



## *Planning Proposal 20/001*

# » *Dwelling entitlement reinstatement and inclusion of additional lots*

Teven Road, Teven

September 2020 (V1 Initiation/Gateway) 20/51081

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shire council



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## Contents

Contents .....	1
1. Introduction .....	2
1.1 Summary of Planning Proposal .....	2
1.2 Background .....	2
1.3 Land to Which the Planning Proposal Applies .....	5
1.4 Council Resolutions .....	6
1.5 Gateway Determination .....	6
2. Objectives & Intended Outcomes .....	7
3. Explanation of Provisions .....	7
3.1 The Proposal .....	7
4. Justification .....	8
4.1 Section A – Need for the Planning Proposal .....	8
4.2 Section B – Relationship to Strategic Planning Framework .....	8
4.3 Section C – Environmental, Social and Economic Impact .....	10
4.4 Section D – State and Commonwealth Interests .....	12
5. Mapping .....	13
6. Community Consultation .....	13
7. Timeline .....	13
8. Appendices .....	14
Appendix 1 – Maps .....	15
Appendix 2 – Section 9.1 Direction Checklist .....	16
Appendix 3 – Copy of Letters – July 1995, April 2019, June 2019 .....	19
Appendix 4 – Proponent’s LEP Amendment Request .....	25
Appendix 5 – Extracts of Historical Records .....	26

# 1. Introduction

## 1.1 Summary of Planning Proposal

This planning proposal seeks to reinstate a dwelling entitlement on Lot 3 Section 1 DP 758964, Teven Road, Teven.

The planning proposal also seeks to transfer the dwelling entitlement to an aggregation of lots located on Teven Road under the same ownership by identifying these lots on the Dwelling Opportunity Reinstatement Map as a group of lots having one dwelling opportunity. The dwelling entitlement transfer will enable a more suitable development site to be available for the construction of a dwelling house.

The land became subject to the provisions of the Ballina Local Environmental Plan 2012 (BLEP 2012) at the commencement of the operation of the 2012 plan in February 2013.

The land is zoned RU1 Primary Production under the provisions of the BLEP 2012 and the applicable minimum lot size is 40ha. The aggregation of the lots is below this, having an approximate area of 2.57ha, and therefore does not receive a dwelling entitlement if consolidated under the provisions of Clause 4.2A of BLEP 2012 on the basis of land area. The land does not meet any of the other criteria under the 2012 plan to be afforded a dwelling entitlement under the plan.

The LEP amendment has been proposed on the basis that a dwelling entitlement was previously acknowledged in writing, before Council made Amendment No. 110 to the Ballina LEP 1987. That is, the proponent has requested reinstatement of an entitlement in line with Council's decision to preserve entitlements lost when Amendment No. 110 was made.

Details of the 12 land parcels owned by Mr and Mrs Latham are provided in Table 1 below. The location of the land is shown in Figure 1.

## 1.2 Background

A letter from Council dated 18 July 1995 identified that Lot 3 Section 1 DP 758964 had a dwelling entitlement under Clause 12 of the BLEP 1987 which could be exercised by obtaining development consent. A copy of the letter is provided at Appendix 3.

Clause 4.2A of BLEP 2012 and Clause 12 of BLEP 1987 contain the criteria used to determine whether a dwelling entitlement exists on a particular lot or holding.

Lot 3 does not have the minimum lot area for the erection of a dwelling house (20 to 40 ha) under the provisions of either BLEP 1987 or BLEP 2012. Lot 3 existed prior to the coming into effect of these LEPs, or the previous interim development provisions, and therefore was not a lot created by a development consent granted under the provisions of applicable planning instruments. Therefore for a dwelling entitlement to exist in respect to the subject lot it must either contain a lawfully erected dwelling house which is proposed to be replaced (clause 4.2A(5)), or the land is an *existing holding*.

An existing holding is defined within Ballina LEP 2012 (clause 4.2A (7)) as follows:

**existing holding** means land that:

(a) in the former shire of Tintenbar:



- (i) was a holding on 12 June 1970, and
- (ii) is still held by the same owner at the time the application for development consent referred to in subclause (3) is lodged

Ballina LEP 1987 defines an existing holding as:

**existing holding** means:

(a) in the case of land in the former Shire of Tintenbar:

- (i) except as provided by subparagraph (ii), a lot, portion or parcel of land which has the same boundaries as it had, and is owned by the same person as it was owned by, on 12 June 1970, or
- (ii) where, on 12 June 1970, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the aggregation of those lots, portions or parcels, provided that they are owned by the same person that they were owned by on that date

There is no current evidence which would conclusively indicate that a lawfully erected dwelling house existed on the land.

The test for permitting a dwelling to be erected on an existing holding is that the land has the same boundaries, and is owned by the same person as owned the land on 12 June 1970, at the time when the development application is approved (BLEP 1987), or lodged (BLEP 2012). In the subject case the owner of the land on 12 June 1970 was TWG Cupitt and AC Cupitt. The purchase of Lot 3 by the Lathams in 1989 is considered to have terminated the existing holding status that the land would have enjoyed.

Copies of historical records and information are provided at Appendix 5.

At its Ordinary meeting held on 26 June 2008, Council resolved to amend the provisions of Clause 12 of the BLEP 1987 to clarify the circumstances in which properties within rural and environmental protection zones have dwelling entitlements as a result of court cases at the time highlighting the difficulties in the interpretation of the clause. At the time it was envisaged that the review of Clause 12 of the BLEP 1987 would provide a template for the interpretation of the dwelling entitlement clause in the new comprehensive shire-wide LEP (BLEP 2012).

Council resolved at its Ordinary meeting held 22 January 2009 to adopt Amendment No. 110 to the BLEP 1987 as exhibited, and to include a schedule in the new comprehensive shire-wide Local Environmental Plan to “protect” the dwelling entitlements for rural properties which do not comply with the revised dwelling entitlement clause but for which Council has previously acknowledged an entitlement in writing.

Consequently, the dwelling entitlement on Lot 3 Section 1 DP 758964 was protected as Council had already acknowledged the dwelling entitlement in its letter dated 18 July 1995. Through the preparation of the BLEP 2012, landowners who had not yet exercised their dwelling entitlements were able to request to have their lots included on the Dwelling Opportunity Reinstatement Map in the new BLEP 2012. For land owners that missed this request, Clause 4.2A of BLEP 2012 noted:

*Subclause 3(f) 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.*

On 17 April 2019, Council wrote to the land owners in response to an enquiry regarding the presence of a dwelling entitlement on their land holdings. The letter concluded that out of the

Planning Proposal 20/001 – Teven Road, Teven

multiple allotments, the only lot that enjoys a dwelling entitlement is Lot 3 Section 1 DP 758964 as previously advised in Council's correspondence dated 18 July 1995. A copy of the letter is provided at Appendix 3.

In response to a further enquiry regarding lot consolidation and relocation of the existing dwelling entitlement from Lot 3 Section 1 DP 758964, Council acknowledged in correspondence dated 17 June 2019 (refer Appendix 3) that as no dwelling house exists on Lot 3 Section 1 DP 758964 and the current BLEP 2012 provisions do not allow for a dwelling entitlement, as Council previously recognised and advised in writing that the lot had an entitlement on 18 July 1995 the landowners would need to rely upon Amendment 110 to the previous BLEP 1987. It was advised that the dwelling entitlement for Lot 3 Section 1 DP 758964 will need to be reinstated in the BLEP 2012 through the Dwelling Opportunity Reinstatement Map.

As noted in the letter dated 18 July 1995, Lot 3 Section 1 DP 758964 would have difficulties gaining development consent for a dwelling due to site constraints, having regard to its location in a high velocity flood area adjacent to the creek and the size and shape of the land. The ability to satisfactorily accommodate the on-site disposal of effluent on the subject land was also noted as a potential constraint.

The aggregation of the additional 11 lots located on Teven Road has a total land area of approximately 2.57ha. The majority of the land is considerably less constrained than Lot 3 Section 1 DP 758964 and could satisfactorily accommodate a dwelling and all other necessary infrastructure.

Any future development application will be required to consolidate all lots referred to in Table 1 below.

**1.3 Land to Which the Planning Proposal Applies**

This planning proposal relates to 12 land parcels located at Teven Road, Teven as outlined in black and shown in Figure 1 below. Details of the land parcels are provided in Table 1. Lot 3 Section 1 DP 758964, the land that previously enjoyed a dwelling entitlement, is shaded green.



**Figure 1: Land to which this proposal applies**

**Table 1 – Details of land parcels the subject of this planning proposal**

Lot	Section	DP	Area (m <sup>2</sup> )
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
<b>Total Area (ha)</b>			<b>2.575</b>

**1.4 Council Resolutions**

To be completed following the submission of the planning proposal to Council.

**1.5 Gateway Determination**

To be completed following the Gateway determination.



## 2. Objectives & Intended Outcomes

The objectives and intended outcomes of this planning proposal are to:

- To amend the Ballina Local Environmental Plan (LEP) 2012 to reinstate a dwelling entitlement on Lot 3 Section 1 DP 758964, Teven Road, Teven through its inclusion on the Dwelling Opportunity Reinstatement Map; and
- To transfer the dwelling entitlement to an aggregate of lots located on Teven Road, Teven under the same ownership by identifying these lots on the Dwelling Opportunity Reinstatement Map as a 'group of lots' having one dwelling opportunity, to provide a more suitable development outcome.

## 3. Explanation of Provisions

### 3.1 The Proposal

The proposed outcomes will be achieved by amending the Ballina LEP 2012 Dwelling Opportunity Reinstatement Map to include the 12 lots described in Table 1 and shown in Figure 1 above as a "group of lots" to which a dwelling entitlement applies. This will enable a dwelling house to be built in a more suitable area of the site.

## 4. Justification

### 4.1 Section A – Need for the Planning Proposal

**Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?**

No. The planning proposal is intended to restore the dwelling entitlement that existed on the land prior to the making of Amendment No. 110 to the Ballina LEP 1987.

**Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes. A planning proposal is the appropriate mechanism for achieving the proposed outcomes as the proposal seeks the inclusion of land on the Dwelling Opportunity Reinstatement Map.

### 4.2 Section B – Relationship to Strategic Planning Framework

**Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?**

North Coast Regional Plan 2036

Ballina is identified in the Plan within the Far North Coast subregion.

The planning proposal demonstrates strategic merit through its consistency with the objectives and actions set out in the North Coast Regional Plan 2036 and aligns with the following goals and objectives of the plan:

**Goal 4: Great housing choice and lifestyle options**

*Direction 23: Increase housing diversity and choice* – The proposal will provide additional housing choice options for rural residents.

*Direction 25: Deliver more opportunities for affordable housing* – The proposal will enable the creation of additional housing within the Shire's rural areas.

**Q4 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Ballina Shire Council Community Strategic Plan 2017-2027 (CSP)

The planning proposal is considered to be generally consistent with the elements and specified outcomes of Council's Community Strategic Plan 2017-2027 as indicated in the table below:

Element and Reference	Outcomes	Benefits
<b>PE3 Prosperous Economy</b>	<b>Improve liveability in the shire</b>	
PE3.2	Facilitate and provide affordable infrastructure	More housing opportunities created
<b>HE3 Healthy Environment</b>	<b>Our built environment blends with the natural environment</b>	

HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development
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Ballina Shire Local Strategic Planning Statement 2020-2040 (LSPS)

The purpose of the LSPS is to provide a land use planning vision for Ballina Shire in the 20-year period to 2040. The LSPS provides a level of consistency between key directions and actions within the North Coast Regional Plan 2036 and Ballina Shire’s strategic planning priorities and actions. The planning priorities and actions contained within the LSPS build on the strategic planning actions already contained within the CSP and the 2019-2023 Delivery Program and Operational Plan.

The planning proposal is considered to be generally consistent with the themes and planning priorities contained within the LSPS.

Ballina Local Environmental Plan 2012 (BLEP 2012)

The planning proposal applies to land within the RU1 Primary Production Zone. The objectives of the zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural, cultural and landscape character of the locality.*
- *To enable development that is compatible with the rural and environmental nature of the land.*
- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

It is considered that reinstating the dwelling entitlement and relocating it to a less constrained area under the same ownership does not give rise to any automatic inconsistencies with the zone objectives. A future development application for the dwelling will need to be assessed against zone objectives to determine whether any inconsistencies arise and determine potential mitigation.

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The purpose of the BSGMS is to provide the framework for managing population and employment growth for Ballina Shire’s urban areas over the planning period of 2012-2031.

## Planning Proposal 20/001 – Teven Road, Teven

The proposal is consistent with the following growth management strategy principles of the BSGMS:

Growth Management Principle	Comment
Facilitate greater housing choice through an adequate mixture of dwelling types.	Reinstating a rural dwelling entitlement and its subsequent relocation to a suitably unconstrained locality will facilitate new housing opportunities for the rural locality.

**Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?**

The proposal's consistency with applicable State Environmental Planning Policies (SEPPs) is detailed in the table below:

SEPP Title	Compliance of Planning Proposal
SEPP No. 55 Remediation of Land	The planning proposal does not propose to rezone land. Sensitive land uses such as dwelling houses and rural dual occupancies are currently permitted with development consent. Therefore, no significant increase in sensitive land uses are proposed.  The assessment of land contamination issues will be considered as part of the development application process as is the case with other sensitive land uses currently permitted within the RU1 zones.
SEPP (Rural Lands) 2008	The proposal is considered to be consistent with the rural planning principles contained within the SEPP. Principle (f), reproduced below, is of particular relevance to this planning proposal:  (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities.

**Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

The planning proposal is consistent with applicable section 9.1 Ministerial Directions as outlined in Appendix Two.

**4.3 Section C – Environmental, Social and Economic Impact**

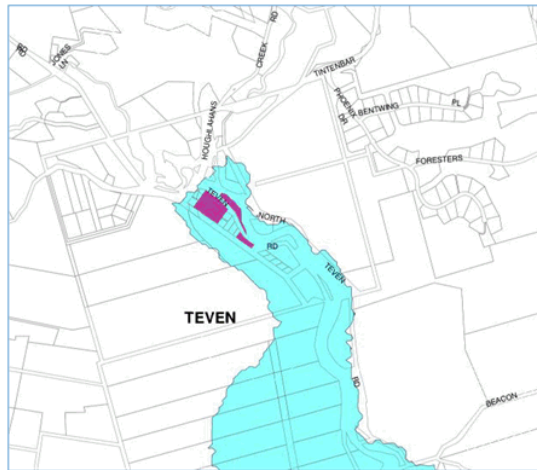
**Q7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The proponent has not yet examined the ecological significance of the subject site. A detailed ecological assessment can be undertaken if required by the Gateway determination.

**Q8** Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

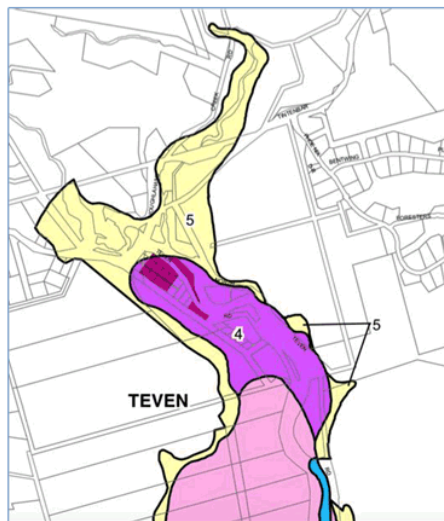
Yes.

All lots are located within a “Flood Planning Area” as identified in the Ballina LEP 2012 (refer Figure 2 below). This will be assessed in detail at the development application stage. A portion of one of the lots is already filled above the flood level and can suitably accommodate a dwelling and associated access above the flood level.



**Figure 2 – Flood Planning Area Map (BLEP 2012)**

The site is mapped as containing Class 4 Acid Sulfate Soils (refer Figure 3). This can be addressed at the development application stage.



**Figure 3 – Acid Sulfate Soils (BLEP 2012)**



A small area of mapped bushfire buffer is nominated on the edge of the site (refer Figure 4), however this will not impact on the location of a future dwelling.



Figure 4 –Bushfire Map (BSC Intramaps)

**Q9 Has the planning proposal adequately addressed any social and economic effects?**

The social and economic outcomes resulting from the inclusion of the subject lots on the Dwelling Opportunity Reinstatement Map are generally positive in terms of enabling additional housing which, under the current circumstances, would not be possible. This will increase the value of the land and will have positive flow on economic effects during the construction phase.

**4.4 Section D – State and Commonwealth Interests**

**Q10 Is there adequate public infrastructure for the planning proposal?**

All required public infrastructure is available to the locality and therefore the proposed development area can be adequately serviced.

**Q11 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

## 5. Mapping

The following map will be prepared to support this planning proposal:

Dwelling Opportunity Reinstatement Map – Sheet DWE\_005B

## 6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. It is anticipated that a minimum public notification period of 28 days will be applied to this planning proposal.

## 7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	October 2020
Government Agency Consultation	November 2020
Public Exhibition Period	November 2020
Public Hearing	N/A
Submissions Assessment	December 2020
RPA Assessment of Planning Proposal and Exhibition Outcomes	January 2021
Submission of Endorsed LEP to DP&E for Finalisation	February 2021
RPA Decision to Make the LEP Amendment (if delegated)	February 2021
Forwarding of LEP Amendment to DP&E for Notification (if delegated)	February 2021

Council is seeking to exercise the functions of the local plan-making authority for finalisation of this LEP amendment.

## 8. Appendices

## Appendix 1 – Maps

Dwelling Opportunity Reinstatement Map (to be prepared post-Gateway determination).

## Appendix 2 – Section 9.1 Direction Checklist

<b>Section 9.1 Direction Checklist</b>	
<b>Planning Proposal – Dwelling entitlement reinstatement and inclusion of additional lots, Teven Road, Teven</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent. The planning proposal is considered to be of minor significance and will meet the objective of protecting the agricultural production value of rural land. No changes are proposed to the existing RU1 Primary Production zone.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent. The planning proposal will not result in the prohibition or restriction of mining and extraction activities.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Lands	Consistent. The direction applies as the land is within an existing rural zone and is considered to be of minor significance.
<b>2. Environment and Heritage</b>	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve the development of land identified as being of environmental significance.
2.2 Coastal Protection	Does not apply to planning proposal. The land is not within the coastal zone.
2.3 Heritage Conservation	Consistent. The planning proposal does not involve the development of land on which a heritage item is located, within a heritage conservation area or within the vicinity of a heritage item or conservation area.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
2.6 Remediation of Contaminated Land	Consistent. The planning proposal does not propose to rezone land. Sensitive land uses such as dwelling houses and rural dual occupancies are currently permitted with development consent. Therefore, no significant increase in sensitive land uses are proposed.  The assessment of land contamination issues will be considered as part of the development application process as is the case with other sensitive land uses currently permitted within the RU1 zones.
<b>3. Housing, Infrastructure and Urban Development</b>	



## Planning Proposal 20/001 – Teven Road, Teven

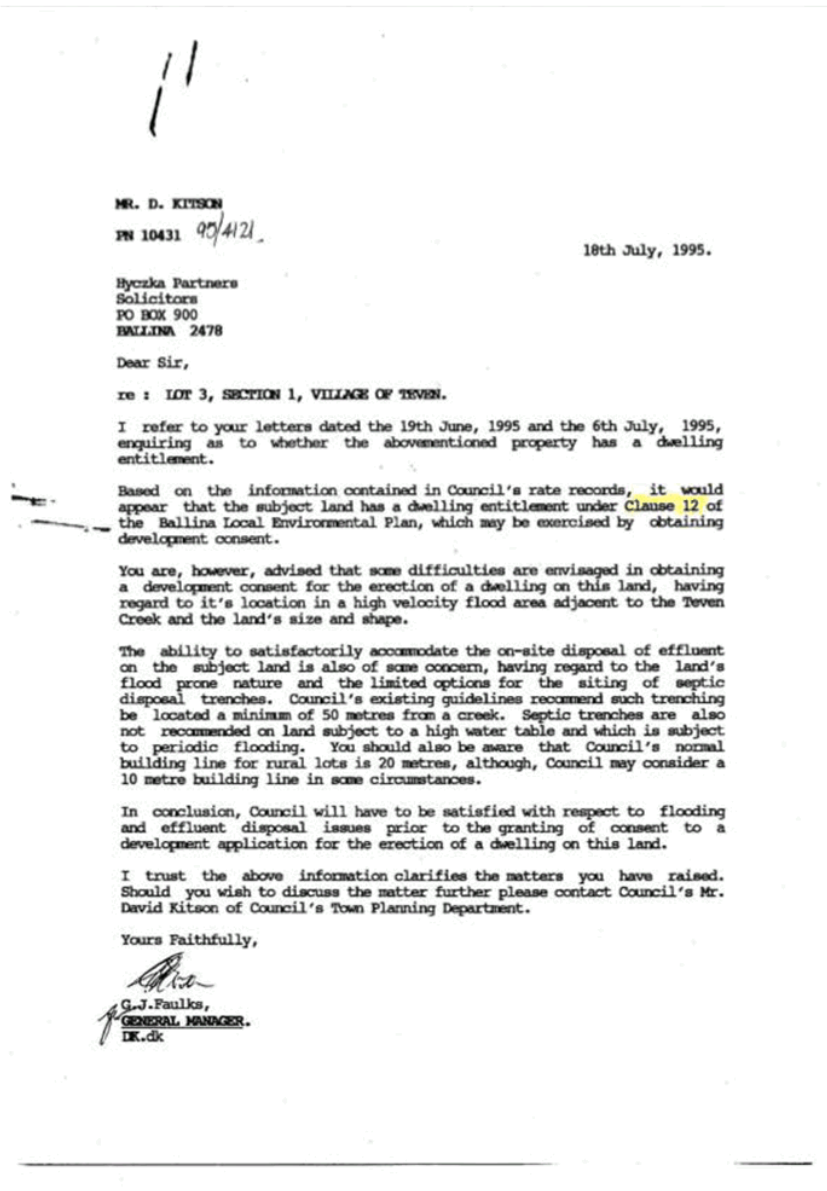
<b>Section 9.1 Direction Checklist</b>	
<b>Planning Proposal – Dwelling entitlement reinstatement and inclusion of additional lots, Teven Road, Teven</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
3.1 Residential Zones	Consistent. The planning proposal will not result in significant residential development.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. The proposal will not result in any restrictions on the permissibility of Caravan Parks or Manufactured Home Estates.
3.3 Home Occupation	Consistent. The planning proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrating Land Use and Transport	Consistent. The planning proposal is considered to be of minor significance.
3.5 Development near Licensed Aerodromes	Does not apply to planning proposal. The land is not near a regulated airfield.
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
<b>4. Hazard and Risk</b>	
4.1 Acid Sulfate Soils	Consistent. The planning proposal is of minor significance.
4.2 Mine subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal. The planning proposal will not rezone the land.
4.4 Planning for Bushfire Protection	Does not apply to planning proposal. The land parcel that is affected by the bushfire buffer would not be suitable for development as it is located within an extreme flood hazard area and as such is considered unsuitable for residential use.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies (Revoked 17 October 2017)	Revoked.
5.2 Sydney Drinking Water Catchments	Does not apply to planning proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal. The planning proposal will not rezone the land.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Revoked 18 June 2010)	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008)	Revoked.
5.7 Central Coast (Revoked 10 July 2008)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to planning proposal.
5.9 North West Rail Link Corridor Strategy	Does not apply to planning proposal.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is generally consistent with the North Coast Regional Plan 2036.

## Planning Proposal 20/001 – Teven Road, Teven

<b>Section 9.1 Direction Checklist</b>	
<b>Planning Proposal – Dwelling entitlement reinstatement and inclusion of additional lots, Teven Road, Teven</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
5.11 Development of Aboriginal land Council land	Does not apply to planning proposal.
<b>6. Local Plan Making</b>	
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. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Consistent. The planning proposal seeks to include the subject land as a group of lots on the Dwelling Opportunity Reinstatement Map. This is consistent with subclause (4)(c) as the planning proposal will amend the Ballina LEP 2012 to allow for a dwelling, without the need for any additional development standards to be imposed other than those already contained in the principle planning instrument.
<b>7. Metropolitan Planning</b>	
7.1 to 7.10	These directions do not apply to the planning proposal.

## Appendix 3 – Copy of Letters – July 1995, April 2019, June 2019

Letter from Council dated 18 July 1995



Letter from Council dated 17 April 2019

enquiries refer  
**Lucy Bennett**  
In reply please quote  
**CM 19/28590 Cont. 142/08**

17 April 2019

Mrs D E Latham  
PO Box 567  
BALLINA NSW 2478



Dear Mrs Latham,

**Re: Dwelling Entitlement Enquiry  
Teven Road, Teven**

I refer to your recent enquiry and discussions with myself and Lucy Bennett of Council's Planning and Environmental Health Division regarding the presence of a dwelling entitlement on your land in the vicinity of Teven Road, Teven.

According to Council's records your land holding in this area is comprised of multiple allotments, being Lots 18 DP 1005893, Lot 1 DP 721324, Lot 295 DP 755745, Lot 353 DP 755745, Lot 2 Sec 5 DP 758964, Lots 3-5 and 9-11 Sec 5 DP 758964 and Lot 3 Sec 1 DP 758964 (all inclusive). The subject lands are zoned RU1 under the Ballina Local Environmental Plan 2012.

The presence of a dwelling entitlement in relation to the land identified above is determined by Clause 4.2A of the Ballina Local Environmental Plan 2012 (LEP). Under Clause 4.2A there are several ways in which a dwelling entitlement can be recognised on a land parcel or group of land parcels. Clause 4.2A states:

**4.2A Erection of dwelling houses and dual occupancies on land in certain rural zones**

- (1) *The objectives of this clause are as follows:*
  - (a) *to minimise unplanned rural residential development,*
  - (b) *to enable the replacement of lawfully erected dwelling houses or dual occupancies in certain rural zones,*
  - (c) *to ensure that development is of a scale and nature that is compatible with the environmental capabilities of the land,*
  - (d) *to protect the primary production potential of the land.*
- (2) *This clause applies to land in the following zones:*
  - (a) *Zone RU1 Primary Production,*
  - (b) *Zone RU2 Rural Landscape.*
- (3) *Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies unless the land:*
  - (a) *is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or*
  - (b) *is a lot created under this Plan (other than under clause 4.2 (3)), or*

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Dwelling Entitlement, Teven Road, Teven

- (c) *is a lot created before this Plan commenced and on which the erection of a dwelling house or a dual occupancy (attached) was permissible immediately before that commencement, but not if the lot is part of an existing holding, or*
- (d) *is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or a dual occupancy (attached) would have been permissible if the plan of subdivision had been registered before that commencement, or*
- (e) *is an existing holding, or*
- (f) *is a lot or a group of lots identified as having "1 Dwelling opportunity" on the Dwelling Opportunity Reinstatement Map, or*
- (g) *would have been a lot or a holding referred to in paragraph (a), (b), (c), (d), (e) or (f) had it not been affected by:*
  - (i) *a minor realignment of its boundaries that did not create an additional lot, or*
  - (ii) *a subdivision creating or widening a public road or public reserve or for another public purpose, or*
  - (iii) *a consolidation with an adjoining public road or public reserve or for another public purpose.*

As per Clause 4.2A(3)(a), the minimum lot size for the abovementioned properties is 40 hectares. All lots are below this size and as such do not enjoy a dwelling entitlement via this Clause.

As per Clause 4.2A(3)(b), the lots were not created under this Plan and as such do not enjoy a dwelling entitlement via this Clause.

As per Clause 4.2A(3)(c), the lots were created before this Plan commenced, however the erection of a dwelling house was not permissible immediately before that commencement.

As per Clause 4.2A(3)(d), the lots formed part of the Parish Map and not a Council approved subdivision before this Plan commenced.

As per Clause 4.2A(3)(e), the lots are not an existing holding. Existing holding means:

- (a) *In the case of land in the former Shire of Tintenbar:*
  - (i) *Except as provided by subparagraph (ii), a lot, portion or parcel of land which has the same boundaries as it had, and is owned by the same person as it was owned by, on 12 June 1970, or*
  - (ii) *Where, on 12 June 1970, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the aggregation of those lots, portions or parcels, provided that they are owned by the same person that they were owned by on that date,*

As per Clause 4.2A(3)(f), the lots are not identified on the Dwelling Opportunity Reinstatement Map (a copy of which is attached).

As per Clause 4.2A(3)(g), are lots have not been affected by any of the following and as such do not enjoy a dwelling entitlement:

- (i) *a minor realignment of its boundaries that did not create an additional lot, or*
- (ii) *a subdivision creating or widening a public road or public reserve or for another public purpose, or*



3.  
Mrs D E Latham  
Dwelling Entitlement, Teven Road, Teven

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*(iii) a consolidation with an adjoining public road or public reserve or for another public purpose.*

Council's records indicate that one dwelling entitlement exists for the amalgamated/combined area of Lot 295 DP 755745, Lot 353 DP 755745, Lots 1-5 and Lots 8-12 Sec 5 DP 758964, Lot 1 DP 721324 and Lot 7 DP 113420 under previous planning instruments. The dwelling house on Lot 7 DP 113420 (near the intersection of Teven Road) has exercised this dwelling entitlement. It is noted that Lot 7 DP 113420 and Lots 1 and 12 Sec 5 DP 758964 are now also under different ownership.

As previously advised in Council's correspondence dated 18 July 1995, Lot 3 Sec 1 DP 758964 does enjoy a dwelling entitlement. There appears to be an existing dwelling house on this allotment.

Should you require any further information please do not hesitate to contact Lucy Bennett on 1300 864 444.

Yours faithfully



 Matthew Wood  
Director  
Planning and Environmental Health Division

Letter from Council dated 17 June 2019

enquiries refer  
**Lucy Bennett**  
In reply please quote  
**CM 19/40325 Cont. 142/08**

17 June 2019

Ms Sally McGarry  
sally.mcgarry1@gmail.com



Dear Sally,

**Re: Dwelling Entitlement Enquiry  
Teven Road, Teven  
Lot 295 and 353 DP 755745  
Lot 3 Section 1 DP 758964  
Lots 1-5 and 9-12 Sec 5 DP 758964  
Lot 18 DP 1005894**

I refer to Council's recent advice of 17 April 2019, your further enquiry regarding dwelling entitlements for the subject lands located in the vicinity of Teven Road, Teven, and in particular to your enquiry regarding lot consolidation and relocation of the existing dwelling entitlement from Lot 3 Sec 1 DP 758964.

It is understood that you wish to undertake the consolidation of Lots 295 and 353 DP 755745, Lots 1-5 and 9-12 Sec 5 DP 758964, and Lot 18 DP 1005894. As previously advised Lot 1 Sec 5 DP 758964 and Lot 12 Sec 5 DP 758964 are under different ownership to the remaining lots.

It was previously advised in Council's letter of 17 April 2019 that Lot 3 appeared to contain an existing dwelling. However, further investigation of Council's records reveals that there is an existing dwelling on the adjoining allotment (Lot 2 Sec 1 DP 758964) which was approved via BA 38/76 and an older dilapidated building on Lot 3 exists (which you describe as the former post office).

As there is not a dwelling house on Lot 3 Sec 1 DP 758964 and the current Ballina Local Environmental Plan 2012 provisions do not allow for a dwelling entitlement, as Council previously recognised and advised in writing that the lot had an entitlement on 18 July 1995 you would now need to rely upon Amendment No. 110 to the previous BLEP 1987.

When Council resolved to adopt Amendment No.110 it also resolved as follows:

*"That Council include a schedule in the new comprehensive shire-wide Local Environmental Plan to "protect" the dwelling entitlements for rural properties which do not comply with the revised dwelling entitlement clause, but for which Council has previously acknowledged an entitlement in writing".*

Lot 3 Sec 1 DP 758964 meets the criteria foreshadowed in Council's resolution due to Council's previous letter of 18 July 1995 recognising a dwelling entitlement. Accordingly, the dwelling entitlement will need to be reinstated in the BLEP 2012 through the Dwelling Opportunity Reinstatement Map. Once this amendment is gazetted it will have the effect of reinstating the dwelling entitlement over the subject allotment through clause 4.2A(3)(f).

40 cherry street, po box 450, ballina nsw 2478  
t 1300 864 444 e [council@ballina.nsw.gov.au](mailto:council@ballina.nsw.gov.au) w [ballina.nsw.gov.au](http://ballina.nsw.gov.au) abn 539 29 867 369

Planning Proposal 20/001 – Teven Road, Teven

2.  
Sally McGarry  
Dwelling Entitlement, Teven Road, Teven

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It is suggested that you now liaise with Council's Strategic Planning Division as to the process and potential timing of the amendment.

In relation to the proposed consolidation of lands, it should be noted that Council's preference is not to create split or "vinculum" reliant lots where unnecessary.

Should you require any further information please do not hesitate to contact Lucy Bennett on 1300 864 444.

Yours faithfully

Andrew Smith  
Manager Development Services  
Planning and Environmental Health Division

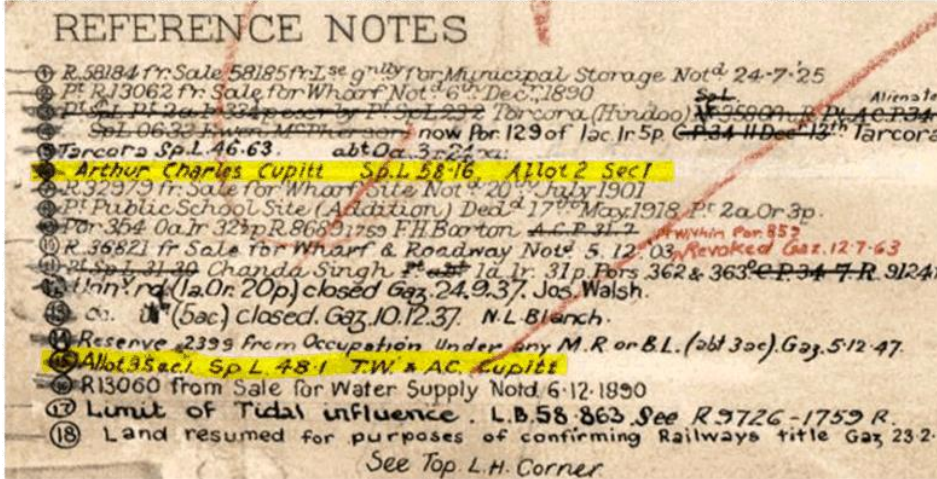
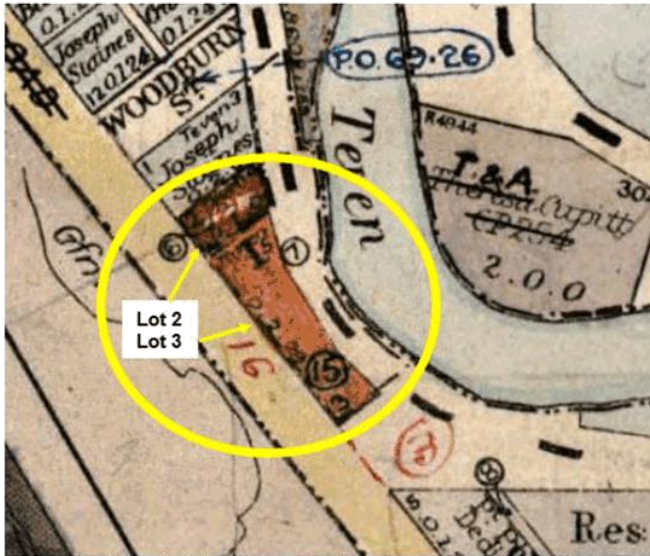
Cc Mrs DE Latham  
PO Box 567  
BALLINA NSW 2478

## Appendix 4 – Proponent’s LEP Amendment Request

(Provided under separate cover).

## Appendix 5 – Extracts of Historical Records

- Extract of Parish Map dated 1934:

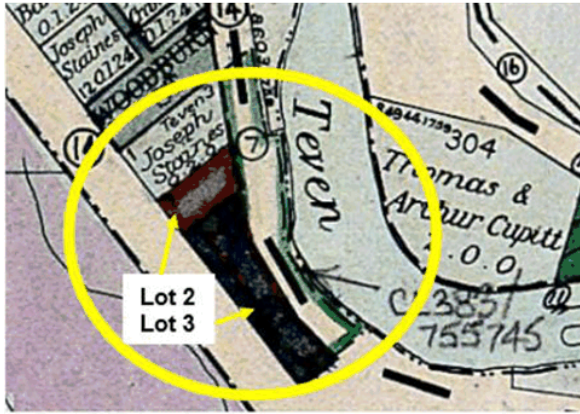




8.3 LEP Amendment Request - Teven Road, Teven

Planning Proposal 20/001 – Teven Road, Teven

- Extract of Parish Map dated 1971:



SMALL NUMBER 3002 UNLESS OTHERWISE SHOWN

SMALL ALLOTMENTS

Sec.	Allot.	Plan	Area		Purchaser etc.
			A. R.	P.	
1	2	Teven 4	0	1012	A.C. Cupitt Sp.L. 58.16 OCP 74.10 Vol. 13793 Fol. 221
	3	Teven 5	0	2751	T.W.G. & A.C. Cupitt Sp.L. 49.1 See also (7) 74.9 Vol. 14590 Fol. 13.

Planning Proposal 20/001 – Teven Road, Teven

- Extract of Rates Notices 1970:

Shire of Tintenbar Form 4, Ordinance 5 Local Govt. Act, 1919

MRS. Mrs. Thomas William George & Arthur Charles Cupitt, Teven. ADDRESS Teven.

Assessment No. 689 <sup>2283</sup> Previous No. 673

Paid  Arrears  Summary

**B RIDING**

**RATE NOTICE AND NOTICE TO PAY SANITARY AND GARBAGE FEES FOR YEAR 1970**

NOTICE IS HEREBY GIVEN that the undermentioned land has been rated by the Council of the Shire of Tintenbar as shown hereunder:

LAND RATED AND WHERE SITUATED				AREA			UNIMPROVED CAPITAL VALUE	IMPROVED CAPITAL VALUE	ASSESSED ANNUAL VALUE
PARISH	SECTION	LOT	PORTION	ACRES	RDS.	PER.			
Teven	1	3		2	29		55	600	48

THIS FORM IS ONE OF A SERIES COMPLETING THE RATE BOOK FOR THE YEAR 1970

Served by Post Date of Posting 30/1/70

PARTICULARS OF RATES AND CHARGES FOR THE YEAR COMMENCING 1st JANUARY, 1970									
GENERAL RATE		COMBINED RATE		EXTRA CHARGES (Sec. 153)		SANITARY AND/OR GARBAGE FEES (See Back)		TOTAL AMOUNT DUE	
Current at 3.25% in the \$ on U.C.V.	Arrears	Current at 2.125% in the \$ on U.C.V.	Arrears	Current	Arrears	\$2 Services Per Annum	Arrears		
4 00									4 00
ADJUSTMENTS									
NETT TOTAL									
PAYMENTS									
Date	Rec. No.							4 00	
April 10 1970		4 00							

Arrears Carried Forward

Shire of Tintenbar Form 4, Ordinance 5 Local Govt. Act, 1919

MR. Arthur Charles Cupitt, Teven. ADDRESS Teven.

Assessment No. 688 <sup>2262</sup> Previous No. 672

Paid  Arrears  Summary

**B RIDING**

**RATE NOTICE AND NOTICE TO PAY SANITARY AND GARBAGE FEES FOR YEAR 1970**

NOTICE IS HEREBY GIVEN that the undermentioned land has been rated by the Council of the Shire of Tintenbar as shown hereunder:

LAND RATED AND WHERE SITUATED				AREA			UNIMPROVED CAPITAL VALUE	IMPROVED CAPITAL VALUE	ASSESSED ANNUAL VALUE
PARISH	SECTION	LOT	PORTION	ACRES	RDS.	PER.			
Teven	1	2		1			35	35	2

THIS FORM IS ONE OF A SERIES COMPLETING THE RATE BOOK FOR THE YEAR 1970

Served by Post Date of Posting 30/1/70

PARTICULARS OF RATES AND CHARGES FOR THE YEAR COMMENCING 1st JANUARY, 1970									
GENERAL RATE		COMBINED RATE		EXTRA CHARGES (Sec. 153)		SANITARY AND/OR GARBAGE FEES (See Back)		TOTAL AMOUNT DUE	
Current at 3.25% in the \$ on U.C.V.	Arrears	Current at 2.125% in the \$ on U.C.V.	Arrears	Current	Arrears	\$2 Services Per Annum	Arrears		
4 00									4 00
ADJUSTMENTS									
NETT TOTAL									
PAYMENTS									
Date	Rec. No.							4 00	
April 10 1970		4 00							

Arrears Carried Forward