

REQUEST TO APPLY SUPERSEDED PLANNING SCHEME – DA 19-2020-2021 – MATTHEW & HELEN RICHARDSON – RAVENSBOURNE ROAD, BLACKALL**EXECUTIVE SUMMARY**

The applicants, Matthew and Helen Richardson, have lodged a request for Council to apply the superseded *Blackall Shire Planning Scheme 2006* ('the superseded planning scheme') to a proposed development located at Ravensbourne Road, Blackall, formally described as Lease A on SP318669, which is over Lot 1 on TB198 ('the premises'). A long term lease (Lease A) is considered a 'lot'. The proposal involves the establishment of a new dwelling house within the lease.

The 2006 planning scheme was superseded by the *Blackall-Tambo Region Planning Scheme 2020* ('the current planning scheme') on 24 January 2020. Under Section 29 of the *Planning Act 2016* ('the Planning Act') a person may, within one (1) year of the planning scheme becoming a superseded planning scheme, make a *superseded planning scheme request*. The request to apply the superseded planning scheme was properly made by the applicant on 22 January 2021. A request of this nature is usually made to Council where the planning process is more favourable or simple under the superseded planning scheme, compared to the current scheme.

In this instance, the proposed development is categorised as Accepted development subject to requirements under the superseded planning scheme while being categorised as Assessable development under the *Blackall-Tambo Region Planning Scheme 2020* ('the current planning scheme'). The proposed development is categorised as Assessable development under the current planning scheme due to the location of the land within the flood hazard area on the Flood Hazard Map, which did not exist under the superseded planning scheme. Accepted development does not require a planning approval, while Assessable development requires a planning approval. By making this superseded planning scheme request, the applicant can therefore proceed with the development without planning approval, provided the relevant requirements are met, as it is Accepted development under the superseded planning scheme. Without the approval of such a request, the current planning scheme would apply and the applicant would need to lodge a development application with Council to seek the relevant planning approval (a Development Permit for Material Change of Use).

The proposed development will still required to provide 300mm to freeboard for the Defined Flood Event to obtain building approval, as the land is identified in the flood hazard area by the current planning scheme.

Previous advice has been given to the applicant by Reel Planning CQ, on behalf of Council, that the development would reasonably be able to comply with the relevant requirements of the superseded planning scheme. Should Council agree to the request to apply the superseded planning scheme to the proposed development, the development would need to maintain compliance with the relevant requirements of the superseded planning scheme outlined herein at all times to ensure the development remained Accepted development.

This report recommends the request be agreed to by Council.

RECOMMENDATION

THAT Blackall-Tambo Regional Council approves the request to apply the superseded Blackall Shire Planning Scheme 2006 to a proposed development for Material Change of Use for a Dwelling House over land at Ravensbourne Road, Blackall, formally described as Lease A on SP318669, Lot 1 on TB198.

1.0 REQUEST SUMMARY

TABLE 1 – OVERVIEW OF THE REQUEST

PROPERTY DETAILS	
Site address	Ravensbourne Road, Blackall
RPD	Lease A on SP318669, Lot 1 on TB198
Site Area	1.857ha
Landowner	Matthew and Helen Richardson
Existing use of land	Rural
APPLICATION DETAILS	
Request No.	DA 19-2020-2021
Applicant	Helen and Matthew Richardson
Request description	Request to apply superseded planning scheme to proposed development
Date request was made	22 January 2021
Decision due date	24 February 2021
Proposal	Dwelling House
CURRENT STATUTORY DETAILS	
Mapped matters of interest under PR 2017	Water Resources <ul style="list-style-type: none"> • Water resource planning area boundaries • Great artesian water resource plan area Native Vegetation Clearing <ul style="list-style-type: none"> • Regulated Vegetation (Category B – least concern regional ecosystem) Natural Hazards Risk and Resilience <ul style="list-style-type: none"> • Flood hazard area – level 1 – Queensland floodplain
State agency referrals	State Transport – Area within 25m of a State-controlled road
State Planning Policy	State Planning Policy (July 2017)
Regional Plan	Central West Regional Plan (September 2009)
Planning Scheme	Blackall-Tambo Region Planning Scheme 2020
Zone	Rural Zone
Overlays	Flood Hazard Area
Defined use	Dwelling House
Category of Assessment	Code Assessment

2.0 SITE AND SURROUNDS DESCRIPTION

The subject site is located at Ravensbourne Road, Blackall, formally described as Lease A on SP318669, which is over Lot 1 on TB198 (see **Figure 1** showing Lot 1). The general area of the subject site is denoted by a yellow star. The subject site is 1.857 hectares in area and is an irregular configuration, with frontage to Isisford Blackall Road to the north and Ravensbourne Road to the east. We understand that both Isisford Blackall Road and Ravensbourne Road are sealed roads. The subject site is sparsely vegetated apart from the southern boundary of the site, which is relatively void of any vegetation. There appears to be an existing dwelling house over Lot 1, however this is located outside the lease area and for the purpose of this assessment is treated as being located on a separate lot.

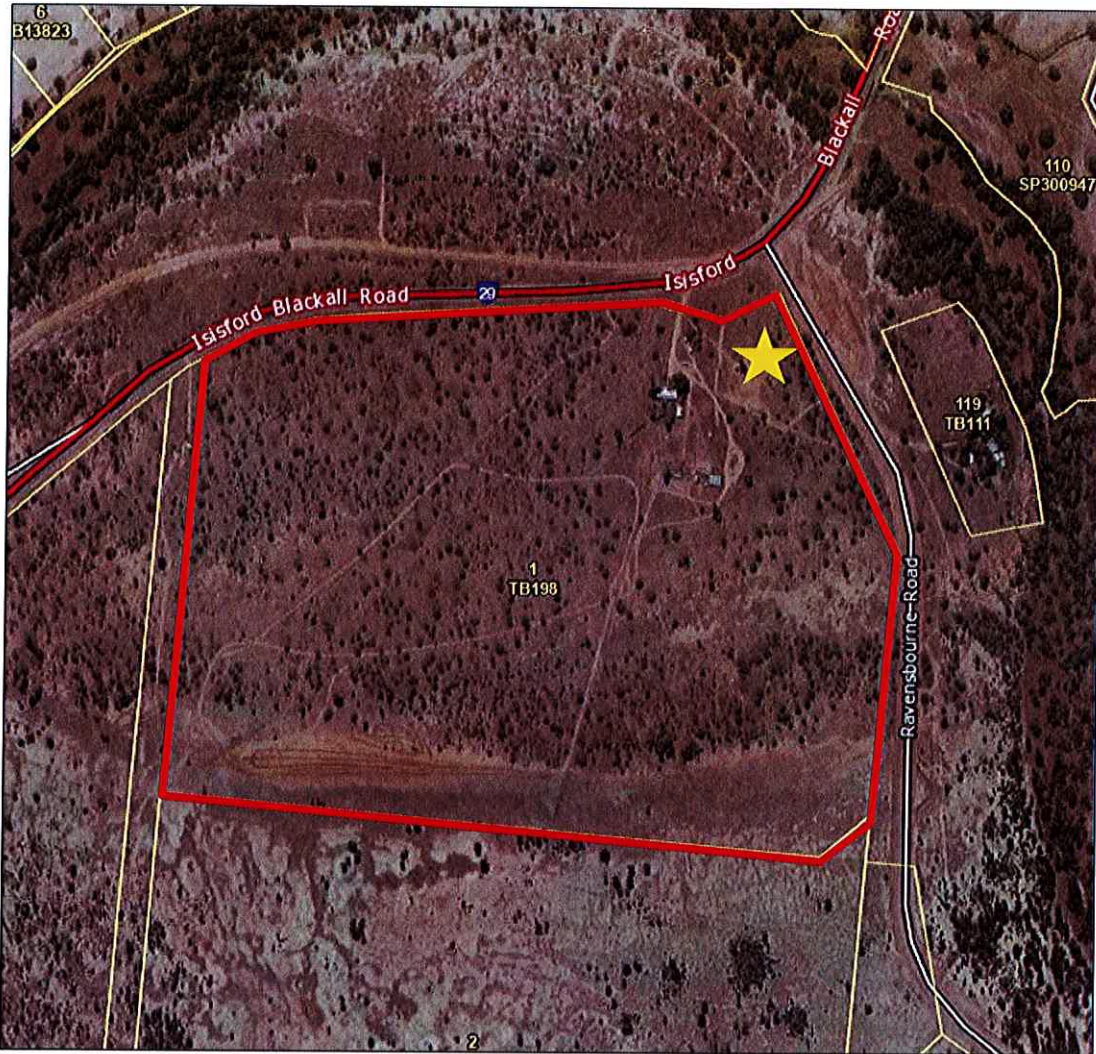


FIGURE 1 – AERIAL PHOTOGRAPH OF THE SUBJECT SITE

3.0 DESCRIPTION OF PROPOSAL

The proposed development is for a new dwelling house on a lease (Lease A on SP318669). The proposed dwelling is located toward the north-west corner of the lease (in the north-eastern corner of Lot 1), with direct access provided from Ravensbourne Road along the eastern boundary. No additional ancillary outbuildings are proposed as part of the development. The proposed dwelling will be connected to all necessary services, with a septic tank and 25,000L water tank provided directly north of the house.

The proposal will further be required to comply with the relevant Acceptable Solutions of the Rural Zone Code under the superseded planning scheme relating to such matters as building height, lighting, separation from incompatible land uses, water supply, effluent disposal, electricity and vehicle access. In order for the development to be categorised as Accepted development under the superseded planning scheme, these requirements must be met by the applicant.

4.0 PLANNING ASSESSMENT

Section 29 of the Planning Act prescribes that if a person wants a superseded planning scheme to apply to a proposed development application or a proposed development, they may request a local government to do so. A superseded planning scheme request is a request written to a local government –

- (a) To accept, assess and decide a development application (to a superseded planning scheme application) under a superseded planning scheme; or
- (b) To apply a superseded planning scheme to the carrying out of development that was accepted development under the superseded planning scheme.**

In this instance the applicant is requesting Council to apply the superseded planning scheme to the carrying out of development that was accepted development under the superseded planning scheme (i.e., did not require planning approval subject to ongoing compliance with a set of criteria).

A request of this nature must be made within one (1) year after a planning scheme becomes a superseded planning scheme. The *Blackall-Tambo Region Planning Scheme 2020* superseded the *Blackall Shire Planning Scheme 2006* on 24 January 2020. Therefore, any request must be made prior to 24 January 2021. The applicant made the request in time on 22 January 2021.

The Planning Act does not prescribe a criterion for assessing superseded planning scheme requests. Rather, it is a judgement call by the local government based on a comparison of the superseded and current planning schemes and development outcomes achieved by the application of each.

The Planning Act does not prescribe criteria for assessing superseded planning scheme requests. To assist Council in considering the request, a comparison of the superseded and current planning schemes and development outcomes achieved by the application of each has been completed. In some instances, Council could be subject to a compensation claim if any changes between schemes adversely affects a person (i.e. development rights are lost). A persons right to compensation is regulated by the Planning Act and only arises if a superseded planning scheme request is refused and an application made under the current planning scheme is also refused.

Contained herein is a brief review of the superseded and current planning schemes as it relates to the site and proposed development.

Planning Parameter	Superseded Planning Scheme	Current Planning Scheme
Strategic Framework	Nil	Non-urban land (Rural)
Zone	Rural	Rural
Overlays	Nil	Flood Hazard Area
Defined Use	"Detached house" – means "Premises" used for residential accommodation which comprises one "Dwelling unit" on one lot.	Dwelling house means a residential use of premises involving – (a) 1 dwelling for a single household and any domestic outbuildings associated with the dwelling; or (b) 1 dwelling for a single household, a secondary dwelling, and any domestic outbuildings associated with either dwelling.
Category of Assessment	Accepted development, subject to requirements	Assessable development (Code assessment (made assessable by the Flood Hazard overlay)
Assessment Benchmarks	Rural Zone Code	General Development Code

Notably, the proposed development can be categorised as Accepted development under the superseded planning scheme (no planning approval required) where compliance is achieved with the identified requirements, while under the current planning scheme it is categorised as Assessable development (planning approval required). Under the current planning scheme, the development is assessed against General Development Code, which contains provisions relating to development located in a flood hazard area.

Separate email advice has been provided to the applicant outlining all Acceptable Solutions of the superseded planning scheme would need to be complied with to ensure the development remains Accepted development. Notable Acceptable Solutions are provided below for reference:

Residential Activities – Density	AS5.1 No more than 1 (one) "Detached house" per lot.
Height	AS6 <u>"Buildings" and "Structures"</u> other than those within 100 metres of the boundary of an "Airport" <u>are less than 8.5 metres in height and are not more than 2 (two) storeys at any point above natural ground level.</u> (Except

	where establishing in an existing "Building" and no "Building works" are being undertaken for that existing "Building" and excluding windmills, silos, and other rural operational equipment).
Setbacks and boundary clearances	<p>AS7.1 "Buildings" and "Structures" have a setback of not less than 20 metres from any road frontage other than a State Controlled Road as identified on Land Characteristics Map – Features Map</p> <p>AS7.2 "Buildings" and "Structures" have side and rear boundary clearances of not less than 15 metres from property boundaries. (Except where establishing in an existing "Building" and no "Building works" are being undertaken for that existing "Building").</p>
Water supply	For "Residential Activities": AS14.3 "Premises" are connected to a rain water tank with a minimum capacity of: (a) 22 000 litres where not in a reticulated water supply area; (b) 11 000 litres where in a reticulated water supply area.
Effluent disposal	AS15.2 "Premises" not in a sewered area have an on-site effluent disposal system in accordance with Schedule 1, Division 4: Standards for Sewerage, Section 4.2.
Electricity	AS17 All "Premises" have a supply of electricity.

The key difference between the superseded and the current planning schemes is the triggering of the flood hazard area, which results in the development being Assessable development under the current planning scheme. As part of the assessment of this request, it is noted that the lease was recently created and has thus given rise to the development opportunity contemplated by the proposed development (the establishment of a dwelling on a vacant lot (the lease). The advice of Council's Acting Director of Works and Services, Garth Kath, was sought regarding the nature of flooding over the lease. Mr Kath advised that the property would be unlikely to be subject to an intolerable risk as a result of flooding. It is further noted that the building approval process will further regulate select aspects relating to flooding, such as the provision of freeboard to the defined flood event.

5.0 CONCLUSION

This request to apply the superseded *Blackall Shire Planning Scheme 2006* to the carrying out of development for Material Change of Use for Dwelling House that was accepted development subject to requirements under the superseded planning scheme, over land at Ravensbourne Road, Blackall, formally described as Lease A on SP318669, which is over Lot 1 on TB198, is recommended for approval.

This recommendation is based on a comparison of the superseded and current planning schemes as they relate to the proposed development and a consideration of the practical implications of the development, particularly with regard to flooding. The superseded planning scheme will regulate the establishment and ongoing operation of the development in a manner that is appropriate for the locality and Council.

<p>Assessment Officer (Author):</p> <p>Rachel Ovenden Senior Town Planner (Reel Planning) 10 February 2021</p>	
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