

POLICY NAME: (REVIEW)
PRIVATE STRUCTURES WITHIN
COUNCIL OWNED WATERWAYS

POLICY REF: P02

MEETING ADOPTED: 28 July 2016
Resolution No. 280716/31

POLICY HISTORY:



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OBJECTIVES

The objectives of this policy are to

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

POLICY

Council recognises the benefits provided to adjoining landowners through the provision of waterway structures that provide access to the greater Richmond River estuary system. Council also acknowledges that the placement of waterway structures is consistent with the purpose of the subject waterways.

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

1. General requirements applicable to all waterway structures

- 1.1 The construction, installation and maintenance of waterway structures within Council owned waterways is to be undertaken in accordance with the provisions of this policy and relevant provisions of the **Australian Standards for Guidelines for the Design of Maritime Structures 2005** or other relevant superseding guidelines.
- 1.2 Landholders are to satisfy themselves that appropriate approvals have been obtained where required from the Road and Maritime Service under the provisions of the *Management of Waters and Waterside Lands Regulation-NSW* where such structures are located within 'navigable waters' under the terms of the Regulation.
- 1.3 When directed, waterway structures are to be removed (at no cost to Council) to permit maintenance activities within the waterway, or for any other reason.

- 1.3 It is the responsibility of the benefiting landowner (licensee) to maintain the waterway structure in a safe and tidy condition at all times.
 - 1.4 A waterway structure must not be modified, extended or changed without the prior approval of Council.
 - 1.5 Any alterations and/or additions to an existing authorised waterway structure must obtain the relevant approvals in accordance with the requirements of section 2 of this policy.
 - 1.6 Provision is to be made for the access of Council and its servants or contractors across any structure erected/installed within the Council owned waterway.
 - 1.7 The benefiting landowner is required to pay the annual licence fee (and application and transfer fees if applicable) for private waterway structures as determined by Council.
 - 1.8 A licence issued by Council for a waterway structure may be cancelled at any time with notice in writing to the benefiting landowner in circumstances where:
 - a) the structure in the opinion of Council has become unsafe or presents a danger to boating or other property or to the general public,
 - b) the benefiting landowner (licensee) does not hold the insurance coverage requirements as specified in this policy,
 - c) failure to pay the annual licence fee, or
 - d) the Council considers it necessary for any other reason.
 - 1.9 The benefiting landowner must maintain a public liability policy of insurance in respect of any one occurrence of not less than \$20,000,000.00 in relation to liability for loss or damage to property and death of or injury to any person in any way connected to Council owned land the subject of the licence agreement. The insurance policy is:-
 - a) to note the interests of Ballina Shire Council as the owner of the land,
 - b) be provided to Council with the signed Licence Agreement,
 - c) be kept up to date and provided to Council upon request.
 - 1.10 Private waterway structures are not to be used for the permanent mooring of houseboats (or involve the residential occupation of boating vessels).
 - 1.11 Private waterway structures are not to be used for commercial purposes, other than as approved in accordance with Council's Commercial Activities on Public Land Policy.
- 2. Requirements for installation of new waterway structures (including alterations and additions to existing structures)**
- 2.1 Proposals for any new waterway structures or any alterations and additions to existing structures over or within Council owned land must satisfy the following requirements prior to construction or installation works commencing:

- a) An application including details (plans and specifications) of the proposed structure/s is to be submitted to Council for approval.
- a) All waterways structures require Development Consent and a Construction Certificate (CC) to be issued prior to the commencement of works.
- b) Any waterways structures, which potentially affect or disturb any sea grass beds may require referral to the NSW Department of Primary Industries (DPI) for their comment/concurrence. In these instances, the proposal is regarded as Integrated Development under the Environmental Planning and Assessment Act (EPA) 1979 as amended. An integrated referral attracts additional NSW Government referral and Council administration fees.
- c) The design and application documents for any proposed waterway structure are to comply with the requirements of Council's Boat Ramp Standard Design and/or Pontoon Design Guideline.
- d) The design and application documents for any proposed waterway structure are to comply with the requirements of Council's "Pontoon, Jetties and Boat Ramp Procedure" for waterway structures, and
- e) The documentation submitted with the application must be sufficient to satisfy any necessary approval requirements under the Environmental Planning and Assessment Act 1979.

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

3. Existing waterway structures with approval

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

Written evidence of approval documentation is required.

~~4. Existing Waterway structures without approval (transitional requirements)~~

- ~~4.1 Upon request by Council, adjoining landowners with existing waterway structures without written approval or consent from Council will be required to enter into a temporary licence agreement for the occupation of Council owned land.~~
- ~~4.2 Prior to the issue of a temporary licence agreement under clause 4.1, the benefiting landowner shall provide evidence satisfactory to Council that the private waterway structure/s:~~
 - ~~a) Comply with Council's "Pontoons, Jetties and Boat Ramps Procedures", and~~
 - ~~b) Have been certified as structurally sound by a suitably qualified person~~
- ~~4.3 A temporary licence agreement issued under clause 4.1 is non-renewable after 12 months and is non-transferable. After 12 months,~~

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

5. Transfer of licences

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

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

6. Compliance

6.1 Failure to have structures appropriately approved and licence issued may result in Council undertaking compliance actions to have the structure removed, with any costs associated with such actions borne by the landholder.

BACKGROUND

Council owns the freehold title to the following water bodies:

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

Note: Retaining walls within the canal profile and located fully within the adjoining private property are not waterway structures for the purposes of this policy.

SCOPE OF POLICY

This policy applies to:

- Council employees
- Community members
- Corporate entities

LAND TO WHICH THIS POLICY APPLIES

This policy applies to Council owned waterways.

RELATED DOCUMENTATION

Related documents, policies and legislation:

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

9.5 Policy (Review) - Private Structures within Council Owned Waterways

Ballina Shire Council

(REVIEW) Private Structures within Council Owned Waterways Policy

REVIEW

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

Note: *Review of this policy is to include a direct notification to landholders that have frontage to the Ballina Quays Canals, Banyanda Lake and Endeavour Lake to advise of the review process and provide the landholders with an opportunity to provide feedback in relation to the policy review.*