

Planning and Assessment

Gateway determination report

Ballina Gateway determination: PP_2020_BALLI_004_00

Purpose: To recommend the Director, as delegate of the Minister, determine that planning proposal PP_2020_BALLI_004_00 should proceed.

Analysis: The planning proposal seeks to permit a dwelling on certain land at Teven Road, Teven. The planning proposal is considered to have merit and should proceed subject to conditions.

Approval required: 10 December 2020

Reason for deadline: The Gateway determination is to be issued by the above date, being 20 days since receiving the planning proposal.

1. INTRODUCTION

LGA	Ballina
PPA	Ballina Shire Council
NAME	Permit a dwelling on certain land at Teven Road, Teven (1 home, 0 jobs)
NUMBER	PP_2020_BALLI_004_00
LEP TO BE AMENDED	Ballina Local Environmental Plan 2012 (BLEP)
ADDRESS	Teven Road, Teven
DESCRIPTION	Lot 3 Section 1 DP 758964, Lot 353 & 295 DP 755745, Lots 2-5 Section 5 DP 758964, Lot 1 DP 721324, Lot 18 DP 1005893, Lots 9-11 Section 5 DP 758964
RECEIVED	11/11/2020
FILE NO.	IRF20/5568
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1.1 Description of planning proposal

The proposal seeks to permit a dwelling on certain land at Teven Road, Teven.

1.2 Site description

The site is located approximately 3.5km west of the Pacific Highway, 6km north east of Alstonville and approximately 10km from Ballina (Figure 1). The immediate surrounding area is primarily rural (Figure 2). Part of the site (Lot 3 Section 1 DP 758964, identified by the green boundary in Figure 2) formerly had a dwelling entitlement under Ballina LEP 1987. The village of Tintenbar is approximately 2km to the north east and has some rural residential areas. To the south east is a quarry on the opposite side of Maguires Creek.

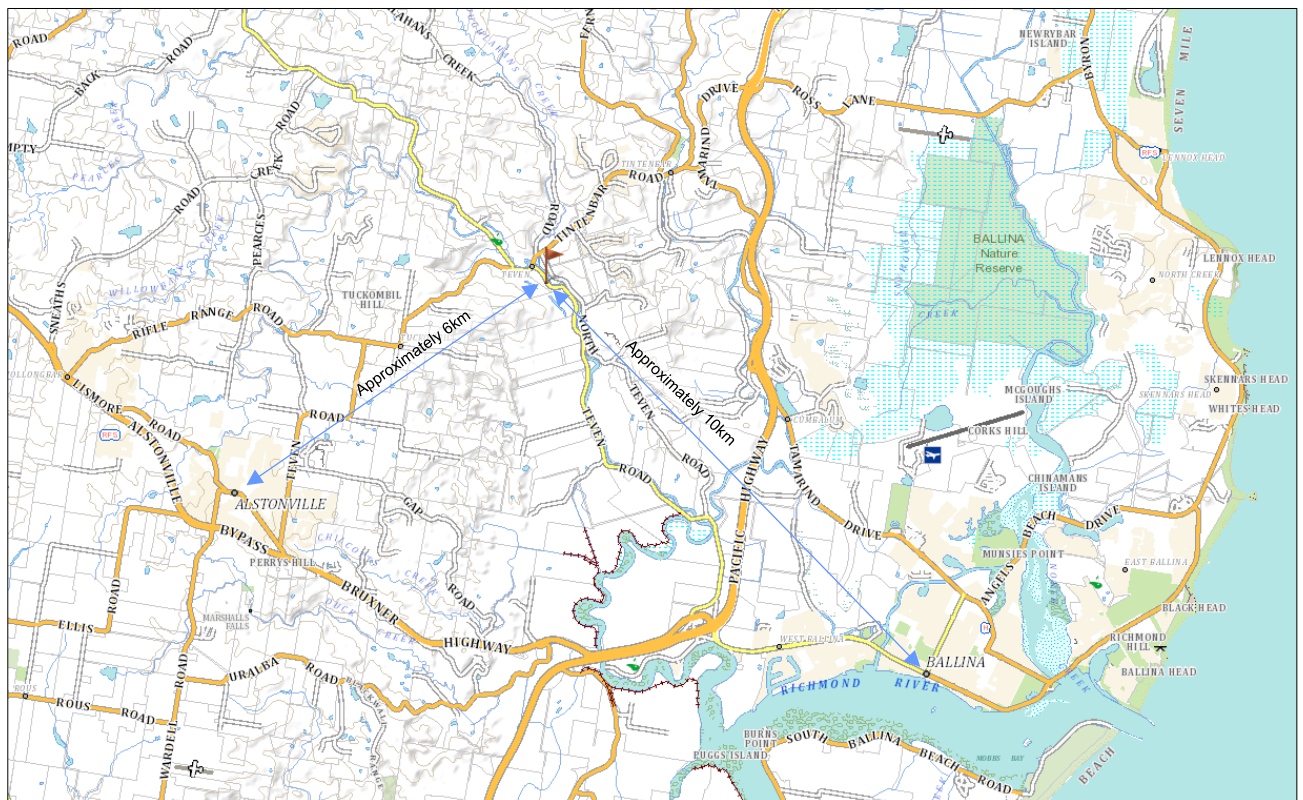


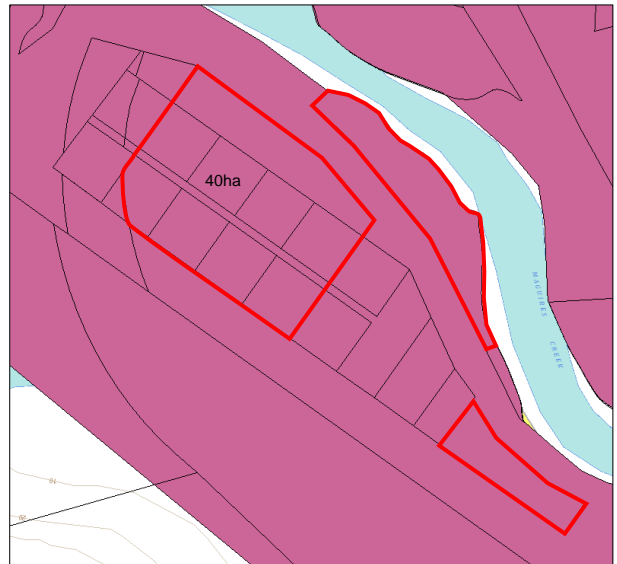
Figure 1 – Teven Road, Teven – Location



Figure 2 – Teven Road, Teven – Subject lots and surrounding area



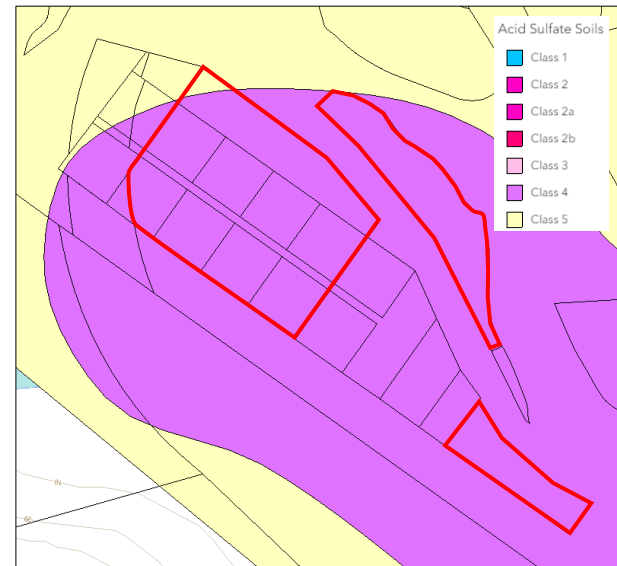
BLEP 2012 - Land Zoning



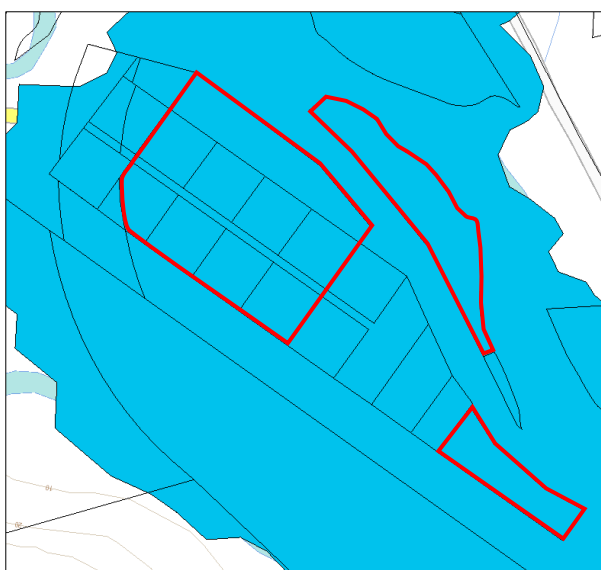
BLEP 2012 - Lot Size



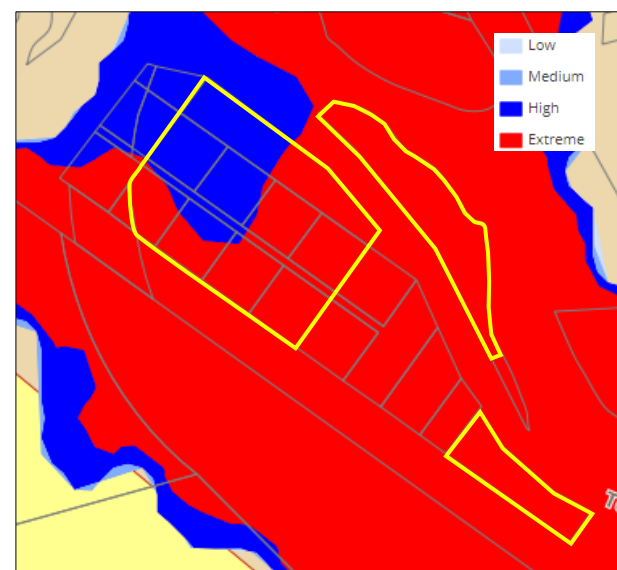
BLEP 2012 - Height of Building



BLEP 2012 - Acid Sulfate Soils



BLEP 2012 - Flood Planning Area



Ballina Shire DCP Flood Hazard

Figure 3 – Current Planning Controls

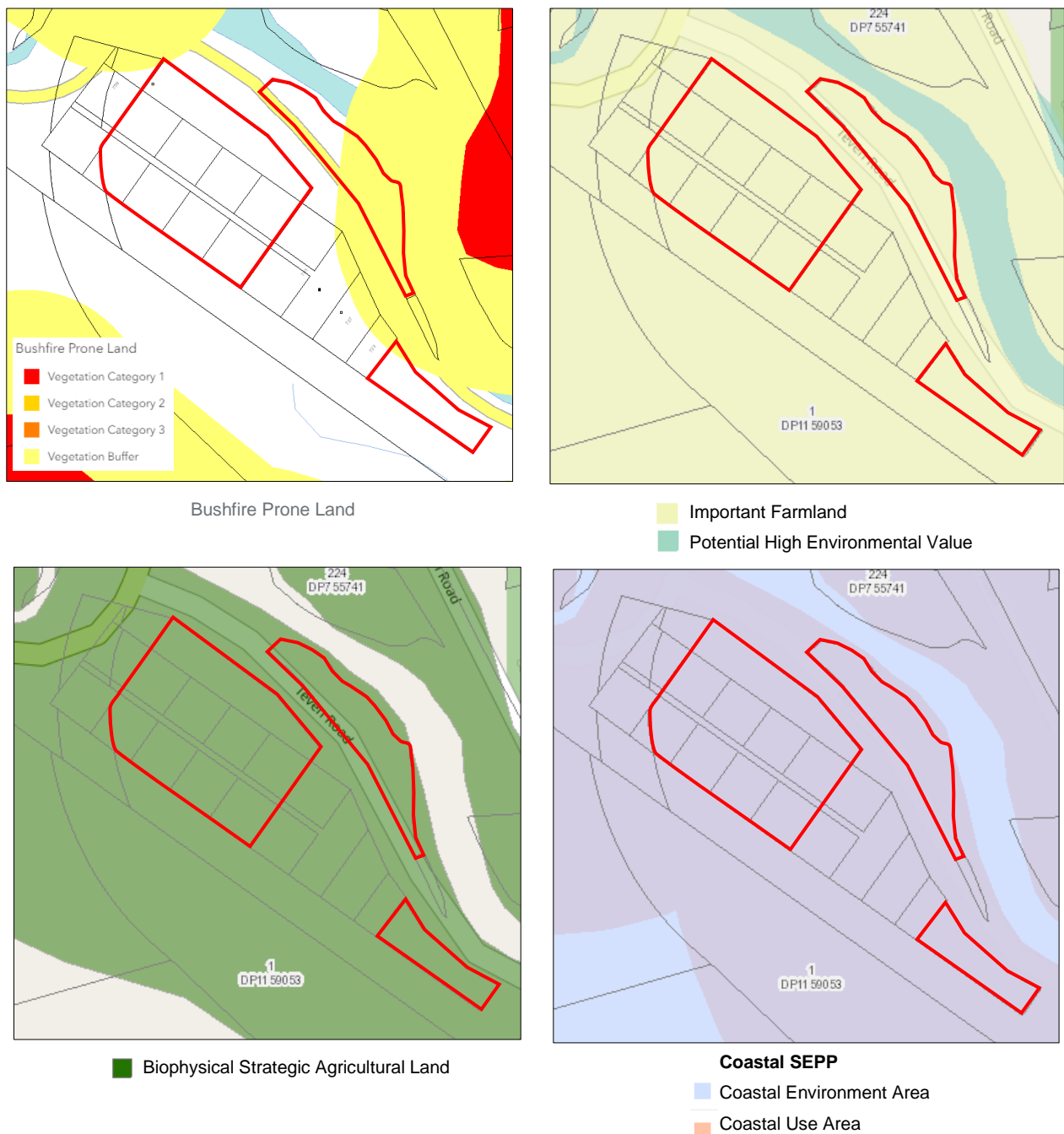


Figure 4 – Current Environmental or Hazard Controls

1.3 Existing planning controls

The current planning controls on the subject lots (Figure 3) are:

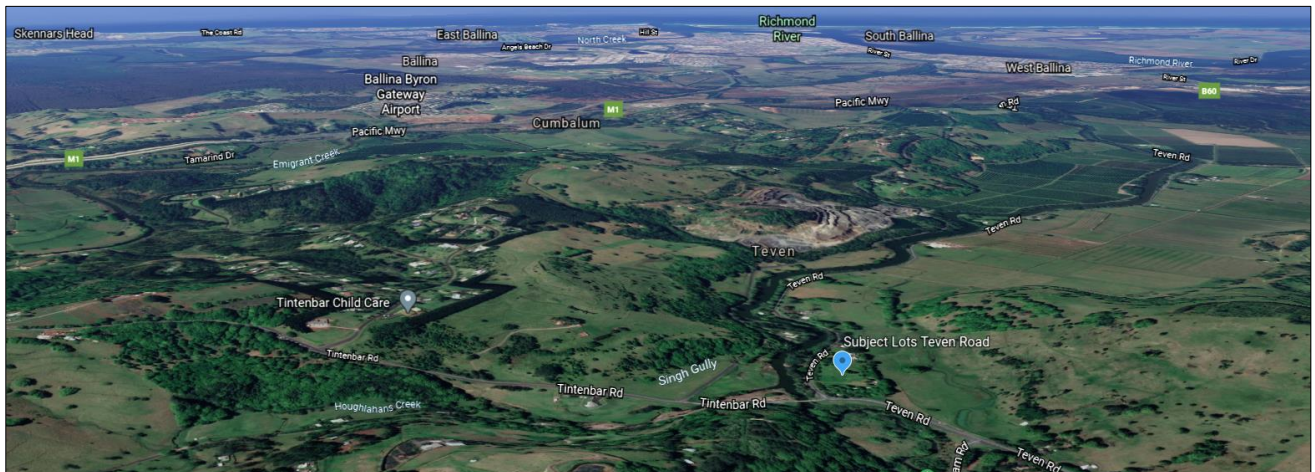
- Zone RU1 Primary Production;
- Minimum Lot Size 40ha;
- Height of Buildings 8.5m;
- Flood Planning Area;
- Class 4 and Class 5 acid sulfate soils; and
- Part bushfire prone land (vegetation buffer).

The North Coast Regional Plan 2036 (Figure 4) also identifies the land as having areas of important farmland and potential High Environmental Value. The subject lots are also identified as Coastal Environment and Coastal Use Areas under the State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP) (Figure 4).

1.4 Surrounding area

The locality of Teven is in the north east hinterland of NSW and is primarily an agricultural/rural area north west of Ballina (Figure 5). The subject lots are adjacent to Maguires Creek in a valley amongst undulating hills, the Teven Valley Golf Course is to the north and an aggregate quarry is located to the south east. There is rural residential housing dotted around the locality.

Much of the Teven locality is zoned as RU1 Primary Production and W1 Natural Waterways including some deferred areas from the BLEP 2012. These areas are zoned 1(a2) Rural (Coastal Lands Agriculture); 1(b) Rural (Secondary Agricultural Land) and 1(e) Rural (Extractive and Mineral Resources) in the BLEP 1987.



Looking South East towards Ballina



Looking North

Figure 5 – Surrounding Area

1.5 Summary of recommendation

It is recommended that the proposal proceed subject to conditions as:

- it will permit a dwelling consistent with Council's policy for land that previously benefited from a dwelling entitlement;
- the proposal indicates that any constraints can be adequately managed; and
- the dwelling will not be inconsistent with the nature of the surrounding area.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the proposal is to permit a dwelling on certain land at Teven Road, Teven. The objective is clearly outlined in the proposal.

2.2 Explanation of provisions

It is considered the explanation of provisions is adequately outlined in the proposal.

2.3 Mapping

The proposal contains an extract that adequately shows the subject lots suitable for public exhibition. The BLEP 2012 Dwelling Opportunity Reinstatement Map is to be updated to include 12 additional lots described in Table 1 and a new map consistent with the Standard Technical requirements will need to be prepared before the making of the LEP amendment.

Lot	Section	DP	Area (m ²)
3	1	758964	2757
353	-	755745	5109
295	-	755745	4211
2	5	758964	1618.7
3	5	758964	1618.7
4	5	758964	1618.7
5	5	758964	1618.7
1	-	721324	1003
18	-	1005893	1341
9	5	758964	1619
10	5	758964	1618.7
11	5	758964	1618.7
Total Area (ha)			2.575

Table 1 Subject Lot Details

3. NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of any strategic study or report.

The intent of the proposal is to permit a dwelling on certain land at Teven Road, Teven, in recognition that part of the site (Lot 3 Section 1 DP 758964) formerly had a dwelling entitlement that was extinguished under Ballina LEP 1987 (Amendment No. 110).

Council has an existing policy to recognise and restore any former dwelling entitlements that were acknowledged prior to their extinguishment. The proposal is accompanied by Council's letter dated 18 July 1995 acknowledging that Lot 3 had a dwelling entitlement under BLEP 1987.

Ballina LEP 2012 specifically provides for landowners that have not yet exercised their dwelling entitlements to have their lots included on the Dwelling Opportunity Reinstatement Map under Clause 4.2A(3)(f). This clause states that it *'preserves dwelling entitlements that were extinguished by Ballina Local Environmental Plan 1987 (Amendment No 110) but were acknowledged by the Council in writing as being preserved before that amendment was made'*.

Council has also negotiated with the landowners to include their other land holdings in the area (an additional 11 lots) to allow the dwelling entitlement to be applied to the aggregated site which has more appropriate dwelling locations than Lot 3.

While the dwelling could be facilitated through a development application and associated Clause 4.6 variation, the current proposal is considered more appropriate due to the size of the variation to the minimum lot size standard that would be required and inclusion on the Dwelling Opportunity Reinstatement Map is consistent with Council's policy approach to this issue.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal does not contain any matters of state or regional significance and is not inconsistent with the Premier's Priorities.

4.2 Regional / District

North Coast Regional Plan 2036 (NCRP)

The site is located outside the Urban Growth Area identified in the North Coast Regional Plan 2036 (NCRP), has areas of mapped potential High Environmental Value, important farmland, Biophysical Strategic Agricultural Land and Coastal Environment and Use areas (Figure 4) and is also identified as a flood affected (Figure 3). The proposal is therefore inconsistent with the NCRP Directions:

- 1 Deliver environmentally sustainable growth;
- 2 Enhance biodiversity, coastal and aquatic habitats, and water catchments;
- 3 Manage natural hazards and climate change; and
- 11 Protect and enhance productive agricultural lands.

The inconsistencies are considered to be of minor significance as:

- the proposal is only reinstating a single dwelling entitlement that formerly existed on the land and was recognized by Council;
- the total size of the aggregated lots is only 2.575ha;
- the proposal is not rezoning the land to significantly increase its development potential;
- the lots are not considered to be agriculturally significant due to their size and the nature of the surrounding area;
- an additional dwelling is not inconsistent with the nature of the surrounding area which contains several other dwellings;
- there will be no increased fragmentation of important farmland; and
- the proposal indicates that any hazards affecting the land can be appropriately considered and addressed on their merits at the development application stage.

It is however recommended that the Department of Planning, Industry and Environment (Biodiversity and Conservation Division) be consulted to confirm the suitability of the subject lots particularly in regard to flooding.

The proposal is considered to be consistent with the remaining Directions of the NCRP, in particular Direction 23 Increase housing diversity and choice and Direction 25 Deliver more opportunities for affordable housing.

4.3 Local

The proposal is not inconsistent with the Ballina Shire Council Community Strategic Plan 2017-2027, Ballina Shire Local Strategic Planning Statement, or the Ballina Shire Growth Management Strategy 2012.

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant s9.1 Directions except:

1.5 Rural Lands

The proposal is inconsistent with this Direction as it affects land within an existing rural zone and is unable to satisfy all the requirements of the Direction such as supporting farmers in exercising their right to farm. The inconsistency with this Direction is considered to be of minor significance as the proposal only seeks to reinstate a dwelling entitlement that formerly existed and due to the small area (2.575ha) of rural land involved.

2.2 Coastal Management

The proposal is inconsistent with this Direction as it includes land mapped in State Environmental Planning Policy (Coastal Management) 2018 and does not include provisions which give effect to the objectives of the *Coastal Management Act 2016*, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan. The inconsistency is considered to be of minor significance as the proposal relates only to a small area (2.575ha) of land and the SEPP contains appropriate provisions that allow this issue to be adequately addressed at the development application stage if necessary.

4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction as it relates to land that contains acid sulfate soils on which an intensification of land use will be possible and is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as Clause 7.1 of the BLEP 2012 contains existing provisions that allow this matter to be adequately addressed at the development application stage if necessary.

4.3 Flood Prone Land

The proposal is inconsistent with this Direction as it permits a possible increase in the development potential of flood prone land. The proposal notes that there is a portion of the land already filled above the flood level and can suitably accommodate a dwelling house and associated access above the flood level. Council have prepared a Floodplain Risk Management Study (2012), the Ballina Floodplain Risk Management Plan (incorporating the guidelines of the Floodplain Development Manual 2005) and Clause 7.3 of the BLEP 2012 contains existing provisions that allow this matter to be adequately addressed at the development application stage if necessary. The inconsistency with this Direction is considered of minor significance.

4.4 Planning for Bushfire Protection

The proposal is inconsistent with this Direction as the site is identified as being part bushfire prone. Consultation with the NSW Rural Fire Service is required within the terms of the Direction. Consistency with this Direction will remain unresolved until consultation has been undertaken and the Secretary's agreement provided.

5.10 Implementation of Region Plans

The proposal is inconsistent with the NCRP 2036, and therefore this Direction, for the reasons outlined above. The inconsistency is considered to be of minor significance as:

- the proposal is only reinstating a single dwelling entitlement that formerly existed on the land and was recognized by Council;
- the total size of the aggregated lots is only 2.575ha;
- the proposal is not rezoning the land to significantly increase its development potential;
- the lots are not considered to be agriculturally significant due to their size and the nature of the surrounding area;
- an additional dwelling is not inconsistent with the nature of the surrounding area which contains several other dwellings;
- there will be no increased fragmentation of important farmland; and
- the proposal indicates that any hazards affecting the land can be appropriately considered and addressed on their merits at the development application stage.

The proposal does however achieve the overall intent of the NCRP 2036 and does not undermine the achievement of its vision, directions or actions. It is considered consistent with Direction 23 Increase housing diversity and choice, and Direction 25 Deliver more opportunities for affordable housing.

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all applicable SEPPs, specifically the Coastal SEPP 2018 and the Primary Production and Rural Development SEPP 2019.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

No significant adverse social impact associated with the reinstatement of a dwelling entitlement on the site has been identified.

5.2 Environmental

There are no known critical habitat or threatened species, populations or ecological communities or their habitats currently identified on the subject site.

The subject lots are identified as having areas of potential High Environmental Value, being partly bushfire prone, flood affected and within the as Coastal Environment and Coastal Use areas under the Coastal SEPP (Figures 3 and 4). It is therefore recommended that the Department of Planning, Industry and Environment (Biodiversity and Conservation Division) and the NSW Rural Fire Service be consulted on the suitability of the proposal regarding these matters. The proposal also confirms that no potential land contamination issues have been identified and that this issue can be adequately addressed at the development application stage.

The subject lots are also mapped as Biophysical Strategic Agricultural Land, important farmland in the NCRP (Figure 4) and regionally significant farmland under the Northern Rivers Farmland Protection Project 2005 (Figure 6). As discussed above, due to the size of the land involved, the nature of the surrounding area, and as the proposal is only reinstating a former dwelling entitlement consistent with Council's policy, this is considered satisfactory and unlikely to result in any significant adverse impact to agriculture in the area or loss of important farmland from production.

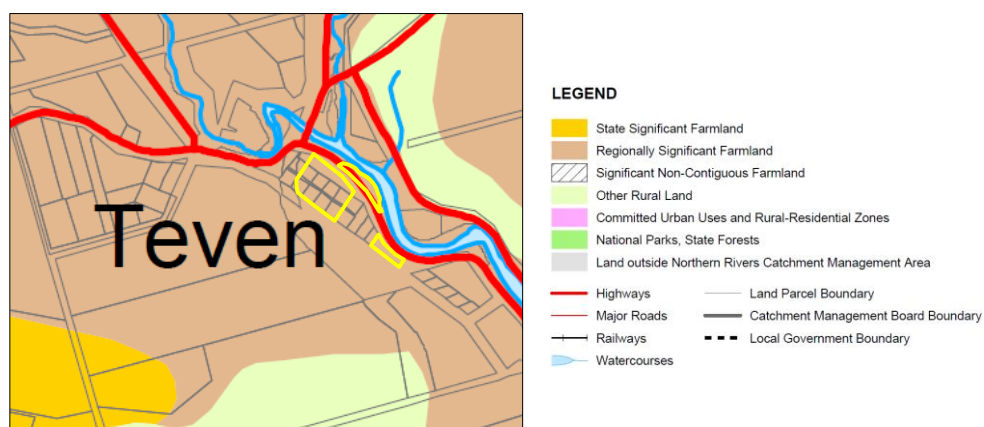


Figure 6 – Northern Rivers Farmland Protection Project Final Map 2005

5.3 Economic

The proposal is not expected to have any adverse economic impacts, particularly noting that public infrastructure is available to the locality enabling adequate servicing.

6. CONSULTATION

6.1 Community

The proposal identifies as 28 day public exhibition period. It is considered that the proposal is a minor and low impact proposal and that a public exhibition period of 14 days is appropriate.

6.2 Agencies

It is considered Council should consult with:

- Department of Planning, Industry and Environment (Biodiversity and Conservation Division)
- NSW Rural Fire Service

7. TIME FRAME

The proposal includes a project timeline which estimates completion of the LEP amendment by February 2021. As consultation has been recommended with agencies it is considered that a six month timeframe is appropriate for completion of the LEP amendment.

8. LOCAL PLAN-MAKING AUTHORITY

Council have requested that it be issued with an authorisation to exercise plan making functions. As the proposal deals only with matters of local significance it is considered appropriate that Council be provided authorisation to act as the local plan making authority.

9. CONCLUSION

It is recommended that the proposal proceed subject to conditions as:

- it will permit a dwelling consistent with Council's policy for land that previously benefited from a dwelling entitlement;
- the proposal indicates that any constraints can be adequately managed; and
- the dwelling will not be inconsistent with the nature of the surrounding area.

10. RECOMMENDATION



It is recommended that the Director, as delegate of the Secretary:

1. **agree** that any inconsistency with section 9.1 Directions 1.5 Rural Lands, 2.2 Coastal Management, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans is justified in accordance with the terms of the Directions; and
2. **note** that the inconsistency with section 9.1 Directions 4.4 Planning for Bushfire Protection remains unresolved until further justification has been provided.

It is recommended that the Director, as delegate of the Minister:

1. **note** the planning proposal (**Attachment A**);
2. **determine** that the planning proposal should proceed subject to the following conditions:
 - The planning proposal should be made available for community consultation for a minimum of 14 days.
 - Consultation is required with the following public authorities:
 - Department of Planning, Industry and Environment (Biodiversity and Conservation Division)
 - NSW Rural Fire Service.
 - The time frame for completing the LEP is to be six months from the date of the Gateway determination.
 - Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.
3. **sign** the Gateway determination (**Attachment B**) noting that Ballina Shire Council is the local plan-making authority and the letter to Council (**Attachment C**).

Approval

 2/12/20 Craig Diss Manager, Local and Regional Planning, Northern Region Date:	 4/12/2020 Jeremy Gray Director, Northern Region Local and Regional Planning Date: 4/12/2020
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Assessment officer: Helen Willis
Admin Para Planner, Northern
Phone: 5778 1489

Attachments

Attachment	Title
A	Planning proposal
B	Gateway determination
C	Letter to Council