

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PSNTH-285 DA 10.2023.454.1
PROPOSAL	<p>Community Title rural residential subdivision, creating 38 neighbourhood lots and 1 common property lot.</p> <p>Construction of private infrastructure in the form of internal roads servicing the neighbourhood lots and associated drainage works.</p> <p>Construction of a community building, tennis courts and associated works.</p> <p>Construction of upgrades to the intersection of Mullumbimby Road and McAuleys Lane.</p>
ADDRESS	Lot 8 DP589795, 53 McAuleys Lane, Myocum
APPLICANT	Mr Dwayne Roberts, Ardill Payne & Partners
OWNER	McAuleys No 1 Pty Ltd
DA LODGEMENT DATE	12 December 2023
APPLICATION TYPE	Development application - Integrated
REGIONALLY SIGNIFICANT CRITERIA	<p>Clause 8 (1) (c), Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Coastal Subdivision</p> <p>1) <i>Development within the coastal zone for the purposes of subdivision of the following kind -</i></p> <p>c) <i>Subdivision of land for rural-residential purposes into more than 25 lots, if the land-</i></p> <p>i. <i>is not in the metropolitan coastal zone, or</i></p> <p>ii. <i>is wholly or partly in a sensitive coastal location</i></p> <p>The north-west corner of the property is mapped within the Coastal Environment Area under SEPP (Resilience & Hazards) 2021. The site is therefore in the Coastal Zone. It proposes more than 25 lots for rural-residential purposes and is not located in the metropolitan coastal zone.</p>
CIV	\$2,996,672 (excluding GST)

CLAUSE 4.6 REQUESTS	None
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • Byron Local Environmental Plan 2014 • Byron Development Control Plan 2014
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>Initial Exhibition Period (11-24 Jan 2024):</p> <p>65</p> <p>64 objecting; 1 in support</p> <p>Key Issues:</p> <ul style="list-style-type: none"> • Traffic – McAuleys Lane and intersection with Mullumbimby Road • Biodiversity • Stormwater • Local character <p>Second Exhibition Period (9 April – 19 May 2025)</p> <p>12 Objections</p> <p>4 from people who did not provide a submission to original exhibition</p> <p>Same issues</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Statement of Environmental Effects • Subdivision Plans • Civil Design Plans • Updated Stormwater Drainage & Effluent Disposal Plan • Original Signed Planning Agreement • Draft Updated Planning Agreement • Proposed Intersection Works – McAuleys Lane & Mullumbimby Road • Traffic Impact Assessment • Road Safety Audit • Submissions to First Exhibition • Submissions to Second Exhibition

SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	18 June 2025
PLAN VERSION	5 June 2025 Version No 1
PREPARED BY	Rob van Iersel
DATE OF REPORT	5 June 2025

EXECUTIVE SUMMARY

Development Application 10.2013.454.1 (planning portal reference PAN-392122) was lodged in December 2023, seeking consent for a Community Title subdivision of land at McAuleys Lane, Myocum.

Background

Most of the site was previously zoned RU2 Rural Landscape, with smaller areas zoned C2 Environmental Conservation.

In December 2022, an LEP amendment was gazetted, rezoning the RU2 portion of the site to R5 Large Lot Residential.

The LEP amendment also involved the identification of the site on Byron LEP 2014 *Multiple Occupancy / Community Title Map*, with a maximum yield of 39 neighbourhood community title lots.

The *Minimum Lot Size Map* was not amended, retaining the 40ha minimum size for the site.

A Voluntary Planning Agreement (VPA) was entered into by the proponents and Council as part of the rezoning, primarily addressing road infrastructure upgrades required to the current intersection of McAuleys Lane and Mullumbimby Road.

The proposed subdivision

The current application seeks development consent to undertake a Community Title subdivision to create 38 x community title residential lots and 1 x community (common) lot, including the construction of private infrastructure and community facilities, which include a community building, tennis court and maintenance shed.

As originally proposed, the residential lots varied in size from 3,000m² to 9,513m², with an average area of 4,934m². The neighbourhood association lot had an area of 15.66ha.

In response to issues raised by Council regarding biodiversity and wastewater disposal, a revised subdivision plan was uploaded on 14 February 2025.

While the layout is substantially unchanged, the neighbourhood association lot size was increased to 16.36ha, with an associated decrease in lot sizes for a number of lots adjoining vegetated areas.

The largest residential lot is 9,093m², with an average residential lot size of approx. 4,748m². Where proposed lots contain existing vegetation, 'no build zones' are proposed, to be enforced by way of restrictions within the Neighbourhood Management Statement.

Effluent disposal areas for all lots would be provided outside of any no build zones.

Access is proposed by way of a new internal road network, entering off McAuleys Lane at the west of the site. Internal roads are all sealed, with 6m, 7m and 8m pavement widths with flush or layback kerbs on both sides. Turning heads are proposed at road terminations.

External works at the McAuleys Lane/ Mullumbimby Road intersection include channelisation via line marking, a raised central median and protected turning lanes and associated signage.

The existing intersection is located relatively close to a crest within Mullumbimby Road, approximately 200m to the east, raising safety concerns with westbound traffic travelling at the 80km/hr speed limit.

Council has received State Government grant funding to design and undertake safety improvements along Mullumbimby Road, from the intersection with Gulgarn Road in the east, to the edge of Mullumbimby township to the west. The limited funding will allow some improvements to road widths, drainage upgrades and pavement repair.

In relation to the intersection of McAuleys Lane and Mullumbimby Road, the design of the grant funded safety improvements includes pavement widening and line marking to introduce a left-turn deceleration lane and protected right-turn lane.

In reporting the safety improvements to Council's Local Traffic Committee, it was noted that the design sight distance issue remains at the McAuleys Lane intersection, but that the limited grant funding is not sufficient to fully solve that issue.

Given that Mullumbimby Road is a regional road, Council held discussions with Transport for NSW around the possibility of lowering the 80km/hr speed limit in this section of road, but Transport for NSW were not supportive of such a change.

The sight distance issue can be solved by moving the existing centreline of McAuleys Lane at the intersection approximately 10m to the west. This would provide sufficient sight distance to meet AUSTROADS requirements and would result in a significant improvement in safety at this intersection.

The relocation of the intersection would require the acquisition of a small area (approx. 1,000m²) of a privately-owned lot immediately west of the intersection (Lot 1 DP843530). Council's current grant funding is not sufficient to cover the cost of the acquisition of that land or the construction of the relocated intersection.

At its meeting of 12 June 2025, Council will consider a draft Planning Agreement submitted by the development which provides:

- if Development Consent is issued, Council will commence the process of acquisition of the identified portion of land in accordance with the relevant legislation;
- Council will use its best endeavours to progress and complete the acquisition process;
- the developer will pay Council for all acquisition costs, including the compensation payable to the landowner and all application/ process fees and Council's legal costs; and
- the developer to construct the intersection upgrades, including the relocation of the centreline of McAuleys Lane to achieve the compliant Safe Intersection Sight Distance.

This Planning Agreement would be revision of the existing signed agreement and would include all of the provisions originally agreed at rezoning stage.

The site

The site is located at 53 McAuleys Lane, Myocum. It is described in real property terms as Lot 8 DP589795 and has an area of 34.82ha.

The site is generally rectangular in shape, with an irregular northern boundary. The property has a depth of 717.9m on its western boundary and 649.8m on its eastern boundary. It has a width of 458.46m.

The property has a frontage of 104m to McAuleys Lane, in its north-western corner. It currently contains a rural dwelling, located in the southern part of the land and accessed via an internal driveway off McAuleys Lane. A disused second dwelling is located toward the north-western part of the property.

The highest point within the property is at approx. 70mAHD, located adjacent to the existing dwelling, with the lowest point at approx. 20-30mAHD in a gully to the south of the dwelling.

The majority of the property is at approx. 40-50mAHD.

The property is mostly cleared, with vegetation within gullies in the north-eastern and southern portions, and paddock trees and landscape plantings around the existing dwelling and in the north.

Legislation

The site is zoned part R5 Large Lot Residential and part C2 Environmental Conservation under Byron LEP 2014. As highlighted above, this zoning was applied following a landowner initiated LEP amendment process in 2022.

Subdivision of land is permissible with consent pursuant to clause 2.6 of the LEP.

Clause 4.1B of the LEP relates to rural community title developments and applies to land shown on the *Multiple Occupancy / Community Title Map*. The site is included on that map with a maximum yield of 39 neighbourhood community title lots.

The north-west corner of site is mapped as coastal environment area for the purpose of *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The application is integrated development as it proposes the subdivision of bushfire prone land for residential purposes, therefore requiring a Bushfire Safety Authority under Section 100B of the *Rural Fires Act 1997*. NSW RFS provided General Terms of Approval (GTAs) and a Bushfire Safety Authority on 5 May 2024.

The application is also integrated as it proposes some filling of waterfront land, therefore being a Controlled Activity under the *Water Management Act 2000*. The Department of Planning and Environment – Water issued General Terms of Approval on 11 July 2024.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

- Clause 4.8(2) of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* as the application is consistent with an approved koala management plan that applies to the land;
- Clauses 2.10, 2.12 & 2.13 of *State Environmental Planning Policy (Resilience and Hazards) 2021* relating to development controls for coastal management areas;
- Clause 4.6 of *State Environmental Planning Policy (Resilience and Hazards) 2021* relating to potential for contamination of land;
- Clause 4.1B of *Byron Local Environmental Plan 2014* relating to rural community title developments;
- Clause 5.16 of *Byron Local Environmental Plan 2014* relating to subdivision of land in rural zones; and

- Clause 6.2 of *Byron Local Environmental Plan 2014* relating to earthworks.

Clause 6.6 of *Byron Local Environmental Plan 2014* requires that development consent must not be granted to development unless the consent authority is satisfied that nominated services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

This includes suitable vehicle access.

In this case, the provision of suitable vehicle access to the proposed subdivision relies on Council endorsing the revised Planning Agreement, which will provide for the upgrade of the McAuleys Lane / Mullumbimby Road intersection in a way that addresses traffic safety issues.

Should the Planning Agreement be endorsed by Council at the meeting of 12 June, adequate arrangements for suitable vehicle access will be in place as required by Clause 6.6 of the LEP.

Should Council not endorse the Planning Proposal, it will not be possible to ensure that adequate arrangements for suitable vehicle access are in place.

Application process

The application was lodged in December 2023. It was referred to external agencies including WaterNSW, NSW Rural Fire Service, Department of Planning and Environment – Water, Essential Energy, Bundjalung of Byron Bay Aboriginal Corp (Arakwal) and Tweed Byron Aboriginal Land Council.

At a later date, the biodiversity assessment report was referred to Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science.

Internally, the application was referred to Council's Development Engineer, Environmental Health Officer, Consulting Ecologist, Resource Recovery Officer and Development Contributions Officer.

The application was exhibited for public comment from 11 to 24 January 2024, resulting in 64 submissions objecting to the proposal and 1 submission in support. A number of supplementary and additional submissions were received following the exhibition, all objecting to the proposal.

Traffic safety was the main reason for objection raised in the majority of submissions, primarily relating to issues at the McAuleys Lane/ Mullumbimby Road intersection. Other issues included concern regarding the increased density of dwellings in the locality, onsite sewerage management, biodiversity impacts and stormwater management.

The application has been exhibited for a second time, after an objector noted that the original exhibition notice failed to advise that the Northern Regional Planning Panel were the consent authority. The second exhibition was opportune, as there had also been a number of minor changes to the subdivision proposal to address biodiversity and effluent disposal issues.

The second exhibition also included the revised draft Planning Agreement.

It was exhibited from 9 April to 19 May 2025 and Council received a total of 12 submissions, 4 of which were from people who had not provided a submission to the initial exhibition.

Issues raised in the second exhibition generally repeated those from the previous exhibition, with some new concern regarding the draft Planning Agreement that it does not provide public benefit, only benefiting the developer.

Submissions to both exhibition contained detailed commentary on the reports and studies submitted with the application, arguing for alternate conclusions, primarily regarding traffic, biodiversity and wastewater disposal.

Council staff have reviewed these submissions as part of their assessment of the application.

The application is referred to the Northern Regional Planning Panel ('the Panel') as the development is 'regionally significant development', pursuant to Section 2.19(1) and Clause 8(1)(c) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, as the land is partially within the coastal zone, is not in the metropolitan coastal zone, and the proposal is subdivision of land for rural-residential purposes into more than 25 lots.

A briefing was held with the Panel on 17 April 2024 where key issues were discussed, including:

- Traffic and access;
- Biodiversity;
- Onsite wastewater and stormwater management; and
- Community opposition.

Key Issues

1. Traffic & Access

Issues associated with traffic, particularly in relation to the intersection of McAuleys Lane and Mullumbimby Road, were assessed in 2022 during consideration of the rezoning proposal for this site.

Traffic is of significant concern to all of the objections received.

Detailed assessment of the applicant's originally submitted concept plans for the upgrade of the McAuleys Lane / Mullumbimby Road intersection has been undertaken by Council engineers. The intersection plans have also been reviewed by consulting engineers separately engaged by Council to design safety upgrades to Mullumbimby Road.

The assessments conclude that there is inadequate safe intersection sight distance for the current posted speed of 80km/hr, due to the crest of the hill on Mullumbimby Road to the east of the intersection.

This safety risk was also flagged in the Road Safety Audit previously undertaken during the rezoning process for the site.

The risk could be addressed by reducing the 80km/hr speed limit, or lowering the crest of the hill, or by moving the centreline of McAuleys Lane at the intersection approx. 10m to the west.

Preliminary discussions with Transport for NSW indicated that a reduction of the speed zone would not be supported. Lowering of the hill would require significant and costly works, which would not be a reasonable imposition on the proponent. Council's current grant funding for Mullumbimby Road safety improvements would also not be sufficient to cover the costs of that work.

The applicant's proposal for the upgrade of the McAuleys Lane / Mullumbimby Road has therefore been amended to move the intersection to the west.

Moving the intersection would require the acquisition of approx. 1,000m² of an adjoining privately-owned property on the western side of the intersection. Preliminary discussion with the owner of that land has indicated an openness to consider the proposal for acquisition.

The grant funding currently available for the Mullumbimby Road safety upgrade project noted above is not sufficient to cover the costs of the intersection relocation and/ or land acquisition.

The situation (and timing) of the subject development application provides an opportunity for the safety upgrade for this intersection to be achieved.

Council could utilise its powers under the *Roads Act 1993* to facilitate the private land acquisition. Given this would also benefit the developer, it would be reasonable for that developer to bear the costs of the acquisition in addition to the costs associated with delivering the upgraded intersection in its relocated position.

This would address the sight distance issues and substantially improve the safety of that intersection.

As outlined above, this is the subject of the revised draft Planning Agreement, considered by Council at its meeting of 12 June 2025. At the time of drafting this report, the outcome of that meeting is not known.

The ability to adequately address traffic safety issues depends on the outcome of Council's deliberations on the draft Planning Agreement.

2. Biodiversity

Biodiversity was also subject of significant attention during the rezoning process. The (then) Biodiversity and Conservation Division (BCD) of the Department of Environment and Planning initially requested additional areas within the site be zoned C2 Environmental Conservation, but subsequently agreed that the nominated areas could be protected within association property as part of a Community Title subdivision.

A Biodiversity Development Assessment Report (BDAR) has been submitted with the application and was reviewed by Council's Consulting Ecologist. The BDAR was also sent to BCD for review and comment.

As a result of those assessments, a request for additional information was sent to the applicant in June 2024 requesting clarification of a number of matters and suggesting updates required to the BDAR.

The applicant provided an updated BDAR in response to that request on 15 November 2024 and amended the subdivision proposal to include nominated "no build zones" on a number of lots which contain native vegetation. The "no build" provision would be included as a by-law in the Neighbourhood Management Statement, so as to be binding on future owners.

The lots have been sized to ensure that adequate area is provided outside of the no build zones to provide for dwelling construction and compliant onsite effluent disposal.

Council's Consulting Ecologist is now satisfied that the BDAR is adequate.

3. Onsite Wastewater Management

Council's Environmental Health Officer raised a number of concerns regarding the location of proposed effluent disposal areas for some of the lots in proximity to watercourses, drainage lines, property boundaries, and nearby bores.

A request for further information regarding these matters was sent to the applicant.

The applicant provided a response to that request on 15 November 2024. Assessment of that information concludes that compliant onsite effluent disposal areas are available on most proposed lots, with Council's Environmental Health officer recommending the amalgamation of lots in the western part of the site to ensure that treated effluent can be

disposed of with sufficient buffer to local waterways, an adjoining dam and an adjoining groundwater bore.

Proposed Lots 36, 37 and 38 are located relatively close to the required 50m setback to a licensed groundwater bore situated upon the western lot boundary adjoining Lot 2 DP1109359. These lots also require earthworks to pipe and back fill an intermittent gully, and the disposal areas for these lots are proposed on the resulting filled portion of the lots.

To minimise impacts and ensure compliance with relevant standards, Council's Environmental Health Officer recommends that proposed Lots 36, 37 and 38 be amalgamated to create 2 lots, to maximise the separation distance between effluent disposal areas and adjoining property.

4. Community Opposition

The initial exhibition of the application generated significant community objection, primarily relating to traffic issues and the upgrades of the McAuleys Lane and Mullumbimby Road intersection.

The second exhibition resulted in an additional 12 submissions, 8 of which were from people who made submissions to the original exhibition.

A number of the submissions provided very detailed commentary of studies and reports submitted with the proposal, including consultant peer review reports on traffic and biodiversity.

The primary concerns expressed by the community reflect the key issues discussed above, with additional commentary on impacts to the character of the area and perceived deficiencies in the level of assessment and studies provided.

Conclusion

Assessment of the updated plans for the upgrade of the McAuleys Lane / Mullumbimby Road intersection indicate that the design can comply with the requirements of Chapter 31 of Austroads Guide to Road Design Part 4A, in relation to inadequate safe intersection sight distance if the centreline of McAuleys Lane at this intersection could be relocated approximately 10m to the west.

That relocation will require some land acquisition. As outlined above, Council is currently undertaking road safety upgrades along Mullumbimby Road, but the grant funding available is not enough to cover the intersection relocation and land acquisition.

A draft update to the previously endorsed Planning Agreement would provide for these works, to be funded by the developer with Council using its acquisition powers under the Roads Act to achieve the public benefit.

A report on the draft Planning Agreement was considered by Council at its Ordinary Meeting of 12 June 2025. At the time of draft this report, the outcome of the meeting is not yet known.

If the Planning Agreement is endorsed by Council, traffic safety issues can be addressed, and suitable arrangements for access will be in place, as required by Clause 6.6 of Byron LEP.

If Council choose not to endorse the Planning Agreement, adequate arrangements will not be available.

Subject to the above, assessment of the application in respect of the remaining key issues, statutory and policy matters demonstrates that the application can be supported.

Following assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, should Council endorse the Planning Agreement at the Ordinary Meeting of 12 June 2025, DA 10.2023.454.1 is recommended for approval, subject to conditions.

In the event that the Planning Agreement is not endorsed by Council at the Ordinary Meeting of 12 June 2025, DA 10.2023.454.1 is recommended for refusal as Council could not be satisfied that adequate arrangements are in place for suitable traffic access to the site.

1. THE SITE AND LOCALITY

1.1 The Site

Property Description	Lot 8 DP589795
Address	53 McAuleys Lane, Myocum
Area	32.84ha
Zoning	Part RU2 Rural Landscape, Part C2 Environmental Conservation under <i>Byron Local Environmental Plan 2014</i>
Mapped Constraints	Bushfire Prone Land – mostly Category 3 (medium risk) High Environmental Value vegetation

The site is generally rectangular in shape, with an irregular northern boundary. The property has a depth of 717.9m on its western boundary and 649.8m on its eastern boundary. It has a width of 458.46m (see **Figure 1**).

The property has a frontage of 104m to McAuleys Lane, in its north-western corner. It currently contains a rural dwelling, located in the southern part of the land and accessed via an internal driveway off McAuleys Lane. A disused second dwelling is located toward the north-western part of the property.

As shown in **Figure 2**, the highest point within the property is at approx. 70mAHD, located adjacent to the existing dwelling, with the lowest point at approx. 20-30mAHD in a gully to the south of the dwelling.

The majority of the property is at approx. 40-50mAHD.

The property is mostly cleared, with vegetation within gullies in the north-eastern and southern portions, and paddock trees and landscape plantings around the existing dwelling and in the north.

Two drainage lines, mapped as first order streams, are located in the north and west of the property.



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Figure 2: Site Topography



Landscape Planting adjacent to McAuleys Lane frontage



Existing vegetation and revegetation – north-western sector



Central sector – looking north



Central Part of the site, looking south-east toward existing dwelling

1.2 The Locality

The site is located approx. 2kms south-east of Mullumbimby, on the southern side of Mullumbimby Road.

Land in the immediate vicinity is rural-residential in nature, with a variety of lot sizes on either side of McAuleys Lane. Elsewhere in the locality, larger rural lots are common, with grazing and sugar cane in the area.

McAuleys Lane connects Mullumbimby Road, which is the main access into Mullumbimby from the Pacific Motorway and areas to the east, with Myocum Road located to the west, which connects to Coolamon Scenic Drive as a key hinterland access to Mullumbimby.

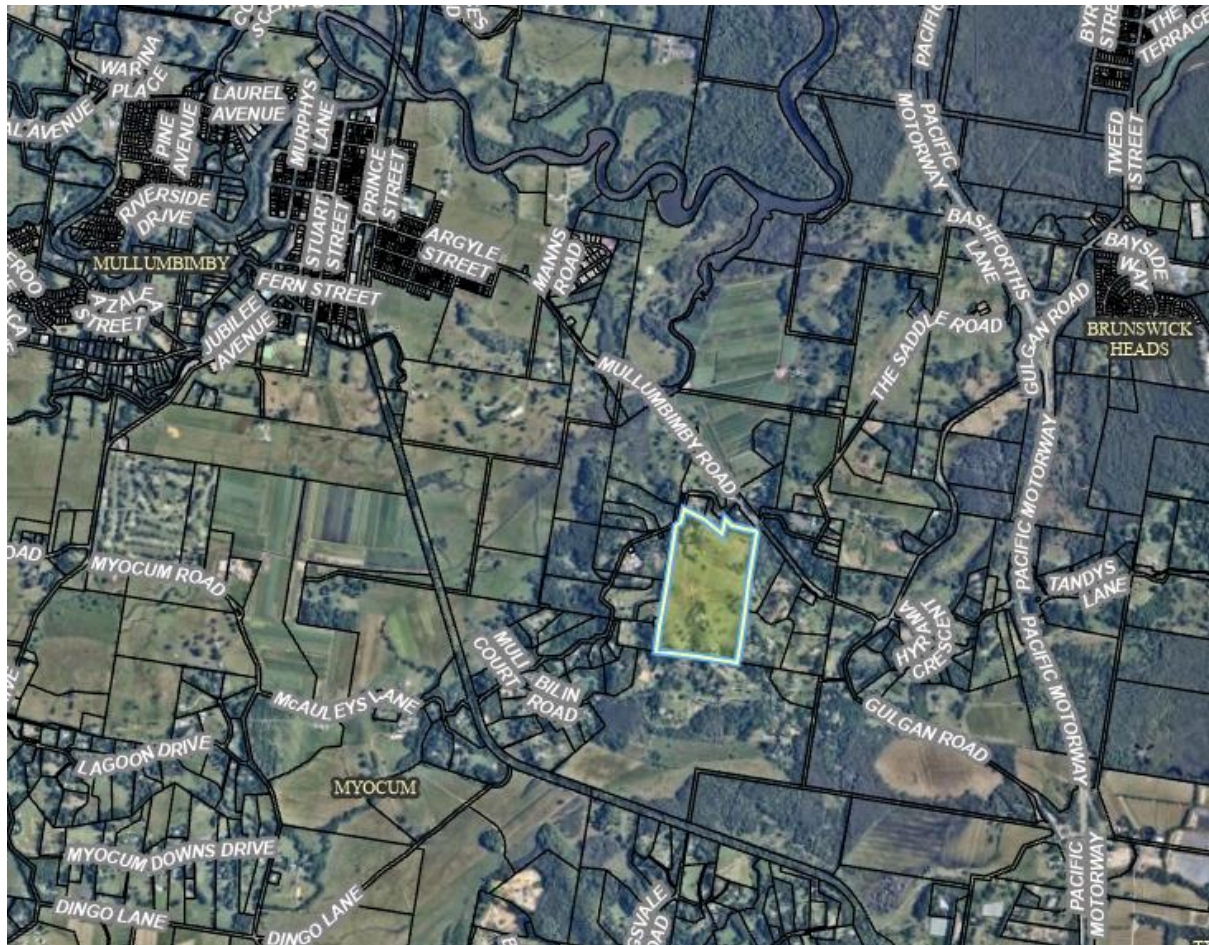


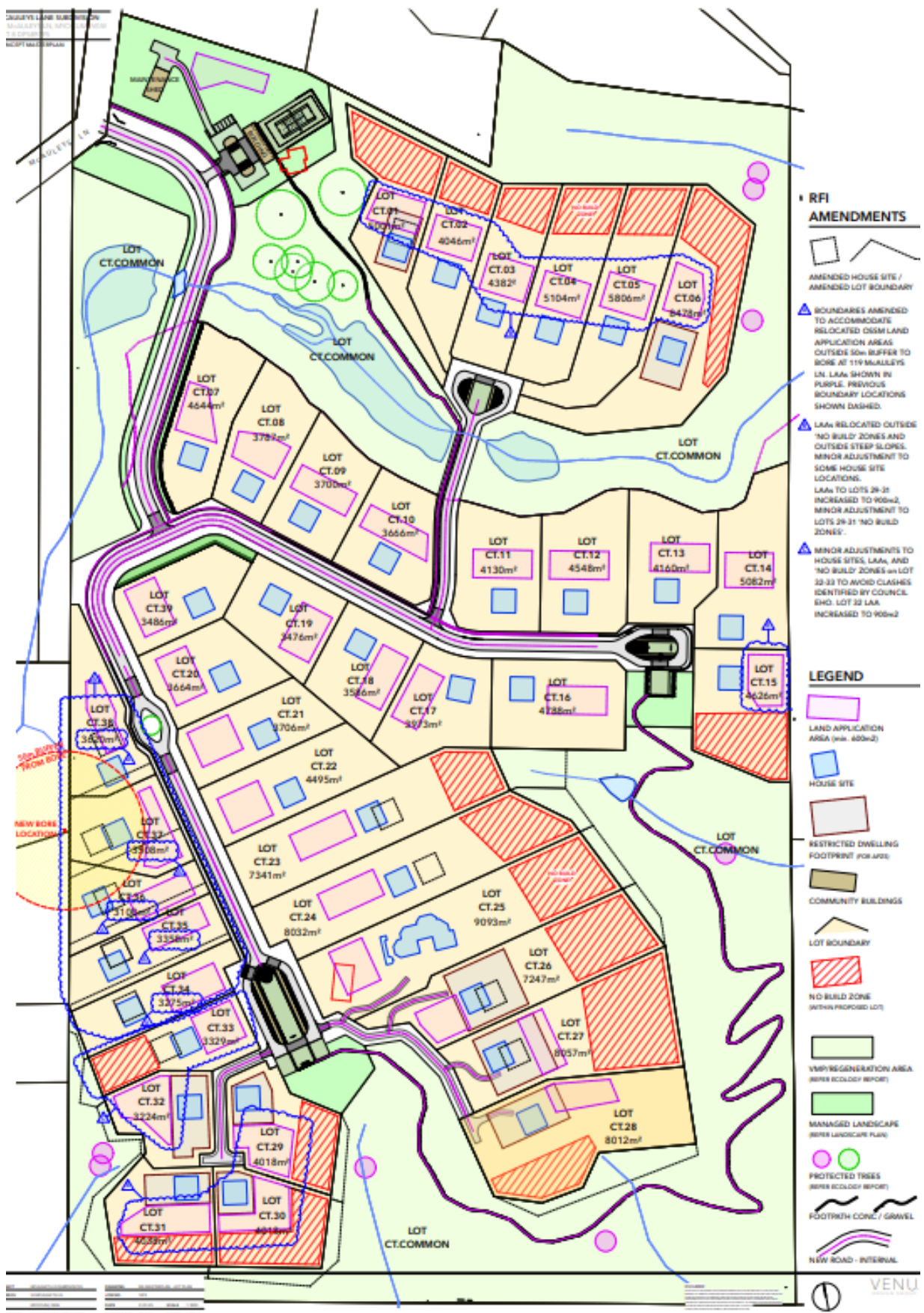
Figure 3: Site Locality

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The application seeks development consent to undertake a Community Title subdivision to create 39 x community title residential lots and 1 x community (common) lot, including the construction of private infrastructure and community facilities (including community building, tennis court and maintenance shed).

The original subdivision plan was updated in response to concerns raised by Council relating primarily to biodiversity and wastewater disposal. The updated Masterplan, submitted on 14 February 2025, is attached and shown in Figure 4 below:



The residential lots vary in size from 3,100m² to 9,093m², with an average residential lot size of approx. 4,750m². The neighbourhood association lot has an area of 16.36ha.

The existing dwelling on the site will be incorporated into one of the residential lots.

A new community building, tennis court and maintenance shed will be constructed on the north-eastern side of the entry road within the neighbourhood lot. The community building will contain an office, storeroom, toilets, and open pavilion and a multi-purpose/ yoga room, with an outdoor terrace overlooking the single tennis court.

A 20m x 10m maintenance shed is proposed within the neighbourhood lot adjacent to the McAuleys Lane frontage.

Access is proposed by way of a new internal road network, entering off McAuleys Lane at the west of the site. Internal roads are all sealed, with 6m, 7m and 8m pavement widths with flush or layback kerbs on both sides. Turning heads are proposed at road terminations.

The external works at the McAuleys Lane/ Mullumbimby Road intersection include channelisation via line marking, a raised central median and protected turning lanes as well as the relocation of the centreline of McAuleys lane at the intersection approx. 10m to the west (see attached plans).

2.2 Background

Rezoning

The majority of the site was previously zoned RU2 Rural landscape, with smaller areas zoned C2 Environmental Conservation.

In December 2022, an LEP amendment was gazetted, rezoning the RU2 portion of the site to R5 Large Lot Residential.

The LEP amendment also involved the identification of the site on Byron LEP 2014 *Multiple Occupancy / Community Title Map*, with a maximum yield of 39 neighbourhood community title lots.

The *Minimum Lot Size Map* was not amended, retaining the 40ha minimum size for the site.

A Voluntary Planning Agreement (VPA) was entered into by the proponents and Council as part of the rezoning.

The rezoning proposal was subject to detailed assessment by Council staff, independent consultants engaged by Council and State Agencies, including:

- NSW Rural Fire Service (RFS)
- NSW Department of Planning, Industry and Environment – Biodiversity and Conservation Division (BCD)
- NSW Department of Primary Industries – Agriculture
- Transport for NSW (TfNSW)
- NSW Department of Natural Resources Access Regulator (NRAR)

Key issues of concern included biodiversity and traffic, particularly in relation to the intersection of McAuley's Lane and Mullumbimby Road.

In relation to biodiversity, BCD originally recommended expanding the existing C2 zone over a number of locations within the site. They subsequently agreed that these areas could be included as common property within a Community Title arrangement, rather than by application of the C2 zone.

The subdivision as lodged, is largely consistent, with the areas nominated by BCD included within the proposed community (common) lot.

Traffic considerations largely related to upgrades required for the McAuley's Lane/ Mullumbimby Road intersection. This involved a number of requested updates to the Traffic Impact Assessment report and the submission of a Road Safety Audit of the intersection and proposed upgrades. The safety audit noted a number of high risks associated with a lack of sight distance at the intersection.

The assessment at that time resulted in approval for a concept plan and agreement around a number of safety upgrade matters to be considered, which were then the subject of the VPA.

2.3 Current Application

The current application was lodged in December 2023. **Table 1** provides a chronology of the development application since lodgement:

Table 1: Chronology of Application

Date	Event
12/12/2023	Application lodged
13/12/2023	DA referred to external agencies including WaterNSW, RFS, DPE Water, & Essential Energy
13/12/2023	DA referred internally to Development Engineer, Environmental Health, Ecologist, Resource Recovery, & Developer Contributions officers
13/12/2023	DA referred to Bundjalung of Byron Bay Aboriginal Corp (Arakwal) and Tweed Byron Aboriginal Land Council
15/12/2023	WaterNSW response – no action required from that organisation
11/01/2024 to 24/01/2024	Public Exhibition
16/02/2024	Applicant's response to submissions
06/03/2024	Essential Energy Response – no issues raised
25/03/2024	Updated stormwater design and bushfire report submitted
27/03/2024	BDAR referred to DCCEEW Biodiversity, Conservation & Science for comment
28/03/2024	DA referred to Transport for NSW
15/04/2024	Transport for NSW response
16/04/2024	Request for further information sent to applicant (see below)
17/04/2024	NSW RFS Determination – Bushfire Safety Authority & GTAs
17/04/2024	Panel Briefing
07/06/2024	DCCEEW Biodiversity, Conservation & Science response – suggest further information required
11/06/2024	Applicant response to first RFI
13/06/2024	Second request for further information sent (see below)

Date	Event
01/10/2024	Email to applicant – external traffic issues; suggest application be withdrawn
01/10/2024	Applicant response – application will not be withdrawn; points to traffic assessments approved for rezoning.
15/11/2024	Applicant response to RFI #2, including revised BDAR, revised subdivision plans, revised Bushfire Assessment Report and arborist report
19/11/2024	Revised bushfire report sent to RFS. Revised reports sent to internal Council staff.
15/02/2025	Revised Wastewater Report and revised Master Plan provided, addressing issues associated with location of on-site wastewater disposal areas.
March 2025	Discussions with applicant and Council road design consultants re options for safety improvements at McAuleys Lane / Mullumbimby Road intersection.
26/03/2025	Revised draft Planning Agreement provided – includes provisions relating to relocation of the intersection and acquisition of adjacent private land.
9/4 to 19/5/2025	Re-exhibition of application, plus exhibition of draft revised Planning Agreement.
12/06/2025	Council meeting to consider draft Planning Agreement.

Request for information #1 16/04/2024

This RFI related to traffic matters, requesting an amended Traffic Assessment based on contemporary traffic counts and an updated traffic growth rate. This followed Council's Development Engineer's assessment of the information submitted with the application.

It further requested a Landslide Susceptibility Assessment Report, which was subsequently submitted.

The applicant provided the requested traffic information in June 2024 by way of Revision 5 to the Traffic Impact Assessment report.

Request for information #2 13/06/2024

This RFI raised concerns relating to on-site sewerage management, particularly regarding the location of proposed on-site effluent disposal sites on many of the proposed lots.

It also raised issues regarding the Biodiversity Development Assessment Report (BDAR), based on the assessment of Council's Consulting Ecologist and the comments received from DCCEEW Biodiversity, Conservation & Science.

A response to this RFI was submitted on 15 November 2024.

Updated Draft Planning Agreement

There is inadequate safe intersection sight distance at the McAuleys Lane / Mullumbimby Road intersection, given the current posted speed limit of 80km/hr and the crest of a hill on Mullumbimby Road to the east of the intersection.

The risk could be addressed by reducing the 80km/hr speed limit, or lowering the crest of the hill, or by moving the centreline of McAuleys Lane at the intersection approx. 10m to the west.

Preliminary discussions with Transport for NSW indicated that a reduction of the speed zone would not be supported. Lowering of the hill would require significant and costly works, which would not be a reasonable imposition on the proponent.

The applicant's proposal for the upgrade of the McAuleys Lane / Mullumbimby Road has therefore been amended to move the intersection to the west.

Moving the intersection would require the acquisition of approx. 1,000m² of an adjoining privately-owned property on the western side of the intersection. Preliminary discussion with the owner of that land has indicated an openness to consider the proposal for acquisition.

The blackspot funding currently available for the Mullumbimby Road safety upgrade project noted above is not sufficient to enable Council to undertake the intersection relocation and/or land acquisition.

The situation (and timing) of the subject development application provides an opportunity for the safety upgrade for this intersection to be achieved.

Council could utilise its powers under the *Roads Act 1993* to facilitate the private land acquisition. Given this would also benefit the developer, it would be reasonable for that developer to bear the costs of the acquisition in addition to the costs associated with delivering the upgraded intersection in its relocated position.

This would address the sight distance issues and substantially improve the safety of that intersection.

This is the subject of the revised draft Planning Agreement, considered by Council at its meeting of 12 June 2025. At the time of drafting this report, the outcome of the meeting is not known.

The ability to relocate the intersection, as facilitated by the Planning Agreement, is fundamental to the consideration as to whether Council can be satisfied that adequate arrangements can be in place to safely provide vehicular access to the site.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
that apply to the land to which the development application relates,
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be Integrated Development (s4.46) as it requires a Bushfire Safety Authority under S100B of the *Rural Fires Act 1997*, and is a Controlled Activity pursuant to s91 of the *Water Management Act 2000*, because of filling of waterfront land.

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Byron Local Environmental Plan 2014.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 2** and considered in more detail below.

Table 2: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration / Commentary	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 2 Vegetation in non-rural areas</p> <p>Applies to land in the R5 Large Lot Residential and C2 Environmental Conservation zones.</p> <p>Some vegetation clearing is required for this development, as outlined and assessed in the Biodiversity Development Assessment Report (BDAR).</p> <p>Chapter 3: Koala Habitat Protection 2021</p> <p>Council's Byron Coast Comprehensive Management Plan is an approved koala management plan for the purposes of this SEPP. Clause 10 of the SEPP therefore applies and requires that Council's determination of the development application</p>	Y

EPI	Matters for Consideration / Commentary	Comply (Y/N)
	<p>must be consistent with the approved koala plan of management that applies to the land.</p> <p>In accordance with the approved Plan, the subject site is within the <i>South Byron Coast Koala Management Area</i> and the <i>Brunswick Heads - Tyagarah Koala Management Precinct</i>.</p> <p>There is no potential koala habitat mapped at the site of the proposed subdivision, but areas are mapped on nearby land to the west and south-west.</p> <p>The proposed works will have no direct impact on these mapped areas.</p>	
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <p>The development constitutes Regionally Significant Development, by way of Clause 8(1)(c), Schedule 6: Coastal Subdivision</p> <p><i>Development within the coastal zone for the purposes of subdivision of the following kind -</i></p> <p><i>c) Subdivision of land for rural-residential purposes into more than 25 lots, if the land-</i></p> <ul style="list-style-type: none"> <i>i. is not in the metropolitan coastal zone, or</i> <i>ii. is wholly or partly in a sensitive coastal location</i> <p>The north-west corner of the property is mapped within the Coastal Use Area under SEPP (Resilience & Hazards) 2021. The site is therefore in the Coastal Zone. It proposes more than 25 lots for rural-residential purposes and is not located in the metropolitan coastal zone.</p>	Y
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 2 Coastal Management</p> <p>The site of the proposed works is not mapped as containing littoral rainforests or coastal wetlands, nor is it mapped within proximate areas.</p> <p>The north-west corner of the site is mapped within the Coastal Environment area.</p> <p>No other areas of the site are mapped under this SEPP.</p> <p>2.10 Coastal Environment Area:</p> <p>Development must be designed to avoid an adverse impact on the coastal environmental values and natural coastal processes.</p> <p>The site is sufficiently distant from the active coastal zone such that development as</p>	Y

EPI	Matters for Consideration / Commentary	Comply (Y/N)
	<p>proposed is unlikely impact any coastal values or processes.</p> <p>Chapter 4 Remediation of Land</p> <p>A consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated.</p> <p>A Preliminary Site Assessment carried out over the property (Contaminated Site Investigation Australia, 2023) concluded that, based on a detailed site review and sampling undertaken, the site is suitable for its intended use.</p>	
<p>Byron LEP 2014</p> <p>Current site zoning shown below in Figure 5</p>	<p>Zone R5 Large Lot Residential</p> <p>Objectives are:</p> <ul style="list-style-type: none"> <i>To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.</i> <i>To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.</i> <i>To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.</i> <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> <p>C2 Environmental Conservation</p> <p>Objectives are:</p> <ul style="list-style-type: none"> <i>To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</i> <i>To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</i> 	<p>The proposal is generally consistent with the zone objectives</p>
	<p>Clause 4.1B Minimum subdivision lot size for multiple occupancy or rural community title developments</p> <p>This clause applies to land identified on the <i>Multiple Occupancy and Community Title Map</i>.</p> <p>The size of any lot may be less than the applicable minimum lot size if the total number of lots proposed does not exceed the number nominated for that land on the map.</p>	<p>The site is shown on the Map, with 39 lots indicated.</p>

EPI	Matters for Consideration / Commentary	Comply (Y/N)
	<p>Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones</p> <p>This clause applies to both R5 and C2 zones and sets out the following considerations:</p> <ul style="list-style-type: none"> (a) the existing uses and approved uses of land in the vicinity of the development, (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development, (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b), (d) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c). 	<p>The site directly adjoins a wider area zoned R5 Large Lot Residential.</p> <p>The proposed subdivision is consistent with the land uses and character of this area.</p>
	<p>Clause 6.2 Earthworks</p> <p>The clause sets out considerations applicable to applications involving earthworks.</p> <p>Some cut and fill will be required for the construction of the internal roads.</p>	<p>Earthworks on the site can be managed by way of conventional construction protection measures to ensure that there are no off-site impacts.</p>
	<p>Clause 6.6 Essential services</p> <p>Water supply can be provided to individual lots via rainwater tanks.</p> <p>Electricity supply is able to be connected to the individual lots.</p> <p>Sewage management – see commentary below.</p> <p>Stormwater can be managed on site as proposed.</p> <p>Suitable vehicle access – see commentary below.</p> <p>An <i>On-site Sewerage Capability Assessment Report</i> is submitted with the application. It concludes:</p> <p><i>The soil profiles across the site indicate that the most suitable land application method is pressurised shallow sub-surface drip irrigation (SDI) to enable effluent distribution within the Category 4/5 topsoils. Secondary effluent treatment with final disinfection via mechanical Aerated Wastewater Treatment Systems (AWTS) is therefore recommended for all lots.</i></p>	<p>On-site wastewater treatment and disposal has been demonstrated to be consistent with the relevant statutory and policy requirements, subject to the amalgamation of some lots in the western sector to achieve increase unconstrained disposal areas.</p> <p>Adequate water supply, electricity and telecommunications can be provided to the proposed lots.</p> <p>Suitable access arrangements can be provided subject to the Planning Agreement being endorsed by Council at its meeting of 12 June 2025.</p>

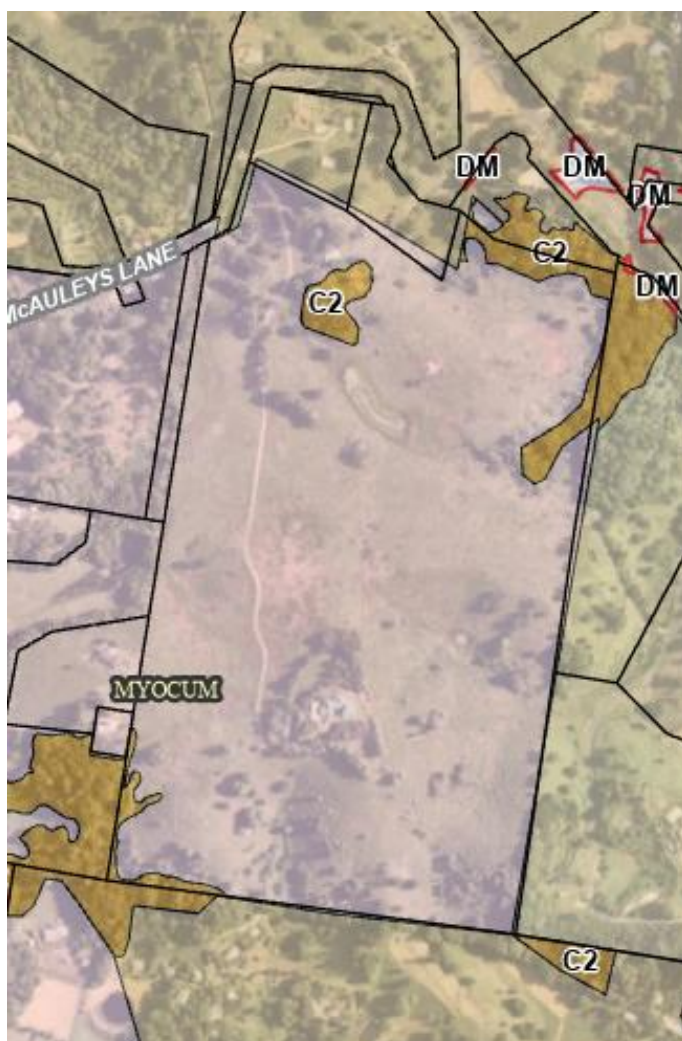


Figure 5: Zoning

Wastewater Disposal

Council staff assessment of the *On-site Sewage Management Capability Assessment* (Ref: 2023.320.01 prepared by HMC dated 3/11/2023) raised concerns regarding the proposed disposal areas for a number of lots, in relation to proximity to property boundaries, a first order stream and nearby waterways, and existing groundwater bores.

The applicant was requested to address these concerns and the potential cumulative environmental impacts of 40 effluent disposal systems on the site and downstream environments.

On-site Sewage Management Capability Report No. HMC Ref: 023.320.01 prepared by HMC Environmental Consulting Pty Ltd dated November 2023 (Revised 28/04/2025) (E2025/23616) and Wastewater Buffer Plan Ref: DWG 2023.320.2 dated 14/02/2025 (E2025/40288) demonstrate that wastewater generated by the development can be adequately managed for all proposed lots except for Lot 37.

Based on extensive assessment Lots 36, 37 and 38 were determined to be constrained relative to the required 50m setback to a licensed groundwater bore situated upon the western lot boundary adjoining Lot 2 DP1109359. These lots also required earthworks to pipe and back fill an intermittent gully, and it was proposed to locate the disposal areas upon the resulting filled portion of the allotments.

Council raised concerns as to the suitability of the compacted fill material for wastewater disposal, and in response HMC provided technical documentation dated 16/05/2025 (E2025/52828) and demonstrated that the fill is suitable for wastewater disposal.

However, the disposal area located on proposed Lot 37 is particularly constrained in that the residual extent of the lot is burdened by the required minimum 50 metre buffer to the groundwater bore and was not supported. To alleviate perceived and real constraints it is recommended that proposed Lot 37 be consolidated into Lot 36 and Lot 38. In addition, a section 88B Instrument is required across the proposed LAA on Lots 36 and 38.

To ensure that the development maximises environmental protection, the layout of each effluent land application area (LAA) must be generally in accordance On-site Sewage Management Capability Report No HMC Ref: 023.320.01 prepared by HMC Environmental Consulting Pty Ltd dated November 2023 (Revised 28/02/2025) (E2025/23616) and Wastewater Buffer Plan Ref: DWG 2023.320.2 dated 14/02/2025 (E2025/40288) and / or otherwise an alternative approach must be to Council EHOs satisfaction and approval.

Prior to the issue of a Subdivision Certificate, a Community On-site Wastewater Management Plan (the Plan) must be prepared by a suitably qualified and experienced professional for approval by Council. This overarching policy will encourage the proper management of 38 future wastewater management facilities contained within the proposed rural subdivision.

An Approval under Section 68 of the Local Government Act 1993 to install fittings and fixtures and connect drainage the approved on-site sewage management system for the proposed community building must be obtained therefore a condition has been imposed.

A potable water supply is required for the community building therefore prior to the issue of a Construction Certificate provided to the Principle Certifying Authority a Quality assurance program (or drinking water management system). The QAP must be prepared by a suitable qualified professional.

Suitable Access

The ability to provide suitable access in this case is largely dependent on being able to upgrade the existing intersection of McAuleys Lane and Mullumbimby Road, given its proximity to the site and that the majority of trips to and from the development would need to pass through this intersection.

The application as originally submitted included design plans for the upgrade of that intersection, which include an extension of the existing left deceleration/turn lane (westbound) in Mullumbimby Road and addition of a channelised right turn lane and acceleration lane (eastbound). A concept plan of the proposed intersection upgrade is shown below in **Figure 6**.

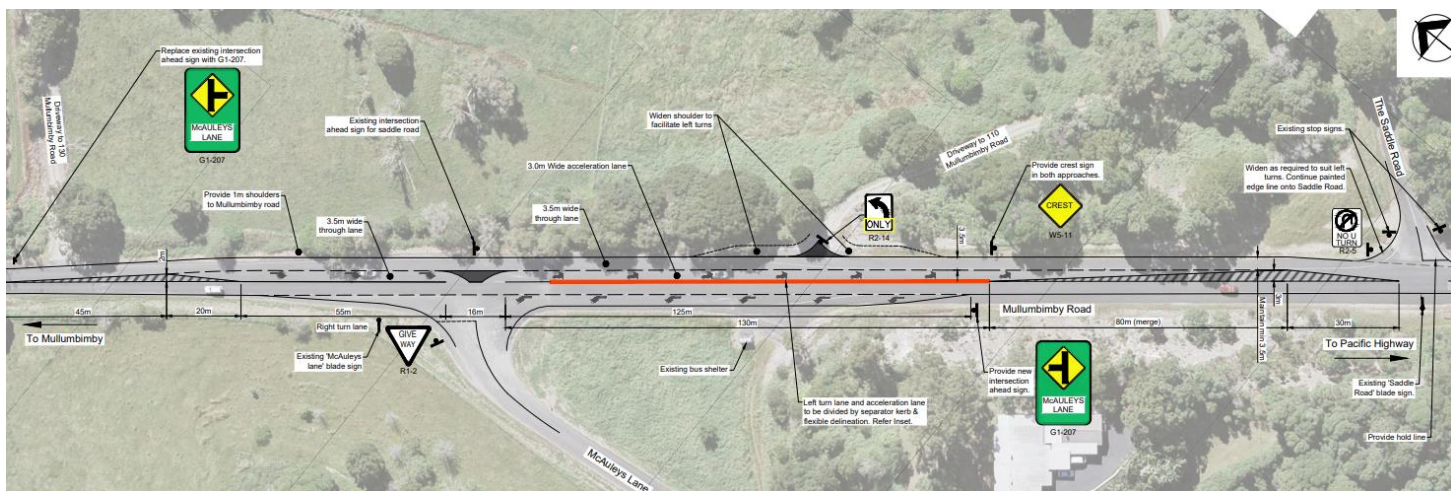


Figure 6: Original Intersection Upgrade Proposal

The concept was essentially the same as that considered as part of the site rezoning, completed in 2022.

Detailed assessment of the concept was undertaken by Council engineers and by consulting engineers separately engaged by Council to design safety upgrades to Mullumbimby Road.

The assessments concluded that there is inadequate safe intersection sight distance (SISD) for the current posted speed of 80km/hr, due to the crest of the hill on Mullumbimby Road to the east of the intersection.

The SISD standard is contained at Chapter 3.1 of Austroads Guide to Road design Part 4A, which states:

It is fundamental to the safety of intersections that drivers approaching in all traffic streams are able to:

- *recognise the presence of an intersection in time to slow down or stop in a controlled and comfortable manner*
- *see vehicles approaching in conflicting traffic streams and give way where required by law or avoid a crash in the event of a potential conflict.*

Intersection safety performance is largely dependent upon adequate sight distance in relation to both horizontal and vertical geometry for all drivers approaching and entering the intersection. Consequently, sight distance is a key consideration in the location and design of intersections.

In accordance with the relevant standard, Council's Development Engineer advises that, based on a speed limit of 80km/hr on Mullumbimby Road, an SISD of 217m is required for motorists leaving McAuleys Lane and entering onto Mullumbimby Road.

There is an existing crest within Mullumbimby Road, located approx. 208m east of the intersection, which means that this SISD standard is not met.

This presents a risk of crash, as motorists travelling west on Mullumbimby Road will not have sufficient time to recognise traffic turning out of McAuleys Lane to be able to slow or stop in a controlled manner.

This safety risk was also flagged in the Road Safety Audit previously undertaken during the rezoning process for the site (see attached).

The risk could be mitigated by:

- reducing the 80km/hr speed limit;

- physically lowering the crest of the hill; or
- relocating the centreline of McAuleys Lane at the intersection to provide the required sight distance of at least 217m.

Preliminary discussions with Transport for NSW indicate that a reduction of the speed zone would not be supported. Lowering of the hill would require significant and costly works, which would not be a reasonable imposition on the proponent.

Council has recently engaged a consultant to design safety upgrades for Mullumbimby Road, from its intersection with Gulgarn Road (east of the development site) to the township of Mullumbimby, in line with grant funding received from the State.

The draft upgrade designs include pavement repair works, shoulder widening, drainage works, and the like and also include safety improvements for the McAuleys Lane intersection, involving introduction of a left-turn deceleration lane and protected right turn lane.

The engineers advise that, while these measures will improve the safety of the intersection for current traffic, they will not resolve the site distance, stopping distance and other safety issues that currently exist at the intersection.

The improvements would not increase the available SISD and would not provide a level of safety at the intersection that would provide capacity for the additional traffic generated by the proposed subdivision.

Based on this assessment, the originally proposed intersection upgrade would not be sufficient to provide suitable access arrangements for the subdivision as proposed.

As indicated above, Council has a current State-funded project to develop a range of safety improvements to Mullumbimby Road. The level of funding is not sufficient to provide for lowering the crest in Mullumbimby Road or relocation of the McAuleys Lane intersection, but the timing of the current subdivision application provides an opportunity for Council to cooperate in facilitating a public benefit outcome that will result in the required safety upgrade.

As indicated above, relocation of the McAuleys Lane centerline will require acquisition of a small portion of a privately-owner property immediately west of the current alignment.

Council, through endorsement of the revised draft Planning Agreement, could utilise their powers under the Roads Act to facilitate the land acquisition. Given that there are no public funds available for that acquisition, and that relocation of the intersection would address the key issue associated with the proposed subdivision, it would be appropriate that the developer pay for the land acquisition as well as undertaking the intersection upgrade works.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act, that are relevant to the proposal.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Chapters with *Byron Development Control Plan 2014* are relevant to this application:

Part A Preliminary

In the dictionary to this Part, the proposed development is *community significant development*, as it is “development that will be referred under the Act to the Joint Regional Planning Panel”.

Under Section A14.5 of this Part, a proponent is required to consult with the community prior to lodging an application for community significant development, in accordance with the requirements detailed in Council's **Community Participation Plan**.

This pre-lodgement consultation was not undertaken in this case.

It is noted, however, that the previous rezoning proposal, which included a Concept Plan of subdivision very similar to the current development plan, was exhibited in September 2022. 21 submissions were received to that exhibition, most raising issues that have again been raised during exhibition of the current development application.

As outlined in this report, the current application has been exhibited twice. Council is satisfied that the local community have had ample opportunity to provide commentary of the development proposal, notwithstanding the lack of pre-lodgement consultation as required by the DCP.

Chapter B1 Biodiversity

A Biodiversity Development Assessment Report (BDAR) was submitted in support of the application, as the proposed development triggers the Biodiversity Offsets Scheme (BOS) area clearing threshold.

Council's Consulting Ecologist has reviewed the BDAR and raised a number of concerns. The report was also reviewed by officers of DCCEEW Biodiversity, Conservation & Science, who also raised a number of issues.

An updated report was received, addressing the concerns raised. Areas of native vegetation located within proposed lots will be subject to 'no build' restrictions implemented through the Neighbourhood Management Statement. The updated information demonstrates that all lots contain sufficient area to ensure that dwellings and on-site effluent disposal areas can be sited outside of the no build zones.

Council's Ecologist has reviewed the updated information and advises that the application can be supported, subject to recommended conditions.

Chapter B3 Services

On-site sewage management – see above

Stormwater – a Stormwater Management Plan is submitted in support of the application.

Electricity and telecommunications services are available.

Chapter B4 Traffic Planning

Council's Development Engineer concluded that the originally submitted proposal for the upgrade of the McAuleys Lane / Mullumbimby Road intersection could not comply with the safe intersection sight distance (SISD) required in Chapter 3.1 of Austroad Guide to Road Design Part 4A.

The lack of SISD raised significant traffic safety and efficiency issues. As outlined above, movement of the intersection approx. 10m to the west would provide the sight distance required to address these safety issues. Endorsement of the draft Planning Agreement would provide the mechanism through which that could be achieved.

Chapter D6 Subdivision

Lot size, shape & configuration:

Battle-axe lots – minimum road frontage must be 7m.

Four (4) battle-axe lots are proposed in the northern precinct; all have road frontage in excess of 7m.

Rural Community Title Subdivision:

The maximum number of lots is not to exceed the number identified on the Multiple Occupancy/ Community Title Map. The map shows 39 sites for this property.

Information to be provided:

- Water Management Plan – not provided (condition drafted)
- On-site sewage management plan – provided
- Waste management plan – provided
- Bushfire management plan – provided
- Vegetation management plan – provided
- Measures to address unauthorised dwellings – not required in this case
- Draft Neighbourhood Management Statement – provided, but does not include all matters required by the DCP – condition recommended.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

A Planning Agreement was entered into by Council and the landowner as part of the rezoning of the site.

It requires the developer to:

- pay a monetary contribution of \$202,145 (incl GST) to Council for the provision of cycle and pedestrian pathways in the local area;
- upgrade the intersection of McAuleys Lane and Mullumbimby Road in accordance with intersection plans approved as part of the site rezoning;
- provide safety upgrades in McAuleys Lane to accommodate cyclists and pedestrians between the site and Mullumbimby Road; and
- consider the following measures at detailed design stage of the intersection upgrade:
 - *the safety and infrastructure of McAuleys Lane west of the property entrance;*
 - *reducing speed limit on Mullumbimby Road;*
 - *a roundabout on Mullumbimby Road at the intersection of McAuleys Lane;*
 - *adequate road verge space to allow safe bike and pedestrian crossings from the north side of Mullumbimby Road to the southern side;*
 - *safe bus stops on each side of Mullumbimby Road, including for pedestrian crossing;*
 - *safe pedestrian crossing from the north side of Mullumbimby Road to the southern side in the vicinity of the bus stop zone.*

The points listed above arose from Council's resolution in 2022 relating to the rezoning application.

The application has not provided a specific response to these matters in the current development application.

It is noted, however, that the Planning Agreement requires these matters to be considered at detailed design stage, not necessarily at DA stage.

Notwithstanding that, some of the matters, e.g. consideration of a roundabout and a speed zone reduction, are not likely to be possible at this location. It may also be difficult to get Transport for NSW approval for a pedestrian crossing of this regional road.

As discussed above, a draft revision to the Planning Agreement was submitted by the applicant. The revision maintains the existing provisions as signed-off as part of the rezoning, and adds the following:

- if Development Consent is issued, Council will commence the process of acquisition of the identified portion of land in accordance with the relevant legislation;
- Council will use its best endeavours to progress and complete the acquisition process;
- the developer will pay Council for all acquisition costs, including the compensation payable to the landowner and all application/ process fees and Council's legal costs; and
- the developer will construct the intersection upgrades, including the relocation of the centreline of McAuleys Lane to achieve the compliant Safe Intersection Sight Distance.

Support for the proposed subdivision is dependant on Council endorsement of the draft Planning Agreement, as, without it, adequate arrangements for vehicular access to the site cannot be made.

At the time of drafting this report, the outcome of Council's deliberations regarding that draft Planning Agreement are not know (see recommendations).

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. None of the matters are relevant to the proposal.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered.

In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – the subdivision proposal is considered to be generally consistent with the context of the site in terms of lot size and land use, although the number of lots is greater than those exist locality.
- Access – safety and efficiency concerns with additional traffic at the intersection of Mullumbimby Road and McAuleys Lane can be addressed through the revised Planning Agreement, which would deliver upgrades to the existing intersection that will provide Safe Intersection Sight Distance that complies with AUSTROADS standards.
- Public Domain – the proposed development raises no significant public domain issues, outside of the access issues discussed above.

- Flora and fauna impacts – issues were raised in relation to the BDAR submitted with the application. Updates to assessment, reporting and the subdivision proposal have adequately addressed the potential for biodiversity impacts.
- Wastewater disposal – updated reporting and subdivision layout demonstrate that effluent treatment and disposal can be provided for all proposed lots in compliance with the applicable legislative and policy provisions.

Based on the information submitted with the application, and subject to endorsement of the draft Planning Agreement, it is considered that the development will not result in significant adverse impacts in the locality.

3.3 Section 4.15(1)(c) - Suitability of the site

The site itself is suitable for the subdivision as proposed, as determined through the recent rezoning of the site.

3.4 Section 4.15(1)(d) - Public Submissions

Submissions are considered in Section 4.2 of this report.

3.5 Section 4.15(1)(e) - Public interest

The subdivision is consistent with the zoning of the site and assessment has demonstrated that, subject to endorsement of the draft Planning Agreement, it will not result in significant issues. It is therefore not contrary to the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/ concurrence/ referral as required by the EP&A Act and outlined below in Table 3.

Table 3: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Integrated Development (S 4.46 of the EP&A Act)			
NSW Rural Fire Service	S100B Rural Fires Act	Bushfire Safety Authority and GTAs issued 17/04/24 Revised subdivision plan was submitted on 15 November and sent to RFS on 19 November. The final revised plans were sent to RFS on 22/03/2025. Updated Bushfire Safety Authority and GTA's issued 5 May 2025.	No
DPE Water	S91 Water Management Act	GTAs issued 11/07/24	Yes

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referrals for Commentary			
Essential Energy		No safety issues noted	Yes
Transport for NSW	Comments requested regarding works at Mullumbimby Road/ McAuleys Lane intersection	Response received 15/04/24. TfNSW entrusts Council to assess and manage traffic implications of the application.	Yes
DCCEEW, BCS	BDAR sent to Dept for comment	Response received 07/06/24, including suggestions for further information or clarification. Updated reporting addresses the issues raised.	Yes

Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined Table 4.

Table 4: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Council's Development Engineer concludes that the intersection of McAuleys Lane / Mullumbimby Road does not meet the safe intersection site distance (SISD) required in Chapter 3 of Austroads Guide to Road Design Part 4A. The lack of adequate SISD raises significant safety concerns regarding the intersection.</p> <p>Compliant SISD could only be provided by either a reduction in the current 80km/hr speed limit or by reducing the height of the existing crest in Mullumbimby Road to the east of the intersection.</p> <p>Transport for NSW preliminary advice is that a speed reduction would not be supported.</p> <p>Relocation of the intersection is supported, as this would address the remaining road safety issues.</p> <p>Issues associated with stormwater and flooding have been assessed and the proposals can be supported subject to recommended conditions.</p>	Yes
Ecologist	<p>Council's Consulting Ecologist raised a number of issues regarding the BDAR, requesting further information and clarification.</p> <p>The issues were subject of the request for further information of 13 June 2024.</p>	Yes

Officer	Comments	Resolved
	In response an updated BDAR has been submitted addressing the issues raised. Council's Consulting Ecologist is now satisfied that the application can be supported subject to recommended conditions.	
Environmental Health Officer	<p>The Officer raised a number of issues regarding the location of wastewater disposal areas on many of the lots.</p> <p>The issues were subject of the request for further information of 13 June 2024.</p> <p>Updated information, including minor design changes, have been submitted addressing the issues raised.</p> <p>Council's Environmental Health Officer is now satisfied that the application can be supported subject to recommended conditions, which include the amalgamation of proposed Lots 36, 37 & 38 to create 2 lots, in order to maximise the separation between wastewater disposal areas and adjoining properties.</p>	Yes

The issues raised by Council officers are considered in the Key Issues section of this report.

4.2 Community Consultation

Original Exhibition

The proposal was initially notified from 11 January until 24 January 2024. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties - 14 letters;
- Notification on the Council's website.

65 submissions were received: 1 in support with 64 objections. A number of objecting submissions included peer review reports addressing traffic and biodiversity.

Those reports were considered by relevant Council staff in their assessment of the proposal.

A copy of all submissions is provided as an attachment.

Issues raised in objection:

- *Traffic:*
 - *Raised median in Mullumbimby Road impacts on driveways on northern side of the road, preventing occupants from turning right to head west into Mullumbimby;*
 - *Concerns regarding capacity of Mullumbimby Road;*
 - *Safety concerns re traffic, cyclists and pedestrians;*
 - *Poor condition of McAuleys Lane, concern that future traffic on this road is underestimated and that it is used as a local short-cut, particularly in time of flood;*
 - *Traffic data used for safety assessment is out of date;*
 - *Current proposal is inconsistent with VPA agreed at rezoning;*
 - *Traffic impact assessment not updated since the rezoning, despite Council resolution to update various elements;*
 - *Traffic numbers do not consider dual occupancy / second dwellings;*

- *Intersection proposals do not consider planned cycleway between Mullumbimby and Brunswick Heads;*
- *Concern that traffic on McAuleys Lane will impact koalas and other wildlife in the area;*
- *Increased traffic on Gulgan Road/ Mullumbimby Road intersection – safety concerns;*
- *Lack of bus safe bus stop for eastbound traffic;*
- *Increased density of dwellings in the locality;*
 - *Impacts on character and amenity;*
 - *Will change the area from rural to suburban;*
- *On-site sewage management*
 - *Concerns that any sewage flows exiting individual sites would impact on downstream dams & bores, insufficient setback distances;*
 - *Assessment does not account for future secondary dwellings/ dual occupancies;*
- *Dwellings on some of the lots would protrude above the ridgeline;*
- *BDAR does not adequately address landscape ecology and wildlife corridor connectivity;*
- *BDAR does not acknowledge koala habitat in the locality and the recent planting of koala food trees on adjoining sites;*
- *Neighbourhood Management Statement does not exclude short-term holiday letting;*
- *No provision for affordable housing;*
- *Costs estimate understated (incorrect concern that Developer Contributions are calculated on stated development costs);*
- *Stormwater impacts on down stream dams (Note: stormwater design amended following exhibition to remove offsite drainage into adjoining dams);*
- *Stormwater impacts on adjoining properties;*
- *Lack of affordable housing;*
- *Potential for future dwellings to be used for STRA*

Submissions from an adjoining neighbour also included consultant peer review of traffic and biodiversity reports.

The traffic peer review highlighted concerns with the safety of the McAuleys Lane / Mullumbimby Road intersection and indicated that a roundabout would be a safer upgrade solution. The report suggested that there is sufficient space at the intersection for the construction of a roundabout.

Design consultants engaged by Council as part of the grant funded safety upgrade for Mullumbimby Road advised that they had preliminary reviews of a roundabout solution but did not pursue it as it would require a speed reduction on Mullumbimby Road, which was not supported by TfNSW.

The peer review report also suggested that some of the traffic modelling and assessment was not adequate. As indicated above, Council's Development Engineer has reviewed all of the information submitted with the application and is satisfied that the application can be supported on traffic grounds, subject to endorsement of the Planning Agreement.

The biodiversity peer review raised a number of issues with the originally submitted BDAR. As indicated above, a revised BDAR was submitted following Council officer review and Council's Consulting Ecologist concludes that it can be supported subject to conditions.

Regarding concerns around potential dual occupancy on the lots, the primary constraint to that will relate to land area for wastewater disposal.

The assessment submitted with the current application would indicate that approx. 25% of lots could have sufficient area to adequately address land irrigation requirements for two dwelling.

Any future proposals for dual occupancy on individual lots will require a development application and on-site wastewater management will be a key consideration for such applications.

For the current application, the traffic assessment has been undertaken on an assumption that second dwellings will be possible.

Regarding STRA concerns, it is noted that a 60-day cap applies in this area for any non-hosted STRA use of a dwelling. A condition is recommended to reinforce this.

Second Exhibition

The application was exhibited for a second time, after an objector noted that the original exhibition notice failed to advise that the Northern Regional Planning Panel were the consent authority.

The second exhibition was opportune, as there had also been a number of minor changes to the subdivision proposal to address biodiversity and effluent disposal issues.

The second exhibition also included the revised draft Planning Agreement.

It was exhibited from 9 April to 19 May 2025 and Council received a total of 12 submissions, 8 of which were from people who had lodged objections to the original exhibition.

Copies of all submissions are included as an attachment.

Most of the 12 submissions reiterated to concerns expressed in the original consultation, with traffic safety remaining a significant community concern.

The table below provides a summary of the key issues raised in the submissions received to the second exhibition:

Issue	Comment
Traffic & Access	
Development will result in excessive extra traffic at the McAuleys Lane / Mullumbimby Road intersection, which is already at capacity	See detailed discuss elsewhere in this report regarding intersection upgrades.
The upgraded intersection will present a traffic obstacle for vehicles travelling on Mullumbimby Road	Intersection upgrades are designed to accommodate the existing 80km/hr speed limit, which will ensure minimal impact on traffic movements on Mullumbimby Road.
Traffic impacts on Saddle Road – proposal needs to include upgrades to existing Saddle Road/ Mullumbimby Road intersection	The proposed road upgrades include a central median in Mullumbimby Road that would result in Saddle Road being restricted to left-in / left-out, which will improve the safety of that intersection.
Traffic assessment has not considered future development proposals in the locality – i.e. Area 16 identified in Council's Residential Strategy/	The assessment includes predictive future traffic volumes based on a compound traffic growth rate above 3% which is sufficient to account for future growth forecasts.

Issue	Comment
Assessment does not adequately provide for pedestrian or cyclist movement	The existing Planning Agreement (and draft update) provide for the payment of a monetary contribution toward local cycleways.
Peer review of intersection proposal suggests that a roundabout is a preferable solution	See above, preliminary assessment of a roundabout solution indicates that it would require a reduction in the posted speed limit on Mullumbimby Road. Advice from TfNSW indicates that a speed reduction would not be supported.
Application has not addressed all the provisions contained in the existing Planning Agreement	See commentary in this report (below)
McAuleys Lane is not suitable for extra traffic	See commentary in this report (below)
Draft Planning Agreement	
The proposal for Council to use its powers under the Roads Act to facilitate land acquisition for the intersection upgrade is not an appropriate inclusion in the PA, as it does not serve a public purpose, benefiting only the developer	The proposal to use the acquisition powers comes from Council's considerations regarding safety improvements for the whole of Mullumbimby Road. This matter was considered by Council at the Ordinary Meeting of 12 June 2025.
Application has not addressed all the traffic safety provisions contained in the existing Planning Agreement	See commentary in this report (below)
Biodiversity	
The BDAR does not adequately address the ecological values of the site.	Council's Consulting Ecologist has reviewed the updated BDAR and is satisfied that it can be supported.
Downstream ecosystems associated with Everitts Creek will be impacted by increased stormwater discharge	See below – Council's Development Engineer is satisfied that the proposed stormwater management measures will ensure that off-site stormwater discharge is not increased.
Local Character	
Scale of the development is out of keeping with the neighbourhood	The local area is zoned R5 Large Lot Residential. Compatibility with the local character was considered in detail as part of the previous rezoning of the site, which concluded that the extension of the R5 zone over the property was appropriate.
Impact on views	The subdivision proposals relatively large lots, which will allow significant space between future dwellings.

Issue	Comment
Stormwater / Flooding	
Stormwater runoff will adversely impact downstream properties and Everitts Creek	Council's Development Engineer has assessed the proposed stormwater management plan and is satisfied that the measures proposed are adequate.
The application has not included a detailed flood assessment	The site is not mapped as flood prone land.
Filling proposed for western edge will cut off overland flow to dam on adjoining property	<p>There is a drainage line in the western part of the property that drains to a dam constructed by a neighbour on an adjoining lot.</p> <p>The contours of the land show that this dam is also fed from a drainage line within that adjoining property, so filling of the land will not restrict all flows into that dam.</p>
Wastewater	
An adjoining owner has objected to having effluent disposal areas located adjacent to his property, which contains a dam and a groundwater bore.	This has been an issue of concern to Council's Environmental health Officer, who recommends that proposed Lots 36, 37 & 38 be amalgamated to provide sufficient area to ensure that effluent disposal will be well away from the boundary.
Lots do not contain sufficient area to allow for wastewater disposal, particularly considering the potential for future dual occupancy development.	<p>Reserve effluent areas are provided on each lot, resulting in total available effluent land application areas of 675m² or 900m² on each lot, based on the use of shallow sub-surface pressure-compensated drip irrigation. The larger areas are for those effluent areas with 20-30% slope, the smaller areas are nominated on those with slopes of less than 20%.</p> <p>The final locations, sizing and make/model of system will be determined at the time of future single lot development applications, as limited by the size and location of the dwellings, and the assessed relevant site constraints.</p> <p>Dual occupancy potential has been satisfactorily considered by the conservative sizing of the available effluent land application areas using sub-surface drip irrigation as the base method. The suitability of any future lot-based development is limited by many factors, and both future dual occupancy</p>

Issue	Comment
	or single dwellings are limited by total design occupancy and footprint, effluent treatment and method of land application, as relevant to each lot boundary.
Procedural Matters	
Application does not include a Cultural Heritage Assessment	Cultural heritage was considered as part of the rezoning of the site. The subdivision DA was referred to Arakwal for comments. No response was received.
Neighbourhood Management Statement does not prohibit short-term holiday letting	Condition of consent can be recommended to prohibit tourism or holiday use of the lots, other than what is permitted under SEPP (Housing) 2021.
Application has not included a visual impact statement	Visual impacts were considered at the site rezoning stage. Future applications for dwellings in this subdivision will need to address this issue in terms of any visual impacts.

5. KEY ISSUES

5.1 Traffic / Access

As highlighted above, there are safety concerns associated with the intersection of McAuleys Lane and Mullumbimby Road. The majority of traffic generated by the proposed subdivision would need to use this intersection on a daily basis.

Assessment of the original intersection upgrade proposal submitted with the application indicated that it did not provide adequate safe intersection sight distance, as required by the Austroads Guide to Road Design.

The SISD standard is contained at Chapter 3.1 of Austroads Guide to Road Design Part 4A, which states:

It is fundamental to the safety of intersections that drivers approaching in all traffic streams are able to:

- *recognise the presence of an intersection in time to slow down or stop in a controlled and comfortable manner*
- *see vehicles approaching in conflicting traffic streams and give way where required by law or avoid a crash in the event of a potential conflict.*

Intersection safety performance is largely dependent upon adequate sight distance in relation to both horizontal and vertical geometry for all drivers approaching and entering the intersection. Consequently, sight distance is a key consideration in the location and design of intersections.

In accordance with the relevant standard, Council's Development Engineer advised that, based on a speed limit of 80km/hr on Mullumbimby Road, an SISD of 217m is required for motorists leaving McAuleys Lane and entering onto Mullumbimby Road.

There is an existing crest within Mullumbimby Road, located approx. 208m east of the intersection, which means that this SISD standard is not met.

This presents a significant risk of crash, as motorists travelling west on Mullumbimby Road will not have sufficient time to recognise traffic turning out of McAuleys Lane in time to be able to slow or stop in a controlled manner.

This safety risk was also flagged in the Road Safety Audit previously undertaken during the rezoning process for the site (see attached).

Adequate sight distance could be provided by way of a reduction in the speed limit on Mullumbimby Road, the lowering of the crest within that road east of the intersection, and/or by relocating the centreline of McAuleys Lane at the intersection approx. 10m to the west.

Preliminary advice from Transport for NSW indicates that a speed zone reduction on Mullumbimby Road would not be supported. Lowering of the crest would require significant and costly earthworks, which could not reasonably be imposed on the proponent.

As outlined above, the proposal has been updated to include the required relocation of the intersection. As this will necessitate acquisition of a small part of an adjoining privately-owned lot, a revised Planning Agreement has now been presented which could facilitate the required safety improvements, with Council utilising its land acquisition powers under the Roads Act to facilitate the private land acquisition required to achieve the relocation.

5.2 Wastewater Disposal

Council's Environmental Health Officer has raised a number of issues relating to the location of on-site wastewater disposal areas and their proximity to waterways, property boundaries and groundwater bores.

Updated effluent disposal design and assessment have been provided, to ensure that all disposal areas are able to meet applicable locational criteria.

To further ensure that there will be no impacts on adjoining downslope properties to the west, the Environmental Health Officer recommends that proposed Lots 36, 37 & 38 be amalgamated into 2 lots to provide a larger available area further away from the boundary.

See additional commentary above.

5.3 Biodiversity

Council's Consulting Ecologist and officers of DCCEEW raised a number of issues regarding the BDAR submitted in support of the application.

The updated BDAR has been assessed and addresses the remaining issues to the satisfaction of Council's Consulting Ecologist, subject to recommended conditions.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application could be supported subject to Council's endorsement of the draft Planning Agreement that would facilitate an upgrade of the McAuleys Lane / Mullumbimby Road intersection in a way that addresses key safety concerns.

The draft Planning Proposal was considered by Council at its Ordinary Meeting of 12 June 2025. At the time of drafting this report, the outcome of that meeting was not known.

Should the Planning Agreement be endorsed at the Ordinary Council meeting of 12 June, the development application can be supported.

7. RECOMMENDATION

1. That, if the Planning Agreement is endorsed by Council at the Ordinary meeting of 12 June 2025, Development Application DA10.2023.454.1 for Community Title Subdivision of land at Lot 8 DP589795, 53 McAuleys Lane, Myocum, be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979*, subject to the conditions of consent in Appendix A.
2. That, if the Planning Agreement is not endorsed by Council at the Ordinary meeting of 12 June 2025, Development Application DA10.2023.454.1 for Community Title Subdivision of land at Lot 8 DP589795, 53 McAuleys Lane, Myocum, be REFUSED for the following reasons:
 - a) Pursuant to Clause 6.6 of *Byron Local Environmental Plan 2014*, the consent authority cannot be satisfied that suitable vehicle access is available for the development as proposed, or that adequate arrangements can be made to provide that access, given the inadequate safe intersection sight distance at the intersection of McAuleys Lane and Mullumbimby Road.
(Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*)
 - b) The application has not adequately addressed the traffic safety provisions contained in the planning agreement, entered into under section 7.4 of the Act in conjunction with the rezoning of the subject property.
(Section 4.15(1)(a)(iia) of the *Environmental Planning and Assessment Act 1979*)
 - c) The proposed development does not satisfy the requirements of Byron Development Control Plan 2014, Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access, in that suitable access cannot be provided to the site.
(Section 4.15(1)(a)(iia) of the *Environmental Planning and Assessment Act 1979*)
 - d) The subject site with increased traffic accessing Mullumbimby Road from McAuleys Lane is not suitable for the proposed development
(Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*)
 - e) The proposed development is not in the public interest given the safety risks associated with the intersection of McAuleys Lane and Mullumbimby Road.
(Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*)