



Planning Proposal – August 2013

Reclassification of Land

Council Owned Waterways

Ballina Quays Canals (Lot 63 DP 263861 & Lot 132 DP 775228)

Banyanda Lake (Lot 50 DP 259593)

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INTRODUCTION

Summary of Planning Proposal

This planning proposal relates to land identified as Lot 50 DP 259593 (Banyanda Lake) and Lot 63 DP 263861 & Lot 132 DP 775228 (the Ballina Quays Canals) which comprise Council owned waterways currently classified as community land for the purposes of the *Local Government Act* 1993 (LG Act). The subject parcels are shown on the locality map below (Figure 1).

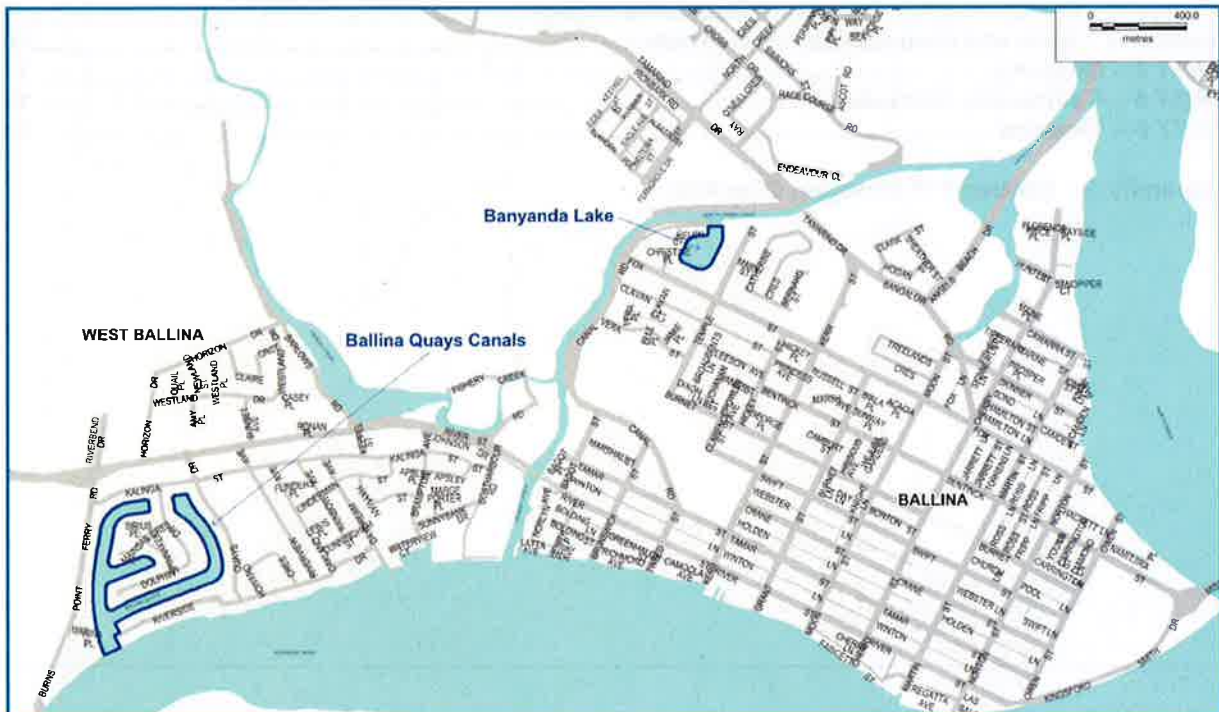


Figure 1 – Site Location

The land containing Banyanda Lake (Lot 50 DP 259593) has an area of 1.97 hectares and the land containing the Ballina Quays Canals (Lot 63 DP 263861 & Lot 132 DP 775228) has a combined area of 9.37 hectares. All three parcels are in the ownership of Ballina Shire Council and are classified as community land. The purpose of this planning proposal is to enable the reclassification of the land to operational land in accordance with the requirements of the LG Act.

All the subject lots are located fully within the W2 Recreational Waterway zone under the provisions of the *Ballina Local Environmental Plan 2012* (BLEP 2012). No amendments to the current zoning arrangements under the BLEP 2012 form part of this planning proposal.

This planning proposal seeks to reclassify the entire area of Lot 63 DP 263861 & Lot 132 DP 775228 (Ballina Quays Canals) and Lot 50 DP 259593 (Banyanda Lake) from community land to operational land under the provisions of the LG Act. This involves the amendment of Schedule 4 of the BLEP 2012 to incorporate reference to the reclassification of Lot 63 DP 263861, Lot 132 DP 775228 and Lot 50 DP 259593.

Planning Context

Lot 50 DP 259593 (Banyanda Lake) comprises part of the Banyanda residential estate and was dedicated to Council as a public following the registration of the plan of subdivision in 1979. Lot 50 includes the bed of the lake as well as the shoreline and the majority of the intertidal area of the waterway.

Lot 63 DP 263861 and Lot 132 DP 775228 (the Ballina Quays Canals) comprise different stages of the Ballina Quays estate and were dedicated to Council as public reserves following the registration of the plans of subdivision in 1983 and 1988 respectively. While Lots 63 and 132 include the bed of the waterway, the property boundaries of the canals extend into the intertidal zone of the canals and in some areas the canal shoreline is located outside the canal boundaries.

The subject lots detailed above were in Council's ownership at the time of commencement of the LG Act. Due to their dedication as public reserves, they became classified as community land by default following the commencement of the LG Act provisions.

The lots form artificial waterways which were constructed as part of the Ballina Quays and Banyanda residential estate developments. Directly adjoining the waterways are 214 residential allotments of which an estimated 145 have private structures, such as boat ramps and pontoons, placed in the waterway on Council owned community land. Council has, in the past, authorised the placement of these private waterway structures through the issue of development consent under the *Environmental Planning and Assessment Act 1979* and the application of development standards for works and structures in the waterways.

A recent review of the management provisions applying to public community land and specifically the subject lots detailed above has revealed that the placement of these private structures is inconsistent with the statutory management provisions of section 35 of the LG Act. This has also highlighted potential public liability for Council in relation to the placement of such private structures on land for which it has management responsibility in accordance with the LG Act.

Section 35 of the LG Act requires that the private, exclusive use of community land may only be by way of a lease or licence. A lease or licence for the use of community land is limited to purposes that meet the current and future needs of the community and wider public such as public recreation and those that promote the physical, cultural, social and intellectual welfare or development of persons. As such, the current private structures placed in the subject waterways cannot be leased or licensed because they are inconsistent with the requirements of the LG Act.

The identified solution to rectifying the above matter and enabling the private waterway structures to be made lawful is to reclassify the subject land from community land to operational land. This will allow Council, in the first instance, to make the structures lawful through removing the application of the specific management requirements of section 35 of the LG Act. Subsequently, it will allow Council to further consider its options with regard to managing and regulating the placement of the structures through leasing and/or licensing.

Given that the land is Council owned and Council's associated commercial interest in the site, this planning proposal has been prepared having regard for the Department of Planning and Infrastructure's Practice Note PN 09-003 - Classification and reclassification of public land through a local environmental plan and Best Practice Guideline: LEPs and Council Land. Information addressing the requirements of the practice note and guideline and the rationale for the reclassification is contained in Tables 1-3 below.

Table 1 – Site Assessment – Lot 50

Site	Lot 50 DP 259593, Banyanda Lake, Ballina
Land Register ID	L20024_01
Current Classification	Community Land
Proposed Classification	Operational Land
Reason for classification/reclassification	To enable Council to regularise (make lawful) the placement of private structures within the waterway in accordance with the requirements of the LG Act.
Reason for the Draft LEP	To insert reference to Lot 50 DP 259593 in Schedule 4 of the BLEP 2012 to enable the reclassification of the subject land from community land to operational land.
Ownership of the land	Ballina Shire Council
Nature of Council's Interest	Council received the land by dedication as a public reserve as part of the Banyanda residential estate in 1979. Being a public reserve, the land was classified as community land upon commencement of the LG Act in 1993. Council now manages the land as a public waterway and seeks to provide adjoining landowners with a lawful means to place private structures, such as boat ramps and pontoons, within the waterway.
Other parties with interests	Adjoining landowners with private structures in the waterway.
Change of interests resulting from classification/reclassification	Not applicable – there are no other parties with an interest in this land.
Special agreements applicable to the land	No special agreements apply to the land other than the land being dedicated and registered as a public reserve.
Financial issues	The reclassification of the land will enable Council to appropriately manage and regulate the use of the waterway, including with respect to the placement of private structures within it.
Asset issues	The subject land comprises an artificial waterway for which Council has a management and maintenance responsibility.

Table 2 – Site Assessment – Lot 63

Site	Lot 63 DP 263861, Ballina Quays Canal, West Ballina
Land Register ID	L21003_02
Current Classification	Community Land
Proposed Classification	Operational Land
Reason for classification/reclassification	To enable Council to regularise (make lawful) the placement of private structures within the waterway in accordance with the requirements of the LG Act.

Reason for the Draft LEP	To insert reference to Lot 63 DP 263861 in Schedule 4 of the BLEP 2012 to enable the reclassification of the subject land from community land to operational land.
Ownership of the land	Ballina Shire Council
Nature of Council's Interest	Council received the land by dedication as a public reserve as part of the Ballina Quays residential estate in 1983. Being a public reserve, the land was classified as community land upon commencement of the LG Act in 1993. Council now manages the land as a public waterway and seeks to provide adjoining landowners with a lawful means to place private structures, such as boat ramps and pontoons, within the waterway.
Other parties with interests	Adjoining landowners with private structures in the waterway.
Change of interests resulting from classification/reclassification	Not applicable – there are no other parties with an interest in this land.
Special agreements applicable to the land	No special agreements apply to the land other than the land being dedicated and registered as a public reserve.
Financial issues	The reclassification of the land will enable Council to appropriately manage and regulate the use of the waterway, including with respect to the placement of private structures within it.
Asset issues	The subject land comprises an artificial waterway for which Council has a management and maintenance responsibility.

Table 3 – Site Assessment – Lot 132

Site	Lot 132 DP 775228, Ballina Quays Canal, West Ballina
Land Register ID	L21003_01
Current Classification	Community Land
Proposed Classification	Operational Land
Reason for classification/reclassification	To enable Council to regularise (make lawful) the placement of private structures within the waterway in accordance with the requirements of the LG Act.
Reason for the Draft LEP	To insert reference to Lot 132 DP 775228 in Schedule 4 of the BLEP 2012 to enable the reclassification of the subject land from community land to operational land.
Ownership of the land	Ballina Shire Council
Nature of Council's Interest	Council received the land by dedication as a public reserve as part of the Ballina Quays residential estate in 1988. Being a public reserve, the land was classified as community land upon commencement of the LG Act in 1993. Council now manages the land as a public waterway and seeks to provide adjoining landowners with a lawful means to place private structures, such as boat ramps and pontoons, within the waterway.

Other parties with interests	Adjoining landowners with private structures in the waterway.
Change of interests resulting from classification/reclassification	Not applicable – there are no other parties with an interest in this land.
Special agreements applicable to the land	No special agreements apply to the land other than the land being dedicated and registered as a public reserve.
Financial issues	The reclassification of the land will enable Council to appropriately manage and regulate the use of the waterway, including with respect to the placement of private structures within it.
Asset issues	The subject land comprises an artificial waterway for which Council has a management and maintenance responsibility.

PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objectives and intended outcome of this planning proposal is:

- to reclassify Lot 50 DP 259593, Lot 63 DP 263861 and Lot 132 DP 775228 (Council owned waterways) to operational land to enable Council to regularise (make lawful) the existing private waterway structures on the land.

PART 2 – EXPLANATION OF THE PROPOSAL

This planning proposal will result in the amendment of Schedule 4 of the BLEP 2012 to incorporate reference to the reclassification of Lot 50 DP 259593, Lot 63 DP 263861 and Lot 132 DP 775228 from community land to operational land for the purposes of the *Local Government Act 1993*.

PART 3 – JUSTIFICATION

Section A - Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is the result of an internal review of the management provisions applying to Council's landholdings and land classified as community land.

2. **Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The planning proposal to reclassify Lot 50 DP 259593, Lot 63 DP 263861 and Lot 132 DP 775228 as operational is the best means for achieving a desired outcome to facilitate the lawful placement of private structures within Council owned waterways. Further rationale for the reclassification is contained in Tables 1-3.

Section B - Relationship to the Strategic Planning Framework

3. **Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The proposal to reclassify the subject land is consistent with the objectives and actions in the applicable regional and sub-regional strategies.

4. **Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plans?**

The proposed reclassification will enable the future and ongoing lawful placement and use of the private water based structures in subject waterways. This is consistent with Council's historic actions to allow such structures in the waterways, including the provisions of Council's Principal Generic Plan of Management for Community Land (PoM). This matter is not directly addressed in Council's Community Strategic Plan or other local plans aside from the PoM.

5. **Is the planning proposal consistent with applicable state environmental planning policies?**

The proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs).

6. **Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

The proposal is consistent with the relevant Section 117 Directions as detailed in the Section 117 Direction Checklist contained in Appendix 1.

Section C - Environmental, Social and Economic Impact

7. **Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

The proposed reclassification will not result in direct impacts on critical habitat or threatened species, populations or ecological communities or their habitats.

8. **Are there any other likely environmental effects as a result of the planning proposals and how are they proposed to be managed?**

No other likely environmental effects are expected.

9. How has the planning proposal adequately addressed any social and economic effects?

The proposed reclassification is not expected to result in any adverse social or economic effects. The reclassification will allow Council to lawfully regulate and manage the placement of private structures on public land while maintaining the waterways for general use by the community.

Section D - State and Commonwealth interests.

10. Is there adequate public infrastructure for the planning proposal?

The planning proposal will not create any need for public infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No engagement with State or Commonwealth public authorities has been undertaken as part of this planning proposal to date.

PART 4 – MAPPING

The planning proposal relates to the reclassification of Lot 5 DP 843369 from community land to operational land as detailed in the aerial maps below. The proposal will not result in amendments to any of the maps associated with the BLEP 2012.





PART 5 – COMMUNITY CONSULTATION

Council has not undertaken any community consultation concerning this specific planning proposal. It is anticipated that this will occur as part of the formal exhibition of the planning proposal or as directed through the Gateway determination process. This is expected to comprise the standard 28 day public exhibition process followed by a public hearing into the reclassification of community land in accordance with legislative requirements.

PART 6 – TIMELINE

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination (Anticipated)	September 2013
Government Agency Consultation	October 2013
Public Exhibition Period	October 2013
Public Hearing (if required)	December 2013
Submissions Assessment	February 2014
RPA Assessment of Planning Proposal and Exhibition Outcomes	March 2014
Submission of Endorsed LEP to DP&I for Finalisation	April 2014
RPA Decision to Make the LEP Amendment (if delegated)	N/A – proposal not subject to delegation
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	N/A – proposal not subject to delegation

Note: Council is not seeking delegation of plan making functions in relation to this proposal due to Council's commercial interest in the subject property.

APPENDICES

Appendix 1 – Section 117 Direction Checklist

Section 117 Direction Checklist Planning Proposal Lot 50 DP 259593, Banyanda Lake, Ballina Lot 63 DP 263861 & Lot 132 DP 775228 (the Ballina Quays Canals)	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Does not apply to planning proposal.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Does not apply to planning proposal.
2.2 Coastal Protection	Consistent. The planning proposal is for the reclassification of land and will not result in inconsistencies with the identified coastal policies, guidelines or management provisions.
2.3 Heritage Conservation	Consistent. The planning proposal is for the reclassification of land and will not directly impact any known items, areas, objects or places of environmental heritage significance and indigenous heritage significance.
2.4 Recreation Vehicle Areas	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Does not apply to planning proposal.
3.4 Integrated Land Use and Transport	Does not apply to planning proposal.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulphate Soils	Consistent. Although the subject waterways contain potential acid sulfate soils, the planning proposal relates to the reclassification of land only. The planning proposal will not amend the applicable regulatory requirements of the BLEP 2012 that address development on land having the potential for acid sulfate soils.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Consistent. The planning proposal relates to the reclassification of land that is primarily below mean high water mark and permanently inundated. The proposal will not result in changes to any existing zoning or land use permissibility provisions.
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
5. Regional Planning	

5.1 Implementation of Regional Strategies	The Far North Coast Regional Strategy applies to Ballina Shire. The planning proposal is consistent with the Far North Coast Regional Strategy.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal.
5.4 Commercial and Retail Development	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Repealed
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1	Repealed
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Repealed
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent.
6.3 Site Specific Provisions	Does not apply to planning proposal.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.