

## **8.1 Aureus Commercial Centre - Planning Proposal and Planning Agreement**

### **8. Planning and Environmental Health Division Reports**

#### **8.1 Aureus Commercial Centre - Planning Proposal and Planning Agreement**

<b>Section</b>	Strategic Planning
<b>Objective</b>	To outline a planning proposal that seeks to reduce the size of the Skennars Head E1 Local Centre zoned area and increase the area of R3 Medium Density zoned land within the Aureus Estate.

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#### **Background**

A planning proposal request has been submitted by Intrapac, which seeks to amend the Ballina Local Environmental Plan 2012 (BLEP 2012) to rezone the southern portion of Lot 346 DP 1271483, 21 Aureus Boulevard, Skennars Head from E1 Local Centre to R3 Medium Density Residential.

Attachment 1 contains a copy of the planning proposal request.

Lot 346 has an area of 1.305ha. The planning proposal request seeks to rezone approximately half (6,650m<sup>2</sup>) of this lot to R3 Medium Density Residential. The remaining 6,402m<sup>2</sup> would retain the E1 Local Centre zone.

Lot 346 is part of the Aureus Estate. This Estate was initially zoned for urban development in 2014. In 2018 the proponent proposed that the B1 zoned area would accommodate a supermarket and specialty retail shops, along with future uses such as a childcare centre, a gym, and a tavern / alfresco dining area.

In 2019 BLEP 2012 was amended to relocate the neighbourhood centre (B1) zoning to its current location and significantly increase its size from 870m<sup>2</sup> to 1.305ha.

Attachment 2 contains details of the way the proponent envisaged the site would be developed in 2018.

The proponent had initially sought to establish a significantly larger centre than facilitated through the 2019 rezoning process. Such larger centre, with ultimate proposed floor space of 10,800m<sup>2</sup>, was not supported following a peer review of the proponents *Economic Need and Impact Assessment* report.

The 2019 rezoning, and associated floor space controls were designed to enable the creation of approximately 5,000m<sup>2</sup> of retail and commercial floor space within the proposed Skennars Head Neighbourhood Centre.

In 2021, the State Government implemented reforms to employment zones. This changed the zoning of the majority of the site from B1 Neighbourhood Centre to E1 Local Centre, which is the same zone that applies to the Epiq Centre, and the Lennox Head and East Ballina commercial centres.

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Skennars Head is now located within the broader retail catchment area of the Epiq Marketplace local centre. The retail needs assessment accompanying the planning proposal request indicates the Epiq Marketplace has impacted on the demand for retail space within the proposed Skennars Head centre. Further the assessment suggests that due to this factor, together with the rise of ecommerce and a shift to online ordering and grocery deliveries, demand for retail space within retail and commercial centres has been reduced.

Attachment 3 contains the *Retail Needs Assessment* submitted in support of the planning proposal.

This report recommends that the planning proposal be supported and submitted for a Gateway determination.

### Key Issues

- Demand for retail and commercial floor space
- Housing supply
- Planning Agreement

### Discussion

#### Overview

Lot 346 is zoned partly E1 Local Centre under the provisions of BLEP 2012 and partly 7(d) Environmental Protection (Scenic / Escarpment) zone under the provisions of Ballina LEP 1987. That part of lot 346 subject to the 7(d) zone is an anomaly which resulted from the misalignment of cadastral and zoning maps at the time that the subdivision creating this lot was registered in December 2021 (this occurs from time due to the different levels of detail at rezoning and survey and subdivision stages in the planning process).

Diagram 1 contains an extract from Council's GIS zoning layer, which shows the zones applicable to Lot 346. The white line represents the cadastral boundaries, and the area enclosed by the red line representing that part of Lot 346 zoned 7(d). The 7(d) zone within lot 346 has an approximate area of 370m<sup>2</sup>.

**Diagram 1 – Zoning layer extract from Council GIS system**



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Lot 346 was intended to contain the whole of the E1 zone located at Skennars Head, excluding a small section of public road.

The 7(d) zone was intended to be contained within Lots 347 and 348, located to the east of Lot 346 and designated as public reserve. Lots 347 and 348 are owned by Council, whereas Lot 346 is owned by Intrapac.

The proponent's planning proposal did not reference the 7(d) zone on Lot 346. This has been corrected within the Council prepared planning proposal contained within Attachment 6.

Lot 346 has an area of 1.305ha. Subject to the floor space ratio controls contained within clause 7.11 of BLEP 2012 this lot has the capacity to yield approximately 5,200m<sup>2</sup> of commercial floor space.

The proponent's planning proposal request seeks to rezone approximately half (6,650m<sup>2</sup>) of Lot 346 from E1 Local Centre to R3 Medium Density as shown in Diagram 2.

It also seeks some consequential changes to remove the floor space ratio restrictions from the proposed R3 zoned portion of Lot 346.

As indicated above additional zone changes will be required to remove the sliver of 7(d) zone that affects Lot 346.

The floor space ratio applicable to Lot 346 is 0.8:1 overall with a maximum 0:4:1 ratio applicable to the commercial component of the development as specified in clause 7.11 of BLEP2012.

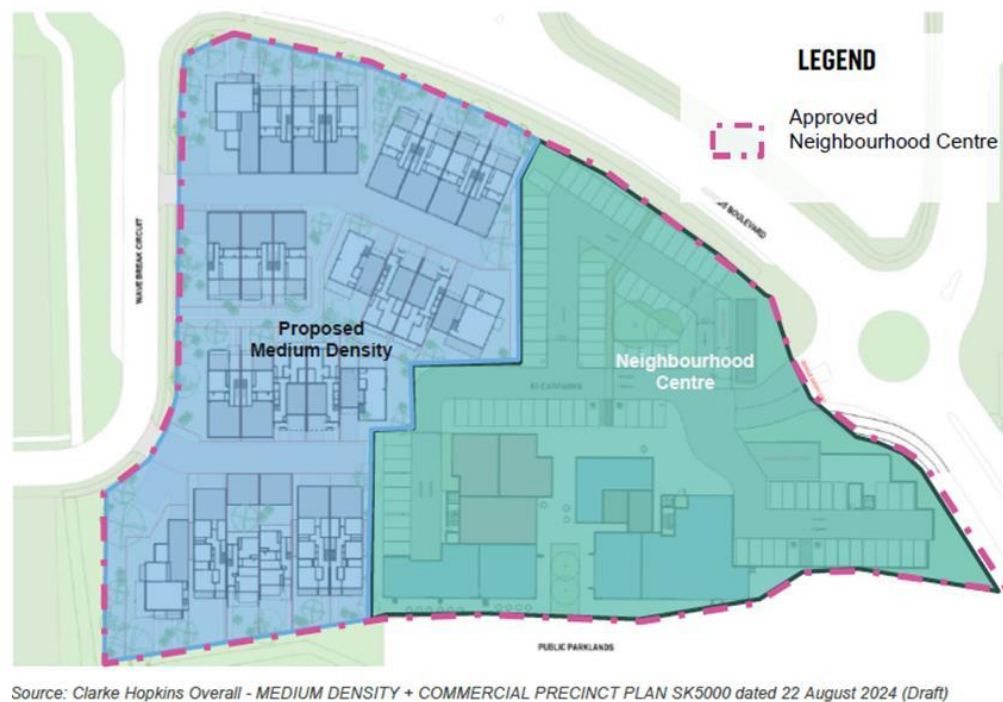
**Diagram 2 Proponent prepared existing and proposed zoning plan**



An indicative precinct plan, contained within the proponent's traffic assessment report, indicates a yield of approximately 20 to 30 townhouses on the proposed R3 zoned portion of the site.

The E1 portion of Lot 346 has been modelled to yield a neighbourhood centre with a floor space of 1,200m<sup>2</sup> for the purposes of the traffic assessment.

Diagram 3 – Indicative Precinct Plan



To put the proposed neighbourhood centre in context, the local centre in the Epiq estate has an approved gross floor area of approximately 6,500m<sup>2</sup>, whereas the Cumbalum Village centre, being constructed at the corner of Power Drive and Ballina Heights Drive, is required by a planning agreement to have a minimum initial size of 1000m<sup>2</sup>.

It is estimated that the Cumbalum centre will ultimately have a size in the order of 2,000 - 3,000m<sup>2</sup>.

The East Ballina neighbourhood centre in Links Avenue has a floor area of approx. 2,000m<sup>2</sup> located on a 4,200m<sup>2</sup> site.

As indicated in the Background section of this report, the Aureus neighbourhood centre was originally proposed on a much smaller (870m<sup>2</sup>) site. It was through the actions of the property owners that this smaller site was abandoned and the current much larger site (1.305ha) established.

Amongst other matters Council's role when assessing the planning proposal in 2019, was to ensure that there was no likely significant negative impact on existing established centres, as a consequence of the proposed centre size increase.

The floor space ratio controls incorporated within BLEP 2012 in 2019 were designed to restrict the size of the proposed centre in line with the limits recommended by retail consultants commissioned by Council.

#### Retail Needs Assessment Report

The proponent's 2024 planning proposal request is supported by a *Retail Needs Assessment* report prepared by Think Economics (Attachment 3). The report states that the current proposal is for a centre containing 1,184m<sup>2</sup> of retail commercial floor space, 65 car parking spaces and shop top residential.

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The report indicates that there have been three main factors which have resulted in a lessening of demand for retail floor space at the Aureus site.

These factors are:

- The completion of the Epiq Marketplace centre in 2020,
- A transition from traditional physical stores to online retailing post Covid-19, and
- Growth of online food and grocery sales with home delivery service.

The report found that the Aureus site will primarily cater for a limited trade area consisting of Skennars Head and a small section of Lennox Head with a population of 2,150 to 3,420 persons by 2036.

This is well below the minimum 8,000 people required to sustain a full line supermarket.

The consultants estimate that there is an opportunity to establish on the Aureus site a small retail centre with a total retail floor space ranging from 1,000m<sup>2</sup> to 1,500m<sup>2</sup>.

Such a centre (slightly smaller than the East Ballina centre) would require a site area of between 3,000m<sup>2</sup> and 5,000m<sup>2</sup>.

The conclusions reached by Think Economics in their *Retail Needs Assessment* report are not disputed.

Whilst it will likely be disappointing for many residents of Skennars Head not to have more direct access to a larger neighbourhood centre, as proposed in 2019, there are no effective means available to Council to ensure such larger centre is built.

### **Consideration of Land Contamination Issues**

In accordance with the requirements of the applicable Local Planning Direction (*Direction 4.4 Remediation of Contaminated Land*) the planning proposal authority must consider land contamination issues when rezoning land for residential purposes.

The planning proposal request is supported by a *Remediation of Contaminated Soil Validation Report* prepared in 2019 by ENV Solutions. This report was prepared in relation to the original 34ha subdivision site, which also contained the area the subject of the current rezoning request.

Council's environmental health staff have advised that previous investigations undertaken are sufficient to demonstrate the proposed rezoning area to R3 Medium Density Residential is considered suitable for residential use.

### **Transport Statement**

Traffic and transport engineering advice prepared by Urbis Transport Advisory forms a part of the planning proposal request submission. The report examines the impact of the previous development proposed for the E1 zoned land and compares this with the current proposal involving less commercial floor space and more residential accommodation.

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The report concluded that the am peak traffic generation will be generally consistent with the previously proposed development concept. In the evening peak a significant reduction in traffic has been estimated. On this basis the consultants have concluded that no adverse traffic impacts are expected as a result of the proposed rezoning.

Council's Development Engineer has advised that trips generated by the multi residential development is less than the commercial centre gross floor area (GFA) rate modelled as part of the approved subdivision development application.

Therefore, the rezoning proposal will reduce traffic impact in the area in the ultimate developed state.

### **Potential Noise Impacts**

A further consideration from an environmental health perspective are noise impacts. This concern relates to road traffic noise impacts and potential noise impacts due to the proximity of proposed residential uses (shop top housing and townhouses) and commercial uses within the E1 Local Centre

At this stage, these matters are considered to be resolvable.

They are matters that will require assessment at the DA stage and do not require further consideration as part of the planning proposal process.

### **Stormwater, Sewer and Water Servicing Issues**

OSKA Consulting Group have undertaken a high-level review examining whether the proposed rezoning area can be serviced and connected to Council's existing stormwater drainage, sewerage and water reticulation networks.

The review has found that servicing of this site is achievable and existing council networks should have adequate capacity. Stormwater quantity and quality standards can be achieved by an onsite detention and treatment tank (or similar).

Sewer and water servicing can be achieved via connection to the existing reticulation networks located in the adjacent verge area.

Council's Development Engineer has advised that the lot has access to water and sewer infrastructure with adequate capacity to service the rezoning. Stormwater has a legal point of discharge and has met flow and treatment requirements.

The rezoning can be supported from an infrastructure perspective.

### **Environmental Considerations**

The site is cleared and has a gentle slope, making it suitable for medium-density residential development without significant environmental impacts.

Future development will be subject to Council's Development Control Plan, which will ensure compliance with environmental and design standards.

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### Local and Strategic Planning Merit

The proposed rezoning of E1 zoned land to R3 medium density, and the correction of the 7(d) zoning anomaly, is not inconsistent with the applicable strategic planning framework.

The proposal is also considered to have sufficient local strategic planning merit to warrant the Council supporting the planning proposal request and to seek a Gateway determination.

Rezoning what amounts to surplus E1 Local Centre land to an R3 Medium Density zone is also in line with the principles contained within the 2024 *Ballina Shire Housing Strategy*.

The rezoning proposal is likely to result in the creation of a more diverse housing mix at Skennars Head, near a proposed neighbourhood centre. Townhouses, as well as potential shop top housing units, will add to the housing mix available at this location.

Due to these factors the planning proposal is considered to have local strategic planning merit.

### Planning Agreement

To support the timely development of the commercial portion of the site, the proponent has offered to enter into a (Voluntary) Planning Agreement (PA).

Attachment 4 contains a copy of the proponent's letter of offer.

Through the letter of offer the proponent has agreed that no residential lots (strata or otherwise) will be registered within the area rezoned to R3 Medium Density Residential, until such time as an Occupation Certificate has been issued for at least 50% of the approved commercial floor space.

A draft planning agreement has not yet been prepared pending the Council's consideration of the letter of offer.

At this stage it is considered reasonable that Council support entering into a planning agreement (or other suitable mechanism to deliver the proposed outcome) with the proponent and landowner subject to the following matters being agreed with the proponents:

- The planning agreement specify 600m<sup>2</sup> as the minimum amount of commercial floor space required to be the subject of the Occupation Certificate
- Unless otherwise agreed by Council's legal advisor the planning agreement be required to be registered on the title of the lot, or that part of the lot containing the proposed R3 zone, and
- The proponent agreeing to pay for Council's reasonable costs associated with the preparation of the planning agreement as provided for in Council's 2024/25 Fees and Charges.

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Subject to this being agreed it is proposed to authorise the preparation of the draft planning agreement (or other appropriate agreement mechanisms based on Council's legal advice).

A pre-lodgement development application (DA) meeting was held on 3 September 2024 with the proponent's consultant planner.

The development discussed at that time involved a three-building concept for that part of the site proposed to retain an E1 zone.

Each building consisted of three levels.

This proposal contained 1170m<sup>2</sup> of commercial floor space (804m<sup>2</sup> of food and drink premises in five tenancies and 366m<sup>2</sup> of commercial / retail floor space in 4 tenancies) plus 27 shop top housing units.

Car parking for 142 vehicles was also proposed.

It is anticipated that a DA will be lodged in the near future.

Attachment 5 contains a copy of the plans discussed at the pre-lodgement DA meeting on 3 September 2024.

### Planning Proposal

Having regard to the above matters a draft planning proposal (BSCPP 24/004 Aureus Village Centre) has been prepared and is contained in Attachment 6 to this report.

The planning proposal provides for the following matters:

- Rezoning of part of Lot 346 from E1 Local Centre to R3 Medium Density Residential
- Rezoning of part of Lot 346 from 7(d) Environmental Protection (Scenic / Escarpment) zone under the provisions of Ballina LEP 1987 to part E1 Local Centre and part R3 Medium Density Residential under the Ballina LEP 2012
- Removal of the proposed R3 zoned portion of Lot 346 from the Floor Space Ratio Map
- Consequential changes to the Land Application Map and zoning relative to property boundaries as required.

Amending the Floor Space Ratio Map will result in the existing floor space ratio restrictions applicable to Lot 346 continuing to apply to the E1 Local Centre zoned portion of the lot.

This provides for an overall floor space ratio of 0.8:1 for this portion of the site. Commercial floor space is, however, limited to 0.4:1 by clause 7.11 of BLEP 2012.

This limitation would enable a maximum of 2560m<sup>2</sup> of commercial floor space to be erected on this part of the lot.



**Delivery Program Strategy / Operational Plan Activity**

The processing of planning proposal requests aligns with the 2024 – 2028 Delivery Program and Operational Plan Outcome HE3.1f – Maintain Local Environmental Plan.

**Community Engagement Strategy**

Should Council resolve to proceed with the recommendations outlined in this report, community engagement will be initiated through the public exhibition of the planning proposal and associated planning agreement following a Gateway determination.

Community engagement will be undertaken as required by the provisions of the *Environmental Planning and Assessment Act 1979* and Council's *Community Participation Plan*.

A minimum exhibition period of 28 days will be required.

**Financial / Risk Considerations**

Costs associated with the processing of the planning proposal and planning agreement will be required to be met by the proponent as specified in council's *Fees and Charges*.

**Options**

The options available include:

*Option 1 – Provide initial support for the planning proposal request and associated proposed draft planning agreement and seek a Gateway determination to enable public exhibition of the planning proposal.*

This is the recommended option.

Adoption of this option will result in broad community consultation and the Council having a further opportunity to consider the merits of what is proposed following community engagement (assuming a Gateway determination is issued by DPHI).

As part of this approach, a planning agreement or other suitable legal document would be drafted in line with the letter of offer contained in Attachment 4 and exhibited in conjunction with the planning proposal.

*Option 2 – Decline to support the planning proposal request and the draft planning agreement.*

This option is not recommended.

Council has no effective means available which could require the proponent to construct a neighbourhood centre of the size, and containing the facilities, originally proposed in 2018.

As indicated in the submitted *Retail Needs Assessment* report, the retailing environment has changed considerably since the Aureus Neighbourhood Centre was originally proposed.

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That being the case reducing the size of the E1 zone and increasing the amount of R3 Medium Density land available is considered a reasonable outcome.

The proposed planning agreement will also ensure that a minimum of 50% (600m<sup>2</sup>) of the commercial floor space currently proposed in the neighborhood centre will be constructed prior to the registration of residential lots within the proposed R3 zoned area.

If Council rejects the proposed planning proposal request, then the proponent may seek to appeal this decision with the Department of Planning, Housing and Infrastructure.

### **RECOMMENDATIONS**

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 relating to the application of a R3 zone to part of Lot 346 DP127483, the correction of the zoning anomaly as it relates to the 7(d) zone, and consequential changes to the Floor Space Ratio Map, and Land Application Map if required, as detailed in planning proposal (BSCPP 24/004 Aureus Village Centre) contained in Attachment 6.
2. That Council submit planning proposal BSCPP 24/004 Aureus Village Centre to the NSW Department of Planning Housing and Infrastructure for Gateway determination.
3. That the Department of Planning Housing and Infrastructure be advised that Council is seeking to be authorised as the Local Plan Making Authority for this LEP amendment and to exercise its delegated plan making functions.
4. That upon an affirmative Gateway determination being received the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council endorse the preparation of a draft Planning Agreement as detailed in this report with amendments as proposed.
6. The draft planning agreement (or other suitable legal mechanism) once finalised be publicly exhibited concurrently with the planning proposal.
7. That the planning proposal and associated planning agreement be reported to Council for further consideration following the completion of the public exhibition period.

### **Attachment(s)**

1. Planning Proposal Request - Aureus Village
2. 2018 Proponents Neighbourhood Centre Development Concept
3. Aureus Village Retail Needs Assessment Report
4. Planning Agreement - Intrapac Letter of Offer
5. Pre-lodgement Meeting Plan Set 3 September 2024
6. BSCPP 2024-004 - Planning Proposal - Aureus Village Centre (V1 Commencement)