



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-482 – 10.2023.454.2
PROPOSAL	Modification to the Plans and Conditions of the Approved Community Title Subdivision Comprising 38 Neighbourhood Lots and 1 Association Property, Private Infrastructure and Community Facilities, including in Relation to Changes to the Configuration of Lots 7-14 and 33-38, Re-alignment of Road 3, Removal of the Requirements to Construct a Cycle Path and Turnaround in McAuleys Lane, and to Allow the Keeping of Dogs under Strict Controls but not Cats
ADDRESS	LOT: 8 DP: 589795 53 McAuleys Lane Myocum
APPLICANT	Dwayne Roberts, The Trustee for Beavis Family Trust & The Trustee for Jacob Family Trust & The Trustee for Niproski Family Trust & The Trustee for ROBERTS FAMILY TRUST & The Trustee for Zingrob Family Trust
OWNER	McAuleys No. 1 Pty Ltd
MOD LODGEMENT DATE	10 March 2026
ORIGINAL DA DETERMINATION DATE	26 June 2025
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	The original development was considered to be “regional development” for the following reason: <i>Clause 8 (1) (c), Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Coastal Subdivision</i> 1) <i>Development within the coastal zone for the purposes of subdivision of the following kind -</i> <i>c) Subdivision of land for rural-residential purposes into more than 25 lots, if the land-</i> <i>i. is not in the metropolitan coastal zone, or</i> <i>ii. is wholly or partly in a sensitive coastal location</i>

	<i>The north-west corner of the property is mapped within the Coastal Environment Area under SEPP (Resilience & Hazards) 2021 and on this basis the site was assessed as being in the Coastal Zone. The application proposed more than 25 lots for rural-residential purposes and is not located in the metropolitan coastal zone.</i>
CIV	\$2,996,672 (excluding GST)
CLAUSE 4.6 REQUESTS	None
KEY SEPP/LEP	• State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Byron Local Environmental Plan 2014
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	15 total and unique objections. Key issues include: • Traffic and road safety impacts due to deletion of intersection upgrade • Impact of allowing dogs • The development as modified not substantially the same • Cycle path is necessary • Failure to achieve compliant (Land Application Area) buffers to a dam • Inadequate wastewater systems • Visual impacts of an additional lot • Erroneous application documents • Public notification did not extend to previous submitters
DOCUMENTS SUBMITTED FOR CONSIDERATION	S455.1.03 (Rev A), Masterplan – Aerial, 1/11/2025, Venu Design Group S455.1.03, S4.55 Masterplan – Lot Plan, 1/11/2025, Venu Design Group 10431 DA-C01 to C13 H and 10431 DA-C15 to C16-02 H, Civil Design – DA Plans, Ardill Payne & Partners, 5/2/2026 On-Site Sewage Management Capability Assessment, HMC Environmental Consulting Pty Ltd, 27/1/2026
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Not applicable
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	12 October 2026

PLAN VERSION	S455.1.03 (Rev A), Masterplan – Aerial, 1/11/2025 S455.1.03, S4.55 Masterplan – Lot Plan, 1/11/2025
PREPARED BY	Venu Design Group
DATE OF REPORT	25 September 2026

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') approval for modifications to a consent granted under DA 10.2023.454.1 approved by the Northern Regional Planning Panel on 26 June 2025. This consent approved a Community Title Subdivision comprising 38 Neighbourhood Lots and 1 Association Property, Private Infrastructure and Community Facilities including a Community Building, Tennis Court and Maintenance Shed (includes Draft Planning Agreement) at 53 McAuleys Lane Myocum ('the site'). The modification application includes the relevant information required by section 100 of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation').

The original development was "regional development" for the following stated reason:

Clause 8 (1) (c), Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Coastal Subdivision

1) Development within the coastal zone for the purposes of subdivision of the following kind -

c) Subdivision of land for rural-residential purposes into more than 25 lots, if the land-

i. is not in the metropolitan coastal zone, or

ii. is wholly or partly in a sensitive coastal location

The north-west corner of the property is mapped within the Coastal Environment Area under SEPP (Resilience & Hazards) 2021 and on this basis the site was assessed as being in the Coastal Zone. The application proposed more than 25 lots for rural-residential purposes and is not located in the metropolitan coastal zone.

The proposed modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the EP&A Regulation 2021 (formerly Cl 123BA of the Regulation 2000).

The application proposes to modify the development consent as follows:

1. Consolidation of approved Lots 36, 37 and 38 into 2 lots, being Lot 36 (3807m²) and Lot 37 (4858m²), including consequential changes to the house site / building envelope on modified Lots 36 and 37 (this is in response to Condition 2 of the consent).
2. Adjustments to the boundary locations and areas of approved Lots 33, 34 and 35.
3. Internal re-alignment of approved Road 3.
4. Re-instatement and re-location of Lot 38 to the north of Road 2 – to bring the total number of lots to 38 as per the original consent.
5. Adjustments to the boundary locations and areas of Lots 7-14 to accommodate re-instated and re-located Lot 38.
6. Removal of the requirement to construct a cycle path and a turnaround in McAuleys Lane.
7. Permit the keeping of dogs under strict controls, whilst maintaining the prohibition on the keeping of cats within the estate.

The proposal includes modified plans and requests for modifications to or deletion of consent conditions numbered 1, 2, 8, 9, 14, 19, 67 and 84.

The application was placed on public exhibition from 26 March to 15 May 2026, with a total of 15 objections having been received.

The objections identified traffic and road safety impacts due to deletion of intersection upgrade, the impact of allowing dogs, the development as modified is not substantially the same, walking and cycling are currently extremely dangerous and the cycle path is necessary, a failure to achieve compliant (Land Application Area) buffers to a dam, inadequate wastewater systems, visual impacts of an additional lot, erroneous application documents and public notification did not extend to previous submitters. These issues are considered further in this Report.

The key issues associated with the proposal identified in the assessment of the application included, in relation to the components of the proposal, the following:

- Condition 1 is recommended to be modified by Council's Development Engineer and Environmental Health Consultant to reflect applicable and suitable plans and documents submitted with the application.
- Council's Environmental Health Consultant raised no objection to the proposed deletion of Condition 2. This condition currently requires consolidation of Lots 36, 37 and 38 adjacent to the site's western boundary into 2 lots. The modified plans depict the reduced number of lots (by 1) adjacent to the site's western boundary envisaged by the required consolidation. The additional lot is accommodated in the eastern branch of the subdivision. The modified plans, as referred to in recommended modified condition 1, result in condition 2 being superfluous and able to be deleted.
- Condition 8 is recommended to be modified by Council's Development Engineer, not deleted as proposed by the application, because it is reasonable to modify the condition to allow preliminary and internal works to proceed under an approved Traffic Management Plan, while retaining the requirement for the external roadworks to be completed before commencement of major subdivision construction activities.
- Condition 9 is recommended to be modified by Council's Environmental Health Consultant, not deleted as proposed by the application.
- Council's Development Engineer objected to the modification of Conditions 14 a)(ii) and a)(iii) and these are not recommended, because there is sufficient area available within the road reserve to accommodate a turnaround area for service vehicles, the provision of this infrastructure is both feasible and practical and was included as part of the approved roadworks and access upgrade requirements and the proposed turnaround area would also facilitate servicing of properties fronting Mullumbimby Road thereby reducing conflict points and improving operational safety for both service vehicles and through traffic. In the absence of any traffic engineering assessment demonstrating that the turnaround area is unnecessary or that an alternative arrangement would achieve an equivalent safety outcome, there is insufficient justification to support its removal.
- Council's Environmental Health Consultant raised no objection to the modification of Conditions 19, 67(a) and 67(b) as proposed by the application.
- Council's Environmental Health Consultant recommended the insertion of 7 new conditions.

- Council's Ecologist objected to the modification of Conditions 67(f) and 84 and these are not recommended given the significant ecological impact of the proposal to permit dogs, including the 11 hectares of restoration that will provide significant habitat.

The development as modified in accordance with the Recommendation of this Report is considered to satisfy the "substantially the same development" test required by Section 4.55 of the EP&A Act.

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.

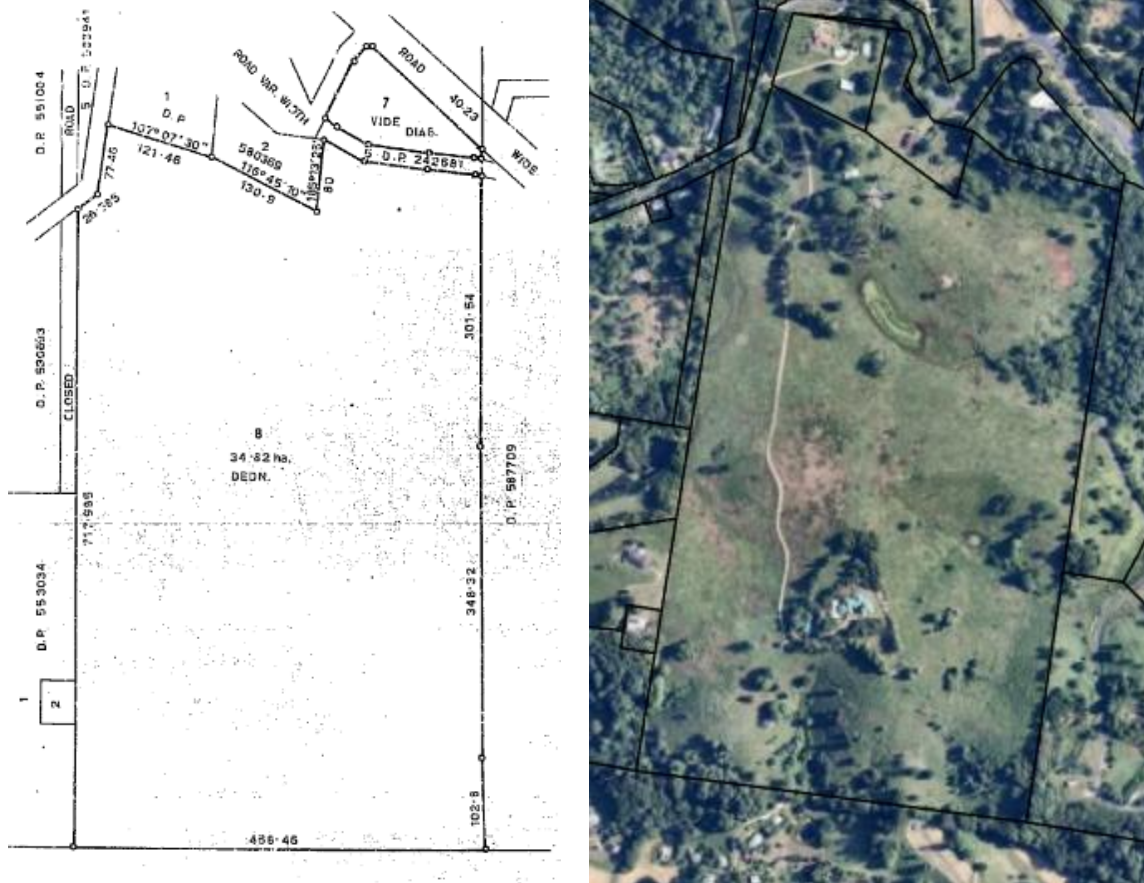


Figure 1: The Site

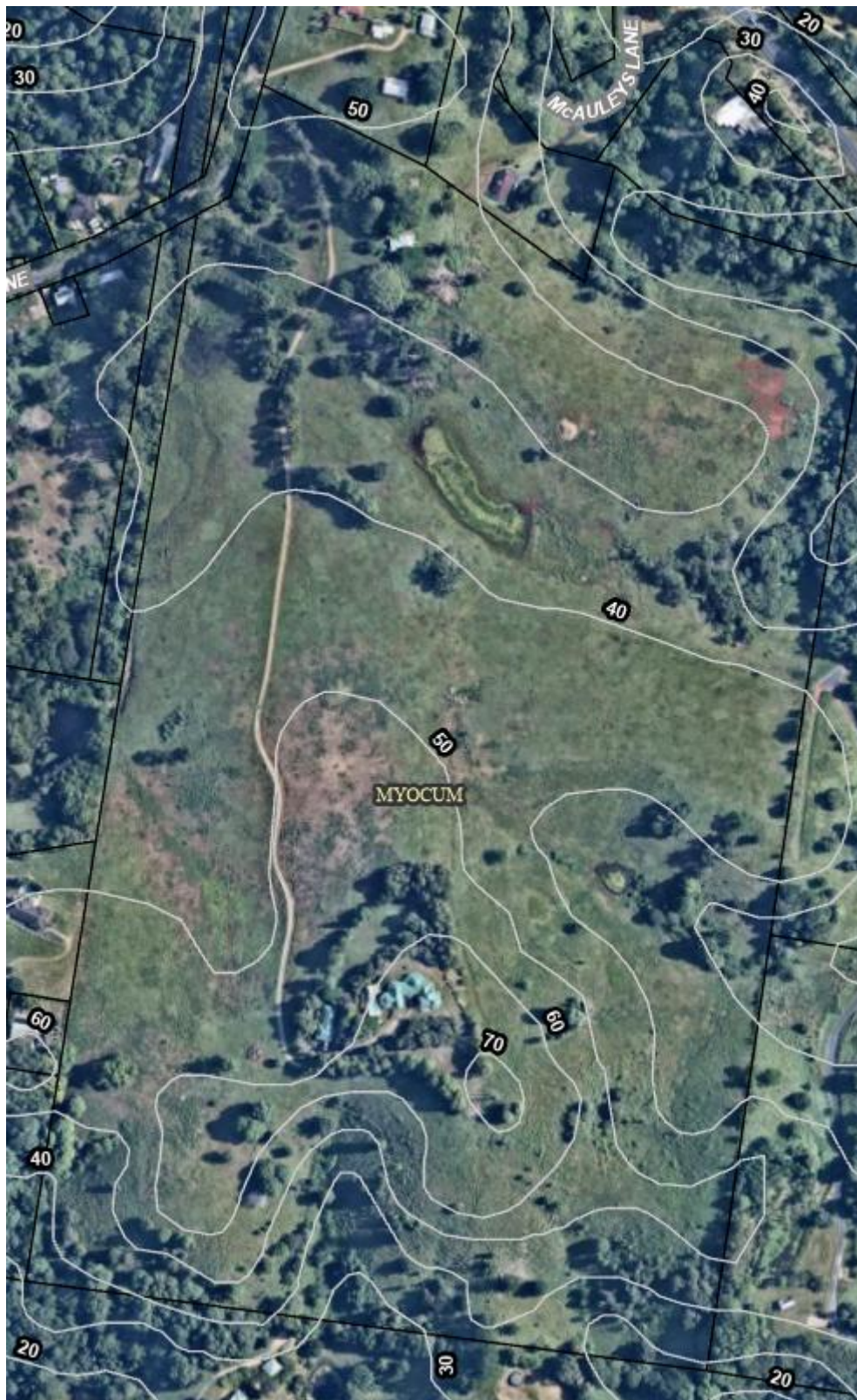


Figure 2: Site Topography



Figure 3: View towards Lots CT.07 to CT.14



Figure 4: View towards Lots CT.33 to CT.37



Figure 5: View towards Lots CT.33 to CT.37



Figure 6: View towards Lots CT.33 to CT.37

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.

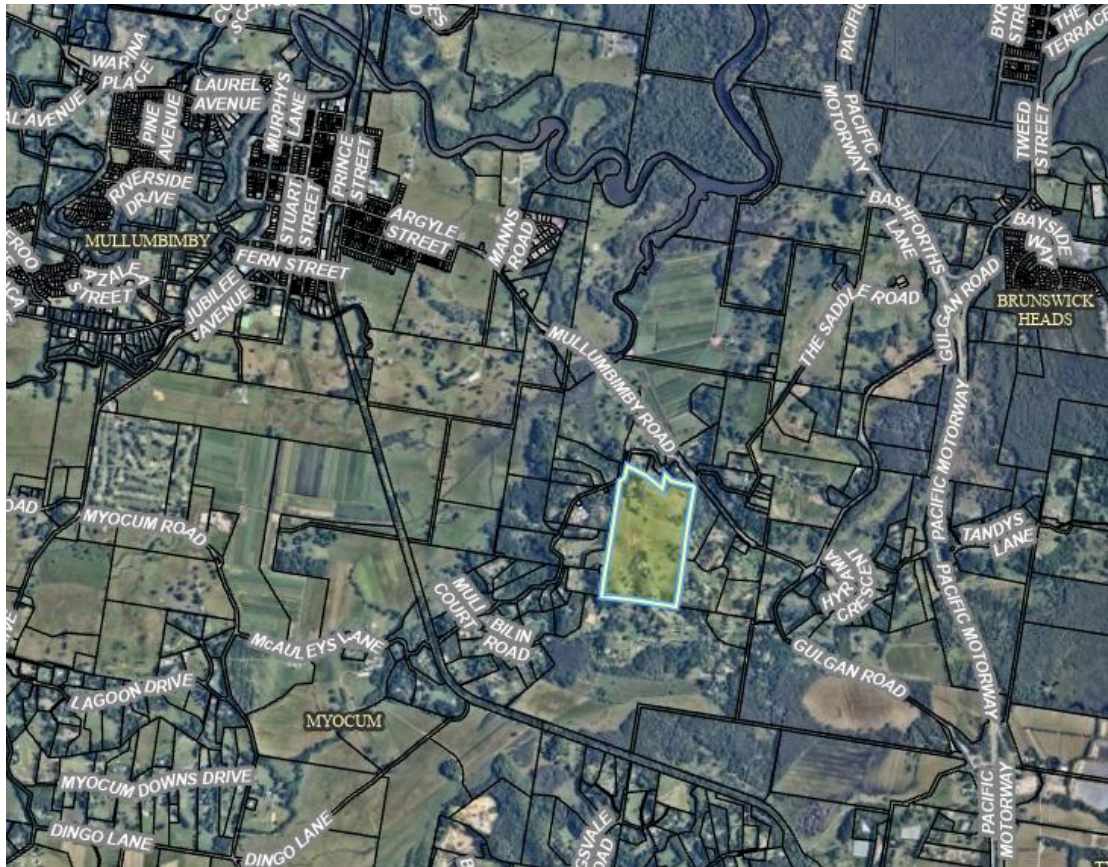
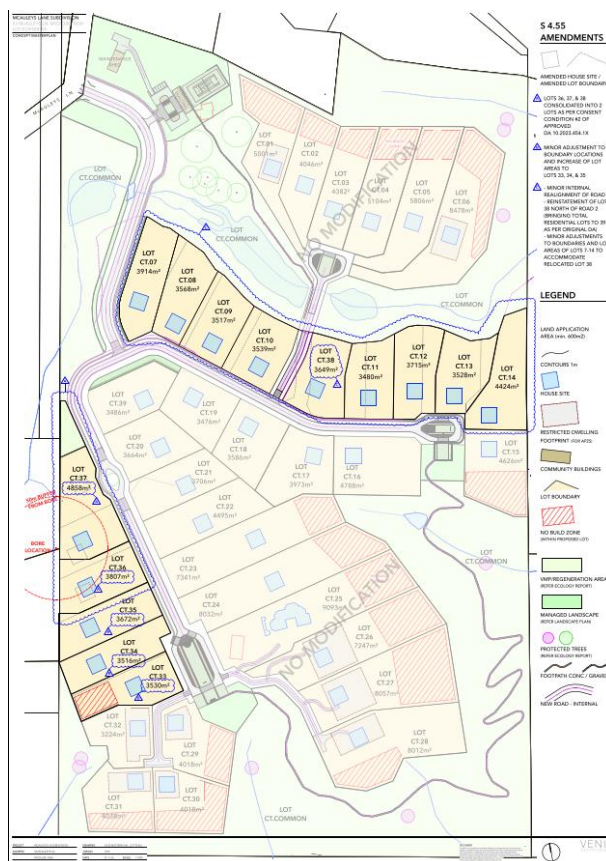
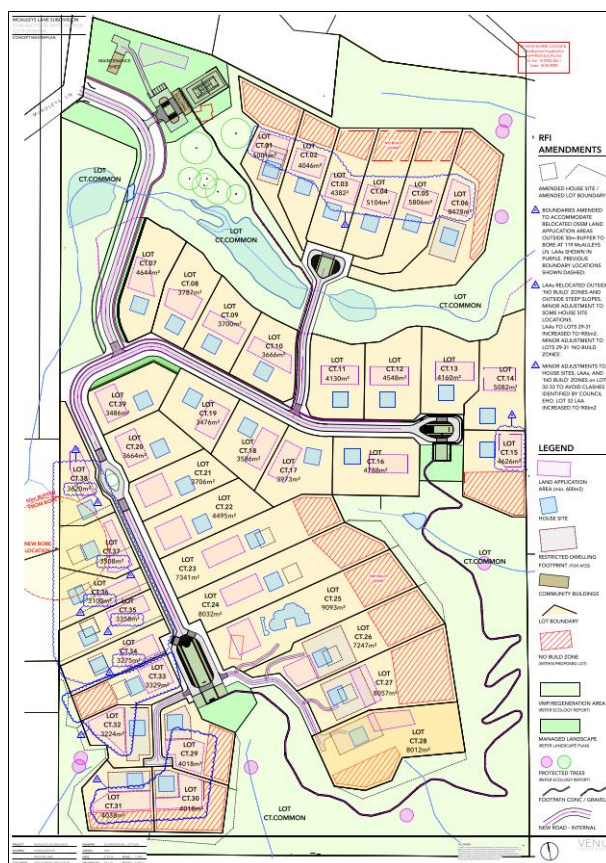


Figure 7: Site Locality

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

- The application seeks approval for modification to the plans and conditions of the approved Community Title Subdivision, including in relation to changes to the configuration of Lots 7-14 and 33-38, re-alignment of Road 3, removal of the requirements to construct a cycle path and turnaround in McAuleys Lane, and to allow the Keeping of Dogs under Strict Controls but not Cats.
- In relation to the changes to the configuration of Lots 7-14 and 33-38 and re-alignment of Road 3, compare the approved and proposed Concept Masterplans in **Figure 8** and **Figure 9** below:



- **Table 1** below provides a comparison of approved versus proposed lots:

Table 1: Proposed Modifications to Lots

Approved Lots	Proposal
CT.01 to CT.06 CT.15 CT.16 to CT.28 CT.29 to CT.32 CT.39	No modification proposed
Was CT.33 to CT.38	Now CT.33 to CT.37 (reduced by 1 in this location)
Was CT.7 to CT.14	Now CT.7 to CT.14 plus CT.38 (increased by 1 in this location)

Proposed Modifications to Conditions

- The proposed modifications to the conditions are as outlined in **Table 2** below.

Table 2: Proposed Modifications to Conditions

Condition No	Condition requirements	Change Proposed	Applicant's Reason for Change
1	Approved plans and supporting documentation The development is required to be carried out in accordance with the approved plans and supporting documentation listed in the table to the condition.	Amend Condition 1 so that it references the amended and attached: • Venue Design Group plans (refer Appendix D) • HMC Environmental Consulting Pty Ltd On-site Sewage Management Capability Assessment (refer Appendix H) • Ardill Payne & Partners civil design DA plans and stormwater drainage and sewer LAA sites (refer Appendix F)	This is required to ensure that the condition relates to the current plans and documentation that support and inform this s4.55 modification.
2	Lot Consolidation Approved Lot 37 is required to be consolidated with approved Lots 36 and 38 to create 2 separate lots. The newly created lots are to be formed by part of approved Lot 37 being consolidated with approved Lot 36 to form one lot; and the remaining part of approved Lot 37 being consolidated with approved Lot 38 to form the second lot.	Delete Condition 2 in consideration of the amended plans to be included in condition 1.	This condition is now considered redundant as this modification has satisfied the required consolidation of proposed Lot 37 into proposed Lots 36 and 38.

	The originally proposed Lots 36 and 38 were significantly restricted by effluent disposal area requirements, particularly as those proposed lots were located close to an off-site groundwater bore. Amended Plans were to be submitted with the Subdivision Works Certificate and Subdivision Certificate for approval showing these changes.		
8	Timing of Works External road works in McAuleys Lane and Mullumbimby Road are required to be completed prior to the Subdivision construction works commencing on the site other than Vegetation Management works.	Delete Condition 8.	This condition was imposed by the NRPP in respect of safety concerns that were raised by the local community and is now considered redundant as consequence of the road and intersection upgrades that have been undertaken by Council which have resulting in the road and intersection being of a sufficient standard to safely and efficiently accommodate construction traffic that will be generated during site works. It not practical nor feasible to undertake external road works prior to undertaking civil works internally with the allotment. There is now no need or justified reason to complete external road works prior to commencing internal works.
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, are required to be amended to address the required consolidation of Lot 37 into 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 is to be submitted to Council for approval prior to the issue of the	Delete Condition 9.	This condition is now considered redundant as this modification application contains the amended On-site Sewage Capability Assessment Report (refer Appendix H) that was required to address the required consolidation of proposed Lot 37 into proposed Lots 36 and 38.

	Subdivision Works Certificate.		
14	Engineering Construction Plans Engineering construction plans and specifications are required to accompany the Subdivision Works Certificate application demonstrating compliance with Council's standards for the required engineering works. The drawings are to provide for External Works and Internal roads, intersection and footpath. For example, specifically in relation to the proposed modifications: a) External Works ... (ii) Cycle Path Provision must be made to provide a cycle path from the development to 180 Mullumbimby Rd. (iii) Roadworks and access upgrades in accordance with Ardill Payne plan 10431 C103A dated 12/12/2024, including the following: • Provide a turnaround area in McAuleys Ln 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	Amend Condition 14 by deleting Item (a)(ii) - Cycle Path. Amend Condition 14 by deleting the second dot point to Item (a)(iii) in respect of the turnaround in McAuleys Lane.	This cycle path component of the condition is now considered redundant as a consequence of the requirement to construct a shared walking/cycle path from the subject lot to the bus stop in Mullumbimby Road. This turnaround component of the condition is considered impractical and will create a potential traffic hazard due to the fact that McAuleys Lane is a through road (and not a dead-end) and there is no apparent road or traffic engineering justification and no comparable precedent to support such. It is noted that numerous enquiries to Council's Engineers has not resulted in any justification being provided for the need for such a SRV turning area.

	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).		
19	Imported Fill Material Prior to the issue of a Subdivision Works Certificate for each stage, the type of fill material to be used is required to be nominated by a suitably qualified geotechnical engineer. The fill is to be provided with certification that it is clean, uncontaminated, and suitable for use as engineering fill. The nominated fill for areas that rely on infiltration is to be provided to the Certifying Authority for approval showing that the parameters of the fill on Lots 35, 36 and 38, meet the minimum infiltration rates as required by the wastewater disposal.	Amend Condition 19 such that the words "Lots 35, 36 and 38" contained in the final/third paragraph are replaced with the words "Lots 36 and 37".	This is required to ensure that the condition relates to the current plans and lot numbers that support and inform this s4.55 modification.
67	Management Statements The management statement and development contract and	Amend Condition 67 Item (a) such that the words "Plan DA1.04 Rev E DA Masterplan Lot Plan" are	This is required to ensure that the condition relates to the current plans and documentation that support

	a copy are to be submitted with the application for a subdivision certificate, together with a letter from a Solicitor, experienced in Community Title legislation, certifying that the management statement and development contract have been prepared in accordance with Community Title legislation and acceptable for registration with NSW Land and Property Information. The Management Statement is required to include within the By-Laws required by a public authority provisions for: a) No Build Zones No buildings or structures of any kind are permitted on the areas within the lots identified on Plan DA1.04 Rev E DA Masterplan Lot Plan, as "no build zone". b) Effluent Disposal Area Restrictions to limit any development, other than effluent disposal systems and associated works, to the nominated effluent disposal areas on all lots, as shown on HMCDWG2023.320.2 OSSM Buffers Lot Layout (7) contained in On-site Sewage Capability Plan Ref: 2023.320.2 dated 14/02/2025. ... f) Keeping of Cats and Dogs Provisions to prohibit the keeping of cats and dogs other than assistance animals as defined under the Companion Animals Act 1988.	replaced with the words "Plan S455.1.03 Rev A Masterplan Lot Plan".	and inform this s4.55 modification.
		Amend Condition 67 Item (b) such that the words "HMCDWG2023.320.2 OSSM Buffers Lot Layout (7) contained in On-site Sewage Capability Plan Ref.: 2023.320.2 dated 14/02/2025" are replaced with the words "HMCDWG2025.1928 OSSM Layout Plan Ref.: 2025.1928 FINAL A, dated 27/01/2026, Rev: D".	This is required to ensure that the condition relates to the current plans and documentation that support and inform this s4.55 modification.
		Amend Condition 67 Item (f) by deleting the words "and dogs".	It is submitted that the prohibition on dogs is unreasonable, largely as a consequence of the subject land not being inherently significant from an ecological perspective, with the proposed subdivision being such that will improve the ecological value via the implementation of the VMP. Further, dogs are able to be readily contained, controlled and managed such that they will not have significant adverse impacts upon any native fauna, with amended "Keeping of Animals" controls being contained in the Draft Community Management Statement at Appendix G. Additionally, whilst this development is a Community Title development, it is zoned R5 and is not a rural community title development which typically have such restrictions to protect local ecology in a rural environment.
84	Habitat protection Restored and protected habitat (as covered by the VMP) is required to be clearly signposted to ensure companion animals do not enter this habitat area. Signage must be clearly erected at suitable	Amend Condition 84 to read as follows - "Restored and protected habitat (as covered by the VMP) must be clearly signposted to ensure dogs (including companion animals) do not enter this habitat area unless they are on-leash	As per the justification above in respect of Condition 67 Item (f).

	internals stating: <i>"Habitat protection area - no dogs permitted under any circumstances"</i> (or words of similar intention). Signage to be installed prior to the issued of the subdivision certificate	and under full control. Signage must be clearly erected at suitable internals stating Habitat protection area - dogs must be on-leash at all times and under full control of a responsible person." (or words with similar meaning/intent). Signage to be installed prior to the issue of the subdivision certificate."	
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Development Data

- The report on the development application advised as follows: *"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 Minimum Lot Size Map was not amended, retaining the 40ha minimum size for the site."*
- The original development application proposed 39 neighbourhood community lots. The consolidation of lots condition results in 38 approved lots. The modification proposes to increase the number of lots back up to 39. This number complies with the maximum permitted number of 39 lots.
- In accordance with clause **4.1B Minimum subdivision lot size for multiple occupancy or rural community title developments** of Byron Local Environmental Plan 2014, the size of any lot resulting from the subdivision of this land (being land to which the clause applies) may be less than the minimum lot size shown on the Lot Size Map in relation to that land if—
 - (a) the total number of neighbourhood lots located on the land following the subdivision does not exceed, in this case, the number nominated for that land (being 39) as shown on the *Multiple Occupancy and Community Title Map*, and Complies
 - (b) there will be at least one lot comprising association property located within that land following the subdivision that comprises land to be used for the purposes of a recreation area, an environmental facility, agriculture or environmental protection works. Complies

2.2 Background

A pre-lodgement meeting was not held prior to the lodgement of the application.

The original development consent was issued on **26 June 2025**, with the key issues considered in the assessment of the original development comprising the following:

- Traffic & Access
- Biodiversity
- Onsite Wastewater Management
- Community Opposition

The proposed modification application was lodged on **10 March 2026**. A chronology of the modification application since lodgement is outlined below in **Table 3**:

Table 1: Chronology of the Modification Application

Date	Event
10 March 2026	Modification application lodged
26 March 2026	Exhibition of the application commenced. Original end date 24 April 2026, extended end date 15 May 2026
19 March 2026	Modification referred to external agencies
18 May 2026	Request for Information from Council to the Applicant (Section 104 of the 2021 Regulation), including that the deletion of the conditions requiring intersection upgrade is not supported due to safety concerns, concerns with the submitted OSSM Capability Assessment, matters identified by Essential Energy and advice that Council is unlikely to support the proposal to permit the keeping of dogs under strict controls within the estate.
30 July 2026	Additional information lodged, with all documents by Ardill Payne & Partners, including a Traffic Management Plan dated July 2026, a plan titled "Plan & Sections of stormwater and sewer LAA, sites Lots 35-37", and a letter dated 30 July 2026 addressing the 3 items in Council's letter requesting further information.
28 August 2026	Applicant advised again that staff are unlikely to support the component of the proposal to modify the consent to "permit the keeping of dogs under strict controls, whilst maintaining the prohibition on the keeping of cats within the estate" at this environmentally significant location. The Applicant responded as follows: <i>"Re the environmental significance of the property, its been a cattle farm for 80 plus years. Its lack of environmental significance was one of the main reasons it made it on to the RLUS. The only environmental significance is the VMP related works that we propose to do, its being created by us and doesn't currently exist."</i>

2.3 Site History

- Development Application No. 5.1990.257.1 for Additions was determined on 16 July 1990.
- Building Application No. 6.1990.2336.1 for Alterations and Additions to a Dwelling was approved on 20 August 1990.

- Development Application No. 10.1999.850.1 for a Dwelling & pool – rural was approved on 19 September 2000 and modified on 20 March 2002, 6 February 2003 and 12 March 2004.
- Development Application No. 10.2002.287.1 for a Farm Shed Facility was approved on 6 June 2002 and modified on 12 November 2002.
- Complying Development Certificate 16.2004.41.1 for a New Swimming Pool was issued on 21 April 2004.
- Development Application No. 10.2023.454.1 for Community Title Subdivision Comprising 38 Neighbourhood Lots and 1 Association Property, Private Infrastructure and Community Facilities Including a Community Building, Tennis Court and Maintenance Shed (includes Draft Planning Agreement) was approved on 26 June 2025.

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

3.1 Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

The development as modified in accordance with the Recommendation of this Report is substantially the same as the approved development. The lot and road layout remains substantially the same and the addition of one lot is not considered to render the modified development not substantially the same as the approved development.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

The NSW Rural Fire Service has issued its modified General Terms of Approval which are included in the Recommendation of this Report.

- (c) *it has notified the application in accordance with—*
- the regulations, if the regulations so require, or*
 - a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

The application was placed on public exhibition from 26 March to 15 May 2026.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

A total of 15 objections having been received during the public exhibition. The issues raised in these submissions are considered in Section 4 of this Report.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this Report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The Northern Regional Planning Panel granted consent to the original development in a notice of determination dated 26 June 2025. The reasons outlined in the Statement of Reasons for the decision included the following:

Statement of Reasons
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies.
The proposed development complies with relevant provisions of Development Control Plan 2014.
The proposed development complies with Environmental Planning & Assessment Regulation 2021 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Council's Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

The modification is consistent with the Reasons for the decision on the consent in that the modified development as recommended by this Report is consistent with the planning controls and expectations for the site given the applicable zoning and other planning controls.

3.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
 - (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),*
- (b) *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.*

3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

The relevant provisions under s4.15(1)(a) are considered below.

(a) **Environmental planning instruments (s4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 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 4** and considered in more detail below.

Table 4: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	The original development was stated to be “regional development” for the following reason: <i>Clause 8 (1) (c), Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Coastal Subdivision</i> <i>1) Development within the coastal zone for the purposes of subdivision of the following kind -</i> <i>c) Subdivision of land for rural-residential purposes into more than 25 lots, if the land-</i> <i>i. is not in the metropolitan coastal zone, or</i> <i>ii. is wholly or partly in a sensitive coastal location</i> <i>The north-west corner of the property is mapped within the Coastal Environment Area under SEPP (Resilience & Hazards) 2021 and on this basis the site was assessed as being in the Coastal Zone. The application proposed more than 25 lots for rural-residential purposes and is not located in the metropolitan coastal zone.</i>	Y
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management - Section 2.10(1) & (2) - Development on land within the coastal environment area <u>Comment:</u> The modified lots are not located in the mapped Coastal Environment Area and no further consideration of this matter is required. Chapter 4: Remediation of Land - Section 4.6 – Contamination and remediation <u>Comment:</u> Council’s Environmental Health Consultant raised no objection to the proposal in this regard.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure Section 2.48(2) (Determination of development applications—other development) – electricity transmission <u>Comment:</u> The application was referred to Essential Energy which provided its advice in response dated 2/4/2026. The advice was relayed to the Applicant who advised in response as follows: <i>“The subject development application was formally lodged 12/12/23 and approved 27/6/25, the modification subject to this application does not alter any matters that would create any impact or any additional impact on the existing Essential Energy infrastructure located within the subject site. Whilst</i>	Y

	<i>the developer is not averse to discussing matters surrounding existing and proposed electrical infrastructure with Essential Energy, the subject modification application is not considered to legally trigger such a discussion.</i> <i>Further, it is likely that the existing Essential Energy infrastructure within the site will be relocated to a more sensible location, this would be undertaken in consultation with Essential Energy prior to undertaking any works associated with such. Therefore, it is considered premature to create easements over existing Essential Energy infrastructure prior to an electrical design being prepared and submitted to Essential Energy for approval."</i> The advice from Essential Energy is included as a modified "Essential Energy" Note in the Notice of Determination as per the Recommended Modifications to the Notice of Determination in Attachment A.	
Proposed Instruments	No significant compliance issues identified.	Y
LEP	• Clause 2.3 – Zone objectives • Clause 4.1B – Permissibility	Y

Byron Local Environmental Plan 2014

The relevant local environmental plan applying to the site is the *Byron Local Environmental Plan 2014* ('the LEP').

Zoning and Permissibility (Part 2)

The modified lots are located within the R5 Large Lot Residential Zone pursuant to Clause 2.2 of the LEP:

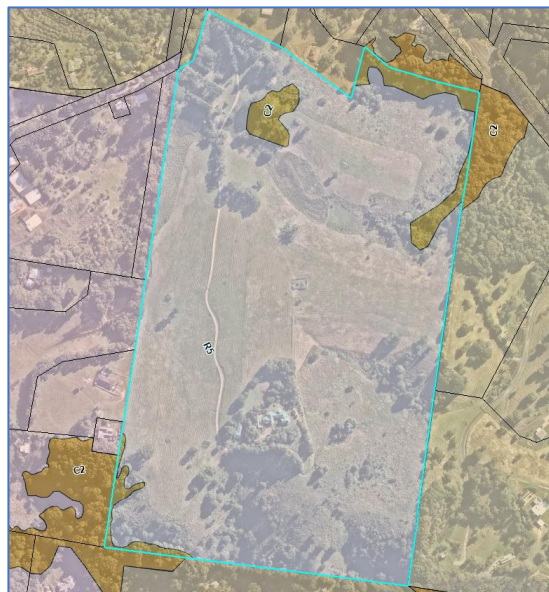


Figure 10: Zoning Map Extract

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The development as modified, in accordance with **Attachment A**, is satisfactory having regard to these zone objectives because it:

- continues to provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- ensures that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- ensures that development in the area does not unreasonably increase the demand for public services or public facilities.
- minimises conflict between land uses within this zone and land uses within adjoining zones.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal as modified are considered below.

- In accordance with clause **4.1B Minimum subdivision lot size for multiple occupancy or rural community title developments** of the LEP, the size of any lot resulting from the subdivision of this land may be less than the minimum lot size shown on the Lot Size Map in relation to the land (40 hectares for this site) if—
 - (a) the total number of neighbourhood lots located on the land following the subdivision does not exceed, in this case, the number nominated for that land (being 39) as shown on the *Multiple Occupancy and Community Title Map*, and Complies
 - (b) there will be at least one lot comprising association property located within that land following the subdivision that comprises land to be used for the purposes of a recreation area, an environmental facility, agriculture or environmental protection works. Complies

The development as modified, in accordance with **Attachment A**, is satisfactory having regard to the applicable provisions of the LEP.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are no proposed instruments of significant applicability to the assessment of this application.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The following Development Control Plan is relevant to this application:

- *Byron Shire Development Control Plan 2014* ('the DCP')

Chapter B1 Biodiversity

Council's Ecologist does not recommend approval of the proposed modifications in relation to conditions 67(f) and 84 seeking to permit the keeping of dogs under strict controls, whilst maintaining the prohibition on the keeping of cats within the estate.

Chapter B3 Services

Council's Environmental Health Consultant raised no objection to deletion of condition 9 in relation to sewage capability, and modification of conditions 19 in relation to imported fill material and conditions 67(a) and 67(b) in relation to contents of management statements relating to no build zones and effluent disposal areas, subject to insertion of 7 additional conditions.

Council's Development Engineer recommends modification of condition 1 to reflect the modified Civil Design Plans.

The advice from Essential Energy is included as a modified "Essential Energy" Note in the Notice of Determination.

Chapter B4 Traffic Planning

Council's Development Engineer did not recommend deletion of condition 8 but recommends a modified condition 8 in relation to timing of external roadworks within McAuleys Lane and Mullumbimby Road. Council's Development Engineer does not recommend deletion of conditions 14 a) (ii) and (iii). These are discussed further below.

Chapter D6 Subdivision

Lot size, shape & configuration:

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

No modifications to the approved battle-axe lots are proposed.

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 and the modified development complies.

Information provided with this modification:

- Water Management Plan – submitted documents assessed by Development Engineer.
- On-site sewage management plan – submitted documents assessed by Environmental Health Consultant.
- Waste management plan – no significant change.
- Bushfire management plan – modified General Terms of Approval provided by Rural Fire Service.
- Vegetation management plan – not required by Ecologist.
- Measures to address unauthorised dwellings – not required in this case
- Draft Neighbourhood Management Statement – modified condition recommended.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Byron Shire Local Infrastructure Development Contributions Plan 2026*

This Contributions Plan has been considered and included **Attachment A** include a modified Note in Schedule 7 of the Notice of Determination titled "S7.11 Schedule of Development Contributions" to account for the increase from 38 approved lots to 39 lots.

(d) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))

No modification is proposed in relation to the Planning Agreement requirements of the consent contained in deferred commencement condition 1.

(e) Provisions of Regulations (s4.15(1)(a)(iv))

There are no additional matters under Section 61 of the 2021 EP&A Regulation that must be taken into consideration by a consent authority in determining this application.

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.

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

The likely impacts of the 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, Council's Ecologist does not recommend approval of the proposed modifications in relation to conditions 67(f) and 84 which seek to permit the keeping of dogs under strict controls whilst maintaining the prohibition on the keeping of cats within the estate.

The deletion of condition 9 in relation to sewage capability, modification of conditions 8 in relation to timing of external roadworks within McAuleys Lane and Mullumbimby Road, 19 in relation to imported fill material and 67(a) and 67(b) in relation to contents of management statements relating to no build zones an effluent disposal areas, and modification of the approved Civil Design Plans are not expected to have significant environmental impacts.

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

The proposal as modified in accordance with the Recommendation of this Report fits in the locality, appropriately addresses constraints and opportunities of the site.

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

These submissions are considered in Section 4.3 of this Report.

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

Approval of the recommended modifications is not contrary to the public interest and potential impacts have been mitigated via the recommended modifications to the consent. On balance the approval as recommended would not be contrary to the public interest.

3.3 Part 5 of the 2021 EP&A Regulation

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 5** below.

Table 5: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by the Applicant with the consent in writing of the owner of the land.	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required.	N/A
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.55(2) to allow Modification to the Plans and Conditions of the Approved Community Title Subdivision Comprising 38 Neighbourhood Lots and 1 Association Property, Private Infrastructure and Community Facilities, including in Relation to Changes to the Configuration of Lots 7-14 and 33-38, Re-alignment of Road 3, Removal of the Requirements to Construct a Cycle Path and Turnaround in McAuleys Lane, and to Allow the Keeping of Dogs under Strict Controls but not Cats, and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the modification as recommended by this Report. Only minor	Y

	modifications to the lot and road layout are recommended to be approved. Aspects of the proposal which are determined to have a significant impact are not recommended to be approved.	
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development as per the recommendation of this Report will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	N/A	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Y
Notification and exhibition requirements (CII 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application has been referred to the relevant integrated development approval body (RFS) as outlined in Section 4.1 of this Report.	Y

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application relates to:

- Integrated Development (s4.46)

Accordingly, the modification application was referred to the NSW Rural Fire Service as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in **Table 6**. There are no outstanding issues arising from these and other referral requirements as discussed below.

Table 6: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Essential Energy	S2.48 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The advice from Essential Energy is included as a modified “Essential Energy” Note in the Notice of Determination as per Attachment A .	Y
Transport for NSW	S138 of the Roads Act 1993	Referral rejected by TfNSW	Y
Integrated Development (s4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes	Modified General Terms of Approval have been issued, which are included in the Recommendation of this Report.	Y
Department of Climate Change, Energy, the Environment and Water – Water Group	S91 – <i>Water Management Act 2000</i> Activity approval under Part 3 of Chapter 3	DCCEEW-Water was notified on 19 March 2026 in accordance with section 109 of the EP&A Regulation 2021. This is the mandatory requirement. DCCEEW-Water has not responded, for example with modified General Terms of Approval.	Y

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 7**. The outstanding issues raised by Council officers are considered in the Key Issues section of this Report.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineer	Council's Development Engineer recommends modification of condition 1 to reflect the modified Civil Design Plans. Council's Development Engineer did not recommend deletion of condition 8 but recommends a modified condition 8. Council's Development Engineer does not recommend deletion of conditions 14 a) (ii) and (iii). These are discussed further below.	Y & N
Environmental Health Consultant	Council's Environmental Health Consultant recommended modification of conditions 9 (not deletion), 19, 67(a) and 67(b), subject to insertion of 7	Y

	additional conditions.	
Ecologist	Council's Ecologist does not recommend approval of the proposed modifications in relation to conditions 67(f) and 84.	N

Council's Development Engineer recommends modification of condition 1 to reflect the modified Civil Design Plans, as indicated in **Attachment A**.

In relation to the proposed deletion of condition 8, Council's Development Engineer recommends instead that it be modified on the basis of the following justification:

"The applicant has submitted additional information, including a Traffic Management Plan to support removal of Condition 8. The submitted information demonstrates that construction traffic associated with preliminary and internal subdivision works can be managed through operational controls. These controls include truck scheduling, restrictions on vehicle queuing within McAuleys Lane, defined heavy vehicle routes and temporary traffic management measures.

While the submitted Traffic Management Plan provides a mechanism for managing construction traffic, it does not demonstrate that the road safety issues underpinning Condition 8 have been resolved. In particular, no updated road safety assessment or intersection analysis has been provided to demonstrate that previously identified sight distance deficiencies and safety concerns are no longer relevant.

Accordingly, proposed deletion of the condition is not supported. However, it is considered reasonable to amend the condition to permit commencement of approved internal works subject to implementation of an approved Traffic Management Plan, while retaining the requirement for completion of external roadworks prior to commencement of works with the potential to generate significant construction traffic.

Outcome

The proposed deletion of Condition 8 is not supported. However, it is considered reasonable to amend the condition to allow preliminary and internal works to proceed under an approved Traffic Management Plan, while retaining the requirement for the external roadworks to be completed before commencement of major subdivision construction activities"

The modified wording for condition 8 is provided in **Attachment A**.

Council's Development Engineer does not recommend the proposed deletion of conditions 14 a)(ii) and (iii) on the basis of the following justification:

"Condition 14a)(ii) Cycle Path – delete

The justification does not clearly identify the requirement it seeks to address, other than the existing condition. Therefore, the proposal to delete the condition lacks adequate justification and is not supported.

Outcome

The proposed deletion of Condition 14a)(ii) Cycle Path is not supported

Condition 14a)(iii) dot 1 turnaround area – delete

The applicant seeks to delete the requirement to provide a turnaround area in McAuleys Lane on the basis that the road functions as a through road and that a turnaround facility is unnecessary.

Assessment

Correspondence previously issued by Council confirms that there is sufficient area available within the road reserve to accommodate a turnaround area for service vehicles. The provision of this infrastructure is both feasible and practical and was included as part of the approved roadworks and access upgrade requirements.

The proposed turnaround area would also facilitate servicing of properties fronting Mullumbimby Road, including 110 Mullumbimby Road, from the southern approach, thereby reducing conflict points and improving operational safety for both service vehicles and through traffic.

In the absence of any traffic engineering assessment demonstrating that the turnaround area is unnecessary or that an alternative arrangement would achieve an equivalent safety outcome, there is insufficient justification to support its removal.

Outcome

The proposed deletion of Condition 14a(iii) requiring the provision of a turnaround area in McAuleys Lane is not supported."

Accordingly, condition 14 is not recommended to be modified.

Condition 9 is recommended to be modified by Council's Environmental Health Consultant, not deleted as proposed by the application. The modified wording requires that, prior to issue of any subdivision works certificate, a revised On-site Sewage Management Capability Plan is to be submitted to and approved by Council, correcting the Lot CT.10 legend annotation and showing dimensioned separation distances from the nominated land application areas on Lots CT.10 and CT.37 to the 2nd order stream and to groundwater bore approval No. 30WA001941 respectively. The bore location is to be taken from the registered coordinates held by WaterNSW or from survey.

Council's Environmental Health Consultant raised no objection to proposed modification of condition 19 as indicated in **Attachment A** to reflect the new lot numbering.

Council's Environmental Health Consultant raised no objection to the modification of conditions 67(a) and 67(b) to reflect the modified documents including Drawing No. S455.1.03 Rev A Masterplan Lot Plan included in **Attachment B**, and the On-Site Sewage Management Capability Assessment by HMC Environmental Consulting Pty Ltd dated January 2026 at **Attachment C**.

Council's Environmental Health Consultant recommended the insertion of 7 additional conditions into the Notice of Determination as indicated in **Attachment A**

Council's Ecologist does not recommend approval of the proposed modifications in relation to conditions 67(f) and 84 given the significant ecological impact of the proposal to permit dogs, including the 11 hectares of restoration that will provide significant habitat.

4.3 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 26 March 2026 until 15 May 2026. The notification included the following:

- A sign placed on the site;
- Notification on Council's website;
- Notification letters sent to adjoining and adjacent properties (approximately 77 letters sent);

The Council received a total of 15 unique submissions, with all being objections. The issues raised in these submissions are considered in **Table 8**.

The issues raised in the community submissions have been addressed in this Report and **Attachment A**.

Table 8: Community Submissions

Issue	No of submissions	Council Comments
Impact of allowing dogs Allowing dogs will have a significant impact on wildlife, noise and out of control dogs.	15	Council's Ecologist does not recommend approval of the proposed modifications in relation to conditions 67(f) and 84 given the significant ecological impact of the proposal to permit dogs, including the 11 hectares of restoration that will provide significant habitat.
Traffic and road safety impacts due to deletion of intersection upgrade There are significant traffic issues and the intersection upgrade is necessary. Deletion of condition 8 will have significant safety impacts. The development will have significant construction traffic impacts. The deletion of the intersection upgrade will affect emergency access to this bush fire prone land. The Panel should seek an independent	14	In relation to the Applicant's proposed deletion of condition 8 Timing of Works, Council's Development Engineer recommends that it instead be modified in accordance with Attachment A and for the reasons outlined elsewhere in this Report. Council's Development Engineer does not recommend the proposed deletion of conditions 14 a)(ii) and (iii) in relation to the cycle path and roadworks and access upgrade.

traffic assessment.		
Not substantially the same The development as modified is not substantially the same. The development is significantly changed and there is an added lot. The lots were reduced due to impacts on a bore, and are now increased. More houses, people, dogs, cars, septs, noise, density in a rural environment. All components of the proposed modification to the consent result in the development not being substantially the same as the approved development.	7	The development as modified in accordance with the Recommendation of this Report is substantially the same as the approved development. The lot and road layout remains substantially the same and the addition of one lot does not render the modified development to be not substantially the same as the approved development. The modified plans reduce the number of lots which adjoin the western boundary as required by condition 2 of the consent and locates another Lot CT.38 in the eastern branch of the subdivision. The modified lot layout generally occupies the same footprint as the approved layout and, subject to the Recommendation of this Report, is not expected to have any more significant environmental or ecological impacts compared to the approved development.
Deletion of cycle path Walking and cycling are currently extremely dangerous. The cycle path is necessary.	9	Council's Development Engineer does not recommend the proposed deletion of conditions 14 a)(ii) and (iii) in relation to the cycle path and roadworks and access upgrade.
Failure to achieve compliant LAA buffers to a dam The application claims a 30m buffer to a 1st	2	Council's Environmental Health Consultant raised no objection to the modification to the lot layout or conditions 67(a) and 67(b) to reflect the modified documents including Drawing No. S455.1.03 Rev A Masterplan Lot Plan included in Attachment B, and the On-Site Sewage Management Capability Assessment by HMC Environmental Consulting Pty Ltd dated January 2026 at Attachment C.

order stream and dam system. The actual setback is approximately 14.2m. The LAA buffers do not comply, increasing the risk of nutrient loading and wastewater impacts.		
Inadequate wastewater systems As a result of squeezing in an extra lot.	3	Council's Environmental Health Consultant raised no objection to the proposal on the basis of the additional lot.
Visual impacts of an additional lot The changes move the development from a large lot rural residential pattern to a suburban subdivision pattern	1	The addition of a lot in the eastern branch of the subdivision will not have a significant visual impact in the locality, and maintains a very similar subdivision pattern compared that of the approved subdivision.
Erroneous application documents • Planning agreement – an amended Planning Agreement needs to be submitted with this application • Notice of determination • OSSM Capability assessment • Stormwater management strategy report	2 for this issue 1 for the other issues	The Planning Agreement is referenced in the deferred commencement condition of the consent, and no modification is proposed by the application to that condition. Council relies on its own a copy of the development consent. Council's Environmental Health Consultant and Development Engineer raised no objection to the proposal in relation to OSSM Capability, Stormwater management strategy report or Community management statement.

• Community management statement		
Public notification did not extend to previous submitters	1	The modification application was required to be publicly exhibited in accordance with Council's then applicable Byron Shire Council Community Participation Plan (CPP), which stated that Council will notify and exhibit applications to modify a development consent in the same manner as the original development application. Council was not required by that CPP to publicly notify previous submitters of a modification application. To capture as many interested persons as possible, Council notifies the application on it's DA Tracker website and also places a sign on the land, both in accordance with the CPP.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail including recommendations of Council's experts, all as outlined elsewhere in this Report:

- Condition 1 is recommended to be modified by Council's Development Engineer and Environmental Health Consultant to reflect applicable and suitable plans and documents submitted with the application.
- Council's Environmental Health Consultant raised no objection to the proposed deletion of Condition 2. This condition currently requires consolidation of Lots 36, 37 and 38 adjacent to the site's western boundary into 2 lots. The modified plans depict the reduced number of lots (by 1) adjacent to the site's western boundary envisaged by the required consolidation. The additional lot is accommodated in the eastern branch of the subdivision. The modified plans, as referred to in recommended modified condition 1, result in condition 2 being superfluous and able to be deleted.
- Condition 8 is recommended to be modified by Council's Development Engineer, not deleted as proposed by the application, because it is reasonable to modify the condition to allow preliminary and internal works to proceed under an approved Traffic Management Plan, while retaining the requirement for the external roadworks to be completed before commencement of major subdivision construction activities.
- Condition 9 is recommended to be modified by Council's Environmental Health Consultant, not deleted as proposed by the application.
- Council's Development Engineer objected to the modification of Conditions 14 a)(ii) and a)(iii) and these are not recommended, because there is sufficient area available within the road reserve to accommodate a turnaround area for service vehicles, the provision of this infrastructure is both feasible and practical and was included as part of the approved roadworks and access upgrade requirements and the proposed turnaround area would also facilitate servicing of properties fronting Mullumbimby Road thereby reducing conflict points and improving operational safety for both service

vehicles and through traffic. In the absence of any traffic engineering assessment demonstrating that the turnaround area is unnecessary or that an alternative arrangement would achieve an equivalent safety outcome, there is insufficient justification to support its removal.

- Council's Environmental Health Consultant raised no objection to the modification of Conditions 19, 67(a) and 67(b) as proposed by the application.
- Council's Environmental Health Consultant recommended the insertion of 7 new conditions.
- Council's Ecologist objected to the modification of Conditions 67(f) and 84 and these are not recommended given the significant ecological impact of the proposal to permit dogs, including the 11 hectares of restoration that will provide significant habitat.

The Applicant was advised by way of letter dated 18 May 2026 in part that the proposal in relation to road upgrades is not supported from a Development Engineering perspective. The Applicant was advised by the same letter and again on 28 August 2026 that Council is unlikely to support the proposal to permit the keeping of dogs under strict controls within the estate. The Applicant submitted additional information which has not addressed the issues in relation to these aspects of the proposal, for the reasons outlined in this Report, to the satisfaction of Council's Development Engineer and Ecologist. The remaining aspects of the proposal are able to be recommended for approval in accordance with **Attachment A**.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation 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 can be supported in accordance with the Recommendation of this Report and **Attachment A**.

The development as modified in accordance with the Recommendation of this Report is considered to satisfy the "substantially the same development" test required by Section 4.55 of the EP&A Act.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended modifications to the Notice of Determination at **Attachment A**.

7. RECOMMENDATION

It is recommended:

- That the Modification Application 10.2023.454.2 for Modification to the Plans and Conditions of the Approved Community Title Subdivision Comprising 38 Neighbourhood Lots and 1 Association Property, Private Infrastructure and Community Facilities, including in Relation to Changes to the Configuration of Lots 7-14 and 33-38, Re-alignment of Road 3, Removal of the Requirements to Construct a Cycle Path and Turnaround in McAuleys Lane, and to Allow the Keeping of Dogs under Strict Controls but not Cats at 53 McAuleys Lane Myocum be APPROVED pursuant to 4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the Recommended Modifications to the Notice of Determination attached to this Report at

Attachment A; and

- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Recommended Modifications to the Notice of Determination
- Attachment B: Plans
- Attachment C: On-Site Sewage Management Capability Assessment by HMC Environmental Consulting Pty Ltd
- Attachment D: Civil Design Plans