



# DEVELOPMENT APPLICATION AND STATEMENT OF ENVIRONMENTAL EFFECTS

## Submission to Byron Shire Council

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 (including community building, tennis court and maintenance shed)

Lot 8 DP 589795  
No. 53 McAuleys Lane, Myocum

for:  
McAuleys No. 1 Pty Ltd

November 2023

**BALLINA**



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## 1. Introduction

*This section introduces the proposal and provides a general overview of the project. Details of public authority and other consultations that have been undertaken in conjunction with the preparation of this development application are also provided.*

### 1.1 Background

Ardill Payne and Partners (APP) has been engaged by McAuleys No.1 Pty Ltd to provide town planning, engineering and surveying services in the preparation and lodgement of a development application and statement of environmental effects with Byron Shire Council.

Development consent is sought for a Community Title subdivision of a rural lot described as Lot 8 DP 589795, No. 53 McAuleys Lane, Myocum to create:

- 37 x vacant Community Title residential lots
- 1 x Community Title residential lot containing an existing dwelling house
- 1 x residue community (common property) lot

including the installation of associated private infrastructure services comprising private internal roads, community building, tennis court, maintenance shed, pathways and the upgrade of the Mullumbimby Road and McAuleys Lane intersection.

### 1.2 Structure and Scope of Report

<b>Section 1</b>	Provides a general introduction to the proposal.
<b>Section 2</b>	Describes the subject land and its local environmental context.
<b>Section 3</b>	Describes the development proposal in detail.
<b>Section 4</b>	Reviews the key environmental interactions/impacts and proposed management measures.
<b>Section 5</b>	Reviews the statutory and planning policy provisions applying to the project.

**Section 6** Provides a summary and conclusions.

A number of appendices form part of this report, being:

<b>Appendix A</b>	Locality plan
<b>Appendix B</b>	Copy of deposited plan
<b>Appendix C</b>	Contour and detail survey
<b>Appendix D</b>	Plans of proposed subdivision
<b>Appendix E</b>	Plans of proposed intersection
<b>Appendix F</b>	Master plan and concept landscaping plan
<b>Appendix G</b>	Bushfire assessment report
<b>Appendix H</b>	Preliminary site investigation
<b>Appendix I</b>	Biodiversity development assessment report
<b>Appendix J</b>	On-site sewage management capability assessment
<b>Appendix K</b>	Site waste minimisation and management plan
<b>Appendix L</b>	Plans of proposed community building, tennis court and maintenance shed
<b>Appendix M</b>	AHIMS search results
<b>Appendix N</b>	Road safety audit
<b>Appendix O</b>	Traffic impact assessment
<b>Appendix P</b>	Stormwater management plan
<b>Appendix Q</b>	Voluntary planning agreement
<b>Appendix R</b>	DAP meeting notes
<b>Appendix S</b>	Draft neighbourhood management statement

### 1.3 Overview of Statutory Framework

Byron Shire Council is the consent authority for the development application pursuant to Section 4.5 of the *EP & A Act 1979*.

The proposed development comprises integrated development pursuant to Section 4.46 of the *EP & A Act 1979* due to the fact that the subject land is:

- mapped as being bushfire prone and the subdivision of such requires a Bushfire Safety Authority to be issued by the NSW Rural Fire Service under Section 100B of the *Rural Fires Act 1997*
- traversed by a watercourse and there are works within 40m of such and thus a Controlled Activity Approval is required to be issued by the Office of Water under the *Water Management Act 2000*

The subject land is subject to 2 x different zones under the BLEP 2014, with the vast majority of the land being zoned R5 – Large Lot Residential and a number of smaller scattered areas of C2 – Environmental Conservation. The land is mapped on the BLEP 2014 Multiple Occupancy and Community Title Map as “Multiple Occupancy – 39” and thus has the ability to be subdivided into 39 Community Title lots.

A Development Advisory Panel meeting was held on the 28<sup>th</sup> June 2023 with Council’s Technical Officers and members of the project team to discuss the proposed Community Title subdivision. There were no formal minutes provided by Council from this meeting, with a copy of APP’s meeting notes being provided at **Appendix Q**.

**Section 5.0** of this report provides a detailed commentary on the environmental planning instruments and development controls applying to the development.

## 1.4 Site History

A search of Council’s DA Tracker identified the following application history in respect of Lot 8 DP 589795 (the subject land):

Application Number	Application Type	Lodgement Date	Details
13.2004.41.1	Occupation Certificate	20/05/2009	53 Mcauleys Ln, Myocum 2482 NSW <b>New Swimming Pool</b>
11.1999.850.2	Construction Certificate	19/04/2004	53 Mcauleys Ln, Myocum 2482 NSW <b>Modifications for additions to dwelling</b>
16.2004.41.1	Complying Development Cert	16/04/2004	53 Mcauleys Ln, Myocum 2482 NSW <b>New Swimming Pool</b>
10.1999.850.4	DA Modification	10/02/2004	53 Mcauleys Ln, Myocum 2482 NSW <b>Modifications for additions to dwelling Modifications for additions to dwelling</b>
13.2002.287.1	Occupation Certificate	21/03/2003	53 Mcauleys Ln, Myocum 2482 NSW
11.2002.287.2	Construction Certificate	21/03/2003	53 Mcauleys Ln, Myocum 2482 NSW
11.1999.850.1	Construction Certificate	21/02/2003	53 Mcauleys Ln, Myocum 2482 NSW
10.1999.850.3	DA Modification	22/01/2003	53 Mcauleys Ln, Myocum 2482 NSW <b>Section 96(1) to delete condition C3 relating to the driveway Section 96(1) to delete condition C3 relating to the driveway</b>
11.2002.287.1	Construction Certificate	22/11/2002	53 Mcauleys Ln, Myocum 2482 NSW <b>Farm Shed Facility</b>
10.2002.287.2	DA Modification	28/10/2002	53 Mcauleys Ln, Myocum 2482 NSW <b>Section 96 Modification - minor amendments to dimensions of shed Section 96 Modification - minor amendments to dimensions of shed</b>
10.2002.287.1	Development Application	14/05/2002	53 Mcauleys Ln, Myocum 2482 NSW <b>Farm Shed Facility</b>
10.1999.850.2	DA Modification	22/02/2002	53 Mcauleys Ln, Myocum 2482 NSW <b>Section 96 Modification to amend Dwelling Design</b>

The subject land has been subject of a recent Planning Proposal (PP-2021-6076) which had the effect of:

- rezoning part of the subject land from RU2 – Rural Landscape to R5 – Large Lot Residential
- permitting multiple occupancy/community title development on the R5 zoned part of the lot

which was gazetted on the 13<sup>th</sup> December 2022.

The subject land is subject to a Voluntary Planning Agreement (VPA), dated 20<sup>th</sup> December 2020, with a copy of such being provided at **Appendix Q**, which provides certain development contributions (both monetary and works-in-kind) that are specifically related to the proposed subdivision.

## 1.5 Landowner, Project Proponent and Applicant Details

The land that is subject of this application is owned by McAuleys No.1 Pty Ltd (ATF McAuleys Unit Trust). The landowners' consent to the making of this application is attached (signed by Matthew Bleakley – Director/Secretary and John Callanan – Director).

The applicant is Ardill Payne & Partners, PO Box 20, Ballina.



## 2. The Site and Its Context

*This section describes the subject land and identifies the geographical context of the site and its relationship to the surrounding locality.*

### 2.1 Location and Property Description

The land to which this application relates (the ‘subject land’) is described in real property terms as Lot 8 DP 589795, is commonly known as No. 53 McAuleys Lane, Myocum. The subject land:

- is generally rectangular in shape with overall dimensions of approx. 460m x 750m and area of 34.82ha
- has a frontage of 104.045m McAuleys Lane with vehicular access being via an existing driveway crossing thereto
- contains a dwelling house and associated improvements/structures
- is largely cleared with a number of scattered small stands of bushland and paddock trees

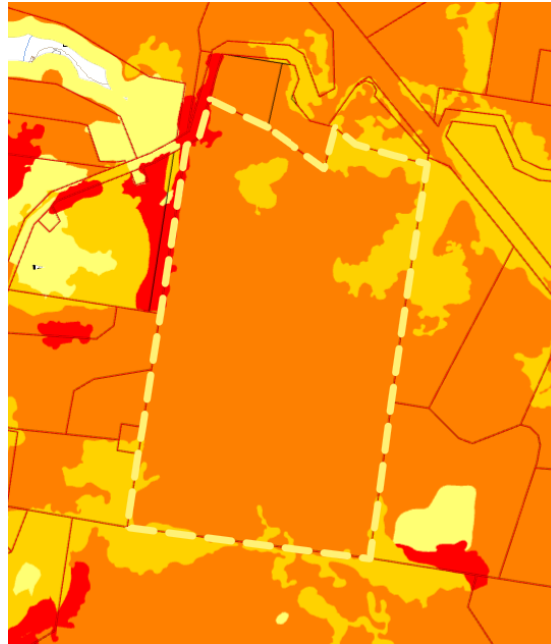
An aerial photograph of the subject and adjoining land is provided at **Appendix A**. A copy of the deposited plan is provided at **Appendix B**. A contour and detail survey of the intersection of Mullumbimby Road and McAuleys Lane is provided at **Appendix C**.

### 2.1 Constraints

Preliminary planning investigations (including interrogation of the ePlanning Spatial Viewer and Council’s Web Map) have confirmed as follows:

#### 2.1.1 Bushfire

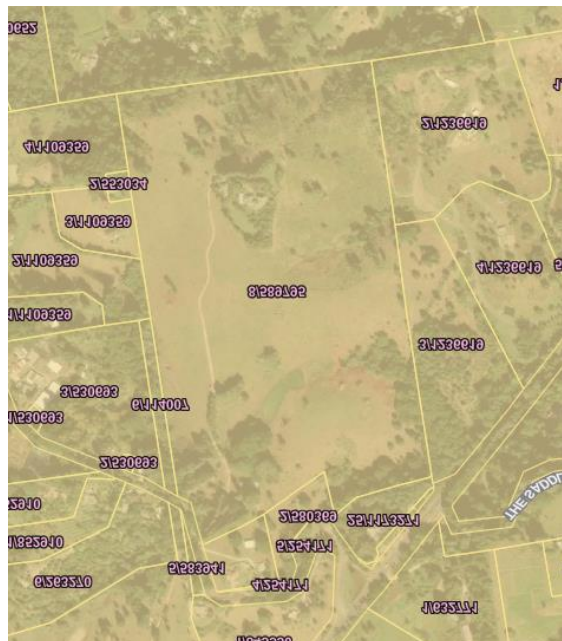
As shown below, the subject land is mapped as being bushfire prone as a consequence of Vegetation Category 1 and Category 2 vegetation + buffer:



Extract: ePlanning Spatial Viewer

## 2.1.2 Flora and Fauna

As shown below, the subject land is mapped as being in a Koala Planning Area, however is **not** mapped as being in a Koala Management Precinct or containing Koala habitat:



Extract: Council Web Map

As shown below, parts of the subject land are mapped as containing “High Environmental Value Vegetation (2023)”:



*Extract: BSC Web Map*

## 2.2 Other matters

The subject land is **not**:

- mapped as containing acid sulfate soils
- mapped as being in an erosion precinct
- mapped as being subject to flooding
- mapped as being subject to coastal hazards or processes
- mapped as being in a drinking water catchment
- mapped as containing “biodiversity values” on the Biodiversity Values Map and Threshold Tool
- identified as being or containing an item of environmental heritage under Part 1 of Schedule 5 of the BLEP 2014
- identified as being within a Heritage Conservation Area under Part 2 of Schedule 5 of the BLEP 2014

- affected by any Road widening or realignment proposal under either Division 2 of Part 3 of the *Roads Act 1993*, any environmental planning instrument or any resolution of Council
- identified as being subject to acquisition by a public authority under the provisions of any environmental planning instrument, deemed or draft environmental planning instrument

### 3. Description of Proposal

*This section describes the proposed development and identifies specific environmental and development objectives that will be adopted in conjunction with the project.*

#### 3.1 Proposed Development

Development consent is sought for the following:

- creation of a Community Title subdivision containing 39 x lots comprising:
  - Proposed Lots 1-25 and 27-38 – vacant residential lots
  - Proposed Lot 26 – existing dwelling house
  - 1 x common property lot
- construction of a private internal road network to service the 38 x lots (being situated on the common property lot)
- construction of a community building, tennis court, maintenance shed and footpath (being situated on the common property lot)

#### 3.2 Proposed Lots

The proposed subdivision comprises a mix of Community Title residential lots, which have been sized and shaped having regard to the characteristics of the land and the constraints and opportunities that the land offers (ie slope, aspect, location, access, bushfire etc), with details of such being provided below and plans being provided at **Appendices D – F**:

Lot No.	Area (m <sup>2</sup> )	Shape	Frontage/Access to internal road/driveway	Status
1	5002	Irregular (battle-axe)	12.4m	Vacant
2	4047	Irregular (battle-axe)	9.9m	Vacant
3	4383	Generally rectangular	34.6m	Vacant
4	5104	Generally rectangular	12.8m	Vacant
5	5807	Irregular (battle-axe)	9.9m	Vacant

6	8479	Irregular (battle-axe)	12.1m	Vacant
7	4140	Irregular (corner lot)	126.5m and 24.3m	Vacant
8	3788	Irregular	35.2m	Vacant
9	3699	Generally rectangular	50.5m	Vacant
10	3666	Irregular (corner lot)	59.5m and 76.2m	Vacant
11	4131	Irregular (corner lot)	52.1m and 81.7m	Vacant
12	4527	Generally rectangular	57.5m	Vacant
13	4160	Irregular	42.4m	Vacant
14	5083	Irregular	15m	Vacant
15	4627	Irregular	15m	Vacant
16	4767	Rectangular	87.3m	Vacant
17	3974	Irregular	44.9m	Vacant
18	3587	Generally rectangular	54m	Vacant
19	3476	Irregular	72m	Vacant
20	3664	Irregular	53.5m	Vacant
21	3707	Generally rectangular	40.9m	Vacant
22	4496	Generally rectangular	40m	Vacant
23	8374	Irregular	42m	Vacant
24	8598	Generally rectangular	54m	Vacant
25	9496	Irregular	40.3	Existing dwelling house
26	7560	Irregular	61.4m	Vacant
27	8058	Irregular	46.9m	Vacant
28	9513	Irregular	10.2m	Vacant
29	4530	Irregular	83.9m	Vacant
30	5015	Irregular	20m	Vacant
31	5162	Irregular	8m	Vacant

32	3420	Irregular	62.2m	Vacant
33	3663	Irregular	73.4m	Vacant
34	3819	Irregular	47m	Vacant
35	3587	Generally rectangular	35m	Vacant
36	3526	Generally rectangular	38m	Vacant
37	3000	Generally rectangular	45m	Vacant
38	3300	Generally triangular	112.2m	Vacant
39	3486	Irregular (corner lot)	141.7m	Vacant
Community Lot	15.66 ha	Irregular	Roads and driveways	Vegetation, roads, community building, maintenance shed & tennis court

Due to the size, shape and dimensions of the proposed 37 x vacant lots, each lot can readily accommodate a minimum 12m x 15m building envelope, which have been shown on the Master Plan and Concept Landscaping Plan at **Appendix F**.

Proposed Lot 25 contains the existing dwelling and swimming pool. This lot is of sufficient size and shape to ensure the existing dwelling is greater than 900mm from any side boundary and will not cause any adverse impact to any future adjoining dwellings.

The Community Title subdivision includes the construction of a private internal road/driveway system to service the 38 x residential community lots.

A new community building, tennis court and maintenance shed will be constructed on the north-eastern side of the entry road within the common lot, with plans of such being provided at **Appendix L**. These buildings/structures will be available for all residents.

The community building:

- has overall dimensions of 8m (W) x 26m (L) x 5m(H)
- is constructed of a combination of light-weight cladding walls and a metal roof
- contains a storeroom (14m<sup>2</sup>), office (15m<sup>2</sup>), toilets (17m<sup>2</sup>), multi-purpose/yoga room (54m<sup>2</sup>) and open pavilion (91m<sup>2</sup>)

- will be provided with 5 x formed car parking spaces

The tennis court is of standard size and design (dimensions of 23.77m x 10.97m) and will be finished with artificial grass with adjustable tennis court perimeter netting, with a basalt stone retaining wall being provided to part of the tennis court surround.

The maintenance shed has dimensions of 10m (W) x 20m (L) x 6.2m (H) and is of metal walls and roof and contains 1 x large sliding door and 1 x small hinged door and will be accessed via a pathway from the car parking area servicing the community building.

Integral to the proposal is the implementation of a Vegetation Management Plan (VMP) covering an area of approx 11.1ha on the common/community lot, with a copy of such being provided at Appendix F of the BDAR at **Appendix I**, the objectives of which are to:

- *Provide guidance on ecological restoration and regeneration of vegetation communities within the areas representing the boundary of the offset area for this VMP;*
- *Remove noxious and environmental weeds from across the restoration areas;*
- *Restore native vegetation to comply with performance targets identified in this VMP; and*
- *To support the sustainability of vegetation elsewhere on the identified land and wider locality by increasing species diversity and providing an additional seed source for the local area.*

Integral to the proposal is the upgrade of the intersection of Mullumbimby Road and McAuleys Lane as detailed in the plans at **Appendix E** and as per the terms and conditions of the VPA provided at **Appendix Q**.

### 3.3 Site Services

The subject land is within a rural type locality. The proposed 38 x residential lots and facilities within the community lot will be connected to reticulated electricity and communications services and will be services with on-site wastewater management and disposal and potable water supplies. (likely roof-water storage tanks) for each future dwelling house.

Provided at **Appendix J** is an On-site Sewage Management Capability Assessment (HMC Environmental Consulting Pty Ltd – dated November 2023) which concluded as follows:



*“This report concludes that, based on the information presented, the proposed land application areas are based on a conservative design approach and enable practical and sustainable on-site sewage management solutions within the proposed new lot boundaries.*

*The report demonstrates that there no absolute site and soil limitations on the proposed lots which cannot be overcome by on-site sewage management design at time of development application assessments for future dwellings.*

*It is considered the site is suitable for the proposed subdivision development in terms of on-site sewage management (OSSM).”*

## 4. Environmental Interactions and Impacts

*This section expands on the contextual description of the physical environment provided in Section 2.0 and provides an analysis of the environmental interactions applicable to the proposed development with specific reference to the site planning objectives specified in Section 3.0 of the report.*

### 4.1 Water Quality

The proposed subdivision will result in an increase in impervious areas being situated on the land as a consequence of the construction of dwelling houses on each community title lot, the new private roads/driveways and the community building, tennis court and maintenance shed.

A Stormwater Management Plan (SWMP) has been prepared by Ardill Payne & Partners (November 2023) at **Appendix P** which addresses the requirements for compliance with Council's Chapter B3 of Council's DCP and its Comprehensive Guidelines for Stormwater Management. The main strategy of the SWMP is as follows:

- large 100kL plus rainwater tanks will be used on each lot for collection and re-use of roof water
- the site does not have access to reticulated water and as such the collated roof water will be used in high rates on a daily basis – this ensures a high level of stormwater quality treatment and quantity mitigation
- where possible the generated flows at the site hard-stand areas will be directed to the existing vegetation buffers and vegetated swales for quality treatment
- the existing water ponding areas along the flow paths will be used for further stormwater quality treatment
- flow condition at the large water ponding area within catchment 7B will be controlled by the size of the culverts proposed for cross drainage of the future road
- this ponding area shall provide both treatment and detention for the site – flows from approximately 70% of the development will discharge to this pond for further quality treatment

### 4.2 Traffic, Transport and Parking

The RMS 'Guide to Traffic Generating Developments' (2002) provides trip rates for a number of different land uses. Updated traffic generation rates contained in the RMS 'Technical Direction TDT 2013/04a: Guide to Traffic Generating Developments, Updated

*Traffic Surveys'* provide the following traffic generation rates for low density residential dwellings in regional areas:

- daily vehicle trips = 7.4 per dwelling
- weekday average evening peak hour vehicle trips = 0.78 per dwelling
- weekday average morning peak hour vehicle trips = 0.71 per dwelling

The Northern Rivers Local Government Development and Design Manual (Version 2) applies a traffic generation rate for single dwelling allotments of 10 vehicles per day.

Based on the above figures, a net increase of 37 x vacant residential lots (with 1 x existing dwelling house on Proposed Lot 25) will generate in the order of 274 – 370 additional daily vehicle trips on the existing local roads servicing the local area.

The proposed private internal road network will be connected to constructed urban residential roads that have a bitumen seal and kerb and gutter and have sufficient capacity to accommodate such movements.

As shown on the plans at **Appendix E**, the proposed internal roads are all 2-way, have a paved bitumen surface, contain either flush or layback kerb on both sides and are provided with turning heads that accommodate a single unit truck (12.5m HRV), which will include Council garage trucks and RFS fire trucks, with the following dimensions:

- Road 1 – 8m wide pavement
- Road 2 – 7m wide pavement with a 4.51 – 5m wide pavement in the turning head
- Road 3 – 6m wide pavement with a 5.5m wide pavement in the turning head
- Road 4 – 7m wide pavement with a 5m wide pavement in the turning head

A Road Safety Audit (RSA) and Traffic Impact Assessment (TIA) were prepared by Ardill Payne & Partners to support and inform the prior Planning Proposal, with a copy of the original RSA being provided at **Appendix N** and a copy of the updated TIA being provided at **Appendix O**.

The amended TIA was prepared on a subdivision layout that is generally consistent with proposed yield and layout proposed by this application and makes the following recommendations:

***For Mullumbimby Road and McAuleys Lane/Mullumbimby Road intersection:***

1. *Provide a channelised right turn lane and acceleration lane (eastbound) on Mullumbimby Road. An auxiliary (acceleration and merging) lane is also required in Mullumbimby Road. Extend the existing left deceleration/turn lane (westbound) in Mullumbimby Road. The existing dedicated left turn lane on Mullumbimby Road shall be extended approx. 30m. Designs shall ensure that sufficient space is available on the shoulder for a bus to stop outside of the turn lane.*
2. *Upgrade intersection line marking and provide a 'Give Way' sign and hold line in McAuleys Lane.*
3. *Modify the driveway entrance to 110 Mullumbimby Road to provide for left in/left out only. This will include a raised splitter island and relevant signage ('Left Only').*
4. *Install an enhanced lane separation device (plastic separator kerb) along the centreline of Mullumbimby Road, with flexible delineators at 5m centres. The spacing of the delineators shall be reduced to 2m opposite the driveway to 110 Mullumbimby Road (details are included on the intersection concept plan in Attachment 3). Arched reflectors shall also be provided on the separator kerb.*
5. *Provide a widened shoulder (similar to existing) at the driveway to 110 Mullumbimby Road to facilitate left turns into and out of the driveway.*
6. *At Saddle Road a 'No U-Turn' sign will be installed for eastbound traffic.*
7. *Install 'Advance Road Name' signs (G1-207) on Mullumbimby Road in both approaches to the McAuleys Lane intersection. Provide also 'Rural Road Name' sign (G3-5) opposite the McAuleys Lane intersection.*
8. *Provide 1m wide shoulders on Mullumbimby Road for the extent of the intersection upgrade.*
9. *Provide 'Crest' signs in Mullumbimby Road in both approaches to the crest at Saddle Road.*
10. *Undertake further discussions with Council with regard to street lighting of the intersection.*

***For the section of McAuleys Lane between Mullumbimby Road and the new internal road:***

11. *Widen McAuleys Lane as required from Mullumbimby Road to the new internal road (approx. 600m) to achieve the minimum NRLG or Austroads design standards. It is noted that some parts of this section are close to the required standard and will not require widening. The road condition (pavement and surface) should be improved with any proposed upgrade works.*
12. *Provide advance warning signs for curves – check warrants to determine if advisory speed signs are also required. Provide where necessary.*

13. *Curve delineation devices – check warrants to determine if CAMs are required – provide where necessary.*
14. *Guide posts – check spacing of guide posts. Provide additional where necessary.*
15. *Safety barriers – check warrants to determine if safety barriers are required. Provide as required.*
16. *Install clear and compliant speed limit signage.*

***For the new McAuleys Lane/Internal Road intersection:***

17. *Install ‘Give Way’ signs and appropriate hold line.*
18. *Install an advance warning sign (‘Side Road Intersection’) on McAuleys Lane in both approaches.*

***For the Mullumbimby Road/Saddle Road intersection:***

19. *Provide a hold line in Saddle Road.*
20. *Maintain clear linemarking at the intersection on completion of the McAuleys Lane intersection upgrade. This will include continuing the edge line through the pavement returns in the intersection. This may also include continuing a lane edge line through the intersection, and adding raised retro-reflective pavement markers (RRPM) and guide posts for added delineation.”*

The stated planning purpose(s) served by the VPA is “..the provision of an upgraded, safe and function transport and road infrastructure for the benefit of the community and road users. The contributions will enable the provision of new cycle and pedestrian links and pathways in the Bryon local government area.”

Subject to the above and to the provisions of the VPA (refer **Appendix Q**), it is contended that the proposed development will not adversely impact the safety and/or efficiency of the local road network.

### 4.3 Heritage

The subject land is not listed in Schedule 5 of the BLEP 2014 as:

- being/containing a heritage item or being in the vicinity of such (Part 1)
- being in a heritage conservation area or being in the vicinity of such (Part 2)

An AHIMS search (refer **Appendix M**) was undertaken for Lot 8 DP 589795 + 50m buffer on the 28<sup>th</sup> June 2023 which reported for both lots:

- zero Aboriginal sites are recorded in or near the above location
- zero Aboriginal places have been declared in or near the above location

The subject land is largely cleared and has been disturbed by prior clearing and cattle grazing and having regard to the circumstances of the case, the potential for the land to be subdivided to contain any items of cultural heritage is considered to be remote.

Notwithstanding the above, if any articles or items of indigenous and/or European heritage significance are uncovered during site activities, work will immediately cease and Council, the Local Aboriginal Land Council and the OEH will be contacted to develop and implement an appropriate management strategy, with the consent able to be conditioned accordingly.

#### 4.4 Contamination

A Preliminary Site Investigation (PSI) was undertaken by Contaminated Site Investigation Australia Pty Ltd (dated 12<sup>th</sup> April 2023) over Lot 8 DP 589795 (refer **Appendix H**) which involved:

- desktop assessment of site location, setting and historical uses
- review of available historical aerial photography and historical title searches
- site visit and walk-over
- collection of 9 x primary soil samples to assess for contaminants of concern
- chain of custody documentation
- analysis of samples via a NATA accredited laboratory
- preparation of PSI report

The PSI concluded that:

*“A desktop review of available information and a site visit did NOT identify evidence of previous development or activities on the site that would suggest potentially contaminating activities had taken place within the area of focus. Analytical results from surface soils indicated all of the compounds tested returned concentrations that were below the adopted criteria for residential use.*

*Based on the sample data collected (nine primary surface soil samples) and the absence of contamination at the site, no further investigation is deemed warranted. A review of laboratory data against the data quality indicators outlined in this report, demonstrates that the data is representative and satisfactory for use in the assessment.*

*Therefore, the site is considered to be suitable for its untended use."*

## 4.5 Bushfire

A Bushfire Assessment Report (BAR) was undertaken by Sustainable Home Solutions (dated 18<sup>th</sup> February 2023) over Lot 8 DP 589795 (refer **Appendix G**) which reported that:

- the Bushfire Attack Level (BAL) for this CT has been assessed using Method 1 in Planning for Bushfire Protection 2019 (PBP 2019) and in Australian Standard 3959 – Construction of Buildings in Bushfire-prone Areas 2009 (AS3959) (Standards Australia, 2009a) and is determined that all dwelling envelopes achieve less than BAL 29
- additionally each point outlined in the Rural Fire Regulation 2008 (RFR), Section 44 specifies detailed conditions which are to be addressed in application for a BFSA
- the proposed CT, providing all recommendations within this report, including but not limited to maintenance of satisfactory Asset Protection Zone (APZ) around each residence, provision of suitable water supply for fire fighting purposes at each residence and a suitable emergency management plan are implemented, will comply with the requirements and specifications of PBP, AS3959, RFA, the Building Code of Australia (BCA), RFR and planning and development controls of BSC
- it must be remembered, by all parties, that while every effort has been made to obtain true and accurate data and analysis of this data was conducted within the framework of PBP and AS3959 as well as other standards, there is no guarantee when it comes to bushfire
- while all recommendations contained in this report need to be complied with to meet the requirements of PBP and AS3959, the EP & A Act 1979 and hence Byron Council's planning requirements, any fire event could pose a threat to both the property and the people therein
- additionally it is incumbent upon the owners and operators and all future owners and operators to, in perpetuity, comply with all the conditions outlined here and in the Bushfire Safety Authority

## 4.6 Flora and Fauna

A Biodiversity Development Assessment Report (BDAR) was undertaken by Biodiversity Assessments & Solutions (dated 25<sup>th</sup> October 2023) over Lot 8 DP 589795 (refer **Appendix I**) which involved:

- literature and on-line resource review
- review of subject land specific reports and plans
- GIS data review
- fieldwork and surveys during November 2020, February to April 2023 and July-August 2023 and August-September 2023
- preliminary statutory and constraints analysis
- preliminary direct and indirect impact assessment

The BDAR concluded that:

- the proposal will have minimal ecosystem impacts due to the development site being historically cleared, resulting in vegetation community types that are dominated by weeds and predominantly in cleared or low condition within the development site
- the highest biodiversity values of the subject land have been avoided, with threatened species habitat, all threatened flora species, and ephemeral drainage lines and man-made waterbodies, all retained within an area of approx. 11.1ha, or 32% of the subject land – this area would be subject to a VMP and would undergo extensive revegetation and assisted regeneration to significantly improve the existing habitat and biodiversity values of the subject land
- the cleared condition subtropical rainforest (PCT 3002) and wet sclerophyll (PCT 3147) vegetation within the development site, were below the vegetation integrity threshold under the BAM 2020, and no ecosystem credits are required
- these vegetation zones, along with areas identified as exotic vegetation only, and do not require off-sets make up approx. 83% of the development site
- approx. 17% of the development site, does require off-setting, specifically, the vegetation integrity score (VIS) of the low, moderate, and good condition subtropical rainforest (PCT 3002) and wet sclerophyll vegetation (PCT 3147), and the low condition freshwater wetland (PCT 3967), are above the vegetation integrity threshold required for off-setting, and contains suitable habitat for fifty-three (n = 53) ecosystem credit species and will therefore require ecosystem credits
- the retirement of the final credits will be carried out in accordance with the NSW Biodiversity Off-set Scheme (BOS) – BAM credit summary reports are attached in Appendix E



- Matters of National Environmental Significance were assessed in accordance with the EPBC Act and are not likely to be significantly impacted by the proposed development – as such, a referral of the project to the Commonwealth is not required
- the proposed development has been positioned on the lowest constraint land and subsequently designed to avoid and minimise potential ecological impacts to the highest biodiversity values of the subject land
- with mitigation measures incorporated, and the proposed rehabilitation of more than 11ha of the residual community land, which contains the highest biodiversity values of the subject land, the proposal would significantly improve the extent and condition of high value habitat, and corridor function through the subject land and the wider locality
- the Koala (*Phascolarctos cinereus*) was not recorded during spotlighting surveys on and adjacent to the development site, nor were any confirmed scats identified during incidental scat searches of suitable feed trees – additionally, no historical BioNet records fall within the lot boundaries of the subject land – however, the development site contains fragmented potential habitat and several records for this species occur in the locality – therefore, as a matter of precaution, the Koala would be off-set as a species credit species for areas within the development site which contain vegetation associated with this species

Integral to the BDAR and proposed development is a Vegetation Management Plan (VMP) over the common/community lot which covers an area of approx. 11.1ha and which includes all of the C2 zoned land.

#### 4.7 Land Use Conflict

The subject land is adjoined by:

- 4 x rural residential type lots (Lots 1 and 2 DP 580369, Lot 1 DP 843530 and Lot 25 DP 1173271) and McAuleys Lane to the north
- R5 – Large Lot Residential zoned land and residential development to the west (fronting McAuleys Lane)
- 6 x rural residential type lots (Lots 1-6 DP 1236619) to the east
- a multiple occupancy development (Lot 26 DP 830652) to the south

The surrounding lands do not contain any agricultural or other uses that would result in land use conflicts with the development of the site for large lot rural residential purposes (in a Community Title subdivision).

The process for identifying appropriate R5 lands within the North Coast Regional Strategy 2036 and the Byron Shire Land Use Strategy 2017 identified the site as being suitable for large lot residential due in part to the absence of adjoining land uses that would result in land use conflicts.

#### 4.8 Social and Economic Considerations

Approval of the proposed subdivision will provide an extra stock of vacant Community Title residential lots in the Byron Shire (particularly in Myocum) and will provide increased competition in the marketplace and will provide additional and alternate lifestyle opportunities for existing and future residents.

The construction of future dwellings on the lots will increase employment opportunities in the region, will have positive multiplier effects on the local economy and will increase Council's rate base.

The proposed large lot residential subdivision and future development of the land is consistent with the strategic and statutory planning for the site as per the BLEP 2014 and BDCP 2014.

## 5. Statutory and Policy Planning

*This section of the report identifies and addresses the applicable environmental planning instruments (EPIs) and policy planning documents that must be considered by the consent authority in the consideration of this application.*

### 5.1 Environmental Planning Instruments (EPIs)

This section identifies and provides comment on the EPIs and *EP & A Act 1979* provisions that are of relevance to the proposed development.

#### 5.1.1 Local Environmental Plan (LEPs)

The BLEP 2014 also applies to the subject site and is mapped as follows:

- Land Zoning Map – part R5 – Large Lot Residential Zone and part C2 – Environmental Conservation Zone
- Height of Buildings Map – Sheet HOB\_002 – J – 9m maximum building height
- Lot Size Map – Sheet LSZ\_002DA – 40ha minimum lot size
- Multiple Occupancy and Community Title Map – Sheet MOC\_002 – Community Title (39)

The objectives of the **R5** zone are:

- *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 objectives of the **C2** zone are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*

- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

All of the proposed Community Title residential lots will be wholly zoned R5 – Large Lot Residential, with the proposed Common Property lot being zoned part R5 and part C2 – Environmental Conservation Zone.

The proposed development complies with the objectives of both of the zones with all of the residential subdivision and development being contained wholly in the R5 zone, with the C2 environmental zoned areas being part of the larger ‘residue lot’ known as common property containing the community facilities and internal road and also being subject of a VMP (area of approx. 11.1ha). All infrastructure and common buildings will be located outside the C2 zones, despite being within the common property.

Clause 2.6 provides that consent is required for subdivision.

Clause 4.1(3) provides that consent must not be granted to the subdivision of any land unless the size of each lot created complies with the minimum size shown on the Lot Size Map. Subclause (4) provides that this clause does not apply to any kind of subdivision under the *Community Land Development Act 2021*.

Clause 4.1B relates to minimum subdivision lot size for multiple occupancy or rural community title developments and applies to land outlined by a thick purple line on the Multiple Occupancy and Community Title Map.

Subclause (3) provides that the size of any lot resulting from the subdivision of land to which this clause applies may be less than the minimum lot size shown on the Lot Size Map if:

*(a) the total number of neighbourhood lots (within the meaning of the Community Land Development Act 1989) located on the land following the subdivision does not exceed—*

*(i) the number nominated for that land as shown on the Multiple Occupancy and Community Title Map, or*

**Comment:** The subject land is outlined by a thick purple line and contains the number 39. The proposed subdivision x 39 lots is therefore consistent with this clause.

*(ii) the number of dwelling sites approved under the development consent for the multiple occupancy or rural community title, and*

**Comment:** This subclause is not applicable as the proposal is permissible under and is consistent with subclause (3)(a)(i).

*(b) there will be at least one lot comprising association property (within the meaning of that Act) 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*

**Comment:** The proposed subdivision includes 1 x larger community/common lot that will contain the internal private road system, infrastructure, community buildings, tennis court and protected vegetation and will be subject of a VMP.

Subclause (4) provides that development consent must not be granted unless the consent authority is satisfied that:

*(a) appropriate management measures are in place that will ensure the protection and enhancement of the landscape, biodiversity and rural setting of the land, and*

**Comment:** As detailed in the BDAR at **Appendix I**, the community/common property lot will contain all of the protected vegetation and will be subject of a VMP.

*(b) improved social and economic outcomes can be achieved, and*

**Comment:** Approval of the proposed subdivision will provide an extra stock of vacant Community Title residential lots in the Byron Shire (particularly in Myocum) and will provide increased competition in the marketplace and will provide additional and alternate lifestyle opportunities for existing and future residents.

The construction of future dwellings on the lots will increase employment opportunities in the region, will have positive multiplier effects on the local economy and will increase Council's rate base.

The proposed large lot residential subdivision and future development of the land is consistent with the strategic and statutory planning for the site as per the BLEP 2014 and BDCP 2014.

Integral to the proposal is a private footpath network, a tennis court and a community building that are all situated in the community/common property lot which will contain all of the protected vegetation and will be subject of a VMP.

As a consequence of the above, there will be positive social and economic outcomes for future residents and the broader Shire.

*(c) appropriate mitigation measures are in place to minimise land use conflicts, with existing agricultural and other rural land uses being undertaken on the land or neighbouring land, that may arise from further development on the land*

**Comment:** The subject land is adjoined by R5 – Large Lot Residential zoned land and development to the west, 6 x rural residential type lots (Lots 1-6 DP 1236619) to the east, a multiple occupancy development (Lot 26 DP 830652) to the south and rural residential type lots and McAuleys Lane to the north. The surrounding lands do not contain any agricultural or other uses that would result in land use conflicts with the development of the site for large lot rural residential purposes (in a Community Title subdivision).

The process for identifying appropriate R5 lands within the North Coast Regional Strategy 2036 and Byron Shire Land Use Strategy 2017 identified the site as being suitable for large lot residential due in part to the absence of adjoining land uses that would result in land use conflicts.

Clause 4.1D (4) relates to exceptions to minimum lot size for certain split zone and applies to each lot that contains land in a residential zone and land in a C2 – Environmental Conservation Zone. The subject land has an area of 34.82ha which is already below 40ha. It is submitted that this clause is not applicable due to the fact that the proposed subdivision is permitted by and is consistent with the provisions of Clause 4.1B.

Clause 4.3 relates to the height of buildings. The proposed maintenance shed and community building have heights of approx. 6.2m and 5m respectively and are both well below 9m.

Clause 5.16 relates to subdivision of, or dwellings on, land in certain rural, residential or conservation zones and applies to R5 and C2 zoned land. Subclause (3) provides that a consent authority must take into account the matters specified in subclause (4) in determining whether to grant consent for subdivision of land proposed to be used for a dwelling or the erection of a dwelling, with comments on such being provided below:

*(a) the existing uses and approved uses of land in the vicinity of the development,*

**Comment:** The subject land is adjoined by R5 – Large Lot Residential zoned land and development to the west, 6 x rural residential type lots (Lots 1-6 DP 1236619) to the east, a multiple occupancy development (Lot 26 DP 830652) to the south and rural residential type lots and McAuleys Lane to the north.

*(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,*

**Comment:** The proposed new vacant community title lots will adjoin existing developed large lot residential and rural residential type lots and will not have any significant impacts on those uses, which are the preferred and predominant uses when having regard to the existing subdivision pattern and the relevant strategic and statutory planning provisions.

*(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*

**Comment:** There are no incompatibility issues with the existing and preferred land uses in the locality, with potential land use conflict having been a significant consideration during the assessment and finalisation of PP-2021-6076.

*(d) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).*

**Comment:** As there are no incompatibility issues, no specific avoidance or minimisation measures are proposed nor deemed necessary. Further, as the surrounding land uses are predominantly large lot residential, land use conflict is not considered to be an issue or concern.

Clause 6.2 relates to earthworks and provides that, before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

**Comment:** An integrated stormwater drainage network has been designed and will be constructed to service the proposed subdivision and roads (refer **Appendix P**) in a manner consistent with that of other adjoining residential subdivisions. As a consequence of such there will not likely be any disruption of, or detrimental effects on drainage patterns and soil stability in the locality of the development.

*(b) the effect of the development on the likely future use or redevelopment of the land,*

**Comment:** The earthworks are required to facilitate the construction of a private internal roads to service the community title subdivision in accordance with the strategic planning for the locality.

*(c) the quality of the fill or the soil to be excavated, or both,*

**Comment:** As detailed in the Preliminary Site Investigation at **Appendix H**, the site soils that will be excavated are not likely contaminated.

*(d) the effect of the development on the existing and likely amenity of adjoining properties,*

**Comment:** The proposed earthworks relate primarily to the construction of the internal roads which are spatially separated from any site boundaries. This internal road system will not have any adverse impacts on the existing and likely future amenity of adjoining properties and will be subject of an integrated stormwater drainage system (refer **Appendix P**).

*(e) the source of any fill material and the destination of any excavated material,*

**Comment:** There will not likely be any need to remove and/or import any significant amounts of material to/from the site. If so, it will be disposed of at approved receival sites. Any excess excavated material will be retained on the site where possible and practicable.

*(f) the likelihood of disturbing relics,*

**Comment:** As per the information provided above in **Section 4.3** and the AHIMS searches at **Appendix M**, the site has been heavily disturbed and the likelihood of disturbing any relics is considered remote.

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

**Comment:** The subject land is not within a drinking water catchment and is traversed by a number of creeks. The C2 zoned land and significant vegetation is to be retained in the common/community lot and will be subject of a VMP.

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

**Comment:** Erosion and sediment controls will be installed and maintained for the duration of site and construction works and will be responsibility of the principal subdivision works contractor.

Clause 6.6 relates to the provision of essential services. As detailed in **Section 3.3**, the proposed lots will be connected to and fully serviced with all necessary infrastructure services as follows:

- underground reticulated electricity and communications system



- constructed private road with a bitumen seal and kerb and gutter

Potable water will be the responsibility of future individual lot owners and will likely be via roof-water storage tanks for future dwellings.

Effluent disposal will be the responsibility of future individual lot owners and will be via on-site means, with an On-site Sewage Management Capability Assessment being provided at **Appendix J**.

As detailed above, the proposed subdivision is consistent with the objectives of, is permitted with consent and complies with all relevant provisions of the BLEP 2014.

#### 5.1.2 NSW Biodiversity Conservation Act 2016

Section 7.2 of the BC Act provides that development under the *EP & A Act 1979* is likely to significantly affect threatened species if:

- (a) It is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in Section 7.3, or*
- (b) The development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or*
- (c) It is carried out in a declared area of outstanding biodiversity value (AOBV).*

As detailed in the BDAR at **Appendix I**, consideration was given to the *BC Act* through the planning process, including:

- the development site has been located and designed with consideration of the principals of avoid and minimise at the forefront, with low constraint utilised and the highest biodiversity values of the subject land retained
- a preliminary constraints assessment undertaken for the rezoning proposal, and extensive surveys of the subject land for this BDAR, informed the concept design process of the highest biodiversity values to avoid, and the minimisation of impacts overall
- several alternative designs were produced and considered in response to environmental considerations, which progressively reduced the extent and scale of the proposal

- the project design was incorporated around low constraint cleared land, with the access road and lot configuration designed to maximise the utilisation of areas with minimal biodiversity value
- the proposed designation as a community title development, the nomination of generous lots and defined development envelopes for the most constrained sites, proposed restrictive covenants, and the incorporation of areas of revegetation and assisted regeneration further allow the avoidance and minimisation of direct and indirect impacts on the biodiversity values of the subject land

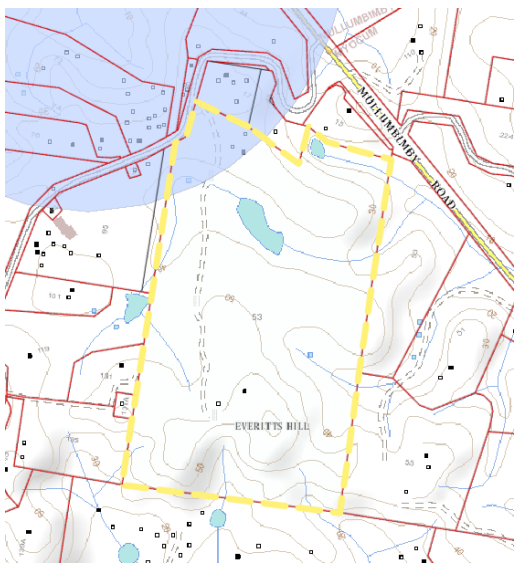
The Ecological Assessment concluded *inter alia* that the:

- proposed mitigation measures, and the incorporation of restrictive covenants on title, in combination with extensive revegetation and regeneration guided by a comprehensive VMP, would contain direct, indirect and prescribed impacts to within the development site, and minimise impacts on biodiversity values of the subject land as a result of the proposal overall
- importantly, the rehabilitation of community land using both assisted regeneration and revegetation restoration strategies, would significantly improve the biodiversity values of the subject land
- an increase in the extent and improvement in the condition of native vegetation, and the establishment and/or augmentation of meaningful habitat corridors across the subject land, would not only benefit flora and fauna that may occur on the subject land, but those occurring in the locality more broadly

### 5.1.3 State Environmental Planning Policies

<b>SEPP (Biodiversity and Conservation) 2021</b>	
<b>Chapter 2 – Vegetation in Non-Rural Areas</b>	This chapter applies due to the part R5 zoning of the subject land. There is no vegetation removal proposed in any of the C2 zoned land, rather it will be subject of a VMP. Refer comments above in <b>Section 4.6</b> and the BDAR at <b>Appendix I</b> .
<b>Chapter 3 – Koala Habitat Protection 2020</b>	This chapter does not apply due to the fact that the subject land is not zoned RU1, RU2 or RU3.
<b>Chapter 4 – Koala Habitat 2021</b>	As detailed above in <b>Section 2.1.2</b> , the subject land is mapped as being in a Koala Planning Area, however is <b>not</b> mapped as being in a Koala Management Precinct or containing Koala habitat.

	<p>Koalas were addressed in the BDAR at <b>Appendix I</b> which reported that:</p> <ul style="list-style-type: none"> <li>• Koala (<i>Phascolarctos cinereus</i>) was not recorded during spotlighting surveys on and adjacent to the development site, nor were any confirmed scats identified during incidental scat searches of suitable feed trees</li> <li>• additionally, no historical BioNet records fall within the lot boundaries of the subject land, however, the development site contains fragmented potential habitat and several records for this species occur in the locality</li> <li>• therefore, as a matter of precaution, the Koala would be off-set as a species credit species for areas within the development site which contain vegetation associated with this species</li> </ul>
<b>Chapter 5, 6 and 13</b>	Not applicable – These Chapters do not apply to the Byron LGA.
<b>SEPP (Housing) 2021</b>	
<b>Chapter 2 – Affordable Housing</b>	Not applicable – The proposal is for a community title large lot residential subdivision and does involve the development of affordable housing.
<b>Chapter 3 – Diverse Housing</b>	Not applicable – The proposal is for a community title large lot residential subdivision and does involve the development of diverse housing.
<b>SEPP (Industry and Employment) 2021</b>	
<b>Chapter 2 – Western Sydney Employment Area</b>	Not applicable – This Chapter does not apply to the Byron LGA.
<b>Chapter 3 – Advertising and Signage</b>	Not applicable – The proposal does not involve any advertising or signage.
<b>SEPP No. 65 – Design Quality of Residential Apartment Development</b>	
Not applicable – The proposal does not involve the construction of any residential flat building, shop top housing or mixed-use development with a residential component.	
<b>SEPP (Planning Systems) 2021</b>	

<b>Chapter 2 – State and Regional Development</b>	Not applicable – The proposed development does not comprise/involve State significant development or infrastructure or regionally significant development.
<b>Chapter 3 – Aboriginal Land</b>	Not applicable – The subject site is not owned by an Aboriginal Land Council.
<b>SEPP (Precincts – Regional) 2021</b>	
Not applicable – The proposed development is not within a State significant precinct or activation precinct.	
<b>SEPP (Primary Production) 2021</b>	
The subject land is <b><u>not</u></b> mapped as containing “Regionally” or “State Significant” farmland.	
<b>SEPP (Resilience and Hazards) 2021</b>	
<b>Chapter 2 – Coastal Management</b>	<p>The subject land is <b><u>not</u></b> mapped as:</p> <ul style="list-style-type: none"> <li>- containing or being “proximity area” to any “coastal wetlands” or “littoral rainforest” and thus Division 1 of Part 2.2 does not apply</li> <li>- “coastal vulnerability area” and thus Division 2 of Part 2.2 does not apply</li> <li>- “coastal use area” and thus Division 4 of Part 2.2 does not apply</li> </ul> <p>As shown below, a small area in the north-western corner of the subject land is mapped as “coastal environment area” and thus Division 3 of Part 2.2 applies:</p>  <p><i>Extract: ePlanning Spatial Viewer</i></p>

	<p>As per Clause 2.10, the subject land and proposed development is physically and spatially removed/separated from any coastal area (and in particular Kings Creek) and subject to the management and disposal of stormwater, OSSMS and the protection of significant vegetation and implementation of the VMP, the proposed development will not likely cause an adverse impact on:</p> <ul style="list-style-type: none"> <li>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment</li> <li>(b) coastal environmental values and natural coastal processes</li> <li>(c) the water quality of the marine environment (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1</li> <li>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms</li> <li>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability</li> <li>(f) Aboriginal cultural heritage, practices and places</li> <li>(g) the use of the surf zone</li> </ul> <p>Division 5</p> <p>2.12 – The subject land is not subject to any known coastal hazards. The proposed subdivision will not cause increased risk of coastal hazards on the subject land or any other land.</p> <p>2.13 – There is no certified coastal management plan applying to the subject land.</p>
<b>Chapter 3 – Hazardous and Offensive Development</b>	Not applicable – The proposal does not involve any hazardous or offensive development.
<b>Chapter 4 – Remediation of Land</b>	<p>This section of the SEPP provides that Council must not consent to the carrying out of any development unless it has considered whether the land is contaminated and if so, it must be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is to be carried out.</p> <p>Provided at <b>Appendix H</b> is a Preliminary Site Investigation (with comments in respect of contamination being provided above in <b>Section 4.4</b>).</p>

<b>SEPP (Resources and Energy) 2021</b>	
Not applicable – The proposed development does not involve mining, petroleum production or an extractive industry.	
<b>SEPP (Transport and Infrastructure) 2021</b>	
<b>Chapter 2 - Infrastructure</b>	Not applicable – The proposal is for a private community title residential subdivision and does not involve any Crown or Council infrastructure or development.
<b>Chapter 3 – Educational Establishments and Child Care facilities</b>	Not applicable – The proposed development does not involve an educational establishment or child-care facility.
<b>Chapter 4 – Major Infrastructure corridor</b>	Not applicable – The subject site is not a major infrastructure corridor.
<b>Chapter 5 – Three Ports – Port Botany, Port Kembla and Port of Newcastle</b>	Not applicable – This Chapter refers to land outside the Byron LGA.
<b>Chapter 6 – Moorebank Freight Intermodal Precinct</b>	Not applicable – This Chapter refers to land outside the Byron LGA.

## 5.2 Byron Development Control Plan 2014

### ***Part B – Controls Applying Generally to Development Applications***

#### ***Chapter B1 – Biodiversity***

Comments in respect of flora and fauna, biodiversity and Koalas are provided above in **Section 4.6** with a BDAR being provided at **Appendix I**. Contained within the BDAR is a VMP that applies to an area of approx. 11.1ha that is contained within the common/community lot.

#### ***Chapter B2 – Trees and Vegetation***

Comments in respect of flora and fauna, biodiversity and Koalas are provided above in **Section 4.6** with a BDAR being provided at **Appendix I**. Contained within the BDAR is a VMP that applies to an area of approx. 11.1ha that is contained within the common/community lot.

### ***Chapter B3 – Services***

Comments in respect of infrastructure servicing of the proposed vacant residential lots are provided above in **Section 3.3** and on the reports and plans provided at **Appendices E** and **J**.

Comments in respect of water quality/stormwater management and disposal are provided above in **Section 4.1** and in the Stormwater Management Plan at **Appendix P**.

### ***Chapter B4 – Traffic Planning, Vehicle Parking, Circulation and Access***

Comments in respect of traffic, parking and access are provided above in **Section 4.2** and in the Road Safety Audit at **Appendix N**, the Traffic Impact Assessment at **Appendix O** and the Voluntary Planning Agreement at **Appendix Q**, with plans of the proposed intersection upgrade being provided at **Appendix E**.

### ***Chapter B5 – Providing for Cycling***

Chapter B5 applies to a number of land uses/developments including subdivision to create 3 or more large lot residential lots in any zone. The proposed internal private roads have been designed such that it would be suitable for cyclists, with an internal pathway network also being provided within the common/community lot.

The subject land does not include and does not adjoin the site of an existing or proposed cycleway or facilities identified on Bike Plan – Proposed Infrastructure of the Byron Shire Bike Plan.



**BIKE PLAN**

Shared Path / Cycle Path Type

Priority  
High Medium Low

----- Cycle Paths  
----- Mixed traffic  
----- Shared Path

----- Footpath  
----- Shared Cycle Footpath

The subject land and proposed new internal roads do not adjoin or connect with any constructed public footpaths in McAuleys Lane. Notwithstanding such, integral to the VMP (refer **Appendix Q**) is a “cycle contribution” for an amount of \$202,145.00 (inclusive of GST) “..for the purposes of Council providing cycle and pedestrian pathways, links and associated infrastructure in the Byron local government area.”

Adjoining and adjacent land uses are evident on the locality plan at **Appendix A**, with comments in respect of land use conflict being provided above in **Section 4.7**.

This chapter applies to all development including residential subdivision. The subject land is elevated (ie above the 10m contour) and is not proximate to any coastal wetlands. The dwelling envelopes are positioned on-site clear of the existing stands of vegetation to the north-east and south to reduce mosquitos travel within shade to dwellings. There are no earthworks proposed or required that would have any implications for run-off and/or surrounding drainage systems. The proposed stormwater management system does not involve any structures/facilities that would result in standing water on-site or increases in water flow into potential mosquito and biting midge breeding areas.



Any future dwellings on the proposed vacant lots would have to be provided with effective screening to the windows and doors of habitable floor areas.

### **Chapter B8 – Waste Minimisation and Management**

A Site Waste Minimisation and Management Plan (SWMMP) has been prepared and is provided at **Appendix K**, which concluded that:

*“A review of the plans shows there is adequate area available on the site to provide suitable storage facilities for waste generated during the proposed demolition of the existing structures and the construction of the proposed subdivision development.*

*Tables 4-7 in this report demonstrate that the expected waste storage and collection service is generally compliant with the waste storage volumes estimates within the Chapter B8 of the Byron Shire Development Control Plan 2014 (BSC, 2014).*

*The proposed waste management arrangements within this report are considered adequate for the purposes of the demolition, construction and occupation associated with the proposed subdivision to be located at Lot 8 DP 589795, 53 McAuleys Lane, Myocum NSW.”*

### **Chapter B9 – Landscaping**

Provided at **Appendix F** is a Master Plan and concept landscaping plan. Integral to the proposal is the implementation of a VMP (contained in the BDAR at **Appendix I**), which includes details of site landscaping/plantings over an approx. 11.1ha area (including detailed planting selection lists and a 5 year maintenance period) specifically within the common/community lot.

### **Chapter B10 – Signage**

Not applicable – no signage proposed.

### **Chapter B11 – Planning for Crime Prevention**

The aims of crime prevention through environmental design are to:

- Enhance the safety of developments for all users; and
- Minimise the opportunities for crime to be committed.

The following comprises a formal crime risk assessment prepared in accordance with the Department of Planning's Crime prevention and the assessment of development applications – Guidelines under section 79C of the EP & A Act 1979.

### **Surveillance**

The subdivision layout has been configured to maximise clear sight-lines between public and private spaces.

Each residential lot will have direct frontage to a constructed private road/driveway. Future dwellings will thus have access and frontage to such roads with a high potential for passive surveillance.

### **Access Control and Target Hardening**

The subdivision has been configured so that there are clear distinctions between public and private spaces. Pedestrian routes will be clearly identifiable and will direct and channel people through the subdivision to private places.

Private and public areas will be clearly identified by signage, pavement treatments, landscaping and the like.

### **Territorial Reinforcement and Space Management**

As is the case with the adjoining rural areas and development in the locality, it is reasonable to expect that future dwellings in the subdivision will be well maintained by future residents. The local residents have maintained high standards and levels of property care which send a positive sense of community care and responsibility.

It is expected that both Council and the local community will maintain a high level of space management with the subdivision with lots being well maintained and kept in a neat and tidy manner.

### ***Chapter B12 – Social Impact Assessment***

A social impact assessment is not required as the trigger for such is a residential development or subdivision comprising more than 50 dwellings. Notwithstanding such, the actual density and yield of the proposed subdivision was determined during the assessment and finalisation of PP-2021-6076 and social impacts would have been duly considered during the assessment of such from a strategic perspective.

### ***Chapter B13 – Access and Mobility***

Not applicable – the proposal does not apply to any specific residential accommodation – vacant residential lots upon which future dwellings will be constructed and which will be subject of separate future application processes.

### ***Chapter B14 – Excavation and Fill***

Integral to the proposed subdivision is an area of bulk earthworks (involving fill) on part of Proposed Lots 34-38 and cut for the roads which have been integrated into the design and construction of the subdivision and are such that will **not**:

- have any significant adverse visual impacts
- overshadow any adjoining private and/or public land
- be incompatible with the scale and character of the surrounds and future character of the locality
- have adverse drainage effects on both the site and in the locality
- increase the risk of geotechnical instability and/or landslip

### ***Chapter B15 – Public Art***

Not applicable – this chapter does not apply to R5 or C2 zoned land.

## ***Part D – Further Controls Applying to Specific Land Uses***

### ***Chapter D6 – Subdivision***

#### ***D6.2.1 – Subdivision Design Guidelines***

All of the information required of the context and site analysis is provided in **Sections 2 and 4** and **Appendixes A-C, G-J and H**.

The lots are of generous size (minimum area of 3000m<sup>2</sup>) with each lot having a concept 12m x 15m building envelope such that will facilitate the design and siting of a future house to maximise solar access and access to cooling summer breezes and reduce the potential for overshadowing or loss of privacy.

The design and layout of the subdivision has been largely informed and dictated by detailed vegetation/ecological (BDAR) and bushfire investigations.

Hazards are detailed in **Section 2**, with comments in respect of contamination being provided **Section 4.4** and **Appendix H** and comments in respect of bushfire being provided in **Section 4.5** and **Appendix G**.

Vegetation management, protection and removal is detailed in **Section 4.6** and **Appendix I**.

The proposed roads are private internal roads that are situated on the common/community lot, with detailed plans of such being provided at **Appendix D**, with intersection upgrade plans being provided at **Appendix E**.

Each future dwelling house will be provided with an on-site sewage management and disposal system (which will be subject of a s68 application), with the On-site Sewage Management Capability Assessment at **Appendix J** confirming that “.. *the site is suitable for the proposed subdivision development in terms of on-site sewage management (OSSM).*”

Comments in respect of stormwater management and disposal are provided in **Section 4.1** and **Appendix P**.

Comments/details in respect of utility services are provided in **Section 3.3** and **Appendix J**.

### ***D6.3 – Rural Subdivision***

As a consequence of the statement that “*R5 is an urban zone however the most appropriate subdivision controls are those which apply to rural lots*”, the proposed subdivision has been assessed under the provisions of Section D6.3.

#### ***D6.3.1 – Lot Size, Shape and Configuration***

The proposed yield of 39 lots is permitted by and consistent with Clause 4.1B(2)(a) and (3)(a)(i) and (b) of the BLEP 2014, due to the fact that the subject land is outlined by a thick purple line on the Multiple Occupancy and Community Title Map and contains the number “39”. There is thus no specific mapped minimum lot size specified by the BLEP 2014.

As shown on the plans at **Appendix D**, each of the proposed vacant residential lots:

- has an area of 3000m<sup>2</sup> or more
- contains an indicative/concept 12m x 15m building envelope
- has a minimum frontage of 9.9m

There are a number of what could be considered to be battle-axe shaped lots (being Proposed Lot 1, 5 and 6, all of which have access handles of >7m and which can accommodate a driveway, drainage, services and landscaping.

#### ***D6.3.2 – Stormwater Management***

Comments in respect of stormwater management are provided above in **Section 4.1** and in the Stormwater Management Plan at **Appendix P**.

All of the 12m x 15m concept building envelopes are well clear of any watercourse or drainage path.

#### ***D6.3.3 – Road Design and Construction***

The proposed new roads are private internal roads, with Road 1 intersecting with McAuleys Lane (and being subject of a s138 application).

The internal roads are private roads and thus do not technically have to comply with the Northern Rivers Development and Design Manual. Notwithstanding such, the internal roads are all 2-way, have a paved bitumen surface, contain either flush or layback kerb on both sides for their full length and are provided with turning heads that accommodate a single unit truck (12.5m HRV), which will include Council garage trucks and RFS fire trucks, with the following dimensions:

- Road 1 – 8m wide pavement
- Road 2 – 7m wide pavement with a 4.51 – 5m wide pavement in the turning head
- Road 3 – 6m wide pavement with a 5.5m wide pavement in the turning head
- Road 4 – 7m wide pavement with a 5m wide pavement in the turning head

#### ***D6.3.4 – Sewage Management***

No reticulated sewer service is available in the locality and thus each lot will have to be serviced by an OSSMS. Comments in respect of sewage management are provided in **Section 4.1** and in the On-site Sewage Management Capability Assessment at **Appendix J**.

#### ***D6.3.5 – Rural Community Title Subdivision***

The proposed yield of 39 lots is permitted by and consistent with Clause 4.1B(2)(a) and (3)(a)(i) and (b) of the BLEP 2014, due to the fact that the subject land is outlined by a thick

purple line on the Multiple Occupancy and Community Title Map and contains the number “39”. There is thus no specific mapped minimum lot size specified by the BLEP 2014.

As per Prescriptive Measure 2, the following have been prepared and are attached:

- (a) water management plan – **Appendix P**
- (b) on-site sewage management plan – **Appendix J**
- (c) waste management plan – **Appendix K**
- (d) vegetation management plan – **Appendix I**
- (e) bushfire management plan – **Appendix G**
- (f) not applicable – no unauthorised/unapproved dwellings exist
- (g) draft neighbourhood management statement – **Appendix S**

## 6. Conclusion

*This section of the report provides a detailed conclusion of the development proposal and the environmental assessment.*

Development consent is sought for a Community Title subdivision of a 34.8ha rural lot at Myocum to create:

- 37 x vacant Community Title residential lots
- 1 x Community Title residential lot containing an existing dwelling house
- 1 x residue community (common property) lot

including the installation of associated private infrastructure services comprising private internal roads, community building, tennis court, maintenance shed, pathways and the upgrade of the Mullumbimby Road and McAuleys Lane intersection.

The proposed yield of 39 lots is permitted by and consistent with Clause 4.1B(2)(a) and (3)(a)(i) and (b) of the BLEP 2014, due to the fact that the subject land is outlined by a thick purple line on the Multiple Occupancy and Community Title Map and contains the number “39”, being the result of a recent amendment to the BLEP 2014 (per PP-2021-6076).

The subject land is subject to a Voluntary Planning Agreement (VPA), which provides certain development contributions (both monetary and works-in-kind) that are specifically related to the proposed subdivision.

The subject land is relatively unconstrained, with the proposed development having been subject to detailed assessment under all applicable environmental planning instruments, DCPs and policies having regard to all relevant environmental, social and economic considerations.

The proposed development will:

- increase land supply and thus competition in the local market place
- provide employment opportunities in the building and development industries which will have resultant positive multiplier effects on the local economy
- increase Council’s rate base
- provide additional choices for existing and new residents seeking vacant residential land

All new lots will be serviced with all appropriate urban infrastructure (with future houses to be serviced by on-site potable water supply and an OSSMS) and will provide a high level of residential amenity to future residents.

In conclusion and having regard to the particular circumstances of the case, it is respectfully requested that Council grant consent to this development application.



## 7. Scope of Engagement

This report has been prepared by Ardill Payne & Partners (APP) at the request of McAuleys No. 1 Pty Ltd, Ebony and Joseph Yeadon, Laura Fry and Matthew, Yvonne and Tom Donohoe for the purpose of lodging a development application with Byron Shire Council and is not to be used for any other purpose or by any other person or corporation.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

No part of this report may be reproduced, stored or transmitted in any form without the prior consent of APP.

APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.

## 8. Appendices

Appendix A	Locality plan
Appendix B	Copy of deposited plan
Appendix C	Contour and detail survey
Appendix D	Plans of proposed subdivision
Appendix E	Plans of proposed intersection
Appendix F	Master plan and concept landscaping plan
Appendix G	Bushfire assessment report
Appendix H	Preliminary site investigation
Appendix I	Biodiversity development assessment report
Appendix J	On-site sewage management capability assessment
Appendix K	Site waste minimisation and management plan
Appendix L	Plans of proposed community building, tennis court and maintenance shed
Appendix M	AHIMS search results
Appendix N	Road safety audit
Appendix O	Traffic impact assessment
Appendix P	Stormwater management plan
Appendix Q	Voluntary planning agreement
Appendix R	DAP meeting notes
Appendix S	Draft neighbourhood management statement

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## APPENDIX A

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## APPENDIX B

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**Appendix B:** Copy of deposited plan

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## APPENDIX C

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## APPENDIX D

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**Appendix D:** Plans of proposed subdivision

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## APPENDIX E

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## APPENDIX F

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**Appendix F:** Master plan and concept landscaping plan



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## APPENDIX G

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## APPENDIX H

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## APPENDIX I

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**Appendix I:** Biodiversity development assessment  
report

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## APPENDIX J

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**Appendix J:** On-site sewage management capability  
assessment

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## APPENDIX K

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## APPENDIX L

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**Appendix L:** Plans of proposed community building,  
tennis court and maintenance shed

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## APPENDIX M

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**Appendix M:** AHIMS search results

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## APPENDIX N

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## APPENDIX O

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## APPENDIX P

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## APPENDIX Q

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## APPENDIX R

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**Appendix R:** DAP meeting notes

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## APPENDIX S

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**Appendix S:** Draft neighbourhood management statement