land", Fishing Boats, River Boat Cruises, Canoes, Tourist & Local all use the canals

Please inform me when Council holds the Public hearing

Yours sincerely

R.K. O'CONNOR

109 Riverside Drive

BALLINA 2478

R. O'Connor

RECORDS  
SCANNED

. 7 NOV 2013

Doc No.....

Batch No.....

**MARGARET PAULL**  
**14 DOLPHIN DRIVE**  
**BALLINA 2478**November 7<sup>th</sup> 2013

The General Manager  
BALLINA SHIRE COUNCIL  
40 Cherry Street  
Ballina NSW 2478

**Re: Planning Proposal BSCPP 13/008**  
**Reclassification of Council Owned Waterways**

Dear Sir,

With reference to the above subject I wish to register my objection to the reclassification of the waterways as noted.

It seems that your information sheet that was attached to your letter informing us of council's intentions shows that "operational" land has some form of public infrastructure included in its description whereas "community" land includes parks, sportsgrounds etc. and surely these waterways are definitely community accessible and most definitely do not include any Council structures.

It appears to me that from your own definitions, the Ballina Quays waterways are most certainly "Community" property and not "operational" as there are most certainly no restrictions on the general "community" use of our waterways as can be seen on most days, these waterways being used by both amateur fishermen and the "Richmond Princess", one of the popular tourist visitor enterprises in our Shire.

Yours faithfully,



**Margaret Paull**  
**P. 0418 251 307**  
**P.O. Box 137**  
**Ballina 2478**



RECORDS  
SCANNED  
. 7 NOV 2013  
Doc No.....  
Batch No.....

**COLIN PAULL**  
**14 DOLPHIN DRIVE**  
**BALLINA 2478**

November 7<sup>th</sup> 2013

The General Manager  
BALLINA SHIRE COUNCIL  
40 Cherry Street  
Ballina NSW 2478

**Re: Planning Proposal BSCPP 13/008**  
**Reclassification of Council Owned Waterways**

Dear Sir,

With reference to the above subject I wish to register my objection to the reclassification of the waterways as noted.

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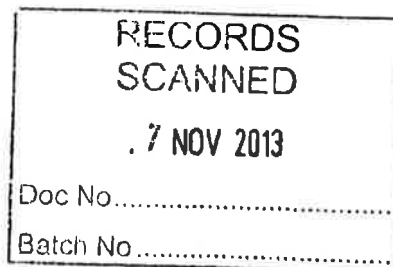
It appears to me that from your own definitions, the Ballina Quays waterways are most certainly "Community" property and not "operational" as there are most certainly no restrictions on the general "community" use of our waterways as can be seen on most days, these waterways being used by both amateur fishermen and the "Richmond Princess", one of the popular tourist visitor enterprises in our Shire.

Yours faithfully,



**Colin Paull**  
**P. 0409 251 820**  
**P.O. Box 137**  
**Ballina 2478**

Lachlan Sims  
Strategic Planner  
Ballina Shire Council  
PO Box 450  
BALLINA. 2478



Dear Sir,

Re RECLASSIFICATION OF COUNCIL OWNED WATERWAYS

As residents of Dolphin Drive, we wish to lodge an objection to the reclassification of the Ballina Quays waterway.

It is our opinion, and that of all residents we have spoken to, of 'the Quays', that this is an attempt by the council to relinquish their obligations as set out and agreed to when the Quays was originally constructed. We have sighted numerous letters/agreements, etc. which state that Council will be responsible for maintaining and dredging of the waterway (but hopefully not like the damage it caused last time it was done). Does this mean that Council is going back on its word in an attempt to get its maintenance jobs paid for by residents? I believe we are already paying more in rates than in a lot of areas of Ballina and it was stated by the Council Engineer 14/12/72 that the "higher rating on these canal blocks will more than cover the yearly costs".

With respect, we purchased our property approx. six years ago, on the understanding that Council maintained the Quays and dredged every 5 years. It was a shock to see the mess it was left in after the last 'excavation' and we found it difficult to believe that there was not any attempt to rehabilitate (at least in our area). It is in sharp contrast to the photos shown to us by neighbours, and ones taken by ourselves a few years prior to moving here which showed sandy waterfronts.

In your information sheet, you state that operational land can be used for carrying out the functions such as a works depot, wastewater treatment works or other similar public infrastructure. How absolutely devastating to think that our Quays could be used for just about anything undesirable. All residents need to be assured that property values remain at a premium. Therefore, it would seem imperative that the canal remains under community land.

We have a unique and beautiful waterway and Ballina Quays has the potential to be a wonderful area for years to come – with the correct attention.

**PLEASE, LET'S ENHANCE ITS POTENTIAL EVEN MORE AND MAINTAIN IT AND TREAT IT SO IT REMAINS PART OF THE GATEWAY TO BALLINA THAT RESIDENTS CAN BE PROUD OF. IT IS WORTH IT!**

Yours faithfully

*M J Hegerty M Hegerty*  
MERV AND MARY HEGERTY

30 Dolphin Drive Ballina

5/11/13

Cr David Wright  
Mayor  
Ballina Shire Council  
40 Cherry St  
Ballina NSW 2478

<b>RECORDS SCANNED</b>  <b>. 7 NOV 2013</b>	PO Box 1110 Ballina NSW 2478 4 <sup>th</sup> November 2013
Doc No.....	
Batch No.....	

Dear David,

We have attached a copy of our objection to the proposed reclassification of Ballina Quays waterways from "Community Land" to "Operational Land" for your attention.

We note that both you and Don Page have had extensive involvement over the last two decades concerning the issues affecting Ballina Quays ratepayers.

We are very disappointed that once again Council is seeking to change its responsibility with regard to the waterways, and once again seek to impose additional fees, levies, licences and costs on Ballina Quays ratepayers. How many times do we need to revisit these issues?

Your urgent attention to this matter would be appreciated.

Regards



Pam & Brian Maxwell

(cc: Don Page MP)

PO Box 1110  
Ballina NSW 2478  
4<sup>th</sup> November 2013

General Manager  
Ballina Shire Council  
40 Cherry St  
Ballina NSW 2478

Dear Sir,

**Ref:** BSCPP 13/008 – Reclassification Council Owned Waterways (13/60200)  
Lachlan Sims

We refer to your letter of 9<sup>th</sup> October 2013 regarding Councils wish to reclassify Ballina Quays waterways from "Community Land" to "Operational Land".

Please note our objection to this process.

Despite your claim that this reclassification is required to comply with the Local Government Act (1993), it is obvious that Council is merely looking for another avenue by which it can charge Ballina Quays ratepayers for the ongoing maintenance of the canals. This is just another shameful attempt by Council to shirk its responsibilities to ratepayers and to avoiding maintaining the canals at Councils expense.

As residents of Ballina Quays for over 20 years, we have watched as successive Councils have sought to shift responsibility for the canals onto ratepayers, time and again. Each time, after extensive community input and many Council hours wasted, they have been forced to accept responsibility for the maintenance and fund the necessary works. (With varying degrees of success as Council utilised, firstly, a dredge and subsequently, an excavator). We purchased our land from the Developer and have paperwork which ensures Council is responsible for the maintenance of the canals. In addition, the higher rates we pay, living on the waterway, should more than cover the cost of the regular dredging required in this waterway. Council should be allocating our Rate money accordingly.

We draw your attention to some historical facts.

- **14/12/1972.** Municipal Engineers Report to Council, 'It is obvious that the maintenance requirement is not as frightening as it may first appear and I consider the higher rating on these canal blocks will more than cover the yearly costs'.
- **30/7/1979.** Council letter to consulting engineers, 'you are advised that following completion of the proposed canals which form part of the above referenced development and the normal contract maintenance period, Council will assume responsibility for continuing maintenance'.
- **7/8/1979.** Department of Public Works issued approval for the construction of Ballina Quays 'following your compliance with the Departments General Conditions and acceptance of responsibility by Ballina Shire Council of responsibility for maintenance of both the access channel and internal waterways in accordance with Councils letter of 30<sup>th</sup> July 1979'.
- **10/2/1992.** Letter to Council from Mr C.N. Wait requesting the canals be dredged.
- **Extensive petitions, letters and meetings** to Council until...
- **23/9/1993.** Council Ordinary Meeting, 'Council sought a legal opinion regarding the maintenance of canals in Banyanda and Ballina Quays Estates and the responsibility for the financing of maintenance works. The legal opinion addresses the matter with reference to the original development consents as well as the provisions of the Local Government Act 1993. The conclusion arrived at is that the maintenance extent and financing is one for Council to resolve...'
- **The Legal Opinion** also goes on to say,  
'16. The note forming a part of Part 2 of Chapter 6 of Local Government Act, 1993 would suggest that the purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not be so kept (operational), the major consequence of classification appearing to be that the classification determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.  
17. It would appear to me that the subject lands would, as public land, continue to be classified as community land'.
- **More extensive discussions, letters, etc.** with Council
- **22/9/1994.** Council resolved 'that the condition of canals be reviewed at least every five years'. Resolved on the motion of Councillors Kerkenezov and Felsch.
- **3/11/1994.** Dredging finally carried out 2 years and 9 months after initial request from residents.
- **More extensive discussions, letters, etc.** with Council

• **23/3/2000.** Council resolved 'that review/monitoring of maintenance requirements be conducted at a maximum of the 4<sup>th</sup> year anniversary of works conducted to enable estimates to automatically be included in the 5<sup>th</sup> budget year. Such to be recorded in the long term capital works program.' Resolved on the motion of Councillors Dakin and Felsch.

- **2001.** An excavator was used to reclaim the beaches and improve the canal depth. (Operated by Gary Spencer)

- **2006/2007.** An excavator was again used to reclaim the beaches and improve the canal depth. (Initially operated by a private contractor but finished by Council with a Council excavator)

Council has also wasted ratepayers money conducting surveys to see if residents would pay for the canal maintenance, included Ballina Quays in the change of Council documents relating to a Special Rate Levy (only to delete the Ballina Quays reference after considerable anguish and community involvement), and now this shameful attempt to reclassify the canals from "Community Land" to "Operational Land" under the guise of attempting to "regularise (make lawful) the existing private waterway structures on the land".

The Local Government Act commenced in 1993. That is **20 YEARS AGO!!!**

Since then Council has been managing and regulating the placement of all structures in Ballina Quays. Council has specified standards for the structures, including specifying directions on the nature of the structure to be installed, the location of the structure and insisting it be moveable to allow for regular maintenance. Council has also charged fees for this consent. We also maintain and insure our structures at no cost to Council.

As ratepayers have installed these structures with **FULL** Council compliance, and at great expense, it is ludicrous to now say that these structures are unlawful. It is a mockery for Council to now decide they have made a mistake in regard to these structures and that we ratepayers should bear the brunt for Councils ineptitude.

It is also concerning for Council documents to say that,

'The levying of fees and charges for such structures would allow Council to recover some of its administrative costs in relation to regulating the structures as well as possibly some of its maintenance costs in relation to the upkeep of the artificial waterways.'

As has been proven numerous times over the last 20-30 years, maintenance of the canals is the sole responsibility of Council.

In addition, as the last maintenance was completed in 2006/2007, clearly it is past time for Council to have completed another regular maintenance of the Canals. As per the Council meeting of 23/3/2000, Council is required to review the maintenance requirements at a maximum of the 4<sup>th</sup> year anniversary of works conducted and estimates automatically be included in the 5<sup>th</sup> budget year. This is to be recorded in the long term capital works program.

It is now 2013; that is, 6 years since the last block was maintained and 7 years since the works were started. Council cannot be trusted to even follow its own minutes and guidelines.

The Planning Proposal states that this reclassification will 'allow Council to further consider its options with regard to managing and regulating the placement through leasing and/or licencing'.

Clearly this is just a Money Grab as Council attempts to divert all costs associated with maintaining the canals onto ratepayers, in direct contravention of all the documentation, legal advice and historical evidence which has been presented over the years.

These structures have always been 'managed and regulated' by Council over the years, without the need for a separate lease or licence, as Council insists that all structures be approved and a consent issued. This is, by default, an effective licence issued by Council. There is **NO NEED** to change the classification. It is splitting hairs to say that the current private structures are inconsistent with the Local Government Act.

The Planning Proposal also states that 'No special agreements apply to the land other than the land being dedicated and registered as a public reserve'. Again, as has been proven, this is incorrect, as Council must maintain the canals, accepting full responsibility and cost for doing this. Surely, that is a special agreement which applies to the land.

It should also be noted, that the fixed part of the structure, is in fact on private land. It is only the floating part of the structure which is on Council property, and as this part changes daily with the tides, it is unclear how Council can lay claim to the water.

The Act provides that a lease or licence may be 'in accordance with an express authorisation in the plan of management'. The Planning Proposal states that 'The Plan of Management applicable to the subject land is Council's Principal Generic Plan of Management for Community Land (PoM) adopted in April 1995. The PoM contains special provisions that recognise and authorise the establishment and use of "private pontoons" but only in the Ballina Quays

waterways'. Surely, this, together with the fact that all structures have been installed with the express approval of Council in the form of a consent to build, indicate that the structures **DO** comply with the LG Act.

It should also be noted here, that the canals are the main drainage for the surrounding roads. The runoff from these roads is a major consideration in the build-up of sand in the waterway, and is a major factor causing the problems experienced by ratepayers in Ballina Quays. It would appear that Council is attempting to shirk its responsibilities for managing the drainage run-off and instead attempting once again, in a shameful manner, to get residents to pay for this Council responsibility.

The Planning Proposal also states in Option 1, that the classification could remain as Community Land, but 'the alternative to the reclassification of land is Council compliance action to have the existing structures removed from its land'. This is nothing short of **threatening and bullying** of residents to allow Council to reclassify the waterway, charge licence fees and then get residents to shoulder Council's responsibility, by paying for the maintenance of the waterway. **A Shameful attempt at revenue raising at the expense of Ballina Quays ratepayers.** Is Council going to reimburse ratepayers for the cost of the structures, if it expects them to be removed?

It has also been stated in The Planning Proposal, that there are 'potentially significant risks to Council as landowner in relation to a personal injury or lawful use claim in relation to the structures'. You should be aware that our NRMA Home Insurance and Building Contents Policy, provides extensive cover for Public Liability. Does Council ask all boat users on the Richmond River and surrounding creeks for copies of their insurance policies as a condition of use of the Ballina waterways? I think not!!

Please note:

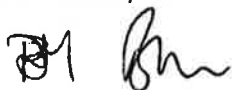
- \*These canals are **not for the sole use** by Ballina Quays residents.
- \*They are the **main drainage area** for the surrounding roads.
- \*It has been **proven** time and again that Council is responsible for funding and maintaining the waterway.
- \*The structures are **NOT unlawful**, having been installed only after Council approval has been issued.
- \*The refusal by Council, to accept its responsibility to Ballina Quays ratepayers, without extensive lobbying, letters, legal advice, and much anguish has been the subject of many newspaper articles over the years. This reflects poorly on the reputation of our Council and does not do anything to improve our community.

We disagree that the Options available, are restricted to the 5 which have been nominated by Council staff.

- \*Clearly the **waterway is 'Community Land'** and should remain as such.
- \*Clearly the **waterway should be funded and maintained by Council** in accordance with all the historical documentation, including Council's own minutes.
- \*Clearly Council should **embark immediately on dredging** the canals, as promised, as it is well past the 5 year anniversary on which the funding should have been allocated and the job started. This dredging should include all the canals, and not just the areas bordering the drainage pipes.
- \*Clearly the **structures are NOT unlawful**, being constructed only after Council approval and guidelines have been adopted.
- \*Clearly the issue of **Public Liability is a ruse**, given that ratepayers should have extensive coverage with their Home and Contents Policies. Council could request proof of insurance cover.
- \*Clearly, as Ballina Shire ratepayers, we have made every effort to comply with all Council rules and regulations, time and again, and it is disgusting that Council now seeks to reclassify the canals, to allow it to levy further charges on us, or be threatened with the removal of our Council approved structures.

We hereby lodge our **strongest objection** to this proposed reclassification of the waterways, from 'Community Land' to 'Operational Land'. This public waterway and Council drain is not a Council 'investment or asset', which Council can use to levy fees on at its leisure. The structures have been approved by Council and are definitely NOT unlawful.

Yours sincerely



Pam & Brian Maxwell

RECORDS  
SCANNED

. 7 NOV 2013

Doc No.....

Batch No.....

113 Riverside Dr  
BALLINA 2478  
2 November 2013

General Manager  
Ballina Shire Council  
PO Box 450  
BALLINA 2478

Dear Sir

**RECLASSIFICATION OF BALLINA QUAYS WATERWAYS**

I hereby object to the reclassification of the Ballina Quays canals from community land to operational land. The canals have always been provided, like reserves, for the use of the wider community.

The council has always accepted responsibility for the continuing maintenance of the canals from general rates. I see this reclassification as one step closer for the council to double dip and charge for approved pontoons and maintenance of canals that drain storm water from the road. The council has admitted in its information sheet that operational land is "not generally open to the public". This is shameful that council could consider such a reclassification after all these years. These canals are widely used by many people, not just Ballina Quays residents.

History and council documentation supports the fact that higher waterfront rates would more than cover any canal maintenance.

Yours faithfully

Amanda Maxwell

49 Burns Point Ferry Road  
WEST BALLINA NSW 2478

8 November 2013

Mr Paul Hickey  
General Manager  
Ballina Shire Council

Dear Mr Hickey

RE: Proposed Reclassification of Community Land to Operational Land  
Planning Proposal BSCPP 13/008 – Council Owned Waterways (Ballina  
Quays canals and Banyanda Lake)

We wish to lodge an objection to the proposed reclassification of council  
owned land in the Ballina Quays canals and make the following points: -

The land in question should remain Community Land as it is enjoyed by the  
whole community and is not for the exclusive use of adjoining residents.

The classification of land as Operational Land is inappropriate as it refers to  
land not used by the public.

Council was gifted the land by the developer of the Quays project over 25  
years ago and council has authorised private structures via the DA process  
which collects fees for the process. My own pontoon was granted an  
occupation certificate by council in only the last two years.

The question of public liability and the need to indemnify council is also raised  
and seen as a contentious issue as it involves the lengthy process of  
reviewing compliance with DA conditions and defers addressing this issue  
until after the reclassification, although I was required to provide evidence of  
appropriate insurance as part of the DA process.

The report that Council commissioned to review options to rectify the private  
use of structures on community land did not include consultation with other  
government departments or the Minister for Local Government to find a  
sensible solution prior to putting out the proposal. Although it indicates a  
timeline for this action, it should actually form part of the proposal.

Clearly the only reason for the reclassification is to allow the introduction of  
fees and charges for use by private residents of slipways and pontoons. I  
note with interest that council has included comparable fees for waterway  
structures that include a charge by one council for the establishment of  
license fees paid by the residents to the tune of \$753.70.



So despite authorizing these structures and collecting fees via the DA process you appear to want us to pay for the establishment of license fees so you can charge us levies.

Our rates are clearly already much higher than non-waterfront properties that should be going towards the upkeep of these waterways, however, in the two years that we have lived in this location we have seen no evidence of maintenance except for the notification of surveying with no further action reported. These waterways require urgent dredging before we reach the stage that we can only launch craft at high tide. You appear to want the reclassification to not only charge a license fee but probably maintenance as well.

If you are going to put forward a Proposal at least cover all the issues raised instead of indicating that you will attend to these items once the reclassification is approved. Clearly if you obtain the reclassification we will be at your mercy for the introduction and payment of fees to establish the process, inspect our structures, license our structures and then pay more rates to pay for it all.

In purchasing my home the question of rates and levies regarding pontoons and waterway maintenance was certainly raised by my solicitor and the results influenced my purchasing decisions.

Our homes are our most important and costly asset and the introduction of higher costs and fees ultimately affects our land value and the resale value of our homes.

Yours faithfully

A handwritten signature in cursive script that reads "Fiona Wilson-Jones". The signature is written in black ink and is positioned centrally on the page.

Fiona Wilson-Jones

Warren Lusted  
145 Riverside Dr.  
Ballina

Ballina Shire Council.

Dear Sir,

Being a resident of Ballina Quays for 30 years, I strongly oppose any change in the reclassification of the canals of the Ballina Quays Estate.

Having worked as a N.S.W Fisheries Inspector, I see this move by Council to re-classify the canals as the first step to allow Council to charge p/o. fees for Jetty's as in main rivers, ports etc. in the State of N.S.W This is nothing more than a money grab for a select few.

On buying land in the Quays estate we were assured on the fact that there would never be any Jetty charges. EVER.

The Jetty's are all approved in accordance with Council Regs. & specs.

We currently pay almost twice the rates of the Dry Block in the area. This was to help pay for the maintenance plan.

The older residents of the estate can ill afford the extra charges they would have to pay under your proposal.

I would like to see the Ballina Council's plan of management as per: Public works instructions on the concert

I would also like to know why the Ballina Council's maintenance Dredge was sold to

[REDACTED]  
[REDACTED] Before it was used for Canal  
maintenance. But After Ballina Residents paid  
for it to be made better than new condition.

- in for the fight.

W. husted.

117 Riverside Drive  
WEST BALLINA NSW 2478

7<sup>th</sup> November 2013

Planning Proposal BSCPP 13/008

I wish to place an **OBJECTION** to the reclassification of Council Owned Waterways. This "recent review" seems to be a convenient way for Council to avoid the Local Government Act 1993, which requires Council to maintain the upkeep and dredging of the canals, as was made clear to us when we purchased our property.

As a ratepayer and resident at the above address for 24 years, we been rated higher than other 'dry' blocks and paid accordingly. We have installed our pontoon within the requirements of the Council and expect the Council to adhere to their side of the agreement.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'S. Ainsbury', written over a horizontal dotted line.

Sheridan Ainsbury

Strategic and Community Facilities Group

Ballina Shire Council

40 Cherry Street

Ballina NSW 2478

Dear Council

Council Reference: BSCPP 13/008-Reclassification Council Owned Waterways (13/602000)

We are writing to object to the above reclassification.

In 1989 we purchased our land from the developer of Ballina Quays Estate and built our home and pontoon with council approval with the understanding that we would have shared use of the waterways within the estate with the community. This situation has continued to this day.

The developer handed over to council the management and ownership of the waterways, roads, and parks and reserves on the finalization of the estate for public use. The council have managed the waterways and collected rates from waterfront blocks at a higher rate than dry blocks, therefore, a reclassification should then result in waterfront blocks attracting a lower rate.

This waterway is continually accessed by the wider community as are parks and sports grounds and is a natural area. It is not an artificial water way, it forms part of the Richmond River as does the canal that surrounds Ballina Island. The council would surely not consider the canal or trawler boat harbour as artificial waterways and reclassify them as operational land.

I consider the Quays estate is clearly community land and should remain as such. I thereby question the reason for this reclassification when it has been community land for many years now so why should it change now.

Yours faithfully



Graham and Elaine Campbell

81 Dolphin Drive Ballina NSW 2478

7<sup>th</sup> November, 2013



Robyn & David Kirsh  
20 Dolphin Drive  
West Ballina NSW 2478  
Ph. 02 6681-5244

6 November 2013

Ballina Council  
PO Box 450  
Ballina NSW 2478

ATTN: Mr Lachlan Sims

Dear Sir,

RE: Proposed reclassification of council owned waterways

I am, together with my husband, an owner of the property described above in Dolphin Drive. I am writing on both our behalf and I am writing in relation to the proposal to reclassify the council owned waterways, primarily the canals in the Ballina Quays.

I wish to express my objection to the proposal.

My objection is based on a number of factors. I will attempt to address each of them.

Firstly, you state that Council has become aware that the classification of the canals as Community Land is contrary to the Local Government Act. It strikes me as absurd that a council that has happily taken DA applications (and fees) for some 20 or 30 years in relation to "structures" has only just realised that this is somehow contrary to the legislation. As I read the legislation, there is no clear definition of community land other than to say it is land classified under Division 1 of Part 2 in Chapter 6. By not having an express definition, legislation should be, according to legal principles of statutory interpretation, read broadly so as to ensure its purpose can be fulfilled. In addition, a common sense interpretation would be that it is land available for general community use. It seems that as long as there is a Management Plan for the Community Land then the legislation is complied with. I am not aware of Council having such a Plan of Management.

I cannot find any provision in the legislation that expressly states that the canals cannot be community land and that the existence of the pontoons is contrary to law. If Council is relying on s47D, then I believe Council needs to look more closely at the actual section. It states that it is unlawful for EXCLUSIVE use or occupation to be exercised by any person. A pontoon is not exclusive occupation or use. There is nothing in the existence of a pontoon that restricts any other person's use of the canal.

The canals of the Ballina Quays do certainly have some structures that could be considered "private" but their existence in no way changes the way the canal is used. They are used for general community use. Evidence of that is the regular use of the canals by the Richmond River Princess, regular visiting boaties, fisher people and tourists. If the land is reclassified as operational land it is arguable that these public activities ought to be restricted. In fact, if the land is reclassified, it ceases to be public reserve and Council is thereby discharged from any conditions and liabilities.

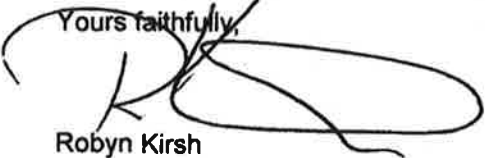
Secondly, there seems to be some concern on the part of council that there is a potential liability issue because of the structures that abut the canal. I ask Council, has there been a single complaint or case brought against council for any incident arising from or as a result of these structures? I would think not, and further, given that the structures have been subject to a DA process and approval given, it is hard to imagine council being responsible for any injury or incident arising from them. A plaintiff or complainant would firstly have to prove a duty of care. Potentially that would be difficult.

Thirdly, it is my understanding that the land was transferred or donated for the purposes of a public reserve. As a result, it is arguable that s31(3) of the LGA prohibits the reclassification of the land.

If the land is reclassified, I expect that Council will then ask all residents to pay a fee to "lease" an area of land so as to permit the pontoons. Given that many of us have paid for a DA to have the pontoon in the first place, there is an element of double dipping. We also pay higher rates than other residents in non-waterfront properties, and our house prices are more than general Ballina properties. There are many elderly people still living in the canals. No doubt they purchased with an understanding that the maintenance of the canals was Council's responsibility and they paid their rates accordingly. A change in the classification will undoubtedly have an effect on the value of our properties. This will impact harshly on all residents but more so on the retirees in the area.

I believe the legal reasoning Council relies on is, if not flawed, at least arguable. It seems to me that this is not something that Council HAS to do and I ask Council to seriously reconsider this plan.

Yours faithfully,



Robyn Kirsh

NGE & JC Reimer  
44 Quays Drive  
Ballina 2478

7 November 2013

**Submissions regarding a proposal to change the classification of Ballina Quays Canals (presently classified as Community Land) to Operational Land.**

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I make these submissions on behalf of myself and my wife who is, as Council records will show, is the Registered Proprietor of our home.

We are both retired professional people and are what has been termed Self Funded Retirees. I am 75 years of age and my wife somewhat younger. We live on an allocated pension from a Superannuation Fund paid out of the Superannuation contributions we have made during the time of our prior Professional careers. We both hold Commonwealth Seniors Health Care Cards.

We purchased our home on the Ballina Quays in early 2003 (seven years prior to my Statutory Retirement age) specifically to provide us with a suitable retirement home. We wanted a waterside home so we could enjoy fishing and boating in our retirement and we specifically favoured Ballina Quays as our enquiries showed that we could (with Council approval) construct a retaining wall, a boat ramp and a pontoon. It was clear that no ongoing fees charges or imposts such as Permissive Occupancy fees or other Licence charges would accrue to us as a result. We learnt that Ballina Council had as part of the original Development Approval agreed to the dedication of the canals to it as public reserve and had undertaken to be responsible for all ongoing maintenance and dredging of the canals. We were aware that Council Rates were higher on waterfront blocks than those of our neighbours on what has been referred to as "dry blocks".

We went ahead in good faith and had these improvements made with Council's approval. Council inspected and approved all



these works which were all carried out within the bounds of our title to the lot. The only part of these improvements that extended beyond the limits of our title was the floating pontoon and suspended walkway which simply floated on the water of the canal. I went ahead (again as part of our retirement plans), and purchased a 22 foot diesel cruiser which also floats on the canal moored to our pontoon.

Naturally we took it that what had been done (and done in good faith and in accordance with Council directions) was entirely legal and proper and in accordance with all statutory requirements and had been consistently been done for at least the last twenty years if not back to the early eighties.

The market for properties on the canals has slumped over recent years and indeed the prices being achieved at present (if a sale can be achieved) is about the asking price it was 10 years ago (and accordingly the value and the prospect of a sale if a property is placed on the market will markedly diminish if this proposed re-classification of the canal goes ahead bringing with it the additional financial burden that is inherent in the proposal) This will give rise to the question of the need to seek from Council appropriate compensation for a sale disincentive which was not disclosed by Council at the time of original purchase.

For these various reasons we vigorously oppose the proposal.

I now turn to the wider considerations behind this proposal. In my view it is not a case of Council suddenly finding the need to correct a state of affairs that it has now deemed to have been illegal for the last twenty or thirty years but a desire to create a situation in which Council can shift, in part or whole, the financial liability it contractually undertook those many years ago to maintain the canals from Council to owners of waterside blocks on the canal estate.

This is not the first time this has been attempted. The last was an attempt to raise a "Special Rate" to be levied on canal block owners. This seems to emerge every time that Council finds that the time for canal maintenance is about to arrive. I understand that a dredging operation is planned for next year and that tenders have been called for that work (I only hope and trust that it will not be that disastrous job that was done last time using a mechanical excavator to scoop mud from the edges of the canal only to dump it on our foreshores causing extensive damage to our property and doing nothing to deepen the centre of the canal).

I believe that Council places some reliance on the terms of s 47D of the Act which essentially states that it is unlawful for EXCLUSIVE use or occupation be exercised by any person. Clearly this is simply not the case in this instance.

The canals, categorised as Community Land now, were designated as Public Reserve initially and they are still so utilised. We, as landholders, have the ability to utilise the waterway in common with the general public. There is no question of exclusivity. Outside our home we see canoes, kayaks, tinnies, runabouts, cruisers and some very large luxurious ones, at that, cruising past our place, as indeed they are entitled to do. We even have the tourist vessel the "Richmond Princess" regularly doing its sightseeing trip with the public address system pointing out points of interest (including the now re-located Big Prawn which can be clearly be seen now standing over the end of our canal)

S35 of the Act specifies that pursuant to the procedures laid down in the Act a Plan of Management for Community Land must come into operation and until that has been done the use of the Community Land must not be changed. I am not aware of the existence of such a plan for the canals.

As council must concede, Community land would normally comprise parks and land such as public reserves (which has been the settled use of the canals for more than twenty years – and still is). Operational Land, as the name implies, is normally land held by Council for the carrying out of its operations such as Council Depots, Garages etc normally (as is set out in the notes to Part 2 of the Act (Public Land) not open to the public or land held as an investment etc.

Conversely under s30 (1) land previously Community Land reclassified as Operational Land ceases to be a public reserve. (Whereas the description and the traditional use of the canals has been as a reserve for the use of the public and always open to the public.) If this proposal goes ahead where does that leave us as landholders and the general public of Ballina and its visitors with whom we share the use and enjoyment of the waterways?

I would argue that the provisions of s31 (3) of the Act is at the very least persuasive on this issue. Although that part of the Act is expressed to be, in the heading, to operate from the coming into force of the Act in 1993, it prohibits the re classification of Community Land if it is contrary to the terms of the transfer from the donor or transferor which was in this case a transfer for the purposes of a Public Reserve.

It is interesting to note that Council wrote to Maritime Services Board in 1983 stating that it was Council's policy to require dedication of the canal waterways as public reserve and went on to say that Council will "control and maintain the bed of the canals" and even earlier, in 1979 wrote to the engineers in charge of the canal development saying "Council will assume responsibility for continuing maintenance"(of the canals) and "any maintenance dredging will be carried out with the Council's own dredge" Clearly the Ballina Council was better equipped 34 years ago than it is today!!

In summary it is our argument that the situation that has existed for the last thirty or so years and for the last twenty years since the commencement of the current Local Government Act is not and has not been unlawful and that the unwarranted attempt to change the nature of the classification of the land (and the abolition of the "public reserve" character of the canals) simply to attempt to create a situation to pass to us a ratepayers Council's financial and legal responsibility is improper and unconscionable.

Nicholas G E & Janice C Reimer

A handwritten signature in black ink, appearing to read 'Nicholas G E & Janice C Reimer', written over a printed name.

7 November 2013

59

**Shianne & Glenn Ford**  
**3 Mainsail Place**  
**Ballina 2478**

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7 November 2013

General Manager  
Ballina Shire Council

Dear sir

Re: BSCPP 13/008 - Reclassification Council Owned Waterways (13/60200)

Although we understand the explanation provided in the planning proposal we do have a few points we have concerns with.

We would like to point out that our boat ramp is not 'in the waterway of council owned community land' as you would be fully aware it is inside our land boundaries as per consent to have said boat ramp.

The boat ramp is placed on the approx. 5% of our land that we pay rates for that is mostly underwater into the intertidal zone of the canal.

We point this out as we believe council's sole reason for progressing with the plan is to implement a fee for private structures on 'their operational land'.

We can only guess that council may well be considering what they could think was a reasonable fee of around \$1,000 p.a. applied to the approximately 125 boat ramps in Ballina Quays and three in Banyanda Lake providing council with \$128,000 income p.a. from a captive source that has no option other than to the imposed tax or remove the pontoon.

It is interesting to note that council is making no such claim for reclassification on the other water ways under their control such as Northlakes Estate, Endeavour Lake, Prospect Lake and Chokiba Lake. Obviously there is no possible financial gain to be made from these.

We would also question the 'potential public liability for council in relation to the placement of such private structures'.

How does council determine its liability for any of these waterways, in addition there is also the Richmond River, North Creek and the many beaches within council's boundaries though we do realise that some of these areas could also come under the Roads and Maritimes Services.

Our home owners insurance covers our liability for any member of the public on our land.

How will council determine if there was a claim made? We own the pontoon - council does not own the water the pontoon is on.

The structure that is the anchor point of the pontoon is indeed on our land. Will a good lawyer be able to sue us as well as council. What part of the pontoon will be council's responsibility.

We believe the approx. 5% of rates paid annually for land that is under water most of the time is indeed a contribution to the ongoing maintenance of the canals.

We have lived on the canal for over 12 years now and there have been from our recollection 2 attempts to do any dredging, one was not successful due to the operator engaged and the other was successful in the part of the canal that we live but was not able to complete dredging of the entire canal estate.

We would not consider the above level of maintenance schedule to have such a high financial costs that could not be covered by the approx. 5% of rates paid annually on the block for the area that requires the maintenance.

It is a shame, we love Ballina, that with so many things that council could be spending rate payer's money and council resources on, that this is even on council's agenda.

Yours sincerely



Shianne & Glenn Ford

**Ford, Shianne**

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**From:** Microsoft Outlook  
**To:** 'council@ballina.nsw.gov.au'  
**Sent:** Friday, 8 November 2013 10:10 AM  
**Subject:** Undeliverable: Re: BSCPP 13/008 – Reclassification Council Owned Waterways (13/60200)

hellfire.ballina.nsw.gov.au rejected your message to the following e-mail addresses:

'council@ballina.nsw.gov.au' ([council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au)) <<mailto:council@ballina.nsw.gov.au>>

hellfire.ballina.nsw.gov.au gave this error:  
Message refused by MailMarshal SpamProfiler

A problem occurred during the delivery of this message to this e-mail address. Try sending this message again. If the problem continues, please contact your helpdesk.

**Diagnostic Information for administrators:**

Generating server: lls-itt-sms08.ncahs.health.nsw.gov.au

[council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au)

hellfire.ballina.nsw.gov.au #550 Message refused by MailMarshal SpamProfiler ##

**Original message headers:**

Received: from LIS-ITT-SMS09.int.ncahs.net (10.66.9.31) by lls-itt-sms08.ncahs.health.nsw.gov.au (203.21.194.29) with Microsoft SMTP Server (TLS) id 14.3.158.1; Fri, 8 Nov 2013 10:06:54 +1100  
Received: from LIS-ITT-SMS12.int.ncahs.net ([fe80::f53b:46cb:5844:6e5a]) by lls-itt-sms09.int.ncahs.net (:::1) with mapl id 14.03.0123.003; Fri, 8 Nov 2013 10:09:51 +1100  
From: "Ford, Shianne" <Shianne.Ford@ucr.edu.au>  
To: "'council@ballina.nsw.gov.au'" <council@ballina.nsw.gov.au>  
Subject: =?Windows-1252?Q?Re:\_BSCPP\_13/008\_=96\_Reclassification\_Council\_Owned\_Wate?= =?Windows-1252?Q?rways\_(13/60200)?=  
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Thread-Index: Ac7cC/VzOt9zuGs7SyCXZqsl4VSV/Q==  
Date: Thu, 7 Nov 2013 23:09:50 +0000  
Message-ID: <484C21E025B5604582F69453EDC50C96039F2EFB@LIS-ITT-SMS12.int.ncahs.net>  
Accept-Language: en-AU, en-GB, en-US

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**X-MS-TNEF-Correlator:**  
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**Return-Path:** [Shianne.Ford@ucr.edu.au](mailto:Shianne.Ford@ucr.edu.au)



General Manager  
Ballina Shire Council  
40 Cherry St  
Ballina

PO Box 5177  
Ballina NSW 2478  
7<sup>th</sup> November 2013

Dear Sir

Re: BSCPP 13/008- Reclassification of land –Council owned Waterways

We refer to your letter of the 9<sup>th</sup> Oct regarding Councils wish to reclassify Ballina Quays from Community land to Operational land.

Please note our strong objection to this proposal, in support we draw Councils attention to the following

1. **The need to reclassify:-** It is obvious that reading Councils minutes of the 22/8/2013 that Council is relying upon legal advice as a pretence to justify the reclassification. That legal advice is not Councils but Councils insurer. If Liability is the sole reason and it is promoted as such, then Council should obtain independent advice looking at alternatives as well as whether Council insurers are correct. We would submit that as the structures are owned by the residents then liability attaches to those residents who would be covered by their individual insurers. Council is unable to simply walk away from liability on the waterways relating to structures erected legally with consent of Council by Reclassifying land and issuing licenses or leases.

The real reason for Council attempting this reclassification is found in Councils own documents

“The levying of charges for such structures would allow Council to recover some of its administrative costs in relation to regulating structures as well as possibly some of its maintenance costs in relation to the upkeep of artificial waterways”

All applications to Council carry fees to cover administration costs. Please see 2. Under regarding maintenance

2. **Recoupment of Costs Public- reserves-**The Ballina Quays waterway is a public reserve that acts as a recreational facility for the general public as well as boating enthusiasts, it also acts as a much needed drainage reserve for the whole of west Ballina, It is a valuable asset to Ballina as are all public reserves. If as it appears, that the main reason for this classification change is recoupment of moneys then all public reserves should be looked at .Who pays for the mowing and maintenance on a weekly basis of Ballina’s playing fields, certainly not adjoining residents it is the Ballina ratepayer. When Council accepted the dedication of the land it accepted the obligation to maintain. Residents who front the Canal system pay increased rates by reason of their increased land value, Council on the other hand spends very little money on the reserve. It has not been maintained for some six years. To seek a select few to cover costs properly payable by many is unjust and against Councils charter.
3. **Plan of management-** Council in 1995 adopted a plan of management for the area some two years after the Local Government act 1993 was amended, Council at time obtained advice and proceeded with the policy that exists now . Nowhere we can see is there any illegality of structures, all structures that we know of have been placed or erected with Council consent, to say there is an inconsistency, and to stretch it to say the inconsistency (if any) amounts to “illegality” is misleading to Council at its best. The management plan adopted in 1995 is



current and can be amended if at all found necessary without the cost and waste of embarking upon the reclassification process.

There are other issues which could be put before council but we hope that Council will re-examine its reasoning to embark upon this process.

Sincerely

Paul & Lesley Starkey

124 Kalinga Street  
WEST BALLINA NSW 2478  
Phone 0458 863 973

8 November 2013

The General Manager  
Ballina Shire Council  
40 Cherry Street  
BALLINA NSW 2478

Dear Sir

RE: PLANNING PROPOSAL BSCPP 13/008  
Reclassification of Council Owned Waterways

This submission is lodged by way of objection with a view to Council obtaining further advice before it embarks upon the final stages of reclassification which would lead to significant staff involvement in the implementation and monitoring a system of licenses for jettys, pontoons and boat ramps that have enjoyed development consent since the subject lands were vested in the Council as public reserve.

I believe that the reason for reclassification, namely that "*private structures*" such as pontoons cannot be placed on community land under the Local Government Act, is not correct as a matter of law. Given the uses to which the canals are currently put by the community (of which adjoining residents are part), the land should retain its current status as community land.

It is also unfair that adjoining residents do not have Council's ultimate management proposals and intentions, as far as fees to be charged, costs of maintenance and any other impost to which they may be put, as a result of reclassification clearly articulated as part of the reclassification proposal.

In my view the concepts of lease and licence and exclusive possession have confused the concepts applying to the grant of a development approval under the EPA Act. Section 45 of the Local Government Act makes a distinction between sale, lease and/or licence and any other estate in community land. A development approval appears to constitute any other estate within the meaning of the section as giving a right (see Section 21(1) of the Interpretation Act 1987). A development approval does not give a licence or a lease, for example I can consent to a neighbour building across my boundary without granting a lease or licence. Section 45(3) states

*"3. A council may grant any other estate in community land to the extent permitted by this Division or under the provisions of another Act".*

The Division (because 45(3) is part of the Division) provides for an alternative, hence the "*or*" which I have underlined above. To my knowledge, Council has never granted a lease or licence in respect of the structures to which I refer and I doubt whether it ever would give exclusive rights of possession over that part of the land on which jettys or ramps are constructed (particularly since the land is to be managed as a public waterway facility and remains zoned W2 Recreational Waterway zone in respect of which the existing structures and further structures to be approved are permissible uses with consent). A development

approval for a pontoon, jetty or ramp covers the owner's land and the land vested in Council. No exclusive use rights have been granted by lease or licence and the consent has been given pursuant to the division which authorises a consent to a lesser estate under the EPA Act. It follows that the structures are not illegal.

If I am incorrect in the above, there is potential to deal with the matter by adoption of a plan of management specific to the canals, rather than the generic plan in existence, and Council's attention is directed to Section 36(3A) which clearly contemplates continued use of existing structures which are legitimised by adoption of a site specific plan. The land could be classified as "*general community use*" and an estate falling short of a lease or licence could be granted under subsection 46(1)(b)(i), 46(4) and Section 36I for current needs within the community (of which the adjoining owners are part). The need is for a use related to public recreation which includes swimming, fishing and boating. The Crown Lands Act, which also applies, indicates that a wide interpretation of use is to be given to Crown land, which includes reserves.

If I am correct in these issues, public liability issues because of illegal approvals do not arise and Council can rely upon inspections and giving notices under the Local Government Act in respect of unsafe structures. If Council adopts a system of licensing, it potentially raises further obligations which require resources and increased costs to the Council and ratepayers.

Finally, if I am incorrect in all the above, bearing in mind that our local member is the Minister for Local Government, it is my view that legislative action by way of regulation can provide an exemption for existing structures and like structures to be constructed on waterways which obtained development consent prior to the prohibition of waterway development.

I am aware that Council's advice to date appears to come from the solicitors for public liability insurers who will traditionally look to the insurers' point of view to cover all eventualities irregardless of cost to the insured. Maintaining the existing regime of development approval under the EPA Act casts no further legal obligation on the Council other than its normal obligations in approving developments. The Civil Liability Act contains exemptions from liability which would apply to the Council. Council also retains its other powers under the Local Government Act in relation to unsafe structures.

This objection is meant to be constructive and for this reason I believe the legal issues and costs to the community need to be revisited if not before, then certainly at, the Public Hearing. I would be happy to discuss any of these matters with Council's officers. If there is an easier way than reclassification and the significant diversion of Council staff resources and less costs in the long run for the ratepayers, all possibilities need to be explored.

Yours faithfully



Dan McOmish

**Lachlan Sims**

---

**From:** myg4mail@gmail.com  
**Sent:** Friday, 8 November 2013 3:07 PM  
**To:** Lachlan Sims  
**Cc:** Ballina Shire Council; IPhone@B-E.BIZ  
**Subject:** Written Submission re: Planning Proposal BSCPP 13/008

Dear Mr. Sims,

I am writing today to express my objection to the proposed reclassification of council owned waterways as outlined in BSCPP 13/008. While I understand that the intent is for Council to make a change that would allow them to assess landowners with additional charges, it is neither fair, reasonable, nor appropriate to do so given the history and circumstances involved. These waterways are clearly correctly zoned as "community land" and I strongly oppose any attempt to reclassify them. The waterways are also well utilised by the community with a significant number of vessels plying the waters daily. These range from kayaks and paddleboards to cruisers and the Richmond Princess. The waterways are a valuable asset to the community and their use represents part of the culture of living in the Ballina Shire.

I am also concerned that the broader intent and implications of this change were not more clearly identified in your correspondence. In essence the affect of such a change would be to permit the Council to charge additional fees and increase costs to those who use compliant, approved facilities installed in accordance with council regulations and having paid the requisite fees to Council at the time for permission to do so. I know that I chose to purchase in this location because I did not want to incur the annual fees charged by NSW Maritime to own a riverfront block with a dock, and I paid a premium to do so. This substantiates my view that this proposed reclassification to allow similar charges would reduce both the values and desirability of the properties affected.

In conclusion I would ask that Planning Proposal BSCPP 13/008 be withdrawn and the existing classification of these waterways be retained as community land.

Respectfully yours,

Thomas (Tom) Bowers  
42 Dolphin Dr.  
Ballina, NSW 2478

E: [MyG4Mail@gmail.com](mailto:MyG4Mail@gmail.com)

105 Riverside Drive  
BALLINA NSW 2478

8 November 2013

Ballina Shire Council  
Attention: Lachlan Sims  
P.O. Box 450  
BALLINA NSW 2478

**Re: BSCPP 13/008 – Reclassification Council Owned Waterways (13/60200)**

This is to register our objection to the proposed reclassification of Council owned waterways, which includes our residence at 105 Riverside Drive on Ballina Quays Canal, due to the ramifications this is likely to have with regard to Council fees and charges in the future.

Sincerely,



David and Lyn Titley  
(02) 66860075  
dt181245@bigpond.net.au

10 November 2013

**Objection Submission for Proposed reclassification of Ballina Quays Canals  
and Banyanda Lake**

To the General Manager and Councillors,

As the daughter of parents who have lived on the Quays for nearly 30 years this is an obvious potential revenue raiser for the Council. Ballina Council may stipulate in letters and such to owners of properties on the Quays and at Banyanda Lake that nothing will change and all will be the same, HOW LONG WILL THAT LAST FOR? How long will it take for property owners to be charged for not just mooring a boat on their pontoon but just to have the pontoon in the water. A pontoon that a lot of owners have spent between \$15 000 and \$20 000 for, some even more. A pontoon that is not maintained by the Council but by the land owners. What rights is the property owner left with?

I know my parents purchased land on the Quays Estate with the understanding that you could enjoy the use of the canal right outside of their home, by placing a pontoon and mooring a boat As well as the serenity, this formed part of the attraction of owning a property on the water. This land was originally given by the developers of Ballina Quays Estate to Ballina Shire Council as a dedication... ie as a gift ... and yes I am well aware for the public to enjoy. It formed part of the estate and was the attraction to potential owners. People who bought into this development did so at elevated prices to start with so they had direct use of the canal. My parents also pay more in rates (than dry blocks) for the privilege of owning a waterfront. The public have always had full access of the waterways and can cruise up and down at their leisure. By changing the waterways to operational will this also change the serenity and privacy? With this give Council the right to lease out sections of the canal?

I understand that new legislation comes into play and council needs to keep up with this... however this Act was introduced in 1993 why is Council wanting this changed now? I really hope that Council can see that both the Quays and Banyanda Lake are residential areas. People are raising their families, grandparents are enjoying their retirement and grandkids and they should be given the same respect and privacy of any other residential populated area. Its great to see the Richmond Princess cruise past and other boating enthusiasts taking a leisurely boat trip around the canal. However opening this up as operational land opens a can of worms that could potentially reduce land prices and change the beautiful idyllic features that attracted land owners to this area to start with.

Yours Sincerely

Deanna Savage on behalf of Victor and Maria Camillo

16 Quays Drive West Ballina

0412 701 602

111 Riverside Drive.  
Ballina. 2478  
8<sup>th</sup> November 2013.

Strategic Planner.  
Strategic & Community Facilities Group  
Ballina Shire Council.

Re: -Reclassification Council Owned Waterways (BSCPP13/008)

Dear Sir,

We refer to your letter dated 9<sup>th</sup> October 2013 for the Council Proposal of Re classification from “community land “ to “operational land” in Ballina Quays. It appears from your letter sent to us that, under this new proposal, you will be able to “lease or licence private structures”, which will have a detrimental effect on us residents.

We already pay significantly more rates than a dry block, for the privilege of owning a waterfront block of land.

If a private dredging company were to be employed by Council for ongoing maintenance, who is going to “foot the bill”? – guarantee it won’t be Council!

This re-classification could also have a serious effect on the re-sale of our property with these additional costs.

Therefore, we strongly object to the re-classification of Ballina Quays. It should remain as “community land”.

Yours faithfully  
Brian & Rosemary Hill.

**Lachlan Sims**

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**From:** Graham & Judy Colefax [colefaxgj@bigpond.com]  
**Sent:** Friday, 8 November 2013 3:16 PM  
**To:** Lachlan Sims  
**Subject:** Fw: Reclassification of Council Owned Waterways

----- Original Message -----

**From:** Graham & Judy Colefax  
**Sent:** Friday, November 08, 2013 2:46 PM  
**Subject:** Reclassification of Council Owned Waterways

Attention Mr Lachlan Sims,

As we are land owners on the Ballina Quays Estate we Strongly Object to the changes from community land to operational land as our pontoon and walkway and our boat ramp have all been approved by council. In making this change the council is only setting it up so we will be charged a license fee. Land owners already pay through our higher rates with no benefits ( maintenance on canal and the foreshore).

The way council manages their parks and commercial interest ( Porter Park , Wigmore Arcade etc) leaves a lot to be desired.

Strongly Opposed

Graham & Judith Colefax  
135 Riverside Drive  
West Ballina NSW 2478



**Lachlan Sims**

---

**From:** Annette Merritt [heabe7@gmail.com]  
**Sent:** Monday, 11 November 2013 9:41 AM  
**To:** Ballina Shire Council  
**Subject:** re - classification of land-Ballina council

to planning dept of canals

We Wish to object to reclassification of canals

H & A Merritt

40 Quays Drive ,  
Ballina 2480.  
8/11/13.

Ballina Shire Council  
Ballina .N.S.W.

<p>RECORDS SCANNED</p> <p>1 1 NOV 2013</p> <p>Doc No.....</p> <p>Batch No.....</p>
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**Regarding the Proposal re -classification of Ballina Quays.**

Broadly speaking, we, the undersigned would like to register our objection to Council's proposal to render the above. The reasoning motivating us, is that by changing the classification, all previous agreements between us and the Council will be nullified leaving us open to any by-laws and future regulations the authorities deem to impose upon us.

We would like members of the Council to understand that many of us are retirees who will make this lovely place our "last stand" so to speak and if we are burdened by additional Rates , Council charges and other impositions on our quiet life ( which we have every right to expect) Local Authority will be doing us a great disservice.

In registering our objection, we would like Council to remember that we feel like the proverbial footballer who kicks for goal, then finds the goal-posts suddenly moved..

Yours in anticipation,

BARRY DRINNAN	48 Quays DVE WEST BALLINA	<i>B Drinnan</i>
Uville Barrett	36 Quays Dr. West. Ballina	<i>Uville Barrett</i>
GAVIN OSBORNE	38 QUAYS DRIVE BALLINA	<i>G Os</i>
ROGER OSBORNE	15 Burns Point Ferry Rd	<i>R Os</i>
Betty Hayes	40 Quays St. West Ballina.	
Lang Hayes	40 Quays St. West Ballina	<i>L Hayes</i>

125 Riverside Drive  
BALLINA NSW 2478

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Batch No.....

Phone +61 2 6686 8538  
janrod@wwwires.com

8 November 2013

The General Manager  
Ballina Shire Council  
40 Cherry Street  
BALLINA NSW 2478

Dear Sir,

**RE: BSCPP 13/008 Reclassification Council Owned Waterways  
(13/60200) Lachlan Sims**

We wish to object most strongly to Ballina Quays Canals being reclassified from 'community land' to 'operational land'. Canal ratepayers do not have exclusive use of the waterways which are used by recreational and other craft on a regular basis. However canal ratepayers do pay higher rates than people living on 'dry' blocks in the area. Obviously, by paying higher rates every year, ratepayers are contributing to the cost of dredging the canals, even though this is carried out infrequently. When purchasing this property we were assured that maintenance of the canals was a Council responsibility.

Should the canals be reclassified as 'operational land', Council would then be in the position to levy charges where jetties/pontoons have been constructed. All such structures have been approved by Council which has strictly controlled the siting of them and the distance they may project into the canals. For this reason we fail to see how the structures could be classified as unlawful.

Ratepayers have paid for and maintained these jetties/pontoons, not Council. While maintenance of the waterway is clearly a Council responsibility, as has been shown a number of times in the over 20 years we have lived here, a number of ratepayers do attempt to assist. This assistance consists of physically moving sand up the beach in an attempt to keep the beach area from eroding into the channel and/or by encouraging grass to grow on areas subject to erosion. By reducing the amount of sand being washed into the channel, ratepayers are making it possible for Council to reduce the frequency of dredging, thereby saving the Council money.

In all the time we have lived here it has regularly accepted by Council that maintenance of the canals is a Council responsibility. Dredging is again overdue.

We support other, more detailed submissions which we understand have been submitted to Council.

Yours faithfully

  
Janice E S Herbert

  
Rodney J Adams

The General Manager

Ballina Shire Council

Ballina

Re Reclassification Ballina Quays Canal

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I have recently taken advice from two local town planners a and a local solicitor with expertise in Local Government law and advise my findings as follows.

Their opinion opposes that received from DLAPiper(councils solicitor) and the structures (pontoons)could be legalised by changing the plan of management.

I am also advised by my insurers that they are responsible for liability of the pontoons.

It would appear that the purpose of the reclassification is to give Council the opportunity to charge a licence fee and in turn recoup the cost of dredging

I must point out that I am in possession of correspondence regarding D A/ 74 which in short states that Council assumes responsibility from 30<sup>th</sup>July 1979 for continuing maintenance of the canals

Judith Hoolihan.

Per Neil Hoolihan

147 Riverside Drive

Ballina

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J & L Wulf  
137 Riverside Drive  
BALLINA NSW 2478

Lachlan Sims  
Strategic Planner  
Ballina Shire Council

8/11/13

Dear Mr Sims,

**RE: Planning Proposal BSCPP 13/008 – reclassification of Waterways (13/60200)**

We are writing to strongly oppose the reclassification of the Quays Waterway as we believe it will adversely affect us as residents/owners of an adjoining property in Riverside Drive.

Firstly, the Canals are used by much of the community for boating and kayaking and it would be unfair to limit community access to these waterways.

Secondly, the reclassification will create additional expenses, on top of the elevated Rates we already pay as a resident of Riverside Drive.

The Quays Waterway must remain community land to allow free access by the community and not add increased financial burden to the existing and future residents of the area.

Regards



Liona Wulf

Per John & Liona Wulf

Owners 137 Riverside Drive, Ballina.

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C & N Whitty  
160 Fox Street  
BALLINA NSW 2478

Lachlan Sims  
Strategic Planner  
Ballina Shire Council

8/11/13

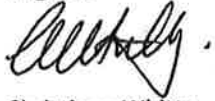
Dear Mr Sims,

**RE: Planning Proposal BSCPP 13/008 – reclassification of Waterways (13/60200)**

As residents of Fox Street we often use the Banyanda Lake with Kayaks and for swimming and fishing, we are concerned that should the Lake be reclassified to operational land that our freedom to access the waterway may be restricted.

We therefore oppose the reclassification of the Banyanda Lake to operational land, it should remain community land as it is used for recreational activities of the community.

Regards



Christiana Whitty

The General Manager  
BALLINA SHIRE COUNCIL  
40 Cherry Street  
Ballina NSW 2478

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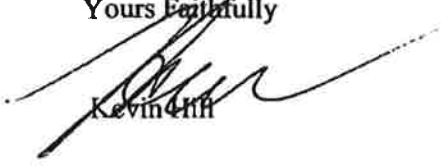
Kevin Hill  
72 Dolphin Drive  
Ballina 2478  
7<sup>th</sup> November, 2013

RE PLANNING PROPOSAL BSCPP 13/008  
RECLASSIFICATION OF COUNCIL OWNED WATERWAYS

Dear Sir,

With reference to the above proposal to reclassify the waterways , I would like to object to any reclassification of the Waterways Canal System.

Yours Faithfully

  
Kevin Hill

The General Manager  
BALLINA SHIRE COUNCIL  
40 Cherry Street  
Ballina NSW 2478

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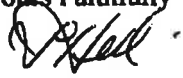
Leigh Hill  
72 Dolphin Drive  
Ballina 2478  
7<sup>th</sup> November, 2013

**RE PLANNING PROPOSAL BSCPP 13/008  
RECLASSIFICATION OF COUNCIL OWNED WATERWAYS**

Dear Sir,

With reference to the above proposal to reclassify the waterways , I would like to object to any reclassification of the Waterways Canal System.

Yours Faithfully



Leigh Hill





Mr. Lachlan Sims  
 Ballina Shire Council  
 40 Cherry Street  
 Ballina N.S.W. 2478

8<sup>th</sup> November 2013

**Re: BSCPP 13/008 reclassification of Council owned Waterways**

Dear Sir,

I regret that I cannot support your proposal regards the above as I feel you are merely squeezing this matter into the category of "operational land" because there is no better category to fit it. In addition, the general consensus of opinion in the Quays is that this exercise is offering little more than lip service to those landholders affected and is merely a step in the overall plan of fleecing more money from water fronting landowners to pay for substandard attempts at maintaining the canal.

If you see it as important to tidy up this section of the LGA 1993, why has it taken you 20 years to do so?

My concerns have always been as detailed hereunder:

- a). The UCV of waterfront properties is, and always has been relatively higher than dry blocks elsewhere in the shire. As such the higher UCV attracts higher rates giving council funds derived directly from those residents and none other. Council has never created a working fund from these extra rates, your fault not ours.
- b). The general public have access to the Quays and their passing motion creates erosion of sand from the beaches, without contributing to maintenance.
- c). Structures have to be built to council specifications, not as the resident feels is more practical for their application. As such we have ad hock structures throughout the Quays which look shabby and have removed the amenity of our beach.
- d). Council has never developed a Management Strategy Plan for the Quays, and as such the maintenance and general attractiveness of the waterway is well below standards achieved by other councils.
- e). Council approved the removal of the only recognised marina which allowed a boat owner an alternative to the present situation of having a private pontoon.
- f). Councils maintenance programme is substandard compared to other councils. The 5 year dredging programme has never been maintained and the effectiveness of excavating the canal is nothing short of embarrassing.

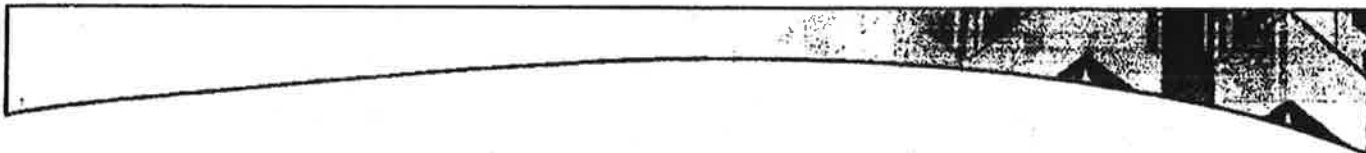
In conclusion I wish, (for what it's worth), for status quo to remain, as I simply do not trust the council has the residents best interests in mind with these changes. I base this on council's poor track record at the Quays, which I feel is unlikely to change.

I genuinely feel I will die wondering about the massive opportunity lost by a town on a large river with a council unable to see the commercial benefits of boating. What the council has done to the boat owning population on this river is appalling, so now you want us to support you in this, not likely.

Yours faithfully,

J.S.Fisher

65 Dolphin Drive  
Ballina



**Phillip and Helen Hoffman  
120 Kalinga Street  
Ballina NSW 2478**

The General Manager  
Ballina Shire Council  
P O Box 450  
Ballina NSW 2478



Dear Sir

**Re Planning Proposal BSCPP 13/008  
Reclassification of Council Owned Waterways**

In response to your letter dated 9<sup>th</sup> October 2013, we strongly object to the reclassification of Council Owned Waterways.

As we understand , the original development transferred ownership of the waterways to Council. This was agreed upon a long time before I came to Ballina but even now appears to be the correct action to take.

We are aware that Council has tried to pass on the costs of maintenance of the canal onto the landholders. Whilst the last effort in "dredging" the canal was a poor effort at best, at least there was some work done. I guess that would have been about five years ago. Any current or future effort by Council to pass on the costs will be strongly challenged by most if not all residents.

Any proposed changes are viewed with skepticism, and therefore we are unable to endorse or even consider the proposed changes.

In the strongest terms, we object to the reclassification.

Yours sincerely



**Phil and Helen Hoffman**  
5/11/2013

8<sup>th</sup> November, 2013

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B.N. & M.A.Drinnan  
48 Quays Drive,  
West Ballina 2478.

Re: Submissions regarding a proposal to change the classification of Ballina Quays Canals

(presently classified as Community Land) to Operational Land.

On behalf of my wife and I who are, as Council records will show are the Registered Proprietors of the abovementioned home and forward the following comments regarding the above proposal to reclassify the presently classified Community Land to Operational Land.

We are both now retired professional people, and would be classed as Self Funded Retirees, living on and allocated pension from a Superannuation Fund paid out of contributions we made whilst employed in our respective careers, receiving a part pension from Centerlink, and we both hold Commonwealth Seniors Health Care Cards

In 2004/2005, we were looking to relocate and establish ourselves for our senior years, owned a boat, and wanted direct access to the water, enquiries with the Council indicated (with Council approval) we could have a boat ramp and pontoon constructed, and it was clear, that no ongoing fees charges or imposts such as Permissive Occupancy fees or other Licence charges would accrue to us as a result

We understood that Ballina Council had as part of the original Development Approval agreed to the dedication of the canals to it as public reserve and had undertaken to be responsible for all ongoing maintenance and dredging of the canals. With this information and knowing the Council Rates on the waterfront blocks were higher than those on the 'dry blocks' taking into consideration the ongoing costs of purchasing such a home, In good faith we went ahead and purchased 48 Quays Drive, West Ballina on the 1<sup>st</sup> April 2005.

With the approval of Council we went ahead constructing a boat ramp and pontoon.

It is of concern that after some 30 years the Council has determined it necessary to change the classification of Ballina Quays Canals. Sometime ago there was an attempt by the Council to raise a "Special Rate" to be levied on the canal block owners, without success. Now it appears Council is attempting to change the 'classification' possibly , so part or the whole of the financial liability it contractually undertook a good many years ago to maintain the canals can be shifted to the waterside block owners on the canals!! It should be noted that it is not only the land owners of the canal homes that use this waterway.

As there is obviously no guarantee that the cost of the ongoing maintenance and dredging of the canals will not be passed on to the landowners , that alone is reason for us to strongly oppose the proposal.



Barry N & Margaret A Drinnan



44 Quays Drive  
Ballina 2478

9/1/14

To Mr David Wright, Mayor

And Mrs Robyn Hordern, A. Ward Councillor  
Mr Ken Johnston, A. Ward Councillor  
Mrs Susan Meehan, A. Ward Councillor

Dear Sirs & Mesdames

I am writing to you, in your capacities as Mayor and A Ward Councillors, as a concerned resident of my waterfront home on Ballina Quays.

As you will by now be aware a Public meeting was held in the Richmond Room on 11/12/13 on the question of the proposal to reclassify the Canals, which were dedicated to Council at the time of the original subdivision as "Public Reserve" from "Community Land" to "Operational Land".

I, and a number of residents addressed that meeting which was very well attended by affected citizens and the clear attitude of all those attending was to vehemently oppose the proposal.

The independent Chairman of the meeting, Mr Svikis, has made his recommendations to Council and as far as it affects our interests it was that Council should obtain further and independent legal advice from a Barrister specialising in Local Government Law and that that advice be communicated to all affected residents so that they could consider their position with regard to the original proposal.

My own view is that the legal advice previously obtained by Council is incorrect and I have pointed this out in my written submissions and in my address to the public meeting. While I do not profess to be a specialist in Local Government Law I have spent a veritable lifetime (over 50 years) as a qualified Lawyer. The first nearly thirty years was as the senior partner in a sizeable Firm (Reimer Winter Williamson) and the last twenty years was in a Judicial capacity on the Bench of the Local Court of NSW. The last ten years on the Bench I was presiding in the Northern Rivers





Courts in Lismore and other regional Courts in this area until my retirement in 2010.

There are two things that particularly concern me arising out of the result of the Public Meeting and the need to implement its recommendations.

The first is the need to correctly seek appropriate and totally independent expert legal advice. I know from a lifetime in the Law that arguments can be promulgated to advance almost any proposition. This is the result of our adversarial system of justice both in the civil and criminal spheres of law. Lawyers often acknowledge that they are "cabs for hire" and it is only after arguments and counter arguments are finally distilled in a judicial decision that the correct (subject to any appeal process) interpretation is established.

It is most important, therefore that the brief to whoever the chosen barrister is (preferably a QC) who is approached is not one couched to seek an argument in support of a particular position. He or she should be briefed with all arguments (including mine and all other submissions received). It will be necessary also to ensure that whoever is approached should not be someone who is generally retained by Ballina Council or who has in the past advised or appeared for the Council. The old adage is that "justice is not only done but is seen to be done"

The second matter that is of concern to me relates to the extent to which the full Council is apprised with the issues being canvassed here.

I accessed the Minutes of the Meeting of Council (on line) for 22/8/13 and as far as I could see there was full attendance of Councillors and the resolution to advance the proposal to reclassify the Community Land in question as Operational Land was passed unanimously by all Counsellors present.

Yet I spoke to one Councillor informally as a result of a totally casual and impromptu meeting and that Councillor had no idea as to what I was talking about and promised to look into the issues involved. Then at the Public Meeting on 11/12/13 one resident who addressed the meeting said that he had spoken to two Councillors on separate occasions and on each occasion was told that the issue was, in effect "totally news to them". (It was actually couched in more colourful language)

I note that a large amount of business seems to have been transacted at that meeting but it is particularly unnerving to find that, at least a fair proportion of those Councillors present and



voting on a subject that had vast potential to affect ratepayers were apparently oblivious to its import.

I would therefore ask that in any further deliberations that may take place all Councillors are made fully conversant with all relevant issues and arguments. Indeed, as one speaker at the public meeting suggested, it would be appropriate for Council to resolve that Councillors attend a workshop arranged by Council so that they were on top of all the issues involved.

There is one other issue that I would like to bring to your attention and that is the issue of the nature of canal maintenance and or so called "dredging". I have been resident here for ten years and have witnessed one attempt by Council and that was a few years ago and was done by using an excavator travelling along the edge of the canals. I had a most dreadful experience of this practice and I enclose a copy of my letter to the General Manager of 8/1/14 in this regard and would ask that the matters raised therein receive your consideration.

Yours truly,

  
Nick Reimer

