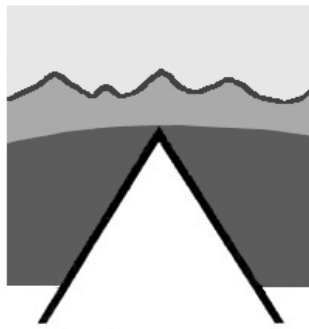


PLANNING PROPOSAL

to
Byron Shire Council
for

**Amendment to Schedule 8 of the Byron Local
Environmental Plan 1988 for the purpose of rural
community title (village catchment) settlement at
Lot 6 DP 261219, 226 Fowlers Lane, Bangalow**

by



Balanced
Systems
Planning
Consultants

**P.O. Box 36 Bangalow 2479
Email: balanced@exemail.com.au
Ph. & Fax (02) 66895301**

September 2010

CONTENTS

1	Introduction	4
2	Proposal objectives and outcomes.....	7
2.1	Objectives	7
2.2	Outcomes	7
3	Explanation of provisions in local plan	9
4	Justifications for objectives, outcomes & provisions	10
4.1	Need for planning proposal	10
4.2	Relationship to strategic planning framework	11
4.3	Environmental social and economic impact.....	14
4.4	State and Commonwealth interests	15
5	Community consultation	16

Illustrations

- 1 - The Locality
- 2 - The Immediate Locality
- 3 - Preliminary Concept

Appendix

- A - Letter from Don Page MP – Member for Ballina

SUMMARY

The land, subject to this Planning Proposal, is Lot 6 DP 261219, a 30.28 ha. rural holding at Fowlers lane north of Bangalow. A summary of the justification for the Planning Proposal, in accordance with the Department of Planning Guidelines for preparing planning proposals, is as follows:

- **Objectives or Intended Outcomes** of the proposed LEP

To enable the rural holding to be utilised for a combination of rural settlement, agricultural uses and ecological enhancement by means of the *Community Land Development Act 1989* in a similar manner to properties in the immediate locality.

- **Explanation of the Provisions** that are to be included in the proposed LEP

The provisions to be used in the amendment to the Byron LEP are regularly utilised provisions used by Council and DOP for this form of development within the shire.

Within Schedule 8 of the LEP, standard provisions will:

- identify the land in words and with reference to a map
 - identify that the purpose is for community title (village catchment)
 - require consistency with section 6.3 of the *Byron Rural Settlement Strategy 1998*
 - nominate the maximum number of neighbourhood lots
 - require the neighbourhood management statement to include provisions for environmental management and enhancement
- **Justification** for those objectives, outcomes and provisions and the process for their implementation
- Need for the planning proposal** – the proposal will result in a net community benefit as it provides infill rural settlement in a suitable location where Council has already permitted rural settlement and allows for the completion of partly provided community infrastructure ie an upgraded local road.
- Relationship to strategic planning framework** – the proposal assists Council to fulfill its settlement obligations as required by the Far North Coast Regional Strategy. The site is west of the Pacific Highway and provides contemporary rural settlement consistent with the Byron Rural Settlement provisions. The proposal is consistent with all applicable SEPPs. A justifiable inconsistency with the S117 relating to the Farmland Protection policy is provided within this Planning Proposal.
- Environmental, social and economic impact** – Positive environmental impacts, in ecological, social and local economic terms, will result from the proposal with no adverse impacts occurring.

- **Community Consultation** that is to be undertaken on the planning proposal

Community consultation within the immediate locality has already been undertaken by a Council facilitated consultation process for this locality (refer Fowlers Lane LAMP). The Planning Proposal will be exhibited in accordance with the Department of Planning guidelines 'A Guide to Preparing Planning Proposals'.

1 Introduction

The land, subject to this Planning Proposal, is Lot 6 DP 261219, a 30.28 ha. rural property at 226 Fowlers Lane, approximately 3 km. north of Bangalow, as depicted within Illustration 1.

The Planning Proposal is to 'rezone' the land for 'rural living' and 'environmental conservation' and 'agricultural' purposes. The rural community title subdivision will be implemented in accordance with the Best Practice Guidelines and Performance Standards of the Byron Rural Settlement Strategy 1998.

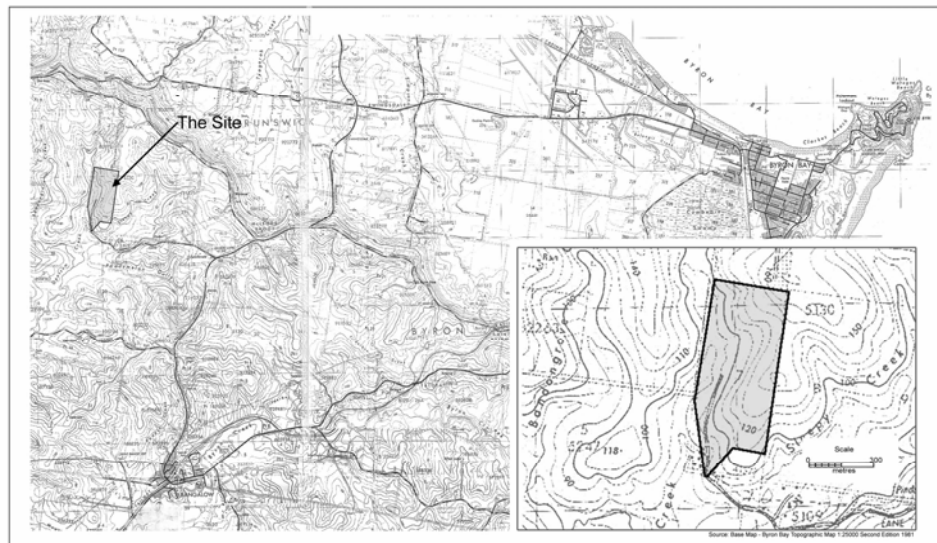
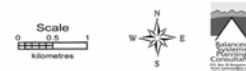


Illustration 1

The Locality

Lot 6 226 DP 261219,
Fowlers Lane Bangalow

Illustration prepared by  balanced@exemail.com.au



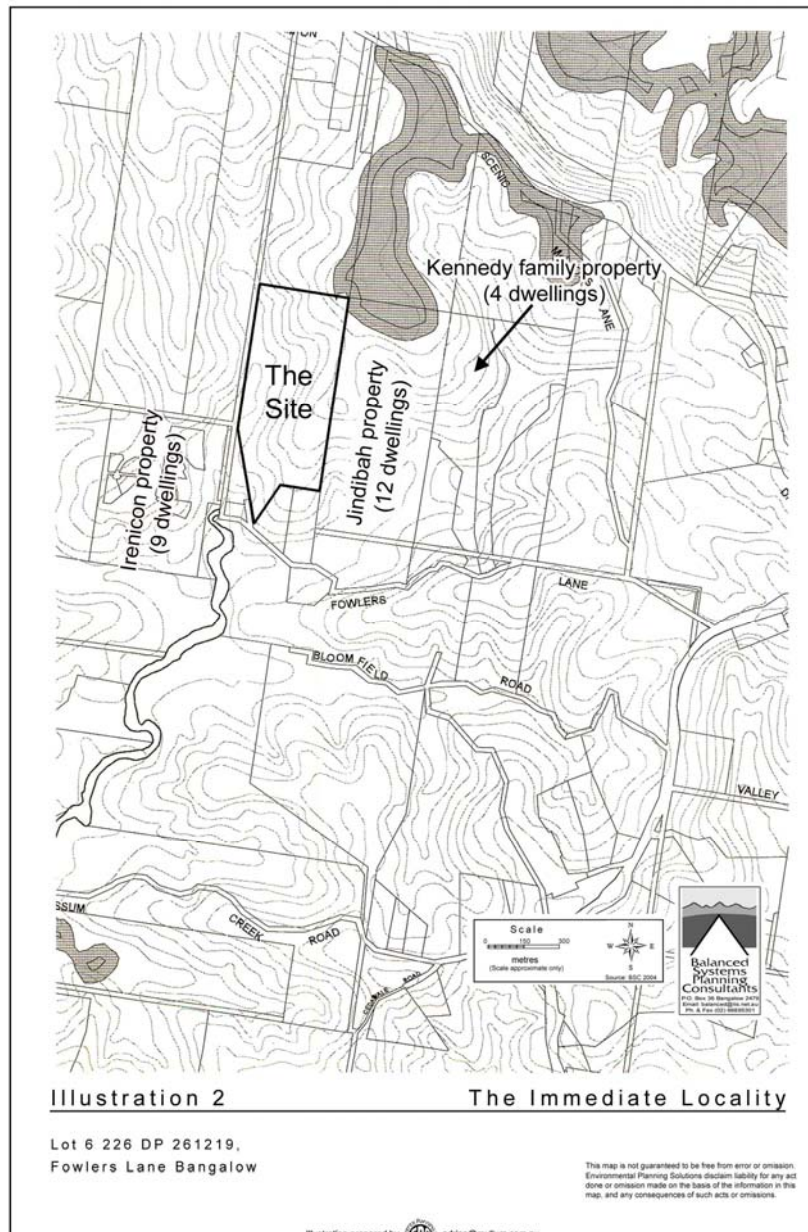
The 'rezoning' is proposed by amending Byron Local Environmental Plan 1988, so as to include the following into Schedule 8 of the LEP:

Lot 6, DP 261219, Fowlers Lane, Bangalow, in the local government area of Byron as shown edged heavy black on the map marked "Byron Local Environmental Plan 1988 (Amendment No xx)", for the purpose of a community title (village catchment) settlement that complies with the provisions of section 6.3 of the *Byron Rural Settlement Strategy 1998* adopted by the council, as in force at the commencement of *Byron Local Environmental Plan 1988 (Amendment No xxx)*, but only if the council is satisfied that:

- (i) the land is to be subdivided under the *Community Land Development Act 1989* to create a neighbourhood scheme that includes no more than 10 neighbourhood lots and one lot that is neighbourhood property, and
- (ii) no more than one dwelling is to be erected on each of the neighbourhood lots, and

- (iii) no part of the property is to be developed for the purpose of holiday cabins or tourist facilities, and
- (iv) use and development of the land is in accordance with a neighbourhood management statement that includes provision for environmental management and enhancement

In recent years, Council has rezoned three other rural properties within the immediate locality in a similar manner. The subject land and these three properties already zoned for rural settlement are depicted within Illustration 2.



Byron Shire Council resolved at its meeting of 12 August 2010 that applicants be invited to proceed with applicant initiated rezoning proposals, if they wished to proceed under the gateway process, by employing a private planning consultant.

This planning proposal is prepared in accordance with the Department of Planning guidelines 'A Guide to Preparing Planning Proposals' and 'A Guide to Preparing Local Environmental Plans'.

The outcomes of this planning proposal will include:

- Contributions will be received to assist the final stages of the upgrading of Fowlers Lane
- Rural housing opportunities will be realised in a manner consistent with the BRSS Best Practice Guidelines and Performance Standards
- Environmental enhancement will be achieved in a manner consistent with the BRSS Best Practice Guidelines and Performance Standards
- Agricultural opportunities consistent with the intent of the Byron Sustainable Agriculture Strategy will become available
- The implementation of the concept within the proposal will result in positive social and economic impacts in the same manner as evidenced by the implementation of similar concepts on adjoining lands. Such positive impacts include increased housing and lifestyle opportunities, resident involvement in ecological restoration and food production, strengthening social cohesion and revitalisation of local community facilities.

2 Proposal objectives and outcomes

2.1 Objectives

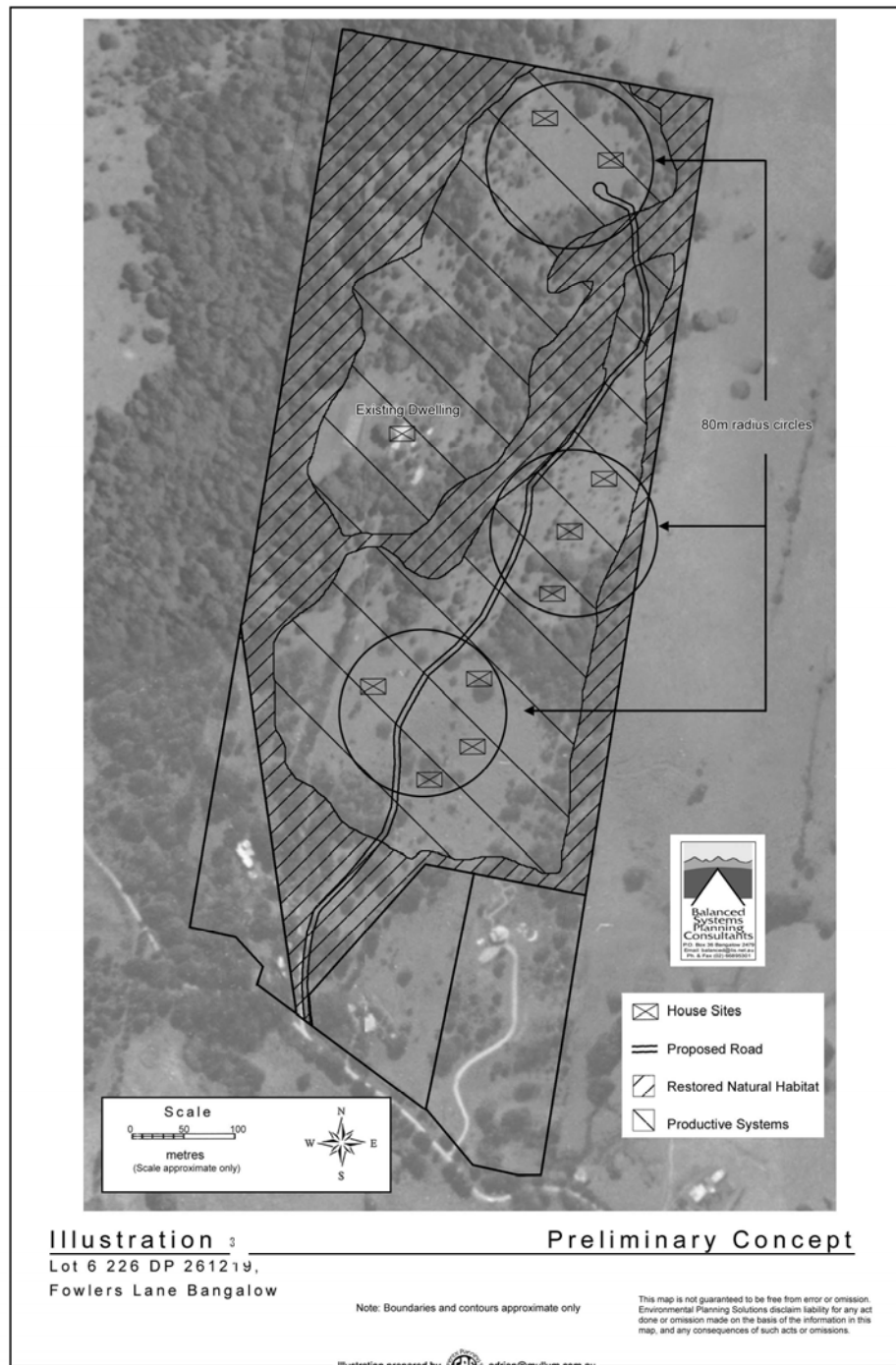
The objectives are:

- to enable rural community title settlement creating 10 rural living lots and a neighbourhood lot providing for ecological restoration and productive agricultural systems

2.2 Outcomes

The outcomes of the rezoning which will allow for implementation of the site concept within Illustration 3 will include:

- Implementing the Council facilitated LAMP for Fowlers Lane
- A settlement pattern consistent with the immediate locality which already has three existing community title subdivisions
- Provision of rural housing opportunities in accordance with the Best Practice Guidelines and Performance Standards within the Byron Rural Settlement Strategy
- Environmental enhancement of the site in accordance with the Best Practice Guidelines and Performance Standards within the Byron Rural Settlement Strategy
- Provision of S94 road upgrading to contribute to the remaining upgrading needs of Fowlers Lane



Planning Proposal

3 Explanation of provisions in local plan

Clause 29 of the Byron LEP allows certain additional development, being that described in Schedule 8, to become permissible with the consent of Council.

Therefore, the following is to be included within Schedule 8 of the LEP:

Lot 6, DP 261219, Fowlers Lane, Bangalow, in the local government area of Byron as shown edged heavy black on the map marked "Byron Local Environmental Plan 1988 (Amendment No xx)", for the purpose of a community title (village catchment) settlement that complies with the provisions of section 6.3 of the *Byron Rural Settlement Strategy 1998* adopted by the council, as in force at the commencement of *Byron Local Environmental Plan 1988 (Amendment No xxx)*, but only if the council is satisfied that:

- (i) the land is to be subdivided under the *Community Land Development Act 1989* to create a neighbourhood scheme that includes no more than 10 neighbourhood lots and one lot that is neighbourhood property, and
- (ii) no more than one dwelling is to be erected on each of the neighbourhood lots, and
- (iii) no part of the property is to be developed for the purpose of holiday cabins or tourist facilities, and
- (iv) use and development of the land is in accordance with a neighbourhood management statement that includes provision for environmental management and enhancement,

4 Justifications for objectives, outcomes & provisions

4.1 Need for planning proposal

The need for the Planning Proposal arises as Council has a responsibility under the Far North Coast Regional FNCRS 2006 - 31 to provide for future settlement within the shire. The timetable for implementing the Local Growth Management Strategy (LGMS) and new shirewide LEP is unclear as the LGMS has not yet commenced and the new LEP has experienced delays.

4.1.1 Previous strategic studies

This Planning Proposal is a not a direct result of any strategic study or report. The proposal is considered infill development amongst the three properties rezoned for rural settlement purposes within recent years.

Council undertook a LAMP process with the local Fowlers Lane community which resulted in the following summary:

Fowlers Lane LAMP Summary

Encourages Ecologically Sustainable Development which retains the rural character of the area, increases agricultural productivity through better land use methods, protects native flora and fauna as well as improving creeks and waterways.

4.1.2 Achieving objectives, outcomes & alternatives

The objectives and intended outcomes of the Planning Proposal are best achieved by amending the LEP 1988 so that the future use and conservation of the land can be resolved now.

The type and content of the amendment is a well used format utilised by Council and the DoP for similar rural settlement proposals already implemented.

4.1.3 Community benefits

The community benefits resulting from progressing the Planning Proposal include:

- Locating needed rural housing opportunities in a suitable location which the settlement pattern is already characterised by this form of settlement
- Assists the completion of the upgrading of the local road system which commenced with contributions from the already implemented rural settlement
- Results in positive social and economic impacts in the same manner as evidenced by the implementation of similar concepts on adjoining lands. Such positive impacts include increased housing and lifestyle opportunities, resident involvement in ecological restoration and food production, strengthening social cohesion and revitalisation of local community facilities.

4.2 Relationship to strategic planning framework

4.2.1 Regional strategy

The Far North Coast Regional FNCRS 2006 - 31 (FNCRS 2006 - 31) is the regional strategy applicable to the land. The Strategy consolidates and builds on the previous regional strategy and for the rural areas of the shire, the Byron Rural Settlement Strategy 1998 (BRSS).

The rezoning of the land is not inconsistent with the intent of the Far North Coast Regional FNCRS 2006 - 31.

4.2.2 Local strategic plans

The Byron Rural Settlement Strategy 1998 (BRSS) was introduced in 1998 some 12 years ago. The BRSS was to be reviewed after five years but the required review was progressively delayed. The Council has now determined that rural settlement will be contained within the yet to be commenced Local Growth Management Strategy. No firm timetable for completion of this document is known.

4.2.3 State environmental planning policies

A number of State Environmental Planning Policies (SEPPs) apply to the land. The following identifies each of the key Policies and makes brief comment in regards to each.

- *SEPP 14 Coastal Wetlands*

There are no identified SEPP 14 wetlands on or near the site which is located on the elevated hinterland plateau.

- *SEPP 26 Littoral Rainforests*

There are no identified SEPP 26 littoral rainforests on the site which is located on the elevated hinterland plateau.

- *SEPP 44 Koala Habitat Protection*

The land is subject to the provisions of the Policy as the land is greater than 1ha in area. The land does not contain potential koala habitat as not more than 15% of the trees are listed koala food trees.

- *SEPP 55 Remediation of Land*

The land has been used for rural lifestyle purposes for the past 35 years. A preliminary land contamination assessment will need to be undertaken and approved at the time development is proposed on the rezoned land.

- *North Coast Regional Environmental Plan (NCREP)*

The NCREP, now a deemed SEPP, specifies objectives and directions on a range of matters to be met and undertaken by Councils when preparing local environmental plans and considering development applications.

Relevant provisions of the REP which apply when considering this planning proposal on the subject site have been assessed. The application is considered consistent with the REP as the proposal results in the protection and improvement of agricultural land, enhances the ecological systems of the site and provides housing opportunities in a suitable manner.

- *SEPP Rural Lands 2008*

The Planning Proposal reflects an integrated concept, in accordance with the provisions of the Byron Rural Settlement Strategy, incorporating rural settlement, ecological enhancement and agricultural uses, and as such is consistent with the Rural Planning Principles of this SEPP and also the Byron Sustainable Agriculture Strategy.

4.2.4 Ministerial directions

A number of Ministerial Directions made under Section 117 of the Environmental Planning and Assessment Act 1979 apply to the proposal. The following identifies each of the key Directions which are relevant to the land and Planning Proposal and makes brief comment in regards to each.

- *Direction 1.2 - Rural Zones*

The objective of this direction is to protect the agricultural production value of rural land. The land subject to this Planning Proposal is mapped as State and Regional Significance farmland. The mapping is clearly flawed in the circumstances of this site which is characterised by slopes not suitable for cropping, significant rock coverage and infestation with camphor laurel (an environmental weed). Refer to letter within Appendix A. The inconsistency with the Direction in the circumstances of this property is clearly justified and is in accordance with Clause 5 (d) of the Direction.

- *Direction 1.5 - Rural Lands*

The objectives of this direction are to:

- (a) protect the agricultural production value of rural land,
- (b) facilitate the orderly and economic development of rural lands for rural and related purposes.

The proposal is consistent with the objectives of SEPP Rural Lands as addressed in section 4.2.3 above. The inconsistency with the Direction in the circumstances of this property is clearly justified and is in accordance with Clause 6 (b) of the Direction.

- *Direction 4.4 - Planning for Bushfire Protection*

The objectives of this direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- (b) to encourage sound management of bush fire prone areas.

The land has been identified as containing bushfire prone vegetation. Management of development in bushfire prone land is subject to existing provisions of Section 79BA of the Environmental Planning and Assessment Act 1979 and Section 100B of the Rural Fires Act 1997. The proposal is able to achieve consistency with the bushfire management criteria listed in Clause 6 of the Direction and *Planning for Bushfire Protection 2006*. Council is to consult with the Commissioner of the NSW Rural Fire Service as part of the assessment of the Planning Proposal.

- *Direction 5.1 - Implementation of Regional Strategies*

The land area proposed to be rezoned is infill and too small to be specifically identified as land on the Housing Map of the FNCRS 2006 - 31. The rezoning of the land is not inconsistent with the overall intent of the Strategy 2006 – 31 and is of minor significance and achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

- *Direction 5.3 - Farmland of State and Regional Significance on the NSW Far North Coast*

The objectives of this direction are:

- (a) to ensure that the best agricultural land will be available for current and future generations to grow food and fibre,
- (b) to provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning, and
- (c) to reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas.

The Planning Proposal reflects a minor infill development located between existing rural settlement and is considered to achieve the overall intent of the regional strategy and is also not inconsistent with Section 4 of the report titled Northern Rivers Farmland Protection Project – Final Recommendations, February 2005

- *Direction 6.1 - Approval and Referral Requirements*

The proposed rezoning of the land does not seek to any additional approval and referral requirements or change the LEP 1988 other than the an addition to schedule 8. The Planning Proposal is consistent with the Direction.

- *Direction 6.3 - Site Specific Provisions*

The Planning Proposal is considered consistent with the Direction and reflects Council's and the DoP's standard LEP amendment practice for this type of development.

4.3 Environmental social and economic impact

4.3.1 Critical habitat, threatened species

The Planning Proposal reflects an integrated concept which reserves and protects the limited areas of the site containing ecological values and locates dwelling sites and associated infrastructure on parts of the site with no ecological values. In this context there is little likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal. Ecological studies and assessment will need to be undertaken and assessed at the time subdivision is proposed on the rezoned land.

4.3.2 Environmental effects and management

The key possible environmental effects of the use of the land by implementing the concept within Illustration 3 comprising the proposed mix of rural settlement, ecological enhancement and agricultural purposes are as follows:

- *Ecological impacts and enhancement*

An ecological assessment of the impacts of the proposal will need to be undertaken together with the preparation of an Environmental Enhancement Plan addressing the relevant BRSS Performance Criteria at the time of development application. The concept plan as depicted within Illustration 3 protects the portions of the site with ecological values and locates any dwelling sites or associated infrastructure such as roads in areas with no ecological values.

- *Protection of water systems*

Water and wastewater assessments of the impacts of the proposal will need to be undertaken together with addressing the relevant BRSS Performance Criteria at the time of development application. The concept plan as depicted within Illustration 3 protects the riparian corridor within the site and locates dwelling sites and their wastewater management areas well away from the riparian corridor.

- *Traffic impacts*

The additional traffic generated by the proposal will result in contributions being levied which will assist towards the finalisation of the upgrading of Fowlers Lane, the local access road.

- *Bushfire management*

The proposal is able to achieve consistency with the bushfire management criteria within Planning for Bushfire Protection 2006. An assessment in accordance with PBP 2006 will be undertaken to provide the specific design criteria for the concept implementation.

4.3.3 Social and economic effects

The implementation of the concept within the proposal will result in positive social and economic impacts in the same manner as evidenced by the implementation of similar concepts on adjoining lands. Such positive impacts include increased housing and lifestyle opportunities, resident involvement in ecological restoration and food production, strengthening social cohesion and revitalisation of local community facilities.

4.4 State and Commonwealth interests

4.4.1 Public infrastructure

The primary public infrastructure is Fowlers Lane, the local road access to the site. Fowlers Lane has been partially upgraded from contributions from recent rural settlement within the immediate locality. This rezoning will contribute towards completion of the upgrading of Fowlers Lane.

The land can be serviced by electricity and telecommunication services which are available to the land.

Other public infrastructure in the form of community facilities and recreation facilities are available in nearby Bangalow. The Byron Contributions Plan provides for this proposal to contribute to such facilities.

4.4.2 State and Commonwealth consultation

This section of the Planning Proposal will be completed following consultation with State and Commonwealth agencies identified in the 'gateway exhibition and determination process'.

It is noted that the proposal is consistent with the landuse pattern likely to result from the realignment of the nearby Pacific Highway.

5 Community consultation

Community consultation within the immediate locality has previously been undertaken by a Council facilitated consultation process for this locality (refer Fowlers Lane LAMP).

A summary of the LAMP outcome is as follows as reported in the BRSS:

Encourages Ecologically Sustainable Development which retains the rural character of the area, increases agricultural productivity through better land use methods, protects native flora and fauna as well as improving creeks and waterways.

The Planning Proposal will be exhibited in accordance with the Department of Planning guidelines 'A Guide to Preparing Planning Proposals'.

References

1. Byron Shire Council. Byron Local Environmental Plan 1988, as amended.
2. Byron Shire Council. Byron Rural Settlement Strategy 1998.
3. Parsons Brinkerhoff & Byron Shire Council. Byron Local Environmental Study 2007.
4. Byron Shire Council. Draft Byron Local Environmental Plan 2008.
5. NSW Dept of Planning. Far North Coast Regional FNCRS 2006 - 31 (FNCRS 2006 - 31).
6. Department of Planning. 'A Guide to Preparing Planning Proposals' & 'A Guide to Preparing Local Environmental Plans'

Usage Note

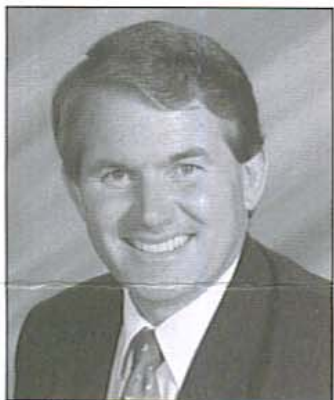
This report was prepared for the purposes and exclusive use of **R & L Henry** and is not to be used for any other purpose or by any other person or corporation.

Balanced Systems Planning Consultants accepts no responsibility for any loss or damage suffered, however so arising, to any person or corporation who may use or rely on this report for a purpose other than that described above.

The maps, development plans and exhibits shown in this report are suitable only for the purposes of this report. No reliance should be placed this information for any purpose other than for the purposes of this report.

No extract of this report may be reproduced, stored or transmitted in any form without the prior consent of **Balanced Systems Planning Consultants**.

APPENDIX A



PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY



DON PAGE, M.P.
MEMBER FOR BALLINA

OFFICE: Shop 1
7 Moon Street
Ballina NSW 2478
PHONE: (02) 6686 7522
FACSIMILE: (02) 6686 7470
MAIL: PO Box 1018
BALLINA NSW 2478
WEBSITE: www.donpage.com.au

16 September 2010

Mr G Faulkner
General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Sraeme,
Dear Mr Faulkner

I am aware that Mr and Mrs Henry of 226 Fowlers Lane, Bangalow 2479 are submitting a Planning Proposal on their property. I am also aware that under the Farmland Protection Policy (NSW) ninety percent (90%) of the property is depicted as Regionally Significant Farmland and ten percent (10%) is depicted as being State Significant Farmland.

I have personally inspected this property and regard the Farmland classification as ridiculous. As you are no doubt aware the Farmland Protection Policy is flawed in that land is classified according to soil type and does not consider slope, vegetation, etc.

A personal inspection of the Henry's property reveals it to be steeply sloping, heavily infested with large camphor laurel, covered in rocks and totally unsuited to an agricultural or horticultural pursuit except grazing a few head of cattle.

I am sure if Council personally inspects the land as I have, you will come to the same conclusion.

I invite Council to inspect the property before considering Mr and Mrs Henry's Planning Proposal.

Yours faithfully

Don Page MP
MEMBER FOR BALLINA

DP:tg