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
THIS DEED is made the day of 2020

BETWEEN:

THE BAROSSA COUNCIL of 43-51 Tanunda Rd, Nuriootpa, SA ("Council");

AND:

ROBERT JOHN HOMBURG of 7 Park Street Tanunda, SA as the Executor of the Estate of the late Elma Linda Keil ("Mrs Keil") ("Executor");

BACKGROUND

A. The Council and the Executor entered into an indenture deed dated 28 June 1996 ("Previous Deed") with respect to land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 and Volume 5133 Folio 408 adjacent to the Tanunda Railway Station (together, "Previous Land").

B. The Executor has previously made funds available by way of a public benefaction under the terms of the will of Mrs Keil in the sum of sixty five thousand dollars ($65,000.00);

C. The funds provided by Mrs Keil were specifically provided on the condition contained in her will that the Previous Land was to be purchased for purposes of parks gardens or sporting facilities within the area of the District Council of Tanunda and that that council give an undertaking that, pursuant to the Previous Deed the Previous Land would be used in the perpetuity for that purpose and not sold at any time in the future thus preserving the said land for such purposes.

D. The Council wishes to undertake a land swap whereby the Previous Land, being the land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 are exchanged for a portion of the land contained in Certificate of Title Volume 5962 Folio 146, with a view that the terms and conditions set out in this Deed will apply to portion of land contained in Certificate of Title Volume 5962 Folio 146 as per the attached land division ("Land") in substitution for the Previous Land.

E. The parties enter into this Deed to set out the terms and conditions of their agreement in relation to the Land.

TERMS

1. The parties acknowledge the accuracy of the Background to this Deed.

2. The parties agree that the Previous Deed is hereby terminated and of not further effect including, without limitation, in respect of the land contained in Certificate of Title Volume 5902 Folio 824 and Volume 5133 Folio 408.

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.

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

[Signature]

ROBERT JOHN HOMBURG

in the presence of:

[Signature]

PHILLIS AUDREY HOMBURG

Name

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

[Seal]

Mayor

Chief Executive Officer


MARTIN MCCARTHY
CHIEF EXECUTIVE OFFICER
THE BAROSSA COUNCIL
22/1/20
NOT YET APPROVED

PURPOSE: DIVISION AND REDESIGNATION OF PARCELS
AREA NAME: TANUNDA
COUNCIL: THE BAROSSA COUNCIL
DEVELOPMENT NO: 96/001/18/001/5681S

AGENT DETAILS:
CIVIL SURVEYS & DESIGN PTY LTD
14 SUNBEAM ROAD
GLYNDE SA 5070
FAX: 53661066
AGENT CODE: CSD1P
REFERENCE: 180893LD

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 25th day of October 2019 LYALL BARNES Licensed Surveyor

SUBJECT TITLE DETAILS:

<table>
<thead>
<tr>
<th>PARCEL</th>
<th>NUMBER</th>
<th>PLAN</th>
<th>NUMBER</th>
<th>HUNDRED / IA / DIVISION</th>
<th>TOWN</th>
<th>REFERENCE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT 5902 946</td>
<td>74</td>
<td>D</td>
<td>58229</td>
<td>MOOROOCHY</td>
<td>SECTION 12</td>
<td></td>
</tr>
<tr>
<td>CT 6203 319</td>
<td>72</td>
<td>D</td>
<td>58229</td>
<td>MOOROOCHY</td>
<td>SECTION 12</td>
<td></td>
</tr>
<tr>
<td>CT 5905 4</td>
<td>(91&quot;) (92&quot;)</td>
<td>F</td>
<td>203805</td>
<td>MOOROOCHY</td>
<td>SECTION 12</td>
<td></td>
</tr>
<tr>
<td>CT 5902 822</td>
<td>73</td>
<td>D</td>
<td>58229</td>
<td>MOOROOCHY</td>
<td>SECTION 12</td>
<td></td>
</tr>
</tbody>
</table>

OTHER TITLES AFFECTED:

<table>
<thead>
<tr>
<th>STATUS</th>
<th>LAND BURDENED</th>
<th>FORM</th>
<th>CATEGORY</th>
<th>IDENTIFIER</th>
<th>PURPOSE</th>
<th>IN FAVOUR OF</th>
<th>CREATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXISTING 255</td>
<td>LONG</td>
<td>EASEMENT(S)</td>
<td>J.K</td>
<td>PURPOSE</td>
<td>IN FAVOUR OF</td>
<td>CREATION</td>
<td></td>
</tr>
<tr>
<td>EXISTING 255, 256</td>
<td>SHORT</td>
<td>RIGHT(S) OF WAY</td>
<td>L</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EXISTING 252</td>
<td>SHORT</td>
<td>FREE AND UNRESTRICTED RIGHT(S)</td>
<td>B.D</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EXISTING 252</td>
<td>SERVICE</td>
<td>EASEMENT(S)</td>
<td>H</td>
<td>FOR WATER SUPPLY PURPOSES</td>
<td>SOUTH AUSTRALIAN WATER CORPORATION</td>
<td>223LG RFA</td>
<td></td>
</tr>
<tr>
<td>EXISTING 252</td>
<td>SHORT</td>
<td>FREE AND UNRESTRICTED RIGHT(S)</td>
<td>A</td>
<td>OF WAY</td>
<td>252.254 (ALL MARKED X) 256°</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EXISTING 252</td>
<td>SHORT</td>
<td>FREE AND UNRESTRICTED RIGHT(S)</td>
<td>G</td>
<td>OF WAY</td>
<td>254</td>
<td></td>
<td></td>
</tr>
<tr>
<td>STATUS</td>
<td>LAND BURDENED</td>
<td>FORM</td>
<td>CATEGORY</td>
<td>IDENTIFIER</td>
<td>PURPOSE</td>
<td>IN FAVOUR OF</td>
<td>CREATION</td>
</tr>
<tr>
<td>--------</td>
<td>---------------</td>
<td>------</td>
<td>----------</td>
<td>------------</td>
<td>---------</td>
<td>--------------</td>
<td>----------</td>
</tr>
<tr>
<td>EXISTING</td>
<td></td>
<td>SHORT</td>
<td>FREE AND UNRESTRICTED RIGHT(S)</td>
<td>C</td>
<td>OF WAY</td>
<td>250* - 254</td>
<td></td>
</tr>
<tr>
<td>EXISTING</td>
<td>253</td>
<td>SHORT</td>
<td>FREE AND UNRESTRICTED RIGHT(S)</td>
<td>M</td>
<td>OF WAY</td>
<td>264</td>
<td></td>
</tr>
<tr>
<td>NEW</td>
<td>262, 253</td>
<td>SHORT</td>
<td>FREE AND UNRESTRICTED RIGHT(S)</td>
<td>F</td>
<td>OF WAY</td>
<td>261*</td>
<td></td>
</tr>
</tbody>
</table>

ANNOTATIONS: ALLOTTMENT 254 (CT99/2822) DOES NOT FORM PART OF THE DIVISION PROCESS.
NO OCCUPATION ON SURVEYED BOUNDARIES OF SUBJECT LAND UNLESS NOTED OTHERWISE.
AUTHORITY FOR PIECE 250* DATA VIDE DS3882.
THIS DEED is made the day of 2019

BETWEEN:

THE BAROSSA COUNCIL of 43-51 Tanunda Rd, Nuriootpa, SA (“Council”);

AND:

ROBERT JOHN HOMBURG of 7 Park Street Tanunda, SA as the Executor of the Estate of the late Elma Linda Keil (“Mrs Keil”) ( “Executor”);

BACKGROUND

A. The Council and the Executor entered into an indenture deed dated 28 June 1996 (“Previous Deed”) with respect to land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 and Volume 5133 Folio 408 adjacent to the Tanunda Railway Station (together, “Previous Land”).

B. The Executor has previously made funds available by way of a public benefaction under the terms of the will of Mrs Keil in the sum of sixty five thousand dollars ($65,000.00);

C. The funds provided by Mrs Keil were specifically provided on the condition contained in her will that the Previous Land was to be purchased for purposes of parks gardens or sporting facilities within the area of the District Council of Tanunda and that that council give an undertaking that, pursuant to the Previous Deed the Previous Land the Previous Land would be used in the perpetuity for that purpose and not sold at any time in the future thus preserving the said land for such purposes.

D. The Council wishes to undertake a land swap whereby the Previous Land, being the land contained in Certificates of Title Volume 5133 Folio 408, Volume 5902 Folio 824 are exchanged for a portion of the land contained in Certificate of Title Volume 5962 Folio 146, with a view that the terms and conditions set out in this Deed will apply to portion of land contained in Certificate of Title Volume 5962 Folio 146 as per the attached land division (“Land”) in substitution for the Previous Land.

E. The parties enter into this Deed to set out the terms and conditions of their agreement in relation to the Land.

TERMS

1. The parties acknowledge the accuracy of the Background to this Deed.

2. The parties agree that the Previous Deed is hereby terminated and of not further effect including, without limitation, in respect of the land contained in Certificate of Title Volume 5902 Folio 824 and Volume 5133 Folio 408.
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.

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**

................................................
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