

Decision Notice

Planning Act 2016

30 May 2023

Section 83 of the *Planning Act 2016*

Application Details

This Decision Notice relates to the below Development Application:

Application Number:	RAL23/0004
Applicant Details:	Andrew Balmer C/-Milford Planning PO Box 5463 Townsville Qld 4810 Email: info@milfordplanning.com.au
Owner Details:	Andrew and Brenda Balmer 910 Home Hill Kirknie Road Osborne QLD 4806
Street Address:	910 Home Hill Kirknie Road, Osborne
Real Property Description:	Lot 206 on SB109
Proposal:	Reconfiguring a Lot (1 Lot into 2 Lots)
Planning Scheme:	Burdekin Shire IPA Planning Scheme
Level of Assessment:	Code

Decision Details

The information below outlines the specifics of any approval or refusal issued by the Assessment Manager resulting from development assessment as per the provision of the *Planning Act 2016*.

Type of Decision:	Approval with conditions
Date of Decision:	23 May 2023
Decision Type:	Development Permit
Deemed Approval:	The Development Permit is not a deemed approval under Section 64 of the <i>Planning Act 2016</i>
Submissions:	Not applicable – The application was not subject to public notification

Conditions of Approval

The Conditions of Approval are set out in **Attachment 1** of this Decision Notice. The conditions are identified to indicate whether the Assessment Manager or a Referral Agency imposed them.

Approved Plans and Documents

The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by the conditions of this permit. Copies of the approved plans are included as **Attachment 2** of this Decision Notice.

Referral Agencies

The development application was referred in accordance with the following provisions of the *Planning Regulation 2017*:

Referral Status	Referral Agency and Address	Referral Trigger
Concurrence	SARA (State Assessment & Referral Agency) Email: nqsara@dsdmip.qld.gov.au	Site 25m State Transport corridor– Schedule 10, Part 9, Division 4, Subdivision 2, table 1

Pursuant to S56 of the *Planning Act 2016*, the SARA provided its response and conditions (as **attached**).

Further Approvals Required

Not Applicable.

Infrastructure Charges

An Infrastructure Charges Notice is enclosed.

Rights of Appeal

The rights of an applicant to appeal to the Planning and Environment Court against a decision about a Development Application area set out in Chapter 6, Part 1 of the *Planning Act 2016*. There may also be the right to make an application for a declaration by Tribunal (refer Chapter 6, Part 2 of the *Planning Act 2016*).

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

A copy of the relevant appeal provisions from the *Planning Act 2016* is **attached**.

Approval Currency Period

Pursuant to Section 85 of the *Planning Act 2016*, the Development Approval will lapse four (4) years after the approval starts to have effect, unless otherwise conditioned. The currency period can only be extended if the request is received before the approval lapses.

Notice About Decision – Statement of Reasons

This Notice is prepared in accordance with s63(5) and s83(7) of the *Planning Act 2016* to inform the public about a decision that has been made in relation to a development application. The purpose of the Notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:

- the relevant parts of the Planning Scheme and Assessment Benchmarks against which the application was assessed; and
- any other information, documents or other material Council was either required to, or able to, consider in its assessment.

All terms used in this Notice have the meanings given them in the *Planning Act 2016*.

Reasons for the Decision

- Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity; and
- On balance, the application should be approved because the circumstances favour Council exercising its discretion to approve the application even though the development does not comply with an aspect of the assessment benchmarks.

Assessment Benchmarks

The following assessment benchmarks applied to the proposed development:

- Rural Zone Code
- Reconfiguring a Lot Zone Code

Compliance with Assessment Benchmarks

Following an assessment of the development application against all of the assessment benchmarks listed above, it was determined the proposed development complies where relevant with the exceptions listed below:

Assessment Benchmark		Reason for the approval despite non – compliance with Benchmark
Reconfiguring a Lot Code		
Specific Outcome 06 - Lot Layout	<p>The lot layout provides for:</p> <ol style="list-style-type: none"> a wide range of needs for land; and lots of a size and dimension suitable for their intended use. 	<p>The proposed development does not comply with the acceptable solutions listed for the minimum frontage and lot sizes specified for a rural zoned lot.</p> <p>Despite this, the subdivision:</p> <ul style="list-style-type: none"> • proposes a logical outcome where productive rural land and land holdings are restructured to provide a suitable outcome that assists with ensuring the ongoing viability of agricultural activity on the subject site; and • is not considered to have a detrimental impact on the good quality agricultural land as the existing dwelling located on the subject site is a small section of land already removed from potential production, however the larger balance parcel is maintained for continued agricultural activity. <p>Therefore the proposal is considered to achieve the Specific Outcome.</p>

Appeal Rights

Planning Act 2016 & The Planning Regulation 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the *Planning Act 2016* states –
 - (a) Matters that may be appealed to –
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) The person-
 - (i) who may appeal a matter (**the appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the Planning Act 2016)

- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is –
 - (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note –

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
 - (a) the respondent for the appeal ; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court – the chief executive; and
 - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.

- (4) The *service period* is –
 - (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
 - (b) otherwise – 10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –
 - decision* includes-
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or failure to make a decision; and
 - (d) a purported decision ; and
 - (e) a deemed refusal.
 - non-appealable*, for a decision or matter, means the decision or matter-
 - (a) is final and conclusive; and
 - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.

Condition	Reason	Timing
1. General and Administration <u>Compliance with Conditions</u> 1.1 The Applicant is responsible for ensuring compliance with this development approval and the conditions of the approval by an employee, agent, contractor or invitee of the Applicant. 1.2 Where a discrepancy or conflict exists between the written condition(s) of the approval and the approved plans, the requirements of the written condition(s) will prevail. 1.3 Where these conditions refer to 'Council' in relation to requiring Council to approve or be satisfied as to any matter or conferring on Council a function, power or discretion that role of the Council may be fulfilled in whole or in part by a delegate appointed for that purpose by Council. 1.4 The proposed development must comply in full with all conditions of this approval, relevant Planning Scheme requirements and the relevant policies, guidelines and standards, as applying at the date of this approval, except as otherwise specified by any condition, to Council's satisfaction prior to the commencement of the use. 1.5 All civil works associated with this development permit must be constructed by a suitably qualified/ licenced contractor and delivered as per the accepted design plans, as per Council specifications and requirements. 1.6 Council's assessment of the design has been an audit only. In the issuing of this permit Council makes no acknowledgement that the design meets the above requirements. 1.7 It is a condition of this permit that any errors in the design are the responsibility of the consulting engineer, and that any rectification costs which may be applicable are to be borne by the	The development must comply with all planning scheme requirements as approved and conditioned by this development permit.	During the operation and life of the development.

Condition	Reason	Timing
<p>developer. Council bears no responsibility for any errors associated with the design or any costs arising therefrom.</p> <p><u>Works – Applicant's Expense</u></p> <p>1.8 The cost of all works associated with the development and construction of the development including services, facilities and/or public utility alterations required are met at no cost to the Council or relevant utility provider, unless otherwise stated in a development condition.</p> <p><u>Infrastructure Conditions</u></p> <p>1.9 All development conditions contained in this development approval about infrastructure under Chapter 4 of the <i>Planning Act 2016 (the Act)</i>, should be read as being non-trunk infrastructure conditioned under section 145 of the Act, unless otherwise stated.</p> <p><u>Works – Applicants Responsibility</u></p> <p>1.10 The Applicant must repair any damage to existing infrastructure (e.g. kerb and channel, footpath or roadway) that may have occurred during any works undertaken as part of the development. Any damage that is deemed to create a hazard to the community, it must be repaired immediately.</p> <p><u>Works – Design and Standard</u></p> <p>1.11 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.</p>		

Condition		Reason	Timing
2. Approved Plans and Supporting Documents			
Drawing Title	Drawing/Revision	Date	
Proposed Lot Configuration	M2063-SK-01, Issue F, Sheet 1	20.03.23	
Associated Reports			
Development application prepared by Milford Planning, February 2023 and the amended proposal Plan received via email on 20 March 2023.			
2.1	The proposed development must be completed, comply with and maintained generally in accordance with the drawings/ documents identified in the above, except as otherwise specified and/or amended by any condition of this approval.	The development must comply with all planning scheme requirements as approved and conditioned by this development permit.	At all times.
2.2	The development must be constructed in the position and at the levels identified on the approved plans or as stipulated by a condition of this approval, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.		
2.3	Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.		
3. Payment of Rates, Charges and Expenses			
3.1	Prior to signing the Plan of Survey, payment is required of any outstanding rates or charges levied by the Council or any expenses being a charge over the subject land.	Confirmation to be provided to Council prior to the release of the Plan of Survey.	

Condition	Reason	Timing
3.2 Pay the sum calculated at the current charge per lot to be levied on the Council by the Department of Resources, for each new valuation.		
4. Confirmation of Existing Services The existing services for each lot must be contained within the individual allotments.	To ensure the development is appropriately serviced in accordance with relevant code/s and policy direction.	Confirmation to be provided to Council prior to the release of the Plan of Survey.
5. Relocation/alteration of Public Utilities The developer must at its own cost undertake all necessary alterations to public utility mains and services as rendered necessary by the carrying out of any required external works or other works associated with the approved development to the satisfaction of Council, and at no cost to Council.	To ensure development is appropriately serviced by public services and/or facilities in accordance with relevant code/s and policy direction.	Prior to the release of the Plan of Survey.
6. Roadworks The construction of any crossovers to give access to the land is to be the owner's responsibility and at no cost to Council, to the satisfaction of the Chief Executive Officer.	To provide appropriate access in accordance with relevant code/s and policy direction.	Prior to the issuing of a Development Permit for Building Works.
8. Drainage/Stormwater The approved development and use(s) must not interfere with the natural flow of stormwater in the locality in such a manner as to cause ponding or concentration of stormwater on adjoining land or roads.	To convey stormwater across other lands legally and in an environmentally responsible manner in accordance with	At all times.

Condition	Reason	Timing
	relevant code/s and policy direction.	
Advice		
1. Infrastructure Charges An Infrastructure Charges Notice outlining the estimated infrastructure contributions payable relevant to the Development Permit is attached for your information.		
2. Compliance with Conditions Unless otherwise specified by these conditions, the conditions must be complied with prior to Council's endorsement of the Plan of Survey.		
3. Future Development and Flood Management 4.1 Any future on-site sewerage treatment and disposal on the proposed lots must be in accordance with the On-Site Sewerage Code and AS/NZS 1547:2000. 4.2 Any development application for building works which includes habitable rooms may have to include a 1% AEP Flood Certificate. N.B. this applies in Localised and River Flood areas as identified in Burdekin Shire Councils mapping.		
4. Acid Sulfate Soils Should the presence of acid sulfate soils or potential acid sulfate soils be detected, an Acid Sulfate Soils Management Plan may be required to be prepared and submitted to Council for approval.		
5. Limitation of Approval 5.1 The Council and its officers make no representations and provide no warranties as to the accuracy of the information contained in the application including its supporting material provided to it by the applicant. 5.2 The Council and its officers rely upon the applicant concerning the accuracy and completeness of the application and its supporting material and accepts the application and supporting material as constituting a representation by the applicant as to its accuracy and completeness. Insofar as the		

Condition	Reason	Timing
application and its supporting material may be incomplete and/or inaccurate giving rise to any claim by a third party the applicant agrees to indemnity and save the council harmless in respect of any claim so arising.		
6. Miscellaneous The Applicant is reminded of their obligations under the Aboriginal Cultural Heritage Act, 2003 and the Torres Strait Islander Cultural Heritage Act 2003. Further information and databases are available from the Department of Aboriginal and Torres Strait Islander Partnerships at: www.datsip.qld.gov.au		
7. Earthworks Earthworks are not approved as part of this Development Permit. If any earthworks are required and deemed assessable development, an operational works development application is to be lodged with Council for assessment in accordance with relevant code/s and policy direction.		
8. Access No access from the state-controlled Home Hill – Kirknie Road to proposed Lot 2 is permitted. Access to proposed Lot 2 is to be via the unnamed Council controlled road reserve located adjacent to the western boundary of Lot 206 on SB109.		

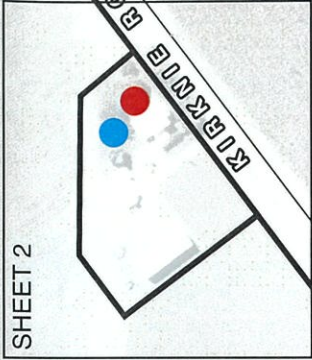
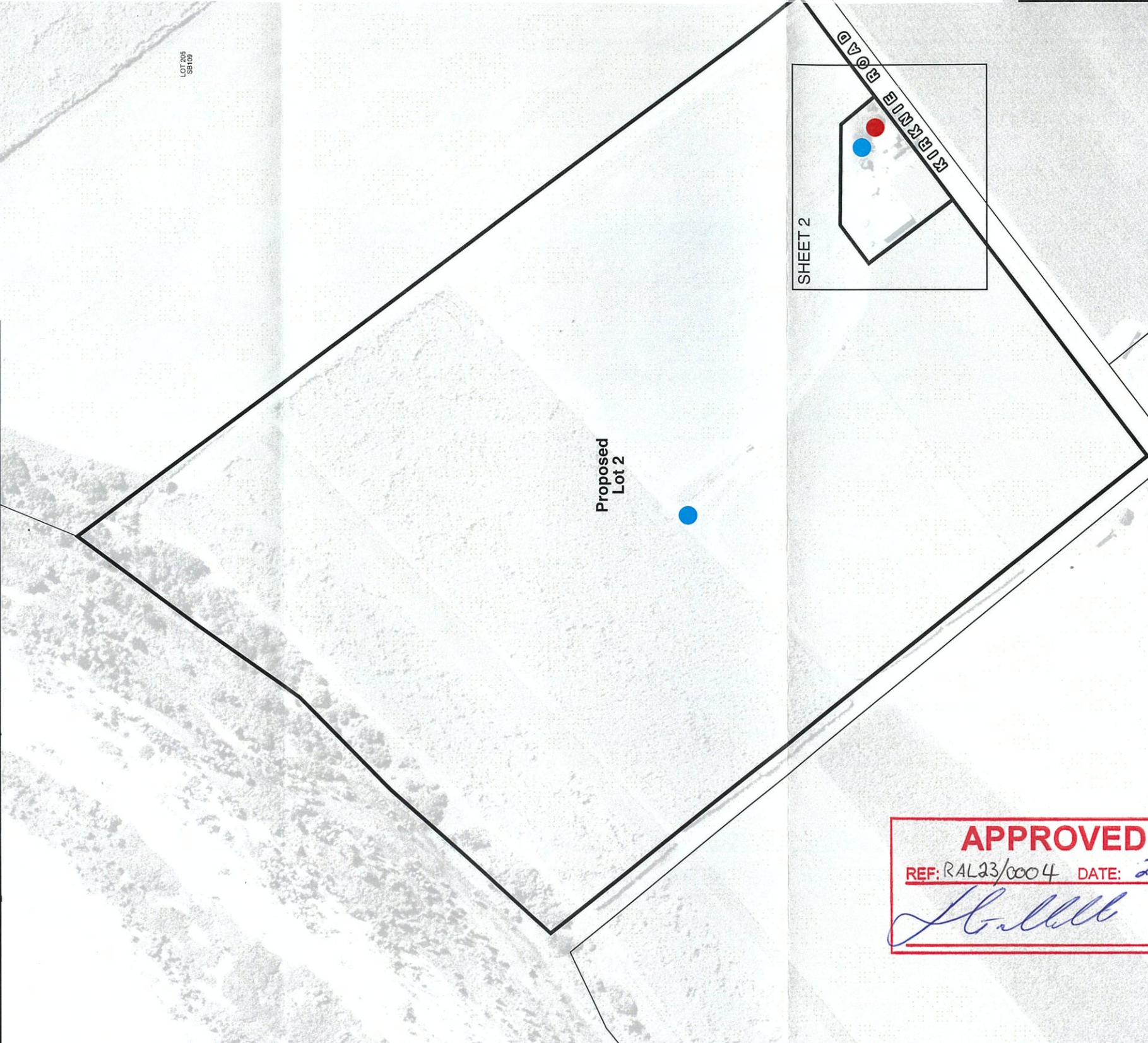
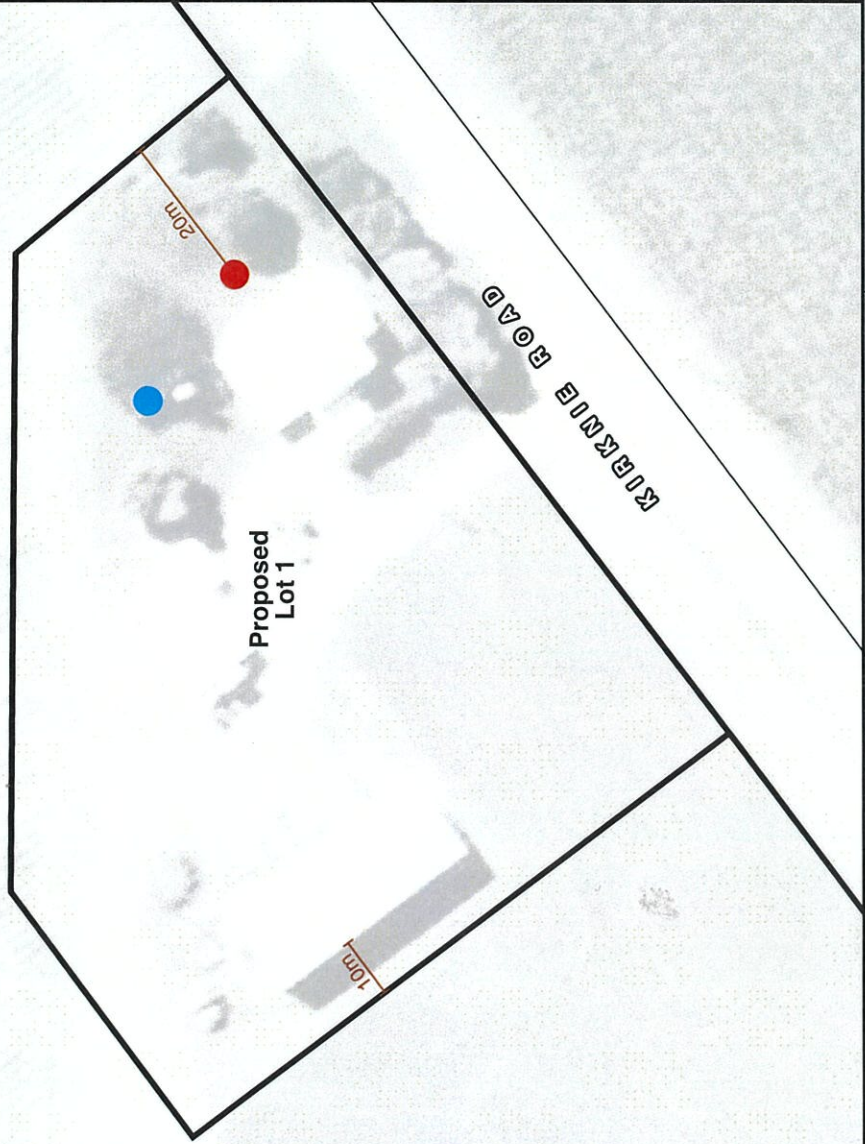
**MILFORD**
PLANNING

Drawing
Proposed Lot Configuration

Property
910 Home Hill Kirkie Road, Home Hill
Lot 206 on SB109

Drawing Number	M2063-SK-01	Issue	F	Sheet	1
Date	15.5.23	Author	RS	Reviewer	SJ

- Legend**
- On Site Septic System
 - Water Bore
 - Proposed Lots
 - Cadastral



APPROVED
REF: RAL23/0004 DATE: 23/5/23
Stallott

Scale (A3 Original)
1:4,000

0 30 60 90 120 150 m

Sources
Milford Planning GIS (2023)
DCD3 extract - State of Queensland (2023)
Aerial Imagery - Bing (2023)

Disclaimer
Areas and dimensions are approximate only
and are subject to survey.



SARA reference: 2303-33721 SRA
Council reference: RAL23/0004
Applicant reference: M2063

6 April 2023

Chief Executive Officer
Burdekin Shire Council
PO Box 974
AYR QLD 4807
planning@burdekin.qld.gov.au

Attention: Kellie Galletta

Dear Sir/Madam

SARA referral agency response—910 Home Hill Kirknie Road, Osborne

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 15 March 2023.

Response

Outcome:	Referral agency response – with conditions
Date of response:	6 April 2023
Conditions:	The conditions in Attachment 1 must be attached to any development approval
Advice:	Advice to the applicant is in Attachment 2
Reasons:	The reasons for the referral agency response are in Attachment 3

Development details

Description:	Development permit	Reconfiguring a lot (1 Lot into 2 Lots)
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item 1 (Planning Regulation 2017)	

Development application for a material change of use within 25m of a State-controlled road

SARA reference: 2303-33721 SRA

Assessment manager: Burdekin Shire Council

Street address: 910 Home Hill Kirknie Road, Osborne

Real property description: Lot 206 on SB109

Applicant name: Andrew Balmer

Applicant contact details: C/- Milford Planning
PO Box 5463
TOWNSVILLE CITY QLD 4810
info@milfordplanning.com.au

State-controlled road access permit: This referral included an application for a road access location, under section 62A(2) of *Transport Infrastructure Act 1994*. Below are the details of the decision:

- Approved
- Reference: TMR23-038861
- Date: 24 March 2023

If you are seeking further information on the road access permit, please contact the Department of Transport and Main Roads at North.Queensland.IDAS@tmr.qld.gov.au

Human Rights Act 2019 considerations: A consideration of the 23 fundamental human rights protected under the *Human Right Act 2019* has been undertaken as part of this decision. It has been determined that this decision does not limit human rights.

Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules). Copies of the relevant provisions are in **Attachment 4**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Mary McCarthy, Senior Planning Officer, on 47583404 or via email NQSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Graeme Kenna
Manager (Planning)

cc Andrew Balmer, info@milfordplanning.com.au

enc Attachment 1 - Referral agency conditions
Attachment 2 - Advice to the applicant
Attachment 3 - Reasons for referral agency response
Attachment 4 - Representations about a referral agency response provisions
Attachment 5 – Approved plans and specifications

Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the documents referenced below are found at Attachment 5)

No.	Conditions	Condition timing
Reconfiguring a lot		
10.9.4.2.1.1 – Reconfiguring a lot near a state transport corridor — The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Transport and Main Roads to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):		
1.	The road access locations, are to be located generally in accordance with Proposed Lot Configuration, prepared by Milford Planning, dated 8 February 2023, reference M2063-SK-01 and issue D, as amended in red.	At all times

Attachment 2—Advice to the applicant

General advice	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> , its regulation or the State Development Assessment Provisions (SDAP) (version 3.0). If a word remains undefined it has its ordinary meaning.

Attachment 3—Reasons for referral agency response

(Given under section 56(7) of the *Planning Act 2016*)

The reasons for the SARA's decision are:

The development complies with State code 1: *Development in a State-controlled road environment* of the State Development Assessment Provisions (SDAP) version 3.0. Specifically, the development:

- does not increase the likelihood or frequency of accidents, fatalities or serious injury for users of a State-controlled road
- does not adversely impact the structural integrity or physical condition of State-controlled roads, road transport infrastructure, public passenger transport infrastructure or active transport infrastructure
- does not adversely impact the function and efficiency of State-controlled roads or future State-controlled roads
- does not adversely impact the State's ability to plan, construct, maintain, upgrade or operate State-controlled roads, future State-controlled roads or road transport infrastructure
- does not significantly increase the cost to the State to plan, construct, upgrade or operate State-controlled roads or road transport infrastructure
- protects community amenity from significant adverse impacts of environmental emissions generated by road transport infrastructure or vehicles using State-controlled roads.

Material used in the assessment of the application:

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the SDAP (version 3.0), as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- section 58 of the *Human Rights Act 2019*

Attachment 4—Representations provisions

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Attachment 5—Approved plans and specifications

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