

## Report No. 13.2 Voluntary Planning Agreement (VPA) - 53 Mcauleys Lane Planning Proposal

**Directorate:** Sustainable Environment and Economy

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5 **File No:** I2022/161

### Summary:

At the 10 June 2021 Council (Planning) Meeting, Council considered a planning proposal to amend Byron LEP 2014. The planning proposal (Attachment 1 & 2) relates to a single lot located at 53 McAuleys Lane, Myocum, described as Lot 8 DP 589795 (Figure 1 below). The lot is identified in the Byron Rural Land Use Strategy as one of the "Priority sites for future rural lifestyle living opportunities".

It is anticipated that the planning proposal would enable approximately 35 large lot residential lots, 6 neighbourhood community title lots and 1 association property lot.

15 Council resolved (**21-181**) to forward the planning proposal to the NSW Department of Planning & Environment (DPE) for a Gateway determination. A Gateway determination to proceed to public exhibition was issued by the DPE on 1 November 2021.

This report seeks Council support for a draft Voluntary Planning Agreement (VPA) requiring the applicant to deliver safety upgrades to McAuleys Lane, and an upgrade of the McAuleys Lane / Mullumbimby Rd intersection. The draft VPA has been reviewed by Council's legal team and will be exhibited concurrently with the planning proposal.

The draft VPA responds to items in [Res 21-181](#), and also includes an updated concept design for the Mullumbimby Rd / McAuleys Ln intersection that improves the safety profile of this intersection.

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### RECOMMENDATION:

That Council

- 30 1. **Endorses the draft Voluntary Planning Agreement (as contained in Attachment 1 to this report) for exhibition with the corresponding planning proposal for the subject land; and**
2. **Receives a submissions report following public exhibition to consider key issues raised.**

**Attachments:**

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- 1 Template - Form of Special Disclosure of Pecuniary Interest - IF YOU EDIT THIS, THE  
TEMPLATE IN BSC TEMPLATES MUST ALSO BE UPDATED, E2012/2815
- 2 26.2021.1.1 Draft Planning Agreement - McCauleys Lane, Myocum - Draft 4.7.22,  
E2022/67967
- 5 3 26.2021.1.1 VPA letter of offer, E2021/114600
- 4 26.2021.1.1 Updated McAuleys Lane TIA submitted 23\_5\_22, E2022/48874
- 5 26.2021.1.1 McAuleys Lane Intersection Design RSA Prepared by Geolink, E2022/67766

## Report

At the 10 June 2021 Council (Planning) Meeting, Council considered a planning proposal to amend Byron LEP 2014 [Agenda of Ordinary \(Planning\) Meeting - Thursday, 10 June 2021 \(infocouncil.biz\)](#). The planning proposal relates to a single lot located at 53  
5 McAuleys Lane, Myocum, described as Lot 8 DP 589795 (Figure 1 below). The lot is identified in the [Byron Rural Land Use Strategy](#) as one of the “Priority sites for future rural lifestyle living opportunities”. The site is currently zoned RU2 Rural Landscape and C2 Environmental Conservation.

10 Council resolved ([Res 21-181](#)) to forward the planning proposal to the NSW Department of Planning & Environment (DPE) for a Gateway determination. A Gateway determination to proceed to public exhibition was issued by the DPE on 1 November 2021.

15 Following minor mapping amendments required by the Gateway determination, the planning proposal will rezone the RU2 area to R5 Large Lot Residential, with the existing C2 Environmental Conservation zones remaining unchanged. A portion of the land will also be identified on the Community Title / Multiple Occupancy map. It is anticipated that the planning proposal would enable approximately 35 large lot residential lots, 6 neighbourhood community title lots and 1 association property lot.

20 This report seeks Council support for a draft Voluntary Planning Agreement (VPA) requiring the applicant to deliver infrastructure upgrades needed to accommodate future development. This includes safety upgrades to part of McAuleys Lane, as well as an upgrade of the McAuleys Lane / Mullumbimby Rd intersection.

The landowner has submitted to Council a draft Voluntary Planning Agreement (VPA) to fund the required works (Attachment 1). The draft VPA has been reviewed by Council’s legal team and will be exhibited concurrently with the planning proposal.



Figure 1: Subject Land

## Voluntary Planning Agreement (VPA)

### What is a Voluntary Planning Agreement (VPA)?

- 5 Voluntary planning agreements are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals and development applications. They provide a way for planning authorities and developers to negotiate flexible outcomes in respect of development contributions.
- 10 Under such an agreement, the developer may be required to dedicate land, pay a monetary contribution, or provide some material benefit to be applied towards a public purpose.

It is important to note that a VPA is voluntary and cannot be imposed on the developer. It is negotiated in good faith between the developer and Council to achieve a good development outcome that meets the infrastructure requirements of Council and the community.

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In this instance, the VPA has been negotiated to provide upgrades to McAuleys Lane and the Mullumbimby Rd / McAuleys Lane Intersection.

### Council Resolution 21-181

Relevant to this report are Items 1 and 2 of Res **21-181**. These items are as follows:

5        **21-181 Resolved 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 subject to the letter of offer being amended to include:*
  - a)    *Safety upgrades to accommodate pedestrian and cycle links from the development site to Mullumbimby Road.*
  - 10        *b)    Integration of pedestrian and cycle links with the proposed McAuleys Lane / Mullumbimby Road intersection upgrade.*
  - 15        *c)    provision of a slip lane for turning into Saddle Road from Mullumbimby Road that provides better safety and access for cyclists, pedestrians, and all road users.*
2.    *Require that a draft VPA be prepared in accordance with the amended letter of offer.*

Following the above resolution:

- An amended letter of offer was submitted by the developer (Attachment 2).
- 20    •    Council worked with the developer to update the Traffic Impact Assessment and associated intersection concept plan to address the above resolution (Attachment 3).
- A road safety audit was undertaken to assess the proposed design (Attachment 4).
- A draft VPA was prepared once Council engineers were satisfied with the proposed outcome (Attachment 1).

25    Discussion of the draft VPA provisions

The following discussion explains how the draft VPA addresses the requirements of the above resolution, specifically items 1(a), (b) and (c).

30    *Item 1(a) Safety upgrades to accommodate pedestrian and cycle links from the development site to Mullumbimby Road.*

The location of the proposed cycleway connecting Mullumbimby to Brunswick Heads is yet to be determined by Council. If the Mullumbimby to Brunswick Heads cycleway alignment is not adjacent to Mullumbimby Road, it would not be practical or possible to require integration with the cycleway.

35    Therefore, the VPA provides some flexibility by giving Council the discretion to require the payment of the Cycleway Contributions in lieu of the Developer carrying out the Cycle Path Works.



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*Item 1(b) Integration of pedestrian and cycle links with the proposed McAuleys Lane / Mullumbimby Road intersection upgrade.*

As noted above, the location of the proposed cycleway connecting Mullumbimby to Brunswick Heads is yet to be determined. It is therefore not possible to produce a detailed concept design that includes the cycleway integration with the intersection. However, the intersection concept design appended to the VPA can be modified at the DA stage if cycleway integration with the intersection is required.

*Item 1(c) provision of a slip lane for turning into Saddle Road from Mullumbimby Road that provides better safety and access for cyclists, pedestrians, and all road users.*

An engineering review of this requirement found that the provision of a slip lane in this location would diminish the line-of-sight for vehicles exiting Saddle Rd. This would have a negative effect on road safety and has therefore not been included in the VPA.

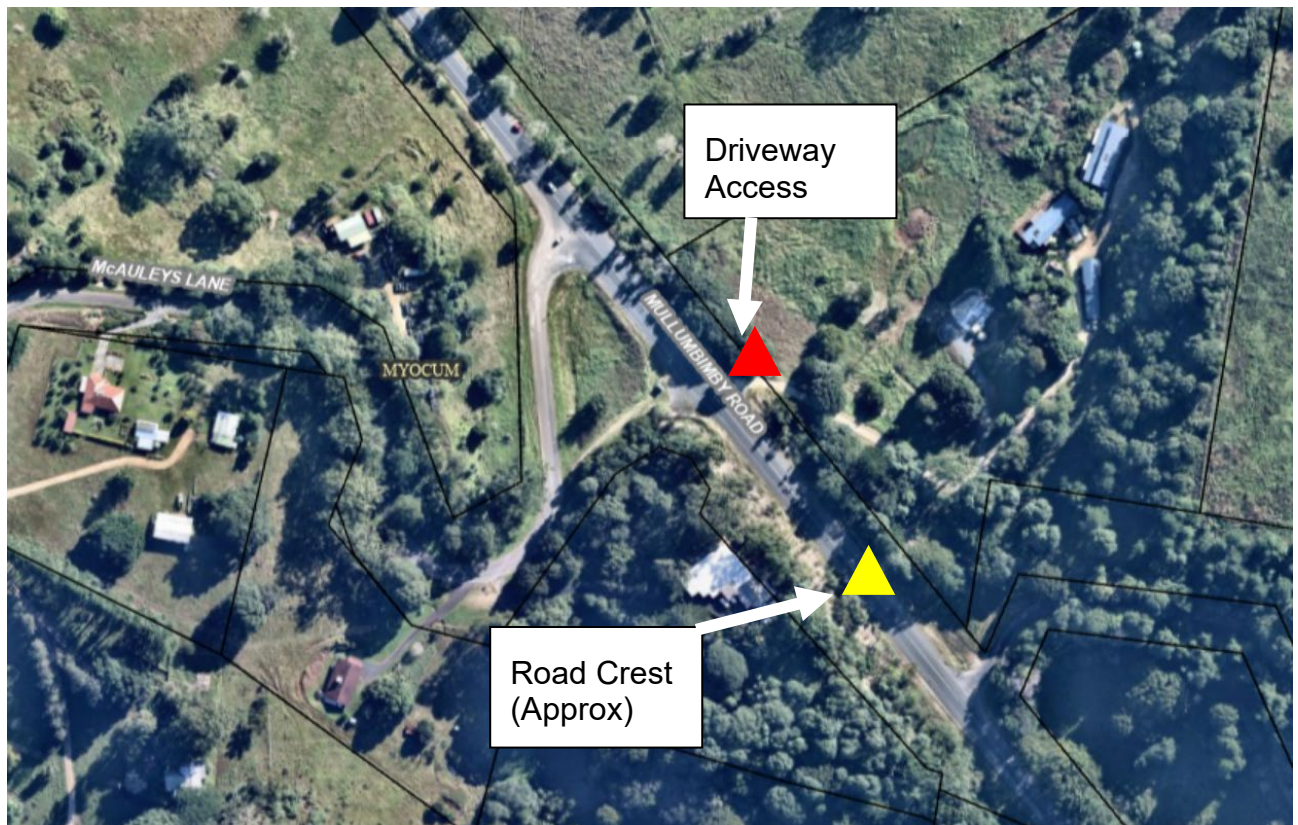
The updated concept plan (Appendix A in Attachment 4) for the intersection instead provides for curb delineation at Saddle Rd making it clear where vehicles are to perform a turn. This will improve the line-of-site issue and overall safety at the intersection.

### **Additional Changes to the Intersection Concept Design**

Refer to updated Intersection Concept Design (Appendix A in Attachment 4)

#### Driveway access at 110 Mullumbimby Rd

Further to addressing the requirements in the above resolution, Council engineers became aware of significant safety issues related to driveway access at 110 Mullumbimby Rd that had not been given adequate consideration when the intersection concept design was initially drafted. The location of the driveway is shown below in Figure 2.



**Figure 2: Location of Driveway Access – 110 Mullumbimby Rd**

The GeoLink Road Safety Audit found that:

- 5 *The site visit revealed significant safety issues associated with the proximity of the crest on Mullumbimby Road to the driveway providing access to No. 110 Mullumbimby Road. Although there is sufficient sight distance available to the right (northwest), the crest severely limits sight distance to the left (southeast).*

*The measures to prevent right turns in or out of this driveway proposed in the concept design remove the exposure to this hazard.*

- 10 Preventing right turns in and out of the driveway means that driveway users heading west along Mullumbimby Rd towards Mullumbimby, will need to perform a U-turn at McAuleys Lane to access the driveway. Similarly, vehicles leaving the driveway that want to travel into Mullumbimby will need to perform a U-turn at the fruit shop road reserve on Mullumbimby Rd, or at the Gulgan Rd / Mullumbimby Rd intersection.
- 15 This constitutes a minor inconvenience for users of the driveway; however, it will significantly improve safety conditions for all road users. Preliminary discussions have been held with the landowner at 110 Mullumbimby Rd and they will be further engaged during the public exhibition process.

## Recommendation

- 5 Council engineers and planning staff have worked with the developer to update the intersection concept design and prepare a voluntary planning agreement that provides the option for Council to levy contributions for cycleway integration (i.e., depending on location of the proposed cycleway connecting Mullumbimby to Brunswick Heads).

It is recommended that Council endorse the draft VPA and place the draft VPA on exhibition concurrently with the planning proposal.

## Next steps

- 10 Following exhibition of the draft VPA and planning proposal, a submission report will be prepared for Council's consideration.

## 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

## Recent Resolutions

- Res 21-181

## 15 Legal/Statutory/Policy Considerations

The relevant policy considerations are addressed above and in the draft Voluntary planning Agreement attached to this report.

## Financial Considerations

- 20 If Council chooses to proceed with the voluntary planning agreement, it will be at the proponent's expense as part of a landowner-initiated planning proposal.

## Consultation and Engagement

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