

Enquiries to: Planning Department  
Our Reference: RAL23/0017  
Your Reference: 57054-001-01

16 February 2024

Robert Gray  
C/- Brazier Motti  
595 Flinders Street  
Townsville Qld 4810  
Via email: [emma.staines@braziermotti.com.au](mailto:emma.staines@braziermotti.com.au)

**Attention: Emma Staines, Town Planner**

Dear Emma,

**Development Approval – Decision Notice for RAL23/0017**

**Reconfiguring a lot - Boundary Realignment (Two (2) Lots into Two (2) Lots) on land described as Lot 7 on SP184054 and Lot 4 on RP702359 and located at 334 Burstall Road and 525 Airdmillan Road, Airdmillan.**

In reference to the above described application, Council advises that the Development Application **RAL23/0017** was assessed and approved in full, subject to conditions on the **13 February, 2024**.

Council's Decision Notice is attached and outlines the developments conditions of approval, currency period, approved plans, referral agency response (if applicable) and includes extracts from the *Planning Act 2016* with respect to making representations about conditions, suspension of the appeal period, negotiated decisions and lodging an appeal, should you wish to do so.

Should you have any further queries in relation to the above, please do not hesitate to contact the Planning Department on the above number.

Yours faithfully



Kellie Galletta  
Manager Planning and Development

Enc: **Decision Notice**  
**Appeal Rights**

# Decision Notice

## Planning Act 2016

16 February 2024

Section 83 of the *Planning Act 2016*

### Application Details

This Decision Notice relates to the below Development Application:

<b>Application Number:</b>	RAL23/0017
<b>Applicant Details:</b>	Robert Gray C/-Brazier Motti 595 Flinders Street Townsville Qld 4810 Via Email: <a href="mailto:emma.staines@braziermotti.com.au">emma.staines@braziermotti.com.au</a>
<b>Owner Details:</b>	Robert John Gray
<b>Street Address:</b>	334 Burstall Road and 525 Airdmillan Road, Airdmillan
<b>Real Property Description:</b>	Lot 7 on SP184054 and Lot 4 on RP702359
<b>Proposal:</b>	Reconfiguring a Lot – Boundary Realignment (Two (2) Lots into Two (2) Lots)
<b>Planning Scheme:</b>	<i>Burdekin Shire Council Planning Scheme December 2022</i>
<b>Level of Assessment:</b>	Impact

### 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*.

<b>Type of Decision:</b>	Approval with conditions
<b>Date of Decision:</b>	13 February 2024
<b>Decision Type:</b>	Development Permit
<b>Deemed Approval:</b>	The Development Permit is not a deemed approval under Section 64 of the <i>Planning Act 2016</i>
<b>Submissions:</b>	Nil Submissions received

### 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

Not Applicable.

### Further Approvals Required

Not Applicable.

### Infrastructure Charges

Not Applicable.

### 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) of the *Planning Act 2016* to inform the public about a decision that has been made in relation to a development application. All terms used in this notice have the meanings given them in the *Planning Act 2016*.

### Reasons for the Decision

Council exercises its discretion to approve the application even though the development may not strictly comply with an aspect of the assessment benchmarks, as the proposal is generally consistent with the intent of the Strategic Framework of the 2022 Scheme and all other relevant assessment benchmarks including the Rural Zone Code.

### Assessment Benchmarks

The proposed development was assessed against the following assessment benchmarks:

- *The Planning Act 2016*
- *The Planning Regulation 2017*
- *The Whole of the Burdekin Shire Council Planning Scheme 2022*

### Compliance with Assessment Benchmarks

Assessment Benchmark:	Reason for approval despite non-compliance with Benchmark:
<b>Strategic Framework</b>	
<b>2.4 Economic Growth</b> 2.4.1 Diverse Rural Futures (3) All land in the rural zone is protected from fragmentation as a result of the creation of small lot sizes below the minimum size nominated in the zone code. Reconfiguration creating lots below these minimum sizes does not occur, other than where: (a) consolidating the balance of the farmed lot which is a minimum of 30ha and the single lot created contains a dwelling house that existed at the commencement of this planning scheme;	Existing Lot 4 (525 Airdmillan Road) is already under the 30.0ha minimum area requirement at 18.3ha and is an existing cane farm.  However no new lots are proposed to be created by this approval.  The boundary realignment of the common boundary of the two existing rural zoned parcels of land is proposed to improve farm management.  It is considered that the proposal generally complies with the relevant intentions sought by the Strategic Framework, as it does not increase the number of lots in the rural zone and no change to the existing agricultural viability of the land nor existing cane farming activities as a result of the boundary realignment, is expected.
<b>Rural Zone Code – Protecting Rural Production</b>	
<b>PO23</b> Except as provided for in PO24, reconfiguration does not result in the creation of: (a) lots less than 30ha in the priority agricultural area or agricultural land	While proposed Lot 2 will remain less than the 30.0ha minimum area requirement post realignment, the proposal does not create any new lots in the Rural Zone nor further fragment or reduce the existing use of the rural land. Rather the boundary realignment is proposed to improve farm

classification class A and B areas shown on overlay map OM2; or

- (b) lots less than 100ha elsewhere.

Editor's note—to remove any doubt, this performance outcome does not apply to land in a village precinct.

#### PO24

Reconfiguration creating lots less than required under PO23 occurs only where:

- (a) consolidating the balance of the farmed lot, which is a minimum of 30ha and the single lot created contains a dwelling house that existed at the commencement of this planning scheme; or
- (b) rearranging lot boundaries in a way that demonstrates a substantial improvement in the management of the land or the protection of its environmental values without increasing the number of lots.

Editor's note—Applicants would need to demonstrate the nature of the improvement, such as amalgamating lots to create a large balance area for an environmental reserve or that is managed in accordance with an appropriate land management plan

management, responsive to site constraints and cropping layout.

It is considered that the proposal generally achieves the outcomes sought by the Rural Zone Code.

### Reconfiguring a Lot Code – Lot Size and Layout

#### PO10

Reconfiguration results in lots that are:

- (a) of a size and dimension which complement the intended character of the zone in which the land is located;
- (b) are capable of accommodating uses intended in the zone in which the land is located; and
- (c) are sized and located to enable development to be primarily oriented to the street and accommodate all ancillary components of the use.

#### AO10

Minimum frontage and lot size occurs in accordance with table 6.2.2.3(b), unless stated otherwise in a zone code.

Table 6.2.2.3(b)—Acceptable outcome – lot size and frontage

Zone	Frontage (m)	Area
Low density residential zone	15	500m <sup>2</sup>
Low-medium density residential zone		
Township zone	15	800m <sup>2</sup> or 2,000m <sup>2</sup> where not connected to sewerage
Rural residential zone		
Horseshoe Lagoon	60	2ha
Mount Kelly	40	4,000m <sup>2</sup>
Elsewhere	40	2,000m <sup>2</sup>
Centre zone	10	400m <sup>2</sup>
Industry zone	20	1,000m <sup>2</sup>
Community facilities zone	20	1,000m <sup>2</sup>
Recreation and open space zone		
Emerging community zone	200	5ha
Rural zone		
(a) In the Groper Creek, Jarvisfield, Jerona and Wungah village precincts		No new lots created
(b) In the priority agricultural area or agricultural land class A and B on overlay map OM2	200	30ha
(c) elsewhere	200	100ha

While proposed Lot 2 will remain less than the 30.0ha minimum area requirement post realignment, the proposal does not create any new lots in the Rural Zone nor further fragment or reduce the existing use of the rural land. Rather the boundary realignment is proposed to improve farm management, responsive to site constraints and cropping layout.

It is considered that the proposal generally achieves the outcomes sought by the Rural Zone Code.

# 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.

## Attachment 1 – Conditions of Approval

Condition	Reason	Timing
<b>1 General and Administration</b> <u>Compliance with Conditions</u> 1.1 The Applicant (and any contractor, agent, employee or invitee of the applicant) is responsible for carrying out the approved development and ensuring compliance with this development approval, the conditions of the approval and the relevant requirements in accordance with: 1.1.1 The specifications, facts and circumstances as set out in the application submitted to Council, including recommendations and findings confirmed within the relevant technical reports. 1.1.2 The development must comply in full with all conditions of this approval, and is to be designed, constructed and maintained in accordance with relevant Planning Scheme requirements, Council policies, guidelines and standards (except as otherwise specified by any condition) to Council's satisfaction, and best practice engineering. 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) of the development approval will prevail. 1.3 Where these conditions refer to 'Council' in relation to requiring Council to approve or be satisfied, the role of the Council may be fulfilled in whole or in part by an officer acting under appropriate delegation. <u>Works – Applicant's Responsibility/Expense</u> 1.4 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 by the applicant, at no cost to the Council. 1.5 The applicant must repair any damage to existing infrastructure (e.g. kerb and channel, footpath or roadway) that may occur during any works undertaken as part of the development. Any damage that is deemed to create a hazard to the community must be repaired immediately. <u>Infrastructure Conditions</u> 1.6 All development conditions contained in this development approval relating to infrastructure under Chapter 4 of the <i>Planning Act 2016</i> ( <i>the Act</i> ), should be read as being non-trunk infrastructure conditioned under section 145 of the Act, unless otherwise stated.		At all times.
<b>2. Approved Plans and Documents</b> <u>Approved Plans &amp; Documents</u> 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.



## Attachment 1 – Conditions of Approval

Condition		Reason	Timing
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.		
Approved Plans			
Drawing Title		Drawing/Revision	Date
Proposed Boundary Realignment – Lots 1 and 2 Cancelling Lot 7 on SP184054 and Lot 4 on RP702359		Plan No: 57054/001 A Prepared by Brazier Motti	11 October 2023
3. Payment of Rates, Charges and Expenses		Confirmation to be provided to Council prior to the release of the Plan of Survey.	
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.			
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		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.
The existing services for each lot must be contained within the individual allotments.			
5. Relocation/alteration of Public Utilities		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.
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.			

## Attachment 1 – Conditions of Approval

Condition	Reason	Timing
<b>6. Roadworks</b> The construction of any additional crossovers to give access to the land is to be the owner's responsibility and 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 or Operational Works.
<b>7. Drainage/Stormwater</b> 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 relevant code/s and policy direction.	At all times.

### Advice

<b>1. Infrastructure Charges</b> Not Applicable.
<b>2. Compliance with Conditions</b> Unless otherwise specified by these conditions, the conditions must be complied with prior to Council's endorsement of the Plan of Survey.
<b>3. Limitation of Approval</b> <b>3.1</b> 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. <b>3.2</b> 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 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.
<b>4. Acid Sulfate Soils</b> 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.

**Attachment 1 – Conditions of Approval****5. Amenity Impacts**

Use of the site is to be operated in a way that protects the values of the existing environment and will not cause unacceptable impacts on surrounding areas as a result of dust, odour, noise or lighting, in accordance with the *Environmental Protection Act 1994*.

**6. 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.

**7. 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](http://www.datsip.qld.gov.au).

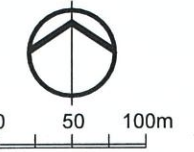
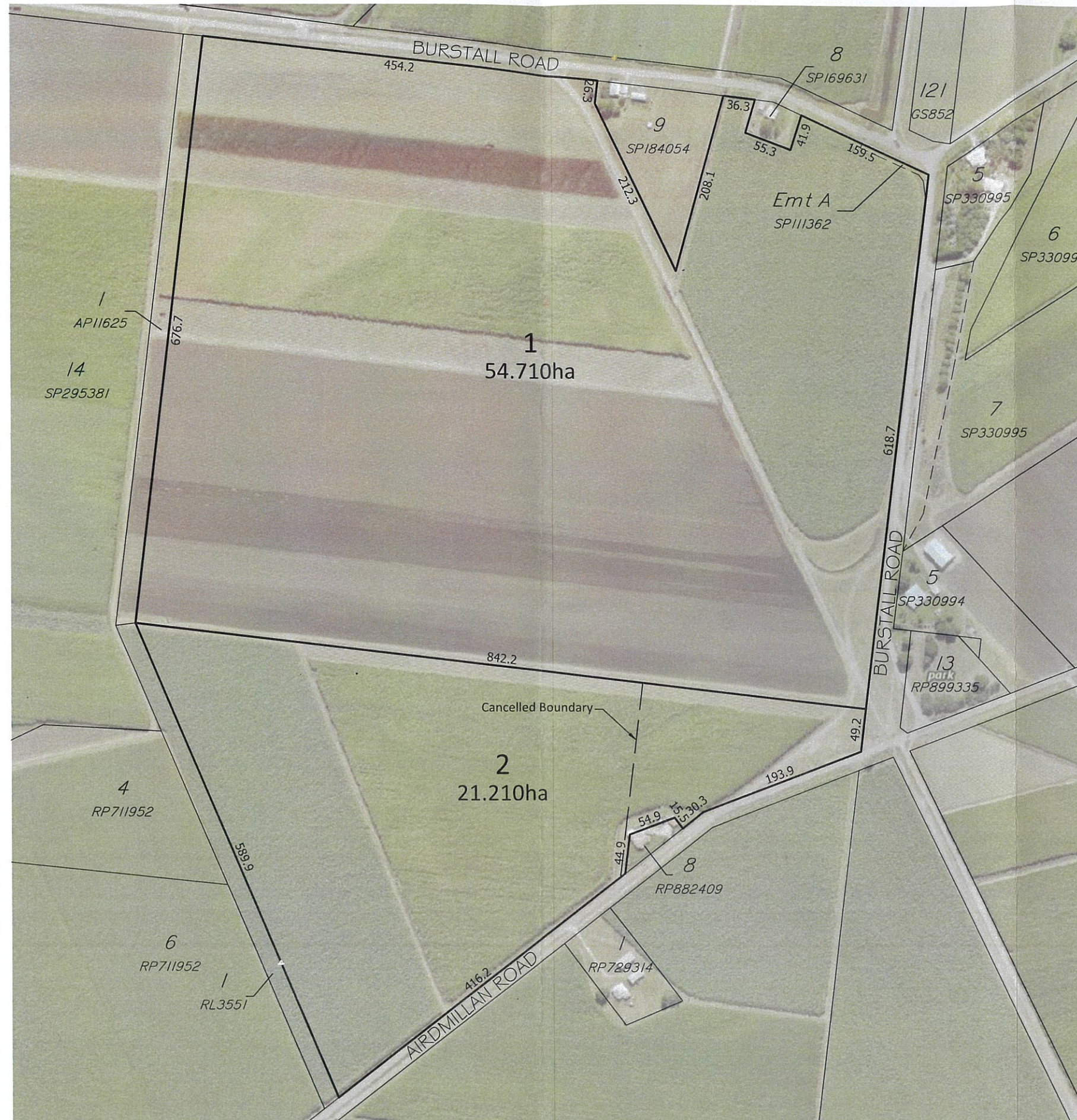
If any item of cultural heritage is identified during site works, all work must cease, and the relevant State Agency must be notified. Work can resume only after State Agency clearance is obtained.



# PROPOSED BOUNDARY REALIGNMENT

Lots 1 and 2

Cancelling Lot 7 on SP184054  
and Lot 4 on RP702359



Date: 11th October, 2023	
Scale: 1:5000	A3
Drawn: MJM	
Job No: 57054/001-01	
Plan No: 57054/001 A	

braziermott

braziermotti.com.au

SURVEYING  
TOWNPLANNING  
PROJECTMANAGEMENT  
MAPPING&GIS



This plan is conceptual and for discussion purposes only. All areas, dimensions and land uses are preliminary, subject to investigation, survey, engineering, and Local Authority and Agency approvals.