

**Report No. 13.4      PLANNING - 26.2021.1.1 Planning Proposal  
to permit Community Title & R5 Large Lot  
Residential Development - 53 McAuleys  
Lane, Myocum**

5      **Directorate:**                      Sustainable Environment and Economy

**Report Author:**                      Steve Daniels, Project Officer - Planning Reforms  
Alex Caras, Land Use Planning Coordinator

**File No:**                                  I2021/474

10      **Summary:**

Council received a planning proposal in December 2020 to amend Byron LEP 2014. This planning proposal relates to a single lot located at 53 McAuleys Lane, Myocum, described as Lot 8 DP 589795. The objective of the Planning Proposal is to enable the future subdivision of the subject land to create a combination of large lot residential and community title lots (and the construction of future dwellings).

It is anticipated that the planning proposal would enable approximately 35 large lot residential lots in the proposed R5 Zone land, and 7 neighbourhood community title lots and 1 association property lot on the RU2 zoned land.

20      An assessment of road safety and intersection capacity found that the proposed development outcome will necessitate improvements to a section of McAuleys Lane, as well as an upgrade of the McAuleys Lane / Mullumbimby Road intersection. To ensure the necessary upgrades required to accommodate future development can be provided at no cost to the wider community, the landowner has submitted to Council a 'letter of offer' to enter into a Voluntary Planning Agreement (VPA) to fund the required works.

25      Although the majority of the site comprises cleared grazing pasture, the site also contains patches of subtropical rainforest in varying condition, freshwater wetlands and planted native and non-native vegetation including three (3) threatened flora species. Given its highly modified and disturbed condition as a whole, the site only represents marginal habitat for threatened fauna. However, the site is well positioned to improve ecological connectivity within the broader landscape through restoration of native plant communities.

The planning proposal is consistent with the Byron Rural land Use Strategy 2017 and the North Coast Regional Plan.

35      It is recommended that the submitted planning proposal be amended to include changes recommended in this report and forwarded to the Department of Planning and Environment for a Gateway Determination.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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### NOTE TO COUNCILLORS:

- 5 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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### RECOMMENDATION:

#### 10 That Council:

1. **Accept the applicant's letter of offer to enter into a Voluntary Planning Agreement (VPA) (Attachment 6 E2021/69988) with Council as part of this planning proposal and require that a draft VPA be prepared in accordance with the letter of offer.**
- 15 2. **Require that the draft VPA be placed on public exhibition concurrently with the planning proposal.**
3. **Amend the Planning Proposal (Attachment 1 E2021/72620) to reflect the recommendations contained in this report as follows:**
  - 20 a) **Reposition the northern boundary of the proposed R5 zone to ensure no encroachment within the required ecological setback areas for the riparian zone and freshwater wetland in the north of the site (i.e. 20m from the top of the stream bank or wetland edge); and**
  - b) **Make consequential amendments to the minimum lot size map and subdivision concept plan.**
- 25 4. **Forward the amended planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination.**
5. **Undertake public exhibition of the planning proposal in accordance with the Gateway determination requirements.**
- 30 6. **Consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption. Attachments:**
  - 1 26.2021.1.1 Planning Proposal - 53 McAuleys Lane Myocum\_PP-2020-4089, E2021/72620
  - 35 2 26.2021.1.1 Planning Proposal - Appendix I - 53 McAuleys Lane - Preliminary Site Investigation (SEPP 55)\_PP-2020-4089(2), E2021/72619
  - 3 26.2021.1.1 Planning Proposal - Appendix G - 53 McAuleys Lane - Onsite sewer assessment\_PP-2020-4089(2), E2021/72612
  - 4 26.2021.1.1 Planning Proposal - Appendix E - 53 McAuleys Lane Myocum - Traffic Impact Assessment\_PP-2020-4089(2), E2021/72617
  - 40

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- 5 26.2021.1.1 Planning Proposal - Appendix D - 53 McAuleys Lane Myocum - Road Safety Audit\_PP-2020-4089(2), E2021/72616
- 6 26.2021.1.1 VPA Letter of Offer\_McAuleys Lane Planning Proposal\_18 May 2021, E2021/69988
- 5 7 26.2021.1.1 Planning Proposal - Appendix H - 53 McAuleys Lane - Ecological Assessment\_PP-2020-4089(2), E2021/72613
- 8 26.2021.1.1 Planning Proposal - Appendix J - 53 McAuleys Lane - Stormwater Management Strategy Report\_PP-2020-4089(2), E2021/72615
- 9 26.2021.1.1 TIA Peer Review report - 53 McAuleys Lane\_Final April 2021, E2021/72140
- 10 10 Template - Form of Special Disclosure of Pecuniary Interest - IF YOU EDIT THIS, THE TEMPLATE IN BSC TEMPLATES MUST ALSO BE UPDATED, E2012/2815

## Report

### The Planning Proposal

5 This planning proposal (Attachment 1) relates to a single lot located at 53 McAuleys Lane, Myocum, described as Lot 8 DP 589795. The subject land:

- is generally rectangular in shape with overall dimensions of approx. 460m x 750m and area of 34.82ha
- has a frontage of 104.045m to McAuleys Lane with vehicular access being via an existing driveway
- 10 • contains a dwelling house and associated improvements/structures
- is largely cleared and contains areas of remnant vegetation

The objective of the Planning Proposal is to enable the future subdivision of the subject land to create a combination of large lot residential and community title lots (and the construction of future dwellings).

- 15 Subject to further assessment at the development application stage, it is anticipated that the planning proposal would enable approximately:
- 35 lots in the proposed [R5 Large Lot Residential](#) zone land
  - 7 neighbourhood community title lots and 1 association property lot on the existing [RU2 Rural Landscape](#) zoned land



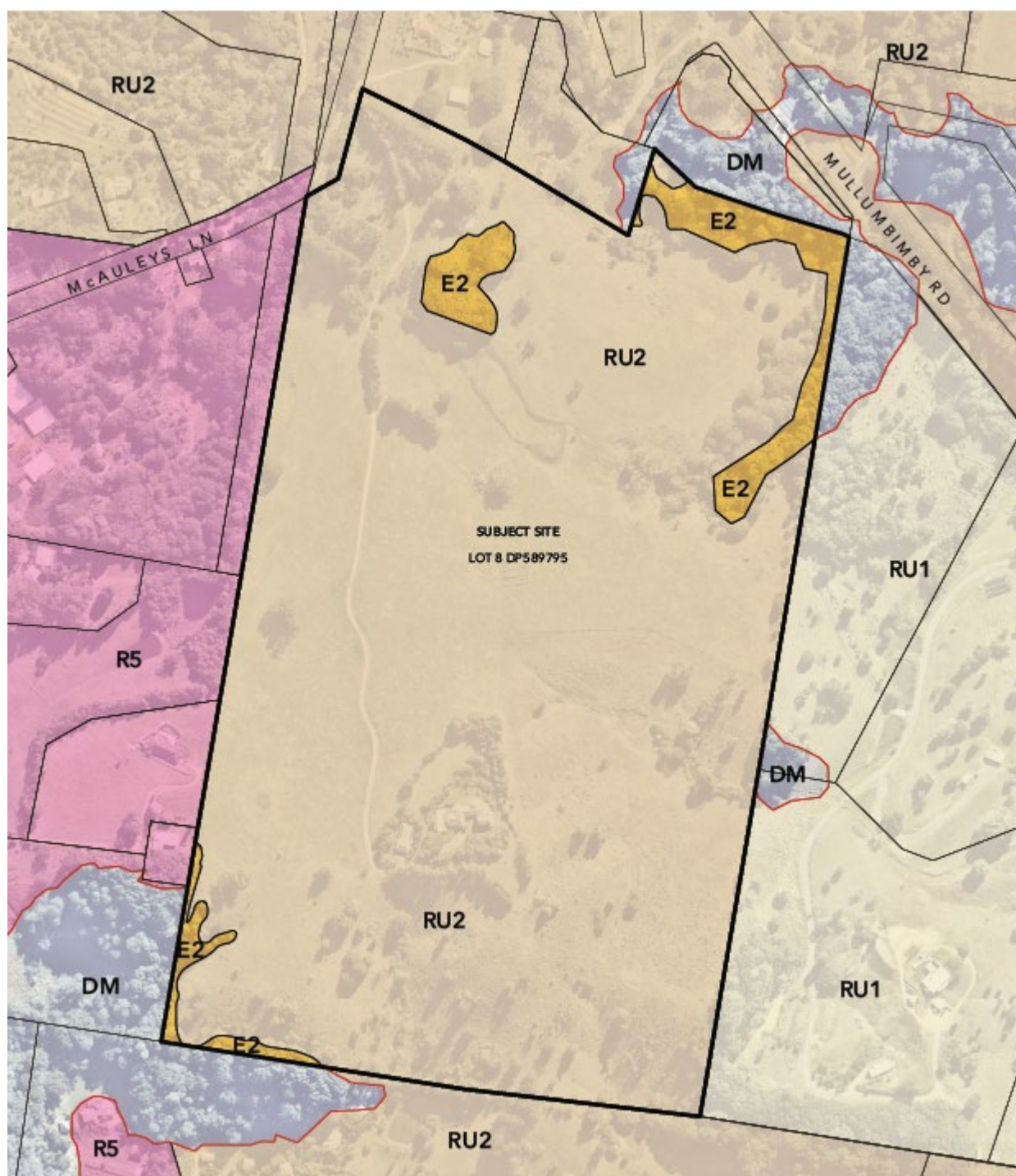
**Figure 1 – Subject Land**

Current Zones and Controls

The subject land is mapped under the BLEP 2014 as follows:

- 5
  - (Part) [RU2 – Rural Landscape Zone](#) and (Part) [E2 – Environmental Conservation Zone](#)
  - 9m maximum building height
  - 40ha minimum lot size





**Figure 2** – Current BLEP 2014 Zone Map

Proposed Zones and Controls

The planning proposal will:

- 5
  - Rezone part of the RU2 –Rural Landscape zoned land to R5 – Large Lot Residential Zone

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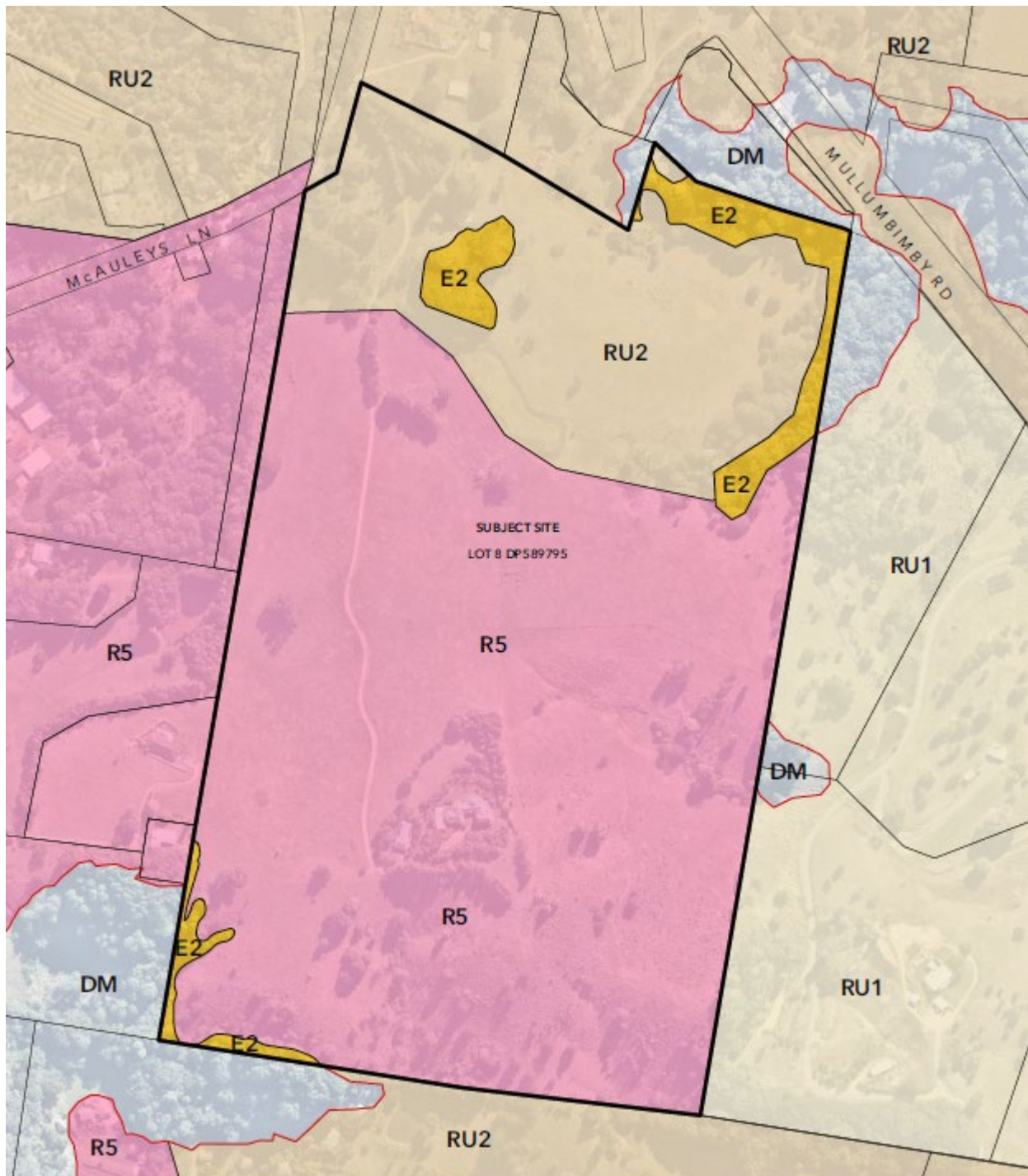
### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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- Change the existing 40ha minimum lot size for the proposed R5 zoned land to part 4000m<sup>2</sup> and part 2.5ha minimum lot size.
- Change the existing 40ha minimum lot size for the proposed RU2 zoned land (Community Title Area) to 8000m<sup>2</sup>.
- 5      • Amend the Multiple Occupancy and Community Title Map (Sheet MOC\_002) so that part of the subject land is outlined by a thick purple line and is thus able to be subdivided to create 7 x neighbourhood lots and 1 x association property lot.

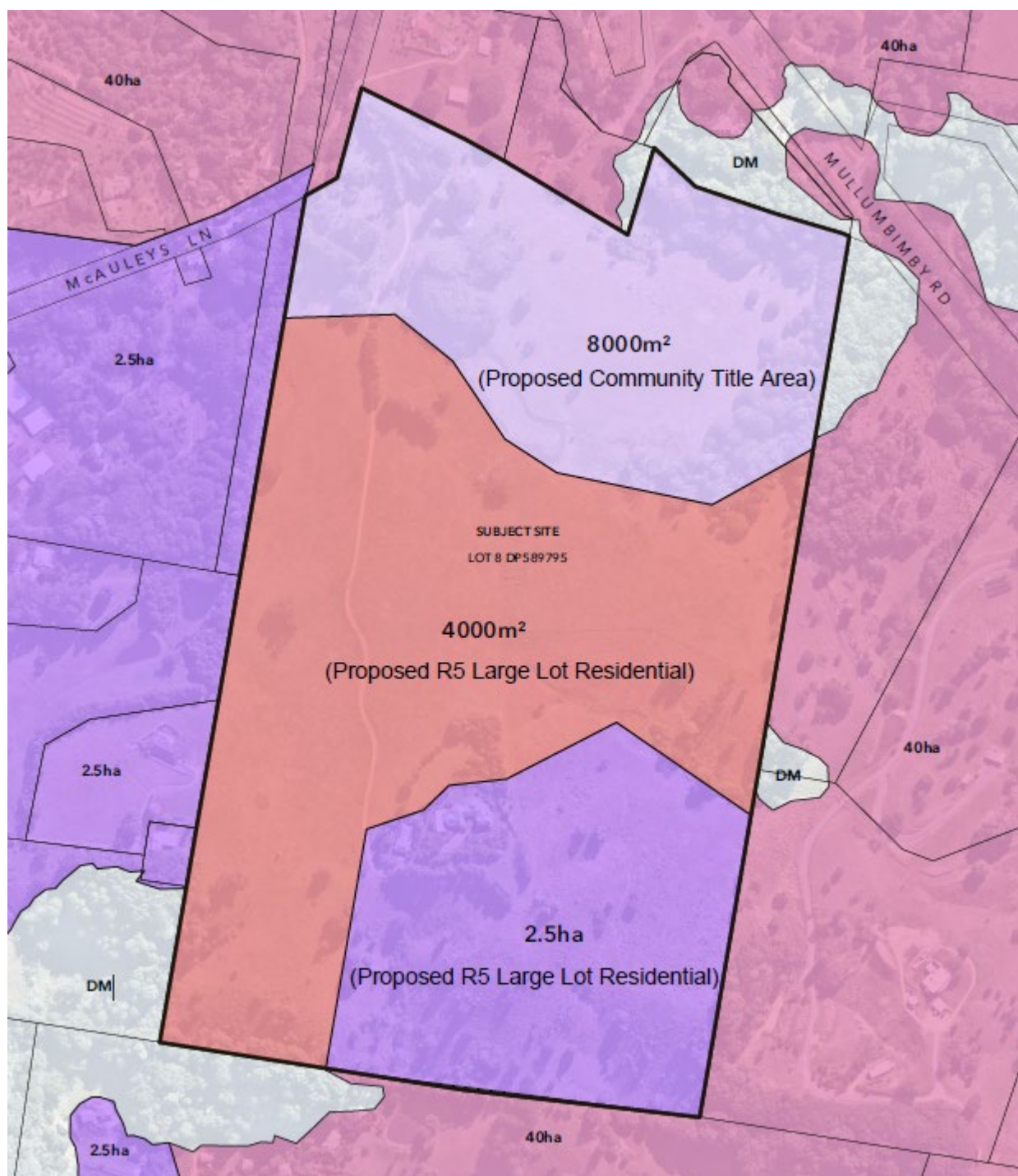
10      The proposed zone and development controls listed above are commensurate with other R5 Large Lot Residential zoned land and community title subdivisions within the rural areas of the Shire.

The planning proposal does not propose to alter the existing E2 Environmental Conservation zone boundaries or maximum building height provisions.



**Figure 3** – Proposed BLEP 2014 Zone Map





**Figure 4 – Proposed Minimum Lot Size Map**

### KEY ISSUES

- 5
- Byron Rural Land Use Strategy 2017
  - North Coast Regional Plan 2036
  - State policy and planning controls
  - Contaminated land assessment
  - Infrastructure

- Traffic Impact Assessment
- Developer Contributions & Voluntary Planning Agreement
- Ecological Assessment
- Stormwater Management & Flooding

5 **Byron Rural Land Use Strategy 2017 (RLUS)**

The [RLUS](#) was approved by the Department of Planning and Environment in June 2018 and replaced the 1998 Byron Rural Settlement Strategy.

The subject land is identified as a priority site for rural lifestyle living opportunities (Site 1) in both Table 10 and Map 3a of the RLUS.

10 **North Coast Regional Plan 2036**

Direction 24 of the North Coast Regional Plan 2036 (NCRP) relates to the delivery of well-planned rural residential housing areas and provides that:

- 15 *“New rural residential housing will not be permitted in the coastal strip, unless the land is already zoned for this purpose, or is identified in a Department endorsed current or future local growth management strategy (or rural residential land release strategy)”.*

The proposal is consistent with Action 24.1 which is to:

*Facilitate the delivery of well-planned rural residential housing areas by:*

- *identifying new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and*  
20 *Environment; and*
- *ensure that such proposals are consistent with the Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies (2007) or land release criteria (once finalised)*

25 The Planning Proposal is consistent with the provisions of the NCRP largely as a consequence of the NSW Department of Planning, Industry & Environment's endorsement of the RLUS.

**State policy and planning controls**

The planning proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs) along with relevant Section 9.1 Directions.

30 An assessment against the relevant SEPPs and 9.1 Directions is provided in the attached planning proposal (Attachment 1).

**Contaminated land assessment**

A Preliminary Contamination Report (Contaminated Site Investigation Australia Pty Ltd) has been prepared for the subject site (Attachment 2).

The Preliminary Contamination Report confirms that the subject site has a low likelihood of contamination. The investigations did not identify any evidence of previous development or activities on the site that would suggest potentially contaminated activities had taken place. Analytical results from the surface soils indicated all of the compounds tested returned concentrations that were below the adopted criteria for residential use.

Council engaged Tim Fitzroy Associates to undertake an independent review of the submitted assessment. The review concluded that there does not appear to be any impediments to approval of the planning proposal.

### Onsite Sewage Feasibility Assessment

The proponent submitted an Onsite Sewage Feasibility Assessment (see Attachment 3) which concluded that future possible on-site sewage management is feasible within a minimum 30m setback to all drainage lines. Existing cleared areas can be utilised for future possible residential development, thereby minimizing the need for removal of native vegetation. There are no absolute soil limitations which cannot be overcome by on-site sewage management design.

Council engaged Tim Fitzroy Associates to undertake an independent review of the submitted assessment. The review concluded that on-site sewage management is feasible within the proposed minimum lot sizes on the subject site.

### Infrastructure

The existing locality is connected to and serviced by a constructed public road system and reticulated electricity and telephone services. There is sufficient capacity for any proposed large residential type lots to be efficiently and economically connected to and serviced by such services. Further discussion is provided below in relation to the road network and traffic impacts of future development.

The subject land and immediate locality is not serviced by reticulated water or sewerage systems and thus any future dwelling houses would have to be serviced by on-site potable water supply (likely roof-water storage tanks) and on-site wastewater management and disposal.

### Traffic Impact Assessment

The potential site yield of 42 lots will generate an increase in traffic volumes on local roads and place additional pressure on both the Mullumbimby Road / McAuleys lane intersection and the Myocum Road / McAuleys Lane intersection. Access to the site will be from McAuleys Lane with a new internal road constructed approximately 600 metres from the Mullumbimby Road intersection.

The proponent has submitted a Traffic Impact Assessment (TIA) and Road Safety Audit (RSA) to accompany the planning proposal (see Attachments 4 & 5). To inform Council's assessment, Barker Ryan Stewart was engaged by Council to undertake an independent peer review (Attachment 9). The key issues considered were:

- Road Safety

- Road Capacity and 'Level of Service' for McAuleys Lane and Mullumbimby Rd
- Intersection Capacity

### Road Safety

- 5 Ardill Payne and Barker Ryan Stewart undertook separate road safety audits in accordance with Austroads guidelines. The identified safety issues are generally consistent between both reports, albeit with some variation regarding the associated level of risk assigned to the safety issues. The safety issues noted for McAuleys Lane could be considered typical of similar rural roads in Byron Shire (i.e. areas of narrow width, limited sight distances, concealed driveways, insufficient safety barriers and the like). Safety
- 10 issues identified for Mullumbimby Rd are largely associated with the McAuleys Lane intersection.

### Road Capacity

- 15 Road capacities and level of service impacts were assessed against RMS guidelines, with traffic volume calculations on local roads taking into account a projected traffic growth rate of 2.5% per annum to 2030. Road capacity 'levels of service' are defined by the RMS and indicate the freedom of traffic flow during peak hour periods (this is separate to the intersection capacity analysis). Traffic volume calculations found no adverse impact on the existing or future levels of service for McAuleys Lane or Mullumbimby Road.

### Intersection Capacity

- 20 The intersection capacity analysis found that the introduction of additional development traffic under existing conditions (i.e. volumes based on 2020 traffic data) would result in only a minor increase in delays at the intersection, with no change to the overall level of service rating for Mullumbimby Road or McAuleys Lane.

- 25 However, when factoring the traffic increase to 2030, the intersection capacity analysis found that commuters on McAuleys Lane would experience a significant increase in delays when turning right onto Mullumbimby Rd, and a significant reduction in level of service for McAuleys Lane. By contrast, the projected impacts for commuters on Mullumbimby Road (both directions) were considered to be minor and within acceptable limits.

These matters are described in detail in Attachments 4 & 5.

- 30 Recommended road infrastructure improvements

- 35 The Traffic Impact Assessment (Attachment 4) recommends a range of road infrastructure improvements, as detailed in Section 8 – Page 24. They include works to rectify safety concerns identified in the Road Safety Audit, as well as an upgrade to the Mullumbimby Road / McAuleys Lane intersection to address safety and capacity issues. The proposed intersection upgrade includes providing a channelised right turn lane and acceleration lane (eastbound) on Mullumbimby Road. Vehicles using this lane will then merge with traffic flowing eastbound on Mullumbimby Road.

The peer review of the Traffic Impact Assessment undertaken by Barker Ryan Stewart (BRS) concluded that the recommendations listed in the Ardill Payne report are adequate



and appropriate to cater for the increased traffic volumes (see Attachment 9). BRS provided an additional recommendation to upgrade the intersection warning signage on Mullumbimby Road to include "Advance Road Name" signs on each approach to McAuleys Lane and to include "Rural Road Name" signs on the northern side of Mullumbimby Road opposite the McAuleys Lane intersection. These signs will provide enhanced advance warning and intersection identification for drivers and assist in mitigating the impacts of the limited sight distance (westbound) and acceleration length (eastbound).

Council also notes the impact this development if it proceeds on the Saddle Road intersection on the level of safety to traffic turning left into this road. This will need to be considered at the Development Application Stage for the subdivision and if works are required at the intersection these upgrades could be offset against contributions or entirely funded by the Developer. An updated road safety audit and traffic impact assessment will need to be submitted with the Development Application addressing this matter.

### Developer Contributions & Voluntary Planning Agreement

As previously discussed, the site is identified in the Rural Land Use Strategy as a priority site for 'Rural Lifestyle Living Opportunities'. The Strategy states that the landowner:

*...must undertake an intersection 'capacity and functionality' assessment prior to commencing the rezoning process. This is necessary to determine the nature and cost of any required road intersection upgrades to accommodate future development of these sites, which must be fully funded by the respective landowners.*

The outcomes of the intersection 'capacity and functionality' assessment and the recommended infrastructure upgrades have been discussed above. In order to ensure the road infrastructure upgrades required to accommodate future development on the subject land can be provided at no cost to the wider community (in accordance with RLUS Action 19 and corresponding policy directions), the applicant has submitted a 'letter of offer' to enter into a Voluntary Planning Agreement to fund the required works (see Attachment 6).

The letter of offer precedes the drafting of a voluntary planning agreement between the landowner and Council.

#### Recommendations:

It is recommended that council accept the letter of offer and require the drafting of a voluntary planning agreement prior to public exhibition of the planning proposal. If the planning proposal progresses to public exhibition, it is recommended that the voluntary planning agreement be exhibited concurrently with the planning proposal.

### Ecological Assessment

An ecological assessment was submitted by the proponent (Attachment 7) and this was internally reviewed by Council's ecologist. The findings are summarised below.

### Flora

The majority of the site comprises cleared grazing pasture. The site also contains patches of subtropical rainforest in varying condition states, freshwater wetlands and planted native and non-native vegetation.

- 5 The disturbed subtropical rainforest on the site may represent the EEC *Lowland rainforest in the NSW North Coast and Sydney Basin Bioregions*.

### Fauna

- 10 Three (3) threatened flora species occur on the site. Freshwater wetlands on the site, although likely not representative of an EEC, likely provide some habitat value for threatened bird species. Notwithstanding, given its highly modified and disturbed condition as a whole, the site only represents marginal habitat for threatened fauna. However, the site is well positioned to improve ecological connectivity within the broader landscape through restoration of native plant communities.

Threatened species test of significance:

- 15 As per section 7.3 of the *Biodiversity Conservation Act 2016*, any future development proposal will be required to undertake a threatened species test of significance to determine whether the proposal is likely to result in a significant impact on threatened species or ecological communities. If a significant impact is likely, the development will be required to enter into the Biodiversity Offset Scheme.

### 20 Riparian and corridor values

There is a freshwater wetland area in the north of the site. According to the ecological assessment report, this has resulted from the artificial damming of a non-perennial drainage line.

### Rezoning Implications

- 25 The surrounding landscape area contains vegetated patches with broad ecological connectivity value between the coastal areas in the east and the hinterland ranges to the west, and the site's location is well positioned to improve this landscape connectivity through the carrying out of ecological restoration work. There is opportunity at the subdivision stage to restore habitat and build upon the ecological connectivity values of the  
30 broader area.

- Any future development proposal would need to address the requirements of relevant biodiversity legislation including the *Biodiversity Conservation Act 2016* and the *Environment Protection and Biodiversity Conservation Act 1999*. Importantly, any future DA would also need to be in accordance with Chapter B1 of the Byron Shire DCP 2014.  
35 For a subdivision DA, this includes the requirement that all biodiversity impacts must be avoided and minimised as well as the requirement for an in-perpetuity Biodiversity Conservation Management Plan to protect and restore the biodiversity values on the site.

- 5 With regard to the proposed rezoning, it is recommended that the northern boundary of the proposed R5 zone be repositioned to ensure that it does not encroach within the required ecological setback areas for the riparian zone and freshwater wetland in the north of the site (20m from the top of the stream bank or wetland edge). The subdivision concept plan will need to be amended to reflect the zone boundary modification. With this change incorporated into the proposal, it is likely that future development resulting from the proposed rezoning could avoid impacting the biodiversity values within the site.

Recommendation:

Reposition the northern boundary of the proposed R5 zone to ensure no encroachment within the required ecological setback areas for the riparian zone and freshwater wetland in the north of the site (i.e. 20m from the top of the stream bank or wetland edge). Make consequential changes to Minimum Lot Size Map and align the subdivision concept plan with the amended R5 zone boundary.

**Stormwater Management & Flooding**

- 10 The proponent has submitted a Stormwater Management Strategy Report (Attachment 8) and Council has undertaken a peer review. The strategy seeks to ensure that post-development stormwater flows will not cause detrimental impact onto the surrounds and downstream catchment, while at the same time improve post-development stormwater quality.

- 15 The site drains via streams within the site towards a 450mm diameter reinforced concrete pipe (RCP) under Mullumbimby Road. A key objective of the stormwater strategy is to ensure that the development of the site does not result in overtopping of stormwater on Mullumbimby Road.

- 20 Although the site is not mapped as part of the flood prone area in the latest flood study by Council, a Flood Study is still a requirement and must be undertaken for the major event of the local catchment. Establishment of flooding impacts and flood planning levels are prerequisite to stormwater management on site due to the presence of major streams traversing through the site. This can be undertaken at the DA stage in conjunction with the detailed site design.

- 25 Overall Council's internal assessment found that the objectives, outcomes and the processes discussed in the strategy will enable an effective Stormwater Management Plan for future uses of the site. No further recommendations are warranted.

**Options to Move Forward**

Options open to Council on this matter are:

- 30 1. Amend the planning proposal (Attachment 1) to reflect the recommendations contained in this report and proceed to a Gateway determination.
2. Not proceed with the planning proposal.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	OP Activity
<i>Objective 4: We manage growth and change responsibly</i>	4.1 Support the visions and aspirations of local communities through place-based planning and management	4.1.3 Manage development through a transparent and efficient assessment process	4.1.3.10 Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

### Legal/Statutory/Policy Considerations

- 5 The relevant policy considerations are addressed above and in the planning proposal attached to this report.

### Financial Considerations

- 10 If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as a landowner initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed.

If Council chooses not to proceed then the matter does not incur any additional costs.

### Consultation and Engagement.

- 15 Any future consultation and engagement will take place in accordance with a Gateway determination issued by the NSW Department of Planning Industry & Environment.