

DATE OF DETERMINATION	26 June 2025
DATE OF PANEL DECISION	25 June 2025
DATE OF PANEL MEETING	18 June 2025
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Joe Vescio and Simon Richardson
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 18 June 2025, opened at 2.03pm and closed at 3.31pm.

MATTER DETERMINED

PPSNTH-285 – Byron – 10.2023.454.1 – 53 McAuleys Lane, Myocum – Community Title rural residential subdivision, creating 38 neighbourhood lots and 1 common property lot, construction of private infrastructure in the form of internal roads servicing the neighbourhood lots and associated drainage works, construction of a community building, tennis courts and associated works, and construction of upgrades to the intersection of Mullumbimby Road and McAuleys Lane (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspection listed at item 8 in Schedule 1.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons set out in the Council Assessment Report.

In considering submissions from the community, the Panel has made amendments to a number of recommended conditions and imposed additional conditions to address construction and operational issues. These include:

- Deferred commencement – the consent will not operate until Council is satisfied that land acquisition for the Mullumbimby Road/McAuleys Lane intersection is completed
- Timing of works – External works in McAuleys Lane and the Mullumbimby Road/McAuleys Lane intersection to be completed prior to Subdivision works commencing on site – other than vegetation management works
- Access upgrade works to 180 and 110 Mullumbimby Road to meet current Austroads standards, with 110 Mullumbimby Road to be provided a right turn from the driveway
- An amended on-site sewage capability plan – demonstrating that the layout of each effluent land application area (LAA) for proposed lots 36 and 38 is in accordance with the On-site Sewage Capability Plan OSSM Buffers Lot Layout dated 14/02/2025
- Advanced secondary treatment for any land application areas within 250m of licensed groundwater bores or within 100m of permanent surface waters
- Vegetation management requirements in ‘no build zones’

The Panel acknowledges the significant concerns raised in submissions regarding the rural character of the McAuleys Lane area and the appropriateness of the residential density/yield as proposed. These concerns included the urbanisation of the area without the accompanying facilities, transport and amenities as would be expected and considered appropriate within a strategic planning framework. These concerns were heightened by the potential for future dual occupancies on the site.

Whilst some Panel members shared concerns about the number of proposed lots, the Panel notes the determination of maximum lot yield, with which the application complies, was made as part of the rezoning process in 2020 prior to being considered by the Panel.

With respect to site specific issues, the Panel is satisfied that Council's assessment has adequately addressed the key issues of road safety and access, stormwater and wastewater management, and biodiversity and appropriate conditions have been imposed to mitigate potential adverse impacts.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

Schedule 1

- Insert Deferred Commencement Condition 1, which reads as follows:

1. Deferred Commencement Consent

This consent does not operate until Council is satisfied as to the following matter:

(a) Intersection Upgrade – Acquisition of Land

The acquisition of land from within Lot 1 DP843530, 44 McAuleys Lane, required for the intersection upgrade works, and as addressed in Clause 29 of the signed Planning Agreement, entered into by Byron Shire Council, Boreas Group Pty Ltd & Tareeda Developments Pty Ltd, the Trustee for Tareeda Developments Unit Trust ABN 72 347 964 155 and McAuleys No1 Pty Ltd, shall be completed in accordance with the terms of that Agreement or by way of the private acquisition of that land.

Evidence of the above relevant matter(s) must be produced to the consent authority, within **Two Years** of the date of the determination, otherwise the consent will lapse.

Under section 88(3) of the EP&A Regulation, the consent authority will notify you in writing if the matters above have been satisfied and the date from which this consent operates.

The conditions of development consent below apply from the date that this consent operates.

Where the applicant produces evidence of the relevant matters in accordance with section 76(4) of the EP&A Regulation, the consent authority must notify the applicant whether or not it is satisfied as to the relevant matter(s). If the consent authority has not notified the applicant within 28 days after receiving the applicant's evidence, the consent authority is taken to have notified the applicant that it is not satisfied about the relevant matter(s) on the date on which that period expires, for the purposes of section 8.7 of the EP&A Act (see sections 76(4), (5) and (6) of the EP&A Regulation).

Schedule 2

- Amend Condition 2 Approved plans and supporting documentation to insert the following at the end of the condition:
'Amended Plans to be submitted with the Subdivision Works Certificate and Subdivision Certificate for approval showing these changes. '
- Insert new Condition 8 Timing of Works, which reads as follows and renumber the remaining conditions accordingly:
8. Timing of Works

External road Works in McAuleys Lane and Mullumbimby Road to be completed prior to Subdivision construction works commencing on the site other than Vegetation Management works.

- Amend now Condition 9 Amended On-site Sewerage Capability Plan (former Condition 8) to read as follows:
 - 9. Amended On-site Sewage Capability Plan**

The On-site Sewage Capability Assessment Report and associated OSSM Buffers Lot Layout Plan, prepared by HMC Environmental Consulting Pty Ltd dated 28/02/2025, must be amended to address the required consolidation of proposed Lot 37 into proposed Lots 36 and 38 and demonstrate that the layout of each effluent land application area (LAA) is in accordance On-site Sewage Capability Plan OSSM Buffers Lot Layout dated 14/02/2025. The plan to be submitted to Council for approval prior to the issue of the Subdivision Works Certificate.
- Amend now Condition 10 Construction Environmental Management Plan (former Condition 9) to insert the following wording after the first paragraph:

‘The plan must provide for the works required for the upgrade of the McAuleys Lane / Mullumbimby Road intersection and the works required to upgrade McAuleys Lane from the site entrance to Mullumbimby Road to be undertaken and completed prior to subdivision construction works occurring within the site (other than Vegetation Management Works).’
- Amend now Condition 14 Engineering Construction Plans (former Condition 13), part a) External Works, section (iii) Roadworks and access upgrades, to read as follows:
 - Provide a turnaround area in McAuleys Lane to cater for up to an SRV service vehicle.
 - Provide a break on the western island to allow entry into 180 Mullumbimby Rd (south eastern driveway).
 - Access to 180 Mullumbimby Rd (south eastern driveway) must be upgraded to current Austroads standard.
 - Provide a break on the eastern island to allow access from 110 Mullumbimby Road back to Mullumbimby and the painted splitter island replaced with a raised island and adjusted accordingly to facilitate right turn from driveway.
 - The batter at 44 McAuleys Lane (in the location of the road acquisition) to be replaced with a rock gabion caged retaining wall or similar Council approved retaining structure, to provide a future maintenance free area. The plans to include details and provisions for drainage.
 - Any widening of the road on the north-eastern side of Mullumbimby Road must have balanced cut and fill for any works below RL 3.2m AHD to mitigate any flood impacts. Retaining walls may be required.
 - Provide plans showing Tree Protection Zones and protection methods for several mature/semi mature trees which occur within chainage 0.0-0.75 along the north-eastern side of Mullumbimby Road (a hoop pine, a pink-flowered doughwood, several umbrella cheese trees).
- Amend now Condition 15 Works within the Road Reserve (former Condition 14) to insert the following at the end of the condition, ‘Regulatory Signage to be submitted to the Local Traffic Committee and endorsed by Council.’
- Amend now Condition 16 Traffic Management Plan (TMP) (former Condition 15) to insert in the second paragraph, after the word ‘development’, ‘and including works within McAuleys Lane and Mullumbimby Road’
- Delete Condition 17 – Planning Agreement – Acquisition of Land and renumber the remaining conditions accordingly
- Delete Condition 22 – Planning Agreement – Cycle Contributions and renumber the remaining conditions accordingly

- Amend now Condition 26 Vegetation Management Plan (former Condition 26) to insert the following and renumber the remaining parts accordingly:
 - b. provide for revegetation plantings within the no build zones and outline specifications for the ongoing maintenance and management of these areas.
- Amend now Condition 67 Management Statements (former Condition 68) to insert the following and renumber the remaining parts accordingly:

c) Advanced Secondary Treatment

Minimum wastewater treatment required for all lots to be advanced secondary treatment of effluent prior to discharge to a Council approved disposal method. The systems to incorporate the following features:

- i Each lot must install a NSW accredited on-site sewage management system which achieves a nutrient reduction rate of no less than 67% and disinfection in the treatment system;
- ii Any land application areas located within 250 m of licensed groundwater bores or within 100m of permanent surface waters must only dispose of effluent which has been treated to an advanced secondary treatment standard with final disinfection prior to discharge

Schedule 7


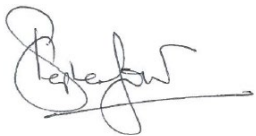
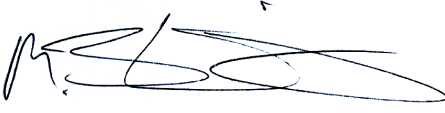


- Insert the following note:
Other Approvals / Permits / Licenses
 If required, the landowner is responsible for obtaining applicable approvals / permits / licenses as may be required under NSW legislation.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Traffic – McAuleys Lane and intersection with Mullumbimby Road
- Biodiversity and BDAR adequacy
- Stormwater impacts on downstream dams and on adjoining properties
- Local character
- Increased density of dwellings in the locality
- On-site sewerage management
- Dwellings on some of the lots would protrude above the ridgeline
- Neighbourhood Management Statement does not exclude short-term holiday letting and potential for future dwellings to be used for STRA
- No provision for affordable housing
- Costs estimate understated (incorrect concern that Developer Contributions are calculated on stated development costs)

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	 Joe Vescio
 Simon Richardson	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-285 – Byron – DA 10.2023.454.1
2	PROPOSED DEVELOPMENT	Community Title rural residential subdivision, creating 38 neighbourhood lots and 1 common property lot, construction of private infrastructure in the form of internal roads servicing the neighbourhood lots and associated drainage works, construction of a community building, tennis courts and associated works, and construction of upgrades to the intersection of Mullumbimby Road and McAuleys Lane
3	STREET ADDRESS	53 McAuleys Lane, Myocum (Lot 8 DP 589795)
4	APPLICANT/OWNER	Dwayne Roberts (on behalf of Ardill Payne & Partners) McAuleys No. 1 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Coastal Development - Subdivision
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <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 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Byron Development Control Plan 2014 Planning agreements: Draft Planning Agreement between Byron Shire Council, Boreas Group Pty Ltd & Tareeda Developments Pty Ltd (The Trustee for Tareeda Developments Unit Trust) and McAuleys No.1 Pty Ltd Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 5 June 2025 Council Addendum Assessment Report: 17 June 2025 Written submissions during public exhibition: 77 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Sharon McGrath, Richard Kowalski, Jan Barham, Silvia Roberts, Jennifer MacLean, Ken MacLean, Ana Barner, Kate Constantine, Stewart Ford, Matthew O'Reilly Council assessment officer – Rob Van Iersel, Chris Larkin, Renan Solatan On behalf of the applicant – John Callanan, Dwayne Roberts, Tony McCormack Total number of unique submissions received by way of objection: 66
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 17 April 2024 <ul style="list-style-type: none"> Panel members: Stephen Gow (Acting Chair), Michael Wright, Joe Vescio and Simon Richardson

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Rob van Iersel and Chris Larkin ○ <u>Department staff</u>: Carolyn Hunt <ul style="list-style-type: none"> ● Site inspection: 03 June 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair) and Stephen Gow, ○ <u>Council assessment staff</u>: Chris Larkin ○ <u>Council's Consultant Planner</u>: Rob Van Iersel ○ <u>Applicant representatives</u>: Dwayne Roberts, Tim Mundy, Jack Dods and John Callanan ● Final briefing to discuss Council's recommendation: 18 June 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Joe Vescio and Simon Richardson ○ <u>Council assessment staff</u>: Chris Larkin, Chris Soulsby and Renan Solatan ○ <u>Council's Consultant Planner</u>: Rob Van Iersel ○ <u>Department staff</u>: Carolyn Hunt and Ilona Ter-Stepanova ● Panel discussions to discuss Council's recommendation: 24 June 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Joe Vescio and Simon Richardson ○ <u>Council assessment staff</u>: Chris Larkin ○ <u>Council's Consultant Planner</u>: Rob Van Iersel ○ <u>Department staff</u>: Carolyn Hunt and Ilona Ter-Stepanova
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Addendum Assessment Report (uploaded 17/06/2025)