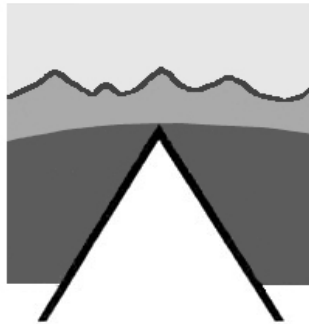


PLANNING PROPOSAL

to
Byron Shire Council
for

**Amendment to Schedule 8 of the Byron Local
Environmental Plan 1988 for the purpose of rural
community title (town catchment) settlement at Lot
4 DP 810118, 219 Saddle Road and Gulgan Road,
Mullumbimby**

by



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Illustrations

- A - Immediate Locality
- B - Constraints
- C - Preliminary Dwelling Layout

SUMMARY

The land, subject to this Planning Proposal, is Lot 4 DP 810118, a 19.3ha. rural holding within the elevated Saddle Road locality, conveniently situated between Mullumbimby and Brunswick Heads. 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 rural community title settlement creating 12 rural living lots and a neighbourhood lot providing for ecological restoration and productive agricultural systems

- **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 (town 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 implementation of the BRSS, over the past 12 years has not yielded the anticipated supply of rural housing opportunities. The BRSS has been placed on hold to be replaced by the forthcoming Local Growth Management Strategy. The timetable for implementing the LGMS) is unclear as the LGMS has not yet commenced.
 - 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

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



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Illustration A
THE IMMEDIATE LOCALITY

Client: Saddle Road Project
Property: 219 Saddle Road, Mullumbimby
Project: Land capability assessment Date: 15.08.06

Cadastre:- Department of Lands 2003
Contours:- Land & Property Information 1989
Aerial Photograph:- Department of Lands 2003

map production by www.geoview.com.au



1 Introduction

The land, subject to this Planning Proposal, is Lot 4 DP 810118, a 19.3 ha. rural property within the elevated Saddle Road locality, conveniently situated between Mullumbimby and Brunswick Heads, as depicted within Illustration A.

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 B depicts an analysis of the site constraints, while Illustration C depicts a preliminary dwelling layout.

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

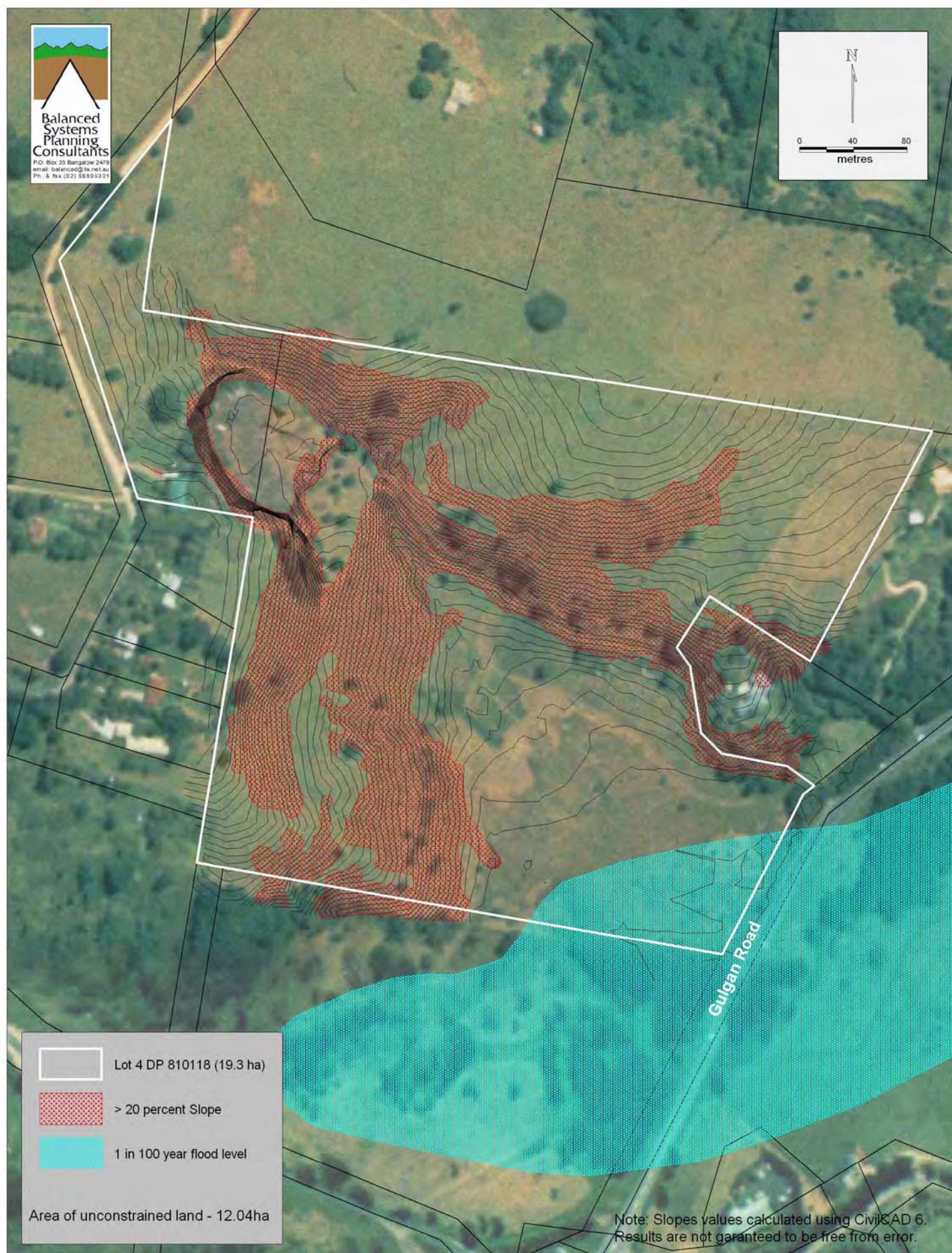
Lot 4, DP 810118, 219 Saddle Road, Mullumbimby, in the local government area of Byron as shown edged heavy black on the map marked "Byron Local Environmental Plan 1988 (Amendment No xxx)", for the purpose of a community title (town catchment) settlement that complies with the provisions of section 6.3 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 xx 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

The property is located within a locality identified within the Byron Rural Settlement Strategy 1988 as potentially suitable for rural settlement. This locality was deferred in the BRSS pending investigation for civic purposes. The investigation for civic purposes concluded the locality was not needed for civic purposes. The locality has been awaiting the strategy review which was to be undertaken in 2003. Since that time the BRSS review has been further delayed.

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.

The Council Local Growth Management Strategy Project Reference Group recently identified the property has having development potential (Council Resolution 10-667).



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Illustration C CONSTRAINTS

Client: Saddle Road Project
 Property: 219 Saddle Road, Mullumbimby
 Project: Land capability assessment. Date: 12.09.06

Cadastre:- Department of Lands 2003
 Contours:- Bill Mills 2006
 Slope: GeoView 2006
 Flood:- Byron Shire Council 2006
 Aerial Photograph:- Department of Lands 2003

map production by www.geoview.com.au



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:

- Rural housing opportunities will be realised, consistent with council's and the NSW government's obligations, 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 within the shire. 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.



- Contours (10m interval)
- Site Boundary
- Proposed Access
- Building envelopes
- Dwelling Cluster (80m)
- Buffer Planting
- Restored Wetland

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Illustration C PRELIMINARY DWELLING LAYOUT

Client: Saddle Road Project
Property: 219 Saddle Road, Mullumbimby
Project: Land capability assessment Date: 17.01.11

Cadastre:- Department of Lands 2003
Contours:- Land & Property Information 1989
Aerial Photograph:- Department of Lands 2003

map production by www.geoview.com.au



2 Proposal objectives and outcomes

2.1 Objectives

The objectives are:

- to enable rural community title settlement creating 12 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 a site concept incorporating rural settlement, ecological enhancement and sustainable agriculture will include:

- A settlement pattern consistent with the locality where rural settlement is a dominant landuse
- Provision of rural settlement in a locality where ready access is available to the shires urban centres and facilities
- 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

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, provisions, previously used by Council and similar to following are to be included within Schedule 8 of the LEP:

Lot 4, DP 810118, 219 Saddle Road, Mullumbimby, in the local government area of Byron as shown edged heavy black on the map marked "Byron Local Environmental Plan 1988 (Amendment No xxx)", for the purpose of a community title (town 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 xx 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 locality was identified for rural settlement in the BRSS and has been awaiting the review of the BRSS for some years. The BRSS is now to be replaced by the Local Growth Management Strategy (LGMS). The timetable for implementing the 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 direct result of the Byron Rural Settlement Strategy. The property is located in an area identified within the Byron Rural Settlement Strategy 1988 as potentially suitable for rural settlement. This locality was deferred in the BRSS pending investigation for civic purposes. The investigation for civic purposes concluded the locality was not needed for civic purposes. The locality has been awaiting the strategy review which was to be undertaken in 2003. Since that time the BRSS review has been further delayed.

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 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.

The property is located in an area identified within the Byron Rural Settlement Strategy 1988 as potentially suitable for rural settlement. This locality was deferred in the BRSS pending investigation for civic purposes. The investigation for civic purposes concluded the locality was not needed for civic purposes. The locality has been awaiting the strategy review which was to be undertaken in 2003. Since that time the BRSS review has been further delayed.

We also note that Council in its resolution 10-667 noted that this land was to be considered for rural living or other development purpose.

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 the site.

- *SEPP 26 Littoral Rainforests*

There are no identified SEPP 26 littoral rainforests on the site.

- *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*

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 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. Part of the land subject to this Planning Proposal is mapped as Regional Significance farmland. However the land has large areas of rock, thus making its agricultural potential restricted. The inconsistency with the Direction in the circumstances of this property is 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 4.1 - Acid sulfate Soils*

The portion of the site proposed for rural settlement is free of acid sulphate soils while a small section within the south east corner of the site is mapped as Class 3 within Byron LES map ASS-02. Management of development of acid sulphate soils is subject to existing special provisions of the LEP 1988.

- *Direction 4.3 - Flood Prone Land*

The portion of the site proposed for rural settlement is flood free while a small section within the south east corner of the site is floodprone. Management of development on flood prone land is subject to existing special provisions of the LEP 1988.

- *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.

A small portion of the site is mapped as 'buffer' on the southern side of the land. 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 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 or 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.

A portion of the site is identified as non-contiguous regional farmland. The Planning Proposal reflects a minor infill development located between existing settlements 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 site characteristics and constraints allows for 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 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 type of integrated concept to be utilised for the site will protect the portions of the site with ecological values and locate 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 type of integrated concept to be utilised will protect the riparian corridor within the site and locate dwelling sites and their wastewater management areas well away from the riparian corridor.

- *Traffic impacts*

The additional traffic generated by the proposal will not exceed the capacity of the local road system and will result in contributions being levied which will assist towards the upgrading of the local road system.

- *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 within the shire. 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

Contributions will be levied towards the upgrading of local roads. 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 Mullumbimby and Brunswick Heads. The Byron Shire 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'.

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'

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