

ADDENDUM REPORT

COUNCIL

EXECUTIVE SERVICES

CHIEF EXECUTIVE OFFICER REPORT

28 JANUARY 2020

7.2.1 CHIEF EXECUTIVE OFFICER - DEBATE

7.2.1.6

INDENTURE DEED – KEIL ESTATE

B7081

PURPOSE

Council is asked to finalise the Deed (known as the Keil Estate Deed) being the last process to re-establish a Deed over new land to be transferred to Council (in the near future) as part of the Chateau Tanunda land transfer.

RECOMMENDATION

That Council authorise the Mayor and Chief Executive Officer to sign, seal and date the Deed to finalise the matter, as presented at Appendix 1.

REPORT

Council received a report in August 2019 outlining the final draft Deed. Council approved the final engagement with the executor. This has been completed with no variation to the Deed presented to Council in August 2019. The resolution of August 2019 is:

Authorise the Chief Executive Officer to proceed with final negotiations with the Executor/s of the Estate of Elma Keil for the finalisation of the Indenture Deed principally on the terms outlined in the draft at Attachment 3 and bring a final report back to Council for endorsement.

With Council now having concluded the internal review of that August 2019 decision I have written to the executor outlining that all conditions have been satisfied. The executor is satisfied with the agreement and executed it. The Deed remains unchanged (other than of course the year now being 2020) from that provided in August 2019.

As a Deed to finalise the matter, in accordance with part 2 of the resolution 2018-22/279, the report is now tabled and final authorisation to sign, seal and date the document is required.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

- Attachment 1 - Final Undated Deed (prepared for finalisation)
- Attachment 2 - Deed Presented in August 2019

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan



Natural Environment and Built Heritage



Community and Culture



Health and Wellbeing



Business and Employment

- 1.4 Develop and maintain streetscapes that reflect the character and heritage of the region.
- 1.6 Support tourism development that is sensitive to the natural environment and sustainable.
- 2.1 Initiate and support activities which encourage participation and pride in the Barossa Council area.
- 2.2 Support the development of activities that celebrate the history and culture of the Barossa and its people.
- 2.6 Support a vibrant and growing arts, cultural, heritage and events sector.
- 4.2 Create opportunities for people of all ages and abilities to participate in the community.
- 4.6 Ensure that community members can participate in cultural, recreational, sporting and learning opportunities.
- 5.1 Work closely with State Government, Federal Government and stakeholders to support economic growth, development and job creation.
- 5.4 Attract investment for new and innovative industries, such as creative industries and cultural tourism.
- 5.13 Support economic development through events.

FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS

There are no financial, resource and risk management consideration with proceeding that haven't already been outlined to Council in prior reports on this matter.

COMMUNITY CONSULTATION

Engagement and regular updates (when relevant information was available) have been held with the executor/s throughout the process of the land swap.

Attachment 1

- 3.1 that the Council will ensure that the Land remains classified as community land under the *Local Government Act 1999* or any future legislation in substitution therefor.
 - 3.2 that the Council will exercise all due care and diligence in the ongoing maintenance preservation and improvement of the Land for the purposes of its use as a public park lands and a recreation area.
 - 3.3 that the Council will not erect any notices buildings or structures on the Land which are not aesthetically in sympathy and in keeping with the overall concept of a park land garden or recreation area.
4. Notwithstanding clause 3, the Council may develop the Land or part of it to enhance its future use either:
 - 4.1 in conjunction and in sympathy with the railway station facilities and complex and adjoining Gallery ; or
 - 4.2 its use for some other commercial or public purpose provided that it retains its primary character as park lands and a recreation area for the public; or
 - 4.3 to provide public infrastructure such as car parks, public areas for recreational use or public facilities and amenities to facilitate or improve access to, and use of the Land, and adjacent parcels of land and developments, provided that the Land retains its primary character as park lands and a recreation area for the public..
5. If the Council is in breach of this Deed then the Executor and his successors and assigns and anyone lawfully claiming through or under the Executor will be entitled to an order restraining the Council from any breach of this Deed or to remedy such breach within a reasonable time and to damages to be paid to the Executor as the Trustee of the Estate of Mrs Keil of a sum equivalent to sixty five thousand dollars (\$65,000.00) with interest thereon at the rate of ten percent (10%) per annum calculated from the date of the breach or such other amount as a Court of competent jurisdiction shall determine if such breach is not remedied within a reasonable time to the satisfaction of the Executor.
 6. Nothing in this Deed affects the powers that the Council has in relation to the Land under the *Local Government Act 1999* to the extent that the Land is community land for the purposes of that act.
 7. It is agreed between the parties that any breach or suspected breach of any of the obligations under this Deed will be capable of giving rise to a Caveat being lodged on all or any of the titles to the Land and the Council hereby pledges the Land as security to the Executor for such purpose.
 8. In addition to any other method by which the Executor may give notice or make any demand under this Deed, such notice or demand may be in writing executed by the Executor or by the solicitors for the Executor and may be either served upon the Council personally or sent by prepaid post under cover addressed to the Council at the last known place of business or abode in South Australia of the Council and every such notice or demand shall take effect and be in force from the day next after the day upon which the same shall have been served or posted.

9. It is expressly agreed between the Executor and the Council that the Executor reserves the right to modify waive or release wholly or in part all or any of the covenants conditions and restrictions herein relating to the Land and the performance by the Council.

Executed as a Deed

SIGNED by

R J Homburg
.....
Signature

ROBERT JOHN HOMBURG

in the presence of:

R J Homburg
.....
Signature

PHYLLIS AUDREY HOMBURG
.....
Name

The Common Seal of **THE BAROSSA COUNCIL**
was affixed in the presence of:



[Signature]
.....
Mayor

[Signature]
.....
Chief Executive Officer

*Executed in error.
Report put to Council 28/1/20.*

[Signature]

MARTIN MCCARTHY
CHIEF EXECUTIVE OFFICER
THE BAROSSA COUNCIL

22/1/20

NOT YET APPROVED

PURPOSE: DIVISION AND REDESIGNATION OF PARCELS MAP REF: 6628/05/L, 6628/05/F LAST PLAN:	AREA NAME: TANUNDA COUNCIL: THE BAROSSA COUNCIL DEVELOPMENT NO: 960/D010/18/001/56816	APPROVED: DEPOSITED:	 <h2 style="font-size: 2em; margin: 0;">D122403</h2> SHEET 1 OF 7 <small>68974_text_01_v04_Version_4</small>								
AGENT DETAILS: CIVIL SURVEYS & DESIGN PTY LTD 14 SUNBEAM ROAD GLYNDE SA 5070 PH: 83651066 FAX:											
AGENT CODE: CSD1P REFERENCE: 18083LB											
SURVEYORS CERTIFICATION: I LYALL BRUCE BARNES, a licensed surveyor do hereby certify - 1) That this plan has been made from surveys carried out by me or under my personal supervision and in accordance with the Survey Act 1992. 2) That the field work was completed on the 25th day of September 2019 29th day of October 2019 LYALL BARNES Licensed Surveyor											
SUBJECT TITLE DETAILS:											
PREFIX	VOLUME	FOLIO	OTHER	PARCEL	NUMBER	PLAN	NUMBER	HUNDRED / IA / DIVISION	TOWN	SECTION	REFERENCE NUMBER
CT	5982	946		ALLOTMENT(S)	74	D	58229	MOOROROOROO		12	
CT	6203	319		ALLOTMENT(S)	72	D	58229	MOOROROOROO		12	
CT	5905	4		ALLOTMENT(S) COMPRISING PIECES	(91*92')	F	203905	MOOROROOROO		12	
CT	5902	822		ALLOTMENT(S)	73	D	58229	MOOROROOROO		12	
OTHER TITLES AFFECTED:											
EASEMENT DETAILS:											
STATUS	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	PURPOSE	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
EXISTING	256*	LONG	EASEMENT(S)	JK							TG 9659270
EXISTING	255*256*	SHORT	RIGHT(S) OF WAY	L							T 120747
EXISTING	252	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	B.D							
EXISTING	252	SERVICE	EASEMENT(S)	H	FOR WATER SUPPLY PURPOSES	SOUTH AUSTRALIAN WATER CORPORATION					223LG RPA
EXISTING	252	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	A	282.254 (ALL MARKED X). 250*						
EXISTING	250*	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	G	254						

NOT YET APPROVED



D122403

SHEET 2 OF 7

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EASEMENT DETAILS:	LAND BURDENED	FORM	CATEGORY	IDENTIFIER	PURPOSE	IN FAVOUR OF	CREATION
STATUS							
EXISTING		SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	C		250'.254	
EXISTING	253	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	M		254	
NEW	252.253	SHORT	FREE AND UNRESTRICTED RIGHT(S) OF WAY	F		251'	

ANNOTATIONS: ALLOTMENT 254 (CT5902/822) DOES NOT FORM PART OF THE DIVISION PROCESS
NO OCCUPATION ON SURVEYED BOUNDARIES OF SUBJECT LAND UNLESS NOTED OTHERWISE
AUTHORITY FOR PIECE 256* DATA VIDE D33882

NOT YET APPROVED

REFERENCE MARKS

CNR	BEARING	FROM	DIST	PM NO
4	198°37'	PSM FD	18.83	6628/47329

D122403

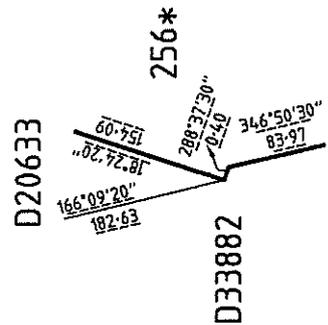
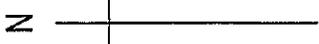
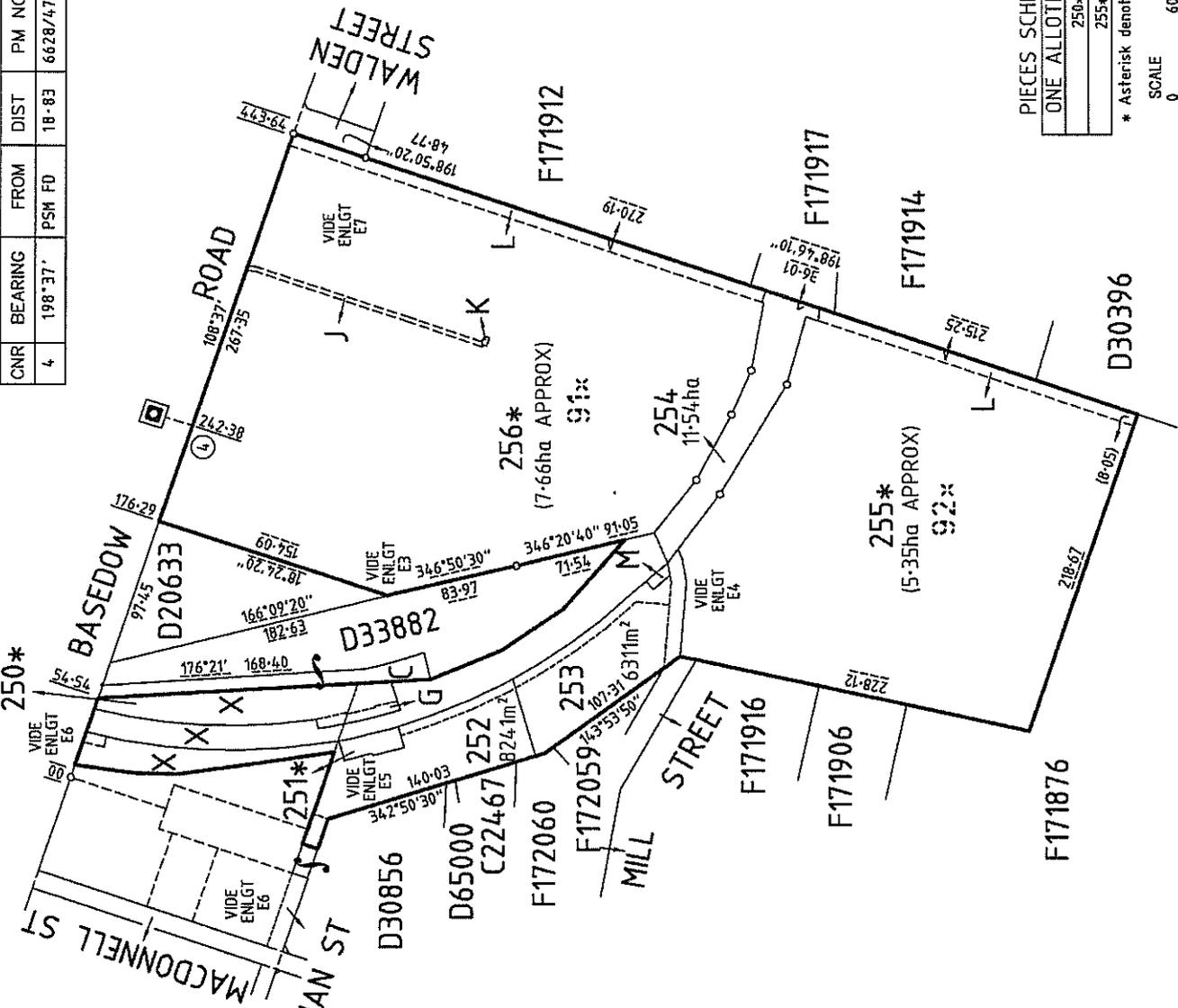
SHEET 3 OF 7

68974_pland_1_V03_Version_4

BEARING DATUM: MGA 2020 ZONE 54

DERIVATION: PSM's 6628/34055-6628/32204

TOTAL AREA:



ENLARGEMENT E3
(NOT TO SCALE)

PIECES SCHEDULE

ONE ALLOTMENT COMPRISES	TOTAL AREA
250* AND 251*	4459m ²
255* AND 256*	13.0ha APPROX

* Asterisk denotes PIECE identifier only.



CIVIL SURVEYS & DESIGN PT
14 SUNBEAM ROAD 3/11 GAWLER STREET
GLYNDE SA 5070 & MURICOOTPA SA 5355
TEL: (08) 8365 1066 TEL: (08) 8562 4388
EMAIL: info@civilsurveys.com.au ABN 19 060 705 231
REF: 180831B/CDP/03/V3 DATE: 28/10/2019

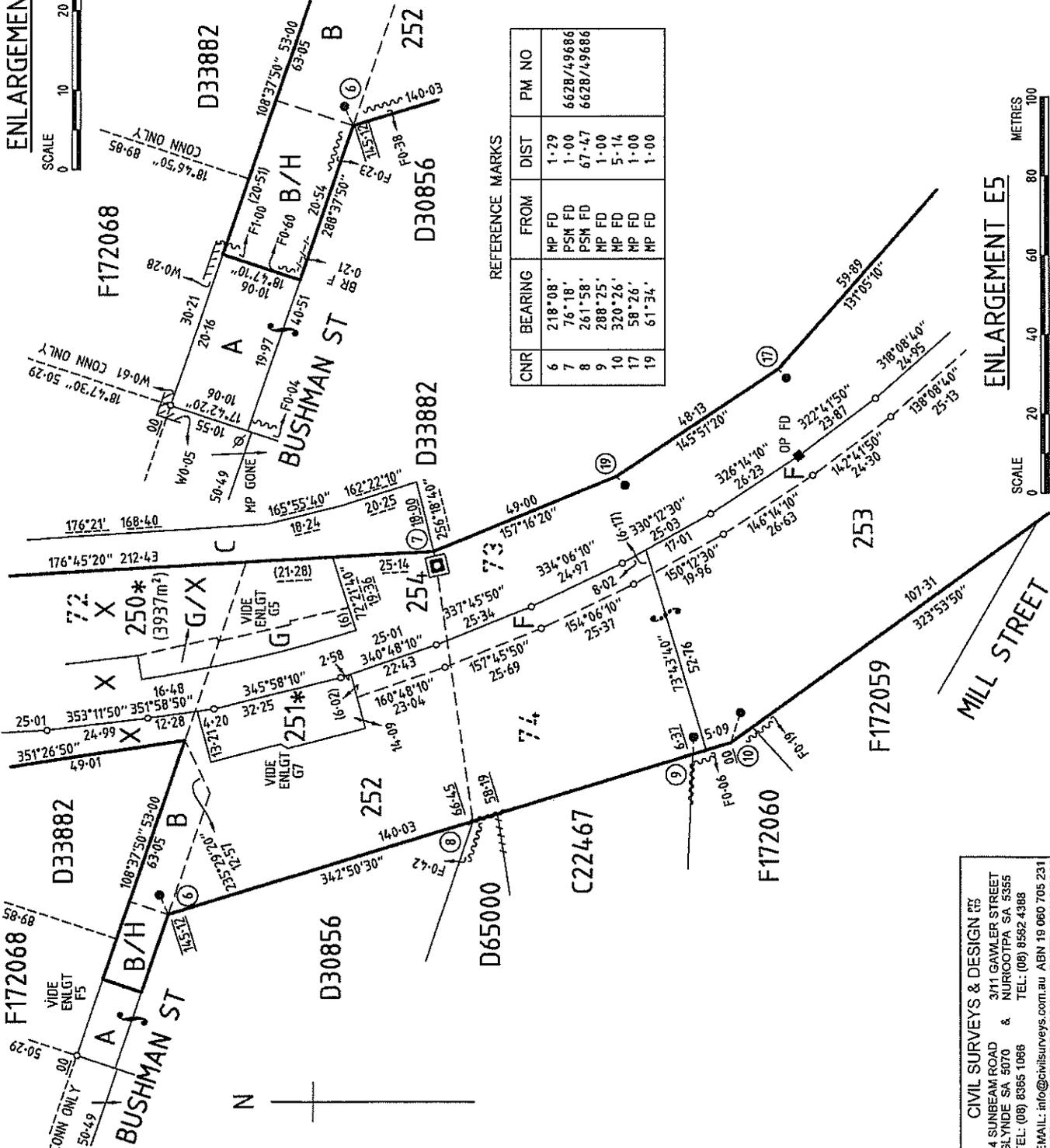
NOT YET APPROVED

D122403

SHEET 5 OF 7

68974_pland_3_V04_Version_4

ENLARGEMENT F5



REFERENCE MARKS

CNR	BEARING	FROM	DIST	PM NO
6	218°08'	MP FD	1.29	
7	76°18'	PSM FD	1.00	6628/49686
8	261°58'	PSM FD	67.47	6628/49686
9	288°25'	MP FD	1.00	
10	320°26'	MP FD	5.14	
17	58°26'	MP FD	1.00	
19	61°34'	MP FD	1.00	

ENLARGEMENT E5



ENLARGEMENT G5

(NOT TO SCALE)

MILL STREET

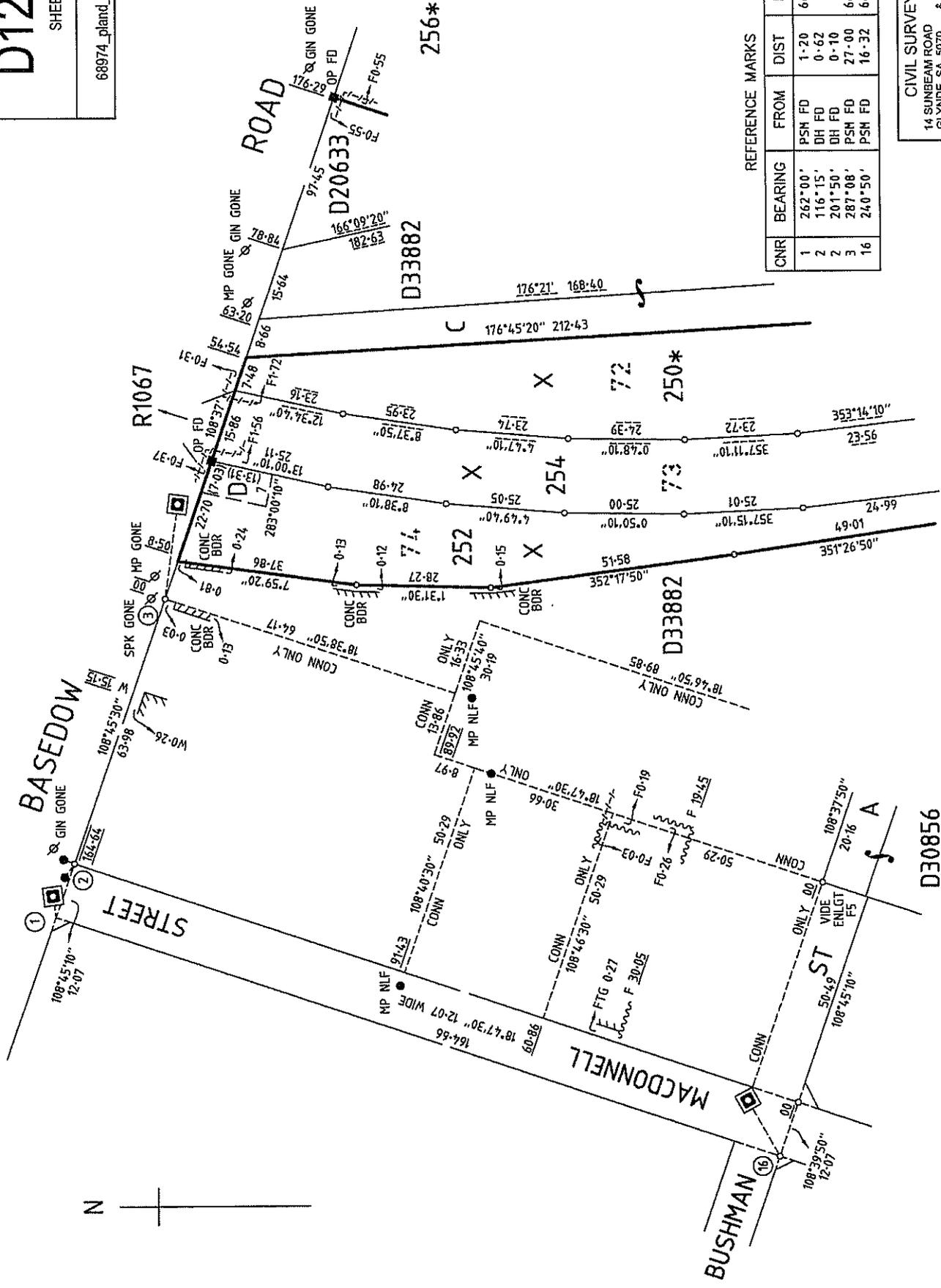
CIVIL SURVEYS & DESIGN PT5
 14 SUNBEAM ROAD
 GLYNDE SA 5070
 & NURIOOTPA SA 5355
 TEL: (08) 8365 1066
 EMAIL: info@civilsurveys.com.au AEN 19 060 705 231
 REF: 18083LBI/CDP/05/V3 DATE: 28/10/2018

NOT YET APPROVED

D122403

SHEET 6 OF 7

68974_pland_4_V03_Version_4



REFERENCE MARKS

CNR	BEARING	FROM	DIST	PM NO
1	262°00'	PSH FD	1-20	6628/28436
2	116°15'	DH FD	0-62	
2	201°50'	DH FD	0-10	
3	287°08'	PSH FD	27-00	6628/34055
16	240°50'	PSH FD	16-32	6628/34054

NEW FIX

CIVIL SURVEYS & DESIGN PT
 14 SUNBEAM ROAD
 GLYNDE SA 5070 & NURIOOTPA SA 5355
 TEL: (08) 8385 1086
 EMAIL: info@civilsurveys.com.au
 REF: 18083LBI/CDP/06/V3



ENLARGEMENT E6

NOT YET APPROVED

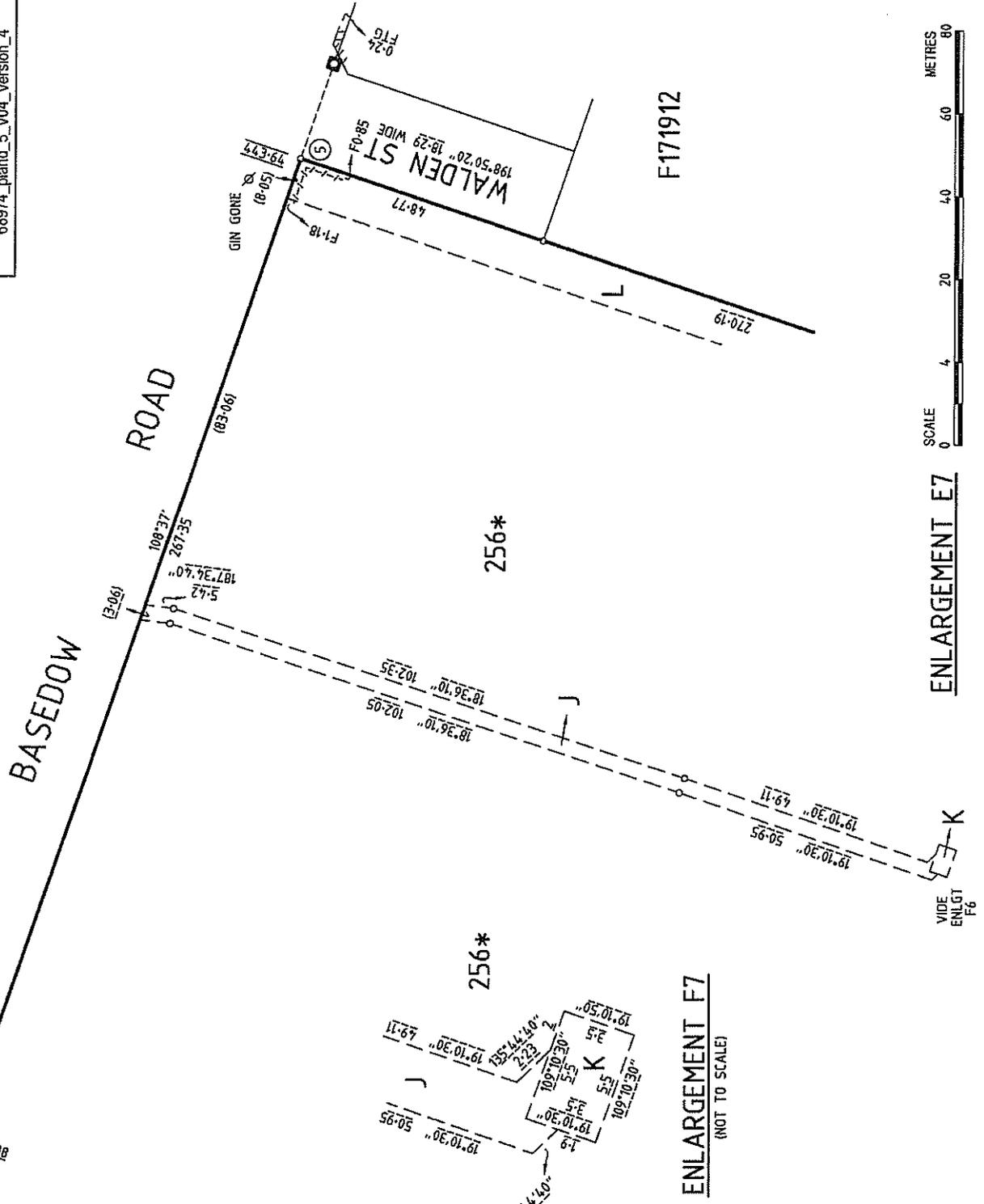
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SHEET 7 OF 7

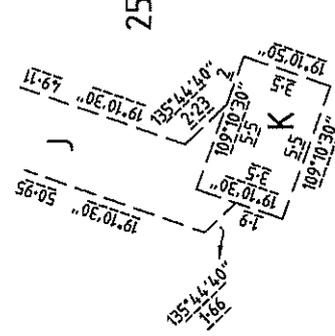
68974_pland_5_V04_Version_4

REFERENCE MARKS

CNR	BEARING	FROM	DIST	PM NO
4	198°37'	PSH FD	18.83	6628/47329
5	288°47'	PM FD	20.42	6628/32327

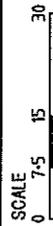


ENLARGEMENT E7



ENLARGEMENT F7 (NOT TO SCALE)

ENLARGEMENT G7



CIVIL SURVEYS & DESIGN PTY
 14 SUNBEAM ROAD 3/11 GAWLER STREET
 GLYNDE SA 5070 & NURIOOTPA SA 5355
 TEL: (08) 8385 1066 TEL: (08) 8562 4388
 EMAIL: info@civilsurveys.com.au ABN 19 060 705 231
 REF: 18044LBCDP/07V3 DATE: 28/10/2019

3. In consideration of the benefit given to the Council by the estate of Mrs Keil, the Council agrees in perpetuity:
 - 3.1 that the Council will ensure that the Land remains classified as community land under the *Local Government Act* 1999 or any future legislation in substitution therefor.
 - 3.2 that the Council will exercise all due care and diligence in the ongoing maintenance preservation and improvement of the Land for the purposes of its use as a public park lands and a recreation area.
 - 3.3 that the Council will not erect any notices buildings or structures on the Land which are not aesthetically in sympathy and in keeping with the overall concept of a park land garden or recreation area.
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 - 4.3 to provide public infrastructure such as car parks, public areas for recreational use or public facilities and amenities to facilitate or improve access to, and use of the Land, and adjacent parcels of land and developments, provided that the Land retains its primary character as park lands and a recreation area for the public..
5. If the Council is in breach of this Deed then the Executor and his successors and assigns and anyone lawfully claiming through or under the Executor will be entitled to an order restraining the Council from any breach of this Deed or to remedy such breach within a reasonable time and to damages to be paid to the Executor as the Trustee of the Estate of Mrs Keil of a sum equivalent to sixty five thousand dollars (\$65,000.00) with interest thereon at the rate of ten percent (10%) per annum calculated from the date of the breach or such other amount as a Court of competent jurisdiction shall determine if such breach is not remedied within a reasonable time to the satisfaction of the Executor.
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8. In addition to any other method by which the Executor may give notice or make any demand under this Deed, such notice or demand may be in writing executed by the Executor or by the solicitors for the Executor and may be either served upon the Council personally or sent by prepaid post under cover addressed to the Council at the last known place of business or abode in South Australia of the Council and every such notice or demand shall take effect

and be in force from the day next after the day upon which the same shall have been served or posted.

- 9. It is expressly agreed between the Executor and the Council that the Executor reserves the right to modify waive or release wholly or in part all or any of the covenants conditions and restrictions herein relating to the Land and the performance by the Council.

Executed as a Deed

SIGNED by

.....
Signature

ROBERT JOHN HOMBURG

in the presence of:

.....
Signature

.....
Name

The Common Seal of **THE BAROSSA COUNCIL**
was affixed in the presence of:

.....
Mayor

.....
Chief Executive Officer