

# INDUSTRY UPDATE – APPLYING UNDER A SUPERSEDED PLANNING SCHEME

## DID YOU KNOW THAT YOU CAN REQUEST A LOCAL GOVERNMENT TO ASSESS YOUR APPLICATION UNDER A SUPERSEDED PLANNING SCHEME?

2016 is going to be a big year for planning in South East Queensland. There are changes occurring at every level of government and a number of new planning instruments in the works. Moreton Bay Regional Council and Gold Coast City Council have just recently adopted new planning schemes; several others are expected to follow throughout the year. Brisbane City Council is preparing to release their first major amendments package since the adoption of the *Brisbane City Plan 2014*. The commencement of a new planning instrument is an interesting time for landowners, with some seeing windfall gains and increases to a property's development potential. On the other hand, some may find that the changes have resulted in a loss of development rights or expected yield. In this instance, a landowner has the opportunity to request that Council assess their development application under the old – or 'superseded' – planning scheme.

### WHEN CAN A REQUEST FOR ASSESSMENT UNDER A SUPERSEDED PLANNING SCHEME BE MADE?

Under Section 95 of the *Sustainable Planning Act 2009*, a person may request that a Local Government assess an application under a superseded planning scheme. To do so, an applicant must have been **injuriously affected** by a change to a planning instrument and have thereby suffered a potential loss of development rights on their property, such as:

- A reduction in development potential due to a change in zoning (e.g. a Low Density Residential property being reclassified as Rural or Environmental Management under a new planning scheme);
- The introduction of onerous code or overlay provisions (e.g. a property identified under a new overlay);
- A change in level of assessment or development becoming prohibited;
- A subsequent and significant loss in property potential (e.g. maximum height or GFA/site cover).

### HOW DO I MAKE A SUPERSEDED PLANNING SCHEME REQUEST?

A superseded planning scheme request must be made to the relevant local Council within **one year** of the new planning instrument taking effect. The request must include a description of the proposed development and detail the reasons for assessment under the superseded scheme. Council often require payment of a separate fee for this service and have up to 30 business days to decide the request. If approved, the applicant has a prescribed period in which they can then lodge a subsequent development application and/or compliance certificate for assessment under the superseded provisions.

### WHAT HAPPENS IF COUNCIL REFUSE THE REQUEST?

Council has full discretion when deciding a superseded planning scheme request. Council may refuse a request if they do not believe the applicant has been injuriously affected by the new planning instrument, or if they believe the changes are marginal and do not have a significant effect on the development potential of the subject land. If an application is refused, the applicant has the right to claim compensation under Sections 701 and 703 of the *Sustainable Planning Act 2009*; however, the applicant must first lodge the development application under the new planning instrument and have it refused or approved subject to adverse conditions.

**WANT TO KNOW HOW TO APPLY UNDER A SUPERSEDED  
PLANNING SCHEME? CONTACT OUR OFFICE ON 07 3876 0533**

**Ken Ryan  
& Associates**  
TOWN PLANNING CONSULTANTS

To subscribe or unsubscribe to these industry updates, email our office at [doug@kenryanassoc.com.au](mailto:doug@kenryanassoc.com.au)

Ken Ryan & Associates – March 2016