



Item No: 16.1.3
 File No: 3.71.8.2
 Date: 18 April 2017
 Attachment: A, B, C, D

Meeting: Council

Title: Land Management Agreement
15 Briar Avenue, Medindie

Responsible Manager: Chief Executive Officer, Kiki Magro

Author: General Manager, Heather Barclay

Key Focus Area 2: Sustainable and resilient future, based on a sensitive and sensible approach to planning, heritage and economic development and the public realm

Type of Report: Information

Pursuant to Section 83(5) of the Local Government Act 1999, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the Local Government Act 1999 on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(a) of the Act being:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person(living or dead);

The said information relates to an existing Land Management Agreement between the Town of Walkerville and the registered proprietors of 15 Briar Avenue, Medindie.

Recommendation (Public)

Moved:
Seconded:

That pursuant to Section 90(2) of the Local Government Act 1999 Council order that the public be excluded, with the exception of the Chief Executive Officer, Kiki Magro, General Manager, Heather Barclay, Property and Contract Officer, Allison Down and Protocol, Compliance, Governance Officer, Deb Bria, from being present at the meeting on the basis that the matter contained in this report is information of the nature specified in subsections 90(3)(a) of the Act being:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person(living or dead);

The said information relates to an existing Land Management Agreement between the Town of Walkerville and the registered proprietors of 15 Briar Avenue, Medindie.

Recommendation (Confidential)

Moved:
Seconded:

That Council receives and notes the report on the Land Management Agreement for 15 Briar Avenue, Medindie.

Recommendation (Public)

Moved:
Seconded:

That the Council, having considered the said information or matter in confidence under Part 3 of Chapter 6 of the Local Government Act 1999, orders, pursuant to Section 91(7) of the Local Government Act 1999, that the report titled "Land Management Agreement, 15 Briar Avenue, Medindie" dated 18 April 2017 and any other documentation relative to the report be retained in confidence until this matter has been finalised excepting that the Council authorises the release of the minutes and relevant documentation to parties to enact the resolution and that this order be reviewed every 12 months by the Chief Executive Officer; and,

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the Local Government Act 1999 Council and re-admit the public.

Summary

Following Councils decisions on 20 January 2017, regarding this matter, advice has been sought from the South Australian State Heritage Unit (DEWNR), regarding possible ways forward, as it relates to protection and preservation of the Locally Heritage Listed property at 15 Briar Avenue, specifically as it relates to the conditions of the Land Management Agreement (LMA) between the Council and the owners.

DEWNR advice is to directly negotiate a favourable outcome for the property, with the owners.

On the basis of this advice, Administration has written to the 'Koh's', seeking to meet with them to discuss the conditions of the LMA.

A meeting occurred on 6 April 2017, between the General Manager and Mrs Judy Koh, wherein she provided a response letter (**Attachment C**).

The CEO has responded to Mrs Koh and requested that she comply with the Development Act (**Attachment D**). At the timing of writing, Council has not received a response from Mrs Koh.

Background

Members may recall a report to the 20 January 2017 ordinary Council meeting regarding a Land Management Agreement between the Town of Walkerville and the registered proprietors of 15 Briar Avenue, Medindie. A copy of the report and attachments are contained in **Attachment A**.

Council resolved the following;

CNC288/16-17

1. *That Council receives and notes the report on the Land Management Agreement for 15 Briar Avenue, Medindie, 16 January 2017.*
2. *That Council authorises the Administration to progress investigations with the State Heritage Branch to further determine the status of the Land Management Agreement (between the Town of Walkerville and the owners of 15 Briar Avenue) and Councils ability to require action by the owners of 15 Briar Avenue, as it relates to the management and maintenance of built form and landscape elements, pursuant to the Land Management Agreement and any associated Acts and Local Heritage listing.*
3. *Subject to item 2, Administration approach the owners in regard to upholding the Land Management Agreement and report back to Council accordingly”.*

In relation to item 2 above, advice was sought from the Principal Conservation Architect of the South Australian State Heritage Unit (DEWNR) via one of Councils Heritage Advisors. The advice received is listing hereunder;

There is a general (long standing) reticence to legally prosecute heritage owners with the general approach to be to assist and empower owners. The State Heritage Unit has brought one action to the ERD Court relating to prosecution of wilful neglect.

The suggested path is one of open negotiation towards obtaining a favourable outcome for the heritage asset/s.

Suggested advice is to;

- *offer financial assistance for remedy as a token of goodwill (ie. consultant report, dilapidation report, conservation works, remedial works) at a dollar for dollar rate (council may choose to set this amount as a gesture of steering the owner into taking action to address their obligations under the LMA rather than to complete to whole scope of work, budget dependent)*
- *draft a timeline of works to remedy the issue*
- *attain sign off by other party/parties to the LMA*
- *allocate resources to monitor the timeline and inspect works in accordance with negotiated and agreed milestones, legal advice and LMA terms.*

Subsequent to receiving this advice, Administration wrote to the owners of 15 Briar Avenue, to seek a meeting to discuss preservation responsibilities and actions that may be warranted by them, as it relates to the LMA, refer **Attachment B**.

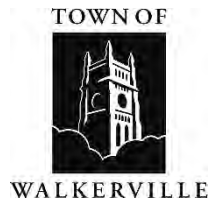
A meeting was held between the parties on the 6 April 2017, where Mrs Koh provided a letter in response to Administrations letter dated 29 March 2017 (**Attachment C**). Further correspondence has been provided to Mrs Koh (**Attachment D**). At the time of writing a response has not been received from Mrs Koh.

The Council will be kept informed via further progress reports as matters proceed.

Attachment/s

Attachment A	<i>Confidential OCM Report and Attachments – 20 January 2017</i>
Attachment B	<i>Letter dated 29 March 2017, to the ‘Koh’s’, owners of 15 Briar Avenue.</i>
Attachment C	<i>Letter dated 5 April 2017 from Mrs Koh</i>
Attachment D	<i>Letter dated 10 April 2017 to Mrs Koh</i>

CONFIDENTIAL



Meeting:	Council	Item No: 16.1.2 File No: 3.71.8.2 Date: 16 January 2017 Attachment: A, B, C, D
Title:	Land Management Agreement 15 Briar Avenue, Medindie	
Responsible Manager:	Chief Executive Officer, Kiki Magro	
Author:	General Manager, Heather Barclay	
Key Focus Area 2:	Sustainable and resilient future, based on a sensitive and sensible approach to planning, heritage and economic development and the public realm	
Type of Report:	Decision	

Pursuant to Section 83(5) of the Local Government Act 1999, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the Local Government Act 1999 on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(h) of the Act being:

(h) legal advice;

The said information relates to an existing Land Management Agreement between the Town of Walkerville and the registered proprietors of 15 Briar Avenue, Medindie.

Recommendation (Public)

Moved:

Seconded:

That pursuant to Section 90(2) of the Local Government Act 1999 Council order that the public be excluded, with the exception of the Administration being the Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay, and the Protocol, Compliance, Governance Officer, Deb Bria, from being present at the meeting on the basis that the matter contained in this report is information of the nature specified in subsections 90(3)(h) of the Act being:

(h) legal advice;

The said information relates to an existing Land Management Agreement between the Town of Walkerville and the registered proprietors of 15 Briar Avenue, Medindie.

Recommendation (Confidential)**Moved:****Seconded:**

1. That Council receives and notes the report on the Land Management Agreement for 15 Briar Avenue, Medindie, 16 January 2017.
2. That Council authorises the Administration to progress investigations to further determine the status of the Land Management Agreement (between the Town of Walkerville and the owners of 15 Briar Avenue) and Councils ability to require action by the owners of 15 Briar Avenue, as it relates to the management and maintenance of built form and landscape elements, pursuant to the Land Management Agreement.

Recommendation (Public)**Moved:****Seconded:**

That the Council, having considered the said information or matter in confidence under Part 3 of Chapter 6 of the Local Government Act 1999, orders, pursuant to Section 91(7) of the Local Government Act 1999, that the report titled "Land Management Agreement, 15 Briar Avenue, Medindie" and Minutes dated 16 January 2017, and any other documentation relative to the report be retained in confidence until this matter has been finalised excepting that the Council authorises the release of relevant documentation to parties to enact the resolution and that this order be reviewed every 12 months by the Chief Executive Officer; and,

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the Local Government Act 1999 Council and re-admit the public.

Summary

Recently, concerns have been raised regarding preservation / management of the gardens of the land at 15 Briar Avenue, known as "*The Briars*" / or "*McBride's*", pursuant to a Land Management Agreement (LMA) between the Council and the registered proprietors of 15 Briar Avenue, Medindie.

It has been determined via legal advice that the LMA is binding on the current owners of the land to which the LMA applies. However, it has not been determined whether Council has any ability to forcibly or persuasively require action to remediate, maintain and/or manage the land or the gardens based on the LMA.

This report seeks Councils consideration towards undertaking further investigations to determine Councils ability to take any action on the basis of conditions contained within the LMA.

Taking such further action is considered to be aligned to Councils recently adopted (December 2016), Heritage Management Policy. This policy seeks to provide guidance to the protection of the Town of Walkerville's character and heritage. The policy purposely is not limited to buildings and places of significance, but is intended to be holistic as it relates to character and heritage, and includes such things as landmarks, streetscapes, plants, trees and gardens.

It is recommended that Council undertake further investigations regarding "*The Briars*" LMA, to determine its ability to take action to preserve and protect the Local Heritage Place at 15 Briar Avenue (built form and the landscape elements), on the basis that;

- 15 Briar Avenue (“*The Briars*”) is listed as Local Heritage Place and there is specifically an LMA established to protect and preserve not only the build form of “*The Briars*”, but also the landscape elements, and;
- 11 Briar Avenue, adjacent land, (including the garden setting) is listed as Local Heritage Place and is immediately adjacent to elements within “*The Briars*” that require maintenance and management for preservation and may be impacted by same, and;
- The action would align with Councils recently adopted Heritage Management Policy which seeks to preserve and enhance character and heritage within the Town of Walkerville.

Notwithstanding the recommendation, it is important to note that no resources or funds have been allocated for any investigations / review of the LMA and actions that may arise. On this basis, if the recommendation is supported by Council, funds will need to be allocated at Budget Review 2 (Jan 2017).

Background

A Land Management Agreement between the Town of Walkerville and the registered proprietors of 15 Briar Avenue, Medindie, refer **Attachment A**.

For Members reference 15 Briar Avenue, Medindie, is a property on Briar Avenue, Medindie, known as “*The Briars*” or “*McBride’s*”. The property is a ‘Local Heritage Place’, under the Walkerville Development Plan.

By way of background, Members are advised that a donation from *McBride* in the early 1900’s allowed for the purchase of “*The Briars*”, by the Salvation Army, from the Cowell Family in 1913. At the time the property was renovated and equipped as a maternity hospital for mothers including for single mothers. The hospital was opened in January 1914 and operated as “*McBride Hospital*”, (“*McBride’s*”), until in late 1986.

The property was subsequently sold on 17 February 1987, to Bellara Retirement Village Pty Ltd (Bellara). At that time a Land Management Agreement (LMA) was executed between the Council (Town of Walkerville) and Bellara on 18 August 1987, to ensure that certain character and heritage conditions would be maintained.

The conditions stated within the LMA (contained in Attachment A), and are broadly as follows;

- That the use of the building on Allotment 1 known as “*McBride*”, revert from hospital use, to a detached dwelling within twelve months from the operative date (presumably the operative date of the LMA);
- That any fencing proposed to all internal boundaries of all allotments created, be a nominal height of 1.8 metres and are to be of brush, timber or other type approved by Council;
- That the driveway to Allotment 3 (some 50 metres) in length, be paved and drained, to the satisfaction of the Council;
- That no trees are to be removed from the said land or unduly lopped without approval from the Council;
- That no alterations of any architectural heritage qualities to the southern façade or adjacent sides of the building on Allotment 1, known as “*McBride*” be made without prior written approval of the Council.

The LMA refers that the Agreement is incumbent on any subsequent owners of the land (Clause 15.1).

In 1988, the current owners “*The Koh’s*”, purchased the property and the land was divided into four allotments. Allotments 1, 2 and 4 were transferred to the Koh’s and Allotment 3 transferred to a new owner (Allotment 3 contained the old nurse’s quarters and is accessible from Willyama Avenue). New CT’s were eventually issued for Allotment 1, 2 and 4 which comprise the land owned by the Koh’s, being 15 Briar Avenue. Each of these CT’s records the LMA, as an Agreement under the Planning Act 1982, Pursuant to Section 61(2) for development.

The land subject to the LMA is defined in **Attachment B**.

The Administration has sought some preliminary legal advice regarding the 'status' of the LMA, to determine if Council has any grounds or ability to require the present owners to 'act' and maintain and preserve and protect the fencing, trees and heritage qualities of the dwelling, pursuant to the agreement.

The advice (received from Wallman's Lawyers) has confirmed that the LMA is binding on the Koh's, but at this stage it is not clear what if any action Council could take if the owners were acting contrary to the LMA or provisions of any other by-law or Act, associated.

Discussion/Issues for Consideration

Recently, concerns have been raised by neighbours of the 'Koh's', at 11 Briar Avenue (The Michelle's), regarding the management and maintenance of the property at 15 Briar Avenue as it relates to the LMA, in particular associated with the management of fences, trees and the garden.

Members are advised that 11 Briar Avenue (formally part of *McBride's*), to the west of '*McBride's*', is also a Local Heritage Place. Of particular significance is that the garden setting at 11 Briar Avenue (an Edna Walling's designed garden), is also listed as a Local Heritage Place.

A copy of the original garden design for 11 Briar Avenue is included as **Attachment C**, and a locality plan depicting the boundary and location of 11 and 15 Briar Avenue, Medindie is included in **Attachment D**.

Concerns have been raised regarding the maintenance and management of the boundary or internal fencing between the properties at 11 and 15 Briar Avenue and also the management and maintenance of landscape elements, which could/may be considered to be currently impacting detrimentally on the Local Heritage Listed Garden at 11 Briar Avenue.

At the time of transfer of the land to Bellara, it appears that preservation of "The Briars" was important to Council, so much so that it ensured an LMA was established to protect and preserve the property.

More recently, Council has reinforced a view regarding heritage management and has recently adopted **Heritage Management Policy** for the Town of Walkerville (December 2016), to provide guidance to the protection of the Town of Walkerville's character and heritage. The policy purposely does not limited to buildings and places of significance, but is intended to be holistic as it relates to character and heritage, and includes such things as landmarks, streetscapes and plants and trees.

The key objectives of the Policy are to:

- Protect, conserve and celebrate the Town of Walkerville's valuable built heritage.
- Protect and enhance the Town of Walkerville's historic character evident in its buildings, streetscapes and other elements of the public realm.
- Support the reinvigoration of the Town's unique built heritage and historic character through the conservation of the Town's heritage buildings, buildings, landmarks and statues plants/trees, walls, street gutters and historic character streetscapes.
- Encourage capital investment in the conservation and adaptive re-use of heritage buildings for the purpose of contributing to the Town's character and appeal as a desirable place to live work and visit.
- Enhance public confidence in the management of heritage properties within the Township boundaries.
- Provide guidance with respect to the operations of the Development Plan in relation to the protection of heritage assets.

The Administration is informed that the neighbours have informally discussed management of the landscape elements, but little action has been taken to manage the land at 15 Briar Avenue. As a

result, the owners of 11 Briar Avenue have requested Council intervention on the basis of the LMA. However, prior to commencing such work it is;

1. Important to determine the status of the LMA (which is confirmed as valid), and;
2. Determine Councils ability or otherwise to act to require the owners of the land to take action pursuant to the LMA

Accordingly, as “*McBride’s*”, or “*The Briars*” is listed as a Local Heritage Place (Walkerville Development Plan, Table Walk/5), and on the basis of the LMA, it considered reasonable that Council should further consider the status of the LMA and its ability to require action by the owners of 15 Briar Avenue, as it relates management and maintenance of built form and landscape elements at the site.

Options for Consideration

Option 1

It is recommended;

1. That Council receives and notes the report on the Land Management Agreement for 15 Briar Avenue, Medindie, 16 January 2017.
2. That Council authorises the Administration to progress investigations to further determine the status of the LMA (between the Town of Walkerville and the owners of 15 Briar Avenue) and Councils ability to require action by the owners of 15 Briar Avenue, as it relates to the management and maintenance of built form and landscape elements, pursuant to the LMA.

Option 2

It is recommended;

1. That Council receives and notes the report on the Land Management Agreement for 15 Briar Avenue, Medindie, 16 January 2017.

Option 3

It is recommended;

1. That Council receives and notes the report on the Land Management Agreement for 15 Briar Avenue, Medindie, 16 January 2017.
2. That Council directs the administration to write to the owners of 15 Briar Avenue and request they appoint a qualified arborist to provide advice to and develop a strategy for the maintenance and management of the landscape elements as it relates to Allotment 2 of 15 Briar Avenue, Medindie, for approval by Council.

Analysis of Options

Option 1

Option 1, will provide Council clarity in terms of its ability to act and enforce the terms and intent of the LMA, prior to commencing any negotiations with the owners of 15 Briar Avenue.

Option 2

Option 2, sees Council merely receiving the report at this stage and taking a position of no further action at this time.

Option 3

Option 3, provides an opportunity to attempt to negotiate an outcome with the owners of 15 Briar Avenue, prior to determining the status of the LMA and any enforcement options. While this option would seem a reasonable approach, it appears (anecdotally) that there have been a number of attempts over many years by neighbours to encourage maintenance, preservation and management of the property to no avail.

Community Implications

The protection, preservation and management and maintenance of Character and Heritage built form and elements in the Town remains an important to the Walkerville Community. This was recently reinforced via Community Survey’s and subsequently included as an important Key Focus Area within the Town’s reviewed Strategic Community Plan.

Governance Implications

The property, 15 Briar Avenue, Medindie is a Local Heritage Place and must be managed pursuant to the objectives and principles of development control, in the Walkerville Development Plan.

Financial Implications

The matter of determining Councils ability to act in relation to this matter (viz; the Status of the LMA), will require Legal Advice which is currently unfunded. If Council determines it wishes to progress this investigation, funds for that purpose will need to be allocated in BR2 (expected between \$5-10K).

Preferred Option & Reasoning

Option (1)

It is the Administration’s position that the (Option 1) recommendation (herein), provides the most appropriate recommendation at this point.

The recommendation is presented for adoption or otherwise.

Attachment/s

Attachment A	Land Management Agreement – 1987 (LMA)
Attachment B	Description of the Land bound by the LMA
Attachment C	Edna Walling’s Garden Design for 11 Briar Avenue
Attachment D	Locality Plan

Attachment A
LM199900737
0104/0002
A189
15 BRIAR AVENUE
MEONDIÉ
D. BATGE

LAND MANAGEMENT AGREEMENT

BETWEEN

THE CORPORATION OF THE TOWN OF WALKERVILLE

of the one part

AND

BELLARA RETIREMENT VILLAGE PTY. LTD.

of the other part

DATED THE EIGHTEENTH DAY OF AUGUST 1987

MEMORANDUM OF LAND MANAGEMENT AGREEMENT pursuant to Section 61 of the Planning Act 1982, as Amended, made the day of 1987

BETWEEN:

THE CORPORATION OF THE TOWN OF WALKERVILLE situated at 66 Walkerville Terrace, Gilberton in the State of South Australia (hereinafter called "the Council") of the one part

AND

BELLARA RETIREMENT VILLAGE PTY. LTD. of 1st Floor, 30 North Terrace Kent Town in the said State (hereinafter called "the Present Owner and Applicant") of the other part

WHEREAS:

- A. The Present Owner and Applicant is the proprietor of an estate in fee simple in the whole of the land comprised and described in Certificate of Title Register Book Volume 1827 Folio 56 (hereinafter referred to as "the said Land");
- B. The Present Owner and Applicant applied to the Council for consent pursuant to the Planning Act 1982 (hereinafter called "the Act") to divide the said Land;
- C. The Council refused to grant its consent to the present Owner and Applicant's application to divide the said Land;
- D. The Present Owner and Applicant have made an appeal to the Planning Appeal Tribunal against the Council's refusal to grant its consent to their application;
- E. The Council and the Present Owner and Applicant have reached an agreement in relation to the application to divide the said Land and have agreed to proceed in accordance with the Plan marked "A" attached to this Agreement;
- F. The Council is now prepared to agree to a compromise being reached between the parties to the appeal pursuant to Section 27 of the Planning Act 1982 PROVIDED THAT the Present Owner and Applicant of the said Land and the Council enter into this agreement;
- G. The Present Owner and Applicant in consideration of the Council being prepared to agree to the compromise reached and in further consideration as hereinafter recited have agreed to undertake the action hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH and in consideration of the foregoing premises and further in the consideration of the sum of One Dollar (\$1.00) being paid by the Council to the Present Owner and Applicant, if demanded, at the time of the execution of this agreement the Present Owner and Applicant and the Council agree as follows:-

1. This agreement shall commence on the day the Registrar-General notifies the Applicant or Agent and the Council that the plan marked "A" attached to this Agreement has been deposited in the Lands Title Registration Office and shall continue in operation until termination by mutual agreement between the parties to this Agreement by means of a written request for termination followed by a written acceptance by the other party.
2. The Present Owner and Applicant and the Council acknowledge the correctness of the recitals which shall comprise and form part of this agreement.
3. The Present Owner and Applicant shall notify the Council of any change of ownership of the said Land.
4. The Present Owner and Applicant shall give to any intending purchaser of the said Land notice of this agreement.
5. The terms and conditions the subject of this agreement are as follows:-
 - 5.1 That the use of the building on Allotment 1 known as McBride, revert from the current hospital use, to a detached dwelling use within twelve months from the operative date;
 - 5.2 That any fencing proposed to all internal boundaries of all allotments created, be a nominal height of 1.8 metres and to be of brush, timber or other type and standard approved by the Council;
 - 5.3 That the driveway to Allotment 3 (some fifty (50) metres in length) be paved and drained by the Applicant (or by any other party who may obtain the benefit of the Consent), to the satisfaction of the Council and within six months of the date of the operative date;
 - 5.4 That no trees are to be removed from the said Land or unduly lopped without obtaining Council approval;
 - 5.5. That no alterations of any architectural heritage qualities to the southern facade or adjacent sides of the building on allotment 1 known as McBride be made without prior written approval of the Council.
6. If the owner is in breach of this agreement the Council may by notice in writing served on the Owner require the Owner to remedy the breach within such time as nominated by the Council in such notice (being not less than twenty eight days of service of the notice) and if the Owner fails to so remedy the breach the Council or its servant or agents may carry out the requirements of the notice and in doing so may perform any necessary works upon the land and recover any costs thereby incurred from the Owner.

7. The execution of this agreement does not in any way relieve the Present Owner and Applicant from the necessity to comply with the provisions of any other act, regulation or by-law.
8. This agreement will be submitted for registration by the Registrar-General at the Lands Titles Registration Office pursuant to provisions of the Real Property Act 1886 by the present owner and applicants at the same time that application is made for new certificates of title pursuant to the provisions of the said Real Property Act.
9. The plan marked "A" attached to this agreement when deposited with the Registrar-General shall be marked to indicate that the subject land is the subject of an agreement pursuant to Section 61 of the Planning Act 1982.
10. Each party hereto, insofar as that may achieve the same, do all things necessary to ensure that this agreement is registered and a memorial thereof entered on the Certificate of Title for the said land pursuant to the provisions of the Section 61(5) of the Planning Act 1982.
11. The Present Owner and Applicant shall bear the cost of all stamp duty and registration fees associated with this agreement and shall bear the costs of preparation of the agreement.
12. This agreement contains the whole of the agreement between the parties in respect of the matters referred to in this agreement and any variation in the agreement shall be in writing and attested to by the parties in writing.
13. Words and phrases used in this agreement which are defined in the Act shall have the meanings as defined in that Act.
14. A reference herein to any statute shall include all statutes amending, consolidating or replacing the statute referred.
15. In the construction of this agreement unless inconsistent with or repugnant to the context of the following words and expressions shall have the meanings set out opposite them respectively:
 - 15.1 "the Present Owner and Applicant" means those persons described in Recital "A" hereof or any subsequent owner of the said land and includes its successors, assigns and transferees and when the Owner is a person that includes his or her heirs, executors, administrators and transferees and where the Owner consists of more than one person or company all and every two or more such persons or companies jointly and each of them severally and their respective

successors, assigns, heirs, executors, administrators and transferees of the companies or persons being registered or entitled to be registered as the proprietor of the estate in fee simple to the land SUBJECT HOWEVER to such encumbrances, liens and interests as are registered and notified by Memoranda lodged with the Registrar-General and proper and full entry upon a Certificate of Title appearing in the Register Book and includes the Present Owner and Applicant.

15.2 "Council" means the Corporation of the Town of Walkerville.

IN WITNESS whereof the parties hereto have executed this agreement the day and year first hereinbefore written

THE COMMON SEAL of)
CORPORATION OF THE TOWN OF)
WALKERVILLE was hereunto)
affixed in the presence of:)

Margot Kowals)
.....)
Mayor)
W. Sauer)
.....)
Town Clerk)

THE COMMON SEAL of)
BELLARA RETIREMENT VILLAGE)
PTY. LTD. was hereunto)
affixed in the presence of:)

M. M. M.)
.....)
Director)
[Signature])
.....)
Secretary)



THE CORPORATION OF THE TOWN OF WALKERVILLE HEREBY CONSENTS to and requests the registration of the within agreement pursuant to Section 61(5) of the Planning Act 1982 (as Amended).

M. J. Passer
.....

Town Clerk for and on behalf of
the Corporation of the Town of
Walkerville

The PRESENT OWNER HEREBY CONSENTS to and requests the registration of the within agreement pursuant to Section 61(5) of the Planning Act 1982 (as Amended).

Nelli
.....

WESTPAC BANKING CORPORATION the Mortgagee pursuant to Memorandum of Mortgage No 6315407 HEREBY CONSENTS to and requests the registration of the within agreement pursuant to Section 61(5) of the Planning Act 1982 (as Amended).

WESTPAC BANKING CORPORATION
BY ITS JOINT ATTORNEYS

[Signature]
.....

MANAGER LEGAL

[Signature]
.....

ACTING
SENIOR MANAGER LENDING

P/A No. S002532

Land Services Group

The Property Location Browser is available on the Land Services Group Website: www.sa.gov.au/landservices

15 Briar Street, Medindie SA (Land subject to LMA)

Attachment B

Date created:

October 24, 2016



Government of South Australia
Department of Planning,
Transport and Infrastructure



Disclaimer: The information provided above, is not represented to be accurate, current or complete at the time of printing this report. The Government of South Australia accepts no liability for the use of this data, or any reliance placed on it.



The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Registrar-General

Certificate of Title - Volume 5442 Folio 867

Parent Title(s) CT 4327/529
Dealing(s) CONVERTED TITLE
Creating Title
Title Issued 18/08/1997
Edition 1
Edition Issued 18/08/1997

REAL PROPERTY ACT, 1886



South Australia

Estate Type

FEE SIMPLE

Registered Proprietor

KOON HWEE KOH
JUDY KOH
OF 15 BRIAR AVENUE MEDINDIE SA 5081
AS JOINT TENANTS

Description of Land

ALLOTMENT 1 DEPOSITED PLAN 23541
IN THE AREA NAMED MEDINDIE
HUNDRED OF YATALA

Easements

NIL

Schedule of Dealings

Dealing Number	Description
6525087	AGREEMENT UNDER PLANNING ACT, 1982 PURSUANT TO SECTION 61(2) FOR DEVELOPMENT

Notations

Dealings Affecting Title

NIL

Priority Notices



Product	Register Search
Date/Time	26/10/2016 10:18AM
Customer Reference	IKD164773
Order ID	20161026002475
Cost	\$27.75

NIL

Notations on Plan

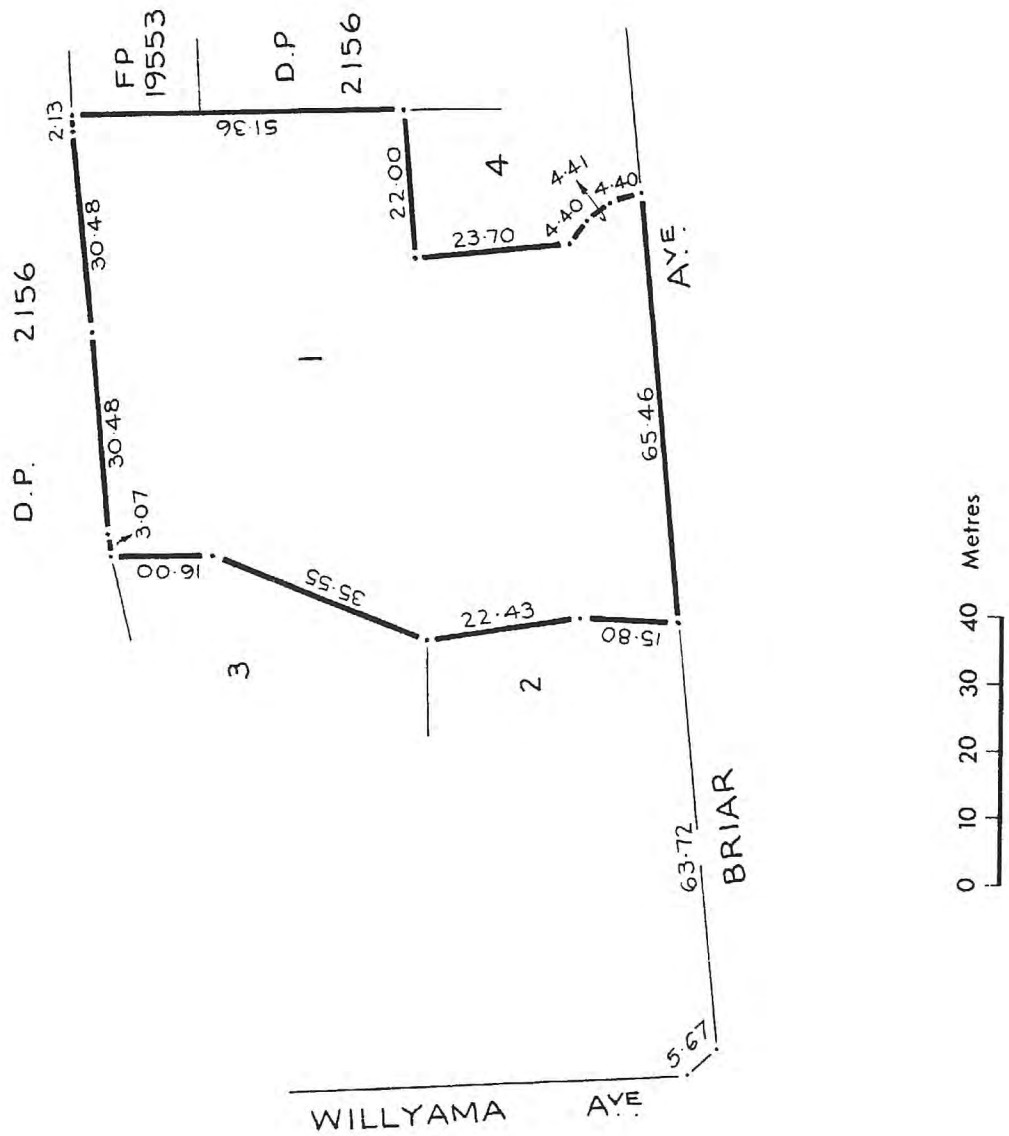
NIL

Registrar-General's Notes

NIL

Administrative Interests

NIL





The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Registrar-General

Certificate of Title - Volume 5443 Folio 77

Parent Title(s) CT 4327/532
Dealing(s) CONVERTED TITLE
Creating Title
Title Issued 18/08/1997
Edition 1
Edition Issued 18/08/1997

REAL PROPERTY ACT, 1886



South Australia

Estate Type

FEE SIMPLE

Registered Proprietor

KOON HWEE KOH
JUDY KOH
OF 15 BRIAR AVENUE MEDINDIE SA 5081
AS JOINT TENANTS

Description of Land

ALLOTMENT 4 DEPOSITED PLAN 23541
IN THE AREA NAMED MEDINDIE
HUNDRED OF YATALA

Easements

NIL

Schedule of Dealings

Dealing Number	Description
6525087	AGREEMENT UNDER PLANNING ACT, 1982 PURSUANT TO SECTION 61(2) FOR DEVELOPMENT

Notations

Dealings Affecting Title

NIL

Priority Notices



Product	Register Search
Date/Time	26/10/2016 10:09AM
Customer Reference	IKD164773
Order ID	20161026002286
Cost	\$27.75

NIL

Notations on Plan

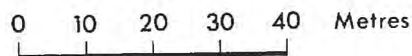
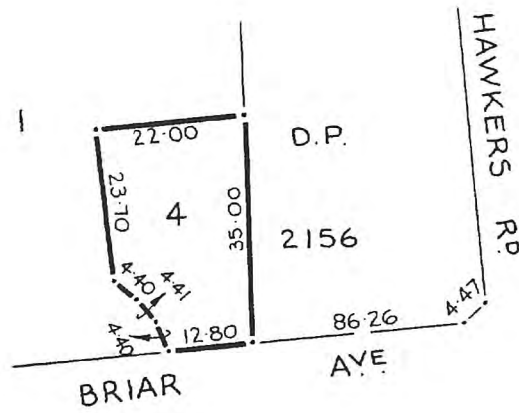
NIL

Registrar-General's Notes

NIL

Administrative Interests

NIL





The Registrar-General certifies that this Title Register Search displays the records maintained in the Register Book and other notations at the time of searching.



Registrar-General

Certificate of Title - Volume 5443 Folio 75

Parent Title(s) CT 4327/530
Dealing(s) CONVERTED TITLE
Creating Title
Title Issued 18/08/1997
Edition 1
Edition Issued 18/08/1997

REAL PROPERTY ACT, 1886



South Australia

Estate Type

FEE SIMPLE

Registered Proprietor

KOON HWEE KOH
JUDY KOH
OF 15 BRIAR AVENUE MEDINDIE SA 5081
AS JOINT TENANTS

Description of Land

ALLOTMENT 2 DEPOSITED PLAN 23541
IN THE AREA NAMED MEDINDIE
HUNDRED OF YATALA

Easements

NIL

Schedule of Dealings

Dealing Number	Description
6525087	AGREEMENT UNDER PLANNING ACT, 1982 PURSUANT TO SECTION 61(2) FOR DEVELOPMENT

Notations

Dealings Affecting Title

NIL

Priority Notices



NIL

Notations on Plan

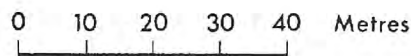
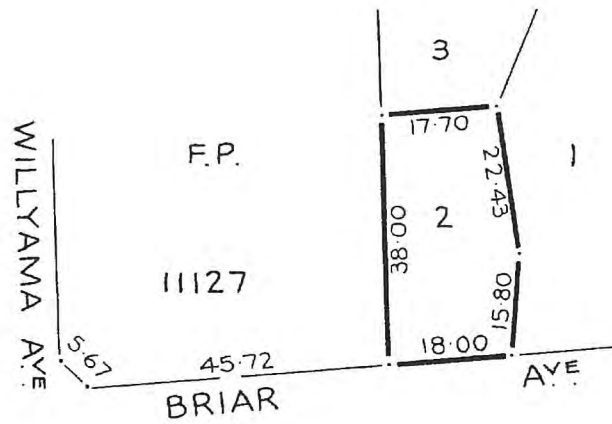
NIL

Registrar-General's Notes

NIL

Administrative Interests

NIL



South Australia.

(CERTIFICATE OF TITLE.)



Register Book,

Vol. 1827 Folio 56

Balance Certificate of Title from Vol. 1728 Folio 183

THE SALVATION ARMY (SOUTH AUSTRALIA)

PROPERTY TRUST of Pirie Street Adelaide

IS the proprietor of an estate in fee simple

subject nevertheless to such encumbrances liens and interests as are notified by memorial underwritten or endorsed hereon in THAT PIECE of land situated in the HUNDRED OF YATALA COUNTY OF ADELAIDE being FIRSTLY a CLOSED ROAD and SECONDLY PORTION OF ALLOTMENT 23 of the subdivision of Block 12 and other land of portion of Section 460 laid out as THE BRIARS WHICH said Allotment is bounded as appears in the plan deposited in the Lands Titles Registration Office No. 2156 WHICH said piece of land contains two acres and eleven perches or thereabouts and is more particularly delineated and bounded as appears in the plan in the margin hereof and therein colored green EXCEPT nevertheless as regards the said Closed Road the following reservation that is to say

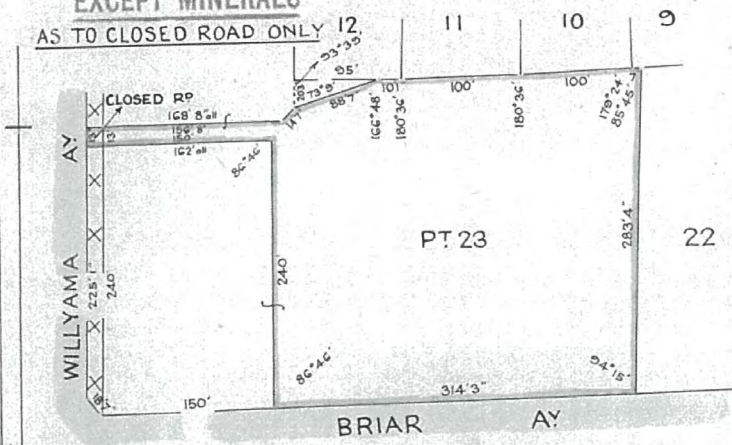
EXCEPT AND RESERVED unto His Majesty His heirs and successors all gold silver copper tin and other metals ore minerals and other substances containing metals and all gems and precious stones coal and mineral oil in and upon such land and all incidental powers as provided for in "The Crown Lands Act 1929-1936" and the "Roads (Opening and Closing) Act 1932" Provided that stone ordinarily used for building or road purposes shall be exempt from this reservation Which said Section is delineated in the public map of the said Hundred deposited in the Land Office at Adelaide.

In witness whereof I have hereunto signed my name and affixed my seal this *twentyfourth* day of *March* 19*44*

Signed the *24th* day of *March* 19*44*, in the presence of *M. V. June*

EXCEPT MINERALS

AS TO CLOSED ROAD ONLY 12.



[Signature]
Registrar-General.
6314257 6315407



TRANSFER No. 6314257 TO
Bellara Retirement Village PTY. LTD. of 407
Glen Osmond Road Glen Osmond 5064.
OF THE WITHIN LAND PRODUCED 17.2.95

MORTGAGE No. 6315407 TO
WESTPAC BANKING CORPORATION
PRODUCED 20.2.95 AT 10:35

OVER

APPLICATION 6525087 WHEREBY AN AGREEMENT
DATED 13.11.1987 PURSUANT TO SECTION 61(2) OF
THE PLANNING ACT 1982 HAS BEEN ENTERED INTO
FOR THE DEVELOPMENT OF THE WITHIN LAND
PRODUCED 3.5.1988 AT 11:00



CAVEAT No. 6534869 LODGED BY KOON HWEI KOH AND
JUDY KOH
OVER THE WITHIN LAND. PRODUCED 20.5.1988 AT 14:55
PARTLY OF



~~Cancelled as regards that portion of the within~~
land comprised in Deposited Plan 23541 (RT 6553113)
and new Certificates issued
Vol 432 Folios 529 to 532 inc





“McBRIDE”
15 Briar Avenue, Medindie
South Australia

BY AUCTION ON THE PROPERTY SATURDAY
 21st NOVEMBER 1987 AT 11 A.M.

The Briars of Medindie . . . a magnificent historic residential estate!
 This classic and imposing Victorian mansion of grand proportions set
 within exceptional park-like grounds exceeding two acres (0.81 of a hectare
 approximately), is situated in a select residential location extremely
 convenient to the city of Adelaide, and is offered together with a separate
 two-storey residence and various outbuildings.

LICENSED AGENTS AND AUCTIONEERS M.R.E.I. IN ASSOCIATION:

Bernard H. Booth Pty Ltd
 142 Fullarton Road,
 Rose Park, S.A.
 Telephone: (08) 364 0788

Colliers International
 60 Hindmarsh Square
 Adelaide, S.A.
 Telephone: (08) 232 0101

Auctioneer: Bernard Booth



ANOTHER ASPECT OF THE VICTORIAN MANSION



ONE OF THE INTERESTING OUTBUILDINGS



SEPARATE TWO-STOREY RESIDENCE

METHOD OF SALE OFFERING: Firstly, as a whole, and if not sold, then in four lots. Comprising the main "McBride" mansion, two-storey stone residence with access from Willyama Avenue, and two vacant allotments fronting Briar Avenue.

AUCTIONEERS NOTE: This release represents an estate of the highest standard with improvements of exceptional note and quality along with beautiful views from the balconies and tower of the mansion and all sited on a uniquely large land holding in this excellent location.

TERMS OF SALE: 10% deposit and balance at settlement.

TITLE REFERENCE: Volume 1827 Folio 56.

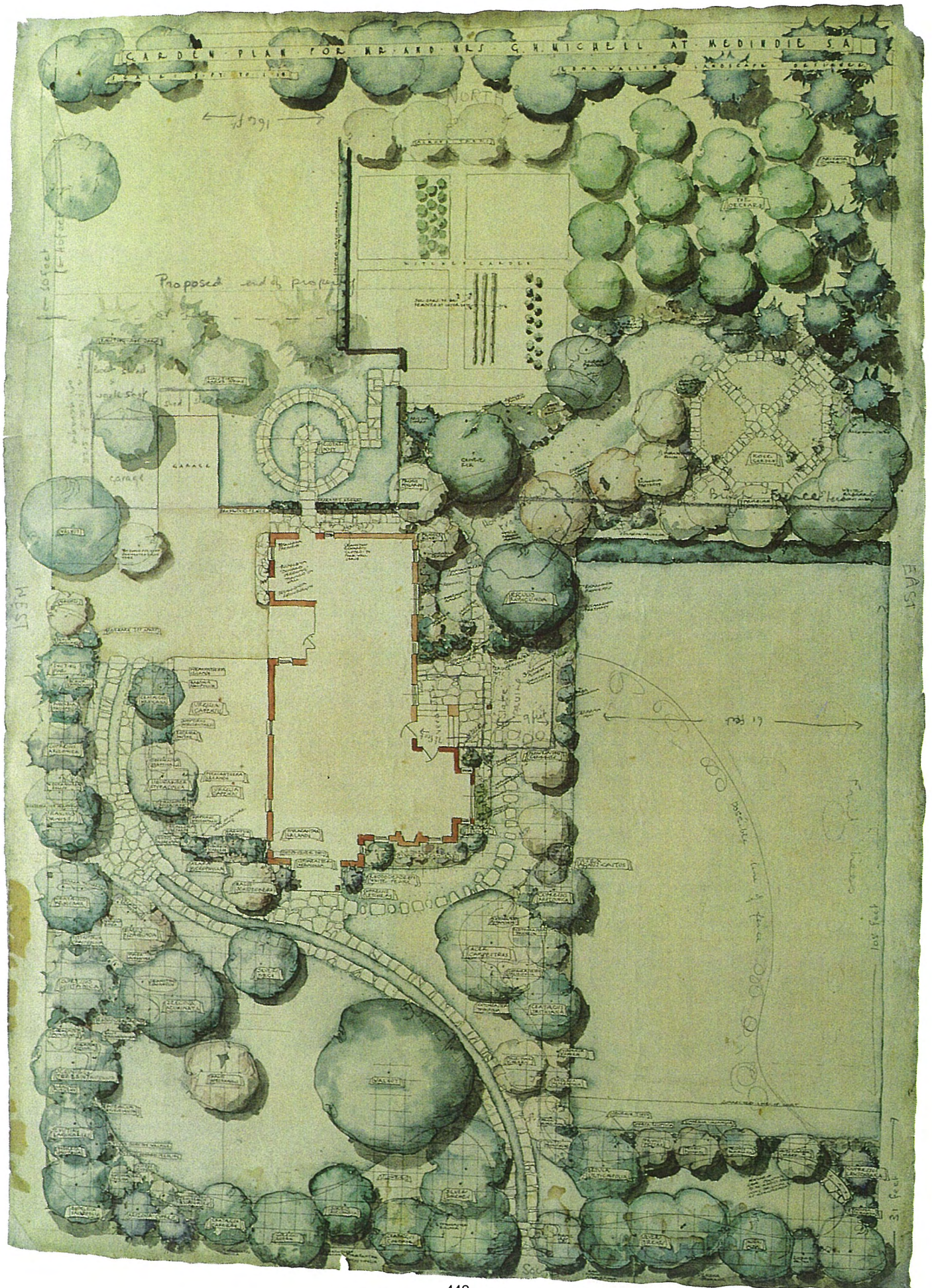
INSPECTION: Strictly appointment only.

PHONE: Bernard Booth or Mostyn Button (08) 364 0788

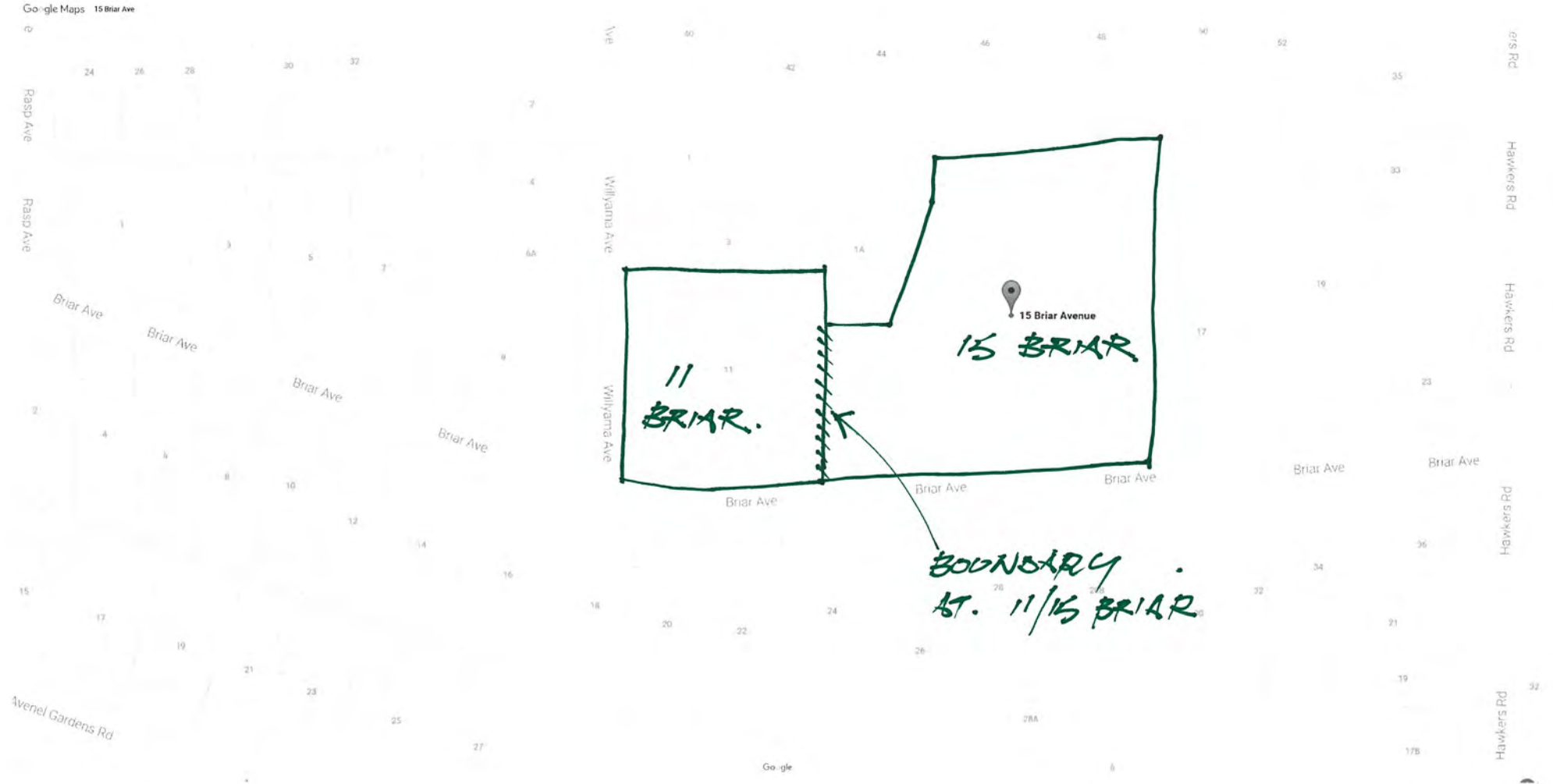
After hours: (08) 271 9773 and (08) 79 8749

Section 90 statements relating to encumbrances and other matters affecting the above may be inspected at the offices of the Licensed Agents and Auctioneers in association for 3 business days prior to auction or at the place of auction 30 minutes before same commences.

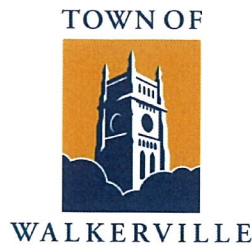
PLEASE NOTE: Every care has been taken to verify the correctness of areas and details used in this brochure and insert, however neither the vendors nor their agents can accept responsibility for errors or omissions. Accordingly, interested parties must rely upon their own enquiries.



442
Copy of Edna Walling's rendered plan of the
Medindie Garden.



15 Briar Ave
Meriden SA 5081



The Corporation of the Town of Walkerville

ABN 49 190 949 882

66 Walkerville Terrace, Gilberton SA 5081

PO Box 55, Walkerville SA 5081

File Number: 3.71.8.2, A189

Please Quote Ref: OLT201715827

Contact Officer: General Manager, Heather Barclay

Telephone: (08) 8342 7100

Facsimile: (08) 8269 7820

Email: walkerville@walkerville.sa.gov.au

[/www.walkerville.sa.gov.au](http://www.walkerville.sa.gov.au)

29 March 2017

Mr & Mrs Koh
15 Briar Avenue
Medindie SA 5081

Dear Mr & Mrs Koh,

Re: Land Management Agreement (LMA) between the Council and the registered proprietors of 15 Briar Avenue, Medindie

I advise that Council recently adopted (December 2016) a Heritage Management Policy. This policy seeks to provide guidance to the protection of the Town of Walkerville's character and heritage. The policy is purposely not limited to buildings and places of significance, and is intended to be holistic as it relates to character and heritage and includes such things as landmarks, streetscapes, plants, trees and gardens.

In January 2017, following adoption of the Heritage Management Policy, Council considered preservation and protection of the Local Heritage Place at 15 Briar Avenue (specifically built form and landscape elements) on the basis that 15 Briar Avenue ("The Briars") is listed as a Local Heritage Place and an LMA (Land Management Agreement) exists between the Council and the registered proprietors to protect and preserve "The Briars".

Council has requested that I write to you in relation to the "conditions" of the LMA and the inherent preservation responsibilities, as concerns have been raised regarding the management and maintenance of the property at 15 Briar Avenue, and in particular with the management of fences and trees.

The conditions set out within the LMA are as follows;

- that the use of the building on Allotment 1 known as "McBride" be reverted from hospital use to a detached dwelling within twelve months from the operative date (presumably the operative date of the LMA);
- that any fencing proposed to all internal boundaries of all allotments created be a nominal height of 1.8 metres and are to be of brush, timber or other type approved by Council;
- that the driveway to Allotment 3 (some 50 metres) in length be paved and drained to the satisfaction of the Council;
- that no trees are to be removed from the said land or unduly lopped without approval from the Council;
- that no alterations of any architectural heritage qualities to the southern façade or adjacent sides of the building on Allotment 1 known as "McBride" be made without prior written approval of the Council.

The LMA is incumbent on any subsequent owners of the land (Clause 15.1), accordingly, as owners of the land you are responsible for the preservation and protection of the Local Heritage Place.

We would appreciate an opportunity to discuss preservation responsibilities and actions that may be warranted to manage the landscape elements at the site as it relates to the LMA.

Could you please contact Heather Barclay, General Manager on 0403 123 376 or at HBarclay@walkerville.sa.gov.au, in order to arrange a suitable time to meet.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Kiki Magro', written in a cursive style.

Kiki Magro

Chief Executive Officer

3.71.8.2
A189
LT201723670

Judy Koh,
15 Briar Ave,
Medindie,
SA 5081.
Tel 83449677/ 0413881406

5th April 2017
The Chief Executive Officer,
Walkerville Council,
66 Walkerville Terrace,
Gilberton SA 5081.

Dear Madame,

Re: 15 Briar Ave Medindie SA 5081 Your ref: OLT 201715827
Your file No: 3.7.8.2.A189

We acknowledge receipt of your letter dated 29 March 2017. We have made an appointment to see Heather Barclay your General Manager tomorrow 6th April 2017.

Please be assured that we have been maintaining our property and home as per the Land management agreement for the past 29 years that we have resided at 15 Briar Ave. We love our property very much and have maintained it as best we can for the past 29 years.

We wish to inform you that besides being worn out and corroded by the ordinary wear and tear of age, our old roof, drain pipes and gutters were damaged by the recent hail storm. As such we are going to replace part of the roof, gutters and drain pipes. We are also going to repaint parts of the building where the paint is peeling off with paint of exactly the same colour as present. The whole building will look exactly the same as now after the replacement of part of the roof, gutters, drain pipes and the paint work. There will be no alteration or change to the façade, structure or architecture of the building at all. There will also be no change to the present exterior colour scheme of the building. What we will be doing is purely maintenance work.

Yours sincerely,



Judy Koh

Copy to General Manager : Heather Barclay

Received
6/4/17
HB

TOWN OF



WALKERVILLE

The Corporation of the Town of Walkerville

ABN 49 190 949 882

66 Walkerville Terrace, Gilberton SA 5081
PO Box 55, Walkerville SA 5081

Telephone: (08) 8342 7100

Facsimile: (08) 8269 7820

Email: walkerville@walkerville.sa.gov.au<http://www.walkerville.sa.gov.au>

File Number: 3.71.8.2, A189

Please Quote Ref: OLT201715989

Enquiries To: Chief Executive Officer, Kiki Magro

10 April 2017

Mrs Koh
15 Briar Avenue
MEDINDIE SA 5081

Dear Mrs Koh,

Re: Proposed work to the existing Local Heritage Item "The Briars House" at 15 Briar Avenue, Medindie

Thank you for your letter dated 5 April 2017. In response to the matters raised, I advise the following:

1. Land Management Agreement (LMA)

I understand, you met with Council's General Manager, Heather Barclay on 6 April 2017, and advised her that you have a full understanding of the LMA and have been maintaining the property explicit to the terms of the LMA.

As I further understand, you indicated, as it relates to the following conditions set out in the LMA;

- a) *That the use of the building on Allotment 1 known as "McBride", be reverted from hospital use, to a detached dwelling within twelve months from the operative date (presumably the operative date of the LMA);*

Your response

'That albeit minimal, a conversion occurred to revert the building to a dwelling within the prescribed time'

- b) *That any fencing proposed to all internal boundaries of all allotments created, be a nominal height of 1.8 metres and are to be of brush, timber or other type approved by Council;*

Your response

'That maintenance to boundary fences had occurred under the provisions of the Fences Act, with adjoining neighbours'

- c) *That the driveway to Allotment 3 (some 50 metres) in length, be paved and drained, to the satisfaction of the Council;*

Your response

'That this aspect was not under the ambit of your control as it is a separate allotment, and you are not the registered owner of that portion'

- d) *That no trees are to be removed from the said land or unduly lopped without approval from the Council;*

Your response

'That no trees have been lopped or removed since you took ownership of the property some 29 years ago'

I understand, Ms Barclay suggested that the intent of the LMA inferred maintenance, and as to whether you have or would consider engaging a qualified arborist to access the health and structure of the trees on the land and conduct maintenance – you told her that your gardener is suitably experienced and undertakes all maintenance on the site for you, as it relates to the garden and you are satisfied with that outcome; and on that basis you did not intend to do anything differently.

- e) *That no alterations of any architectural heritage qualities to the southern façade or adjacent sides of the building on Allotment 1, known as "McBride" be made without prior written approval of the Council.*

Your response

'No changes to of any architectural heritage qualities to the southern façade or adjacent sides of the building as occurred during your ownership to-date'.

Notwithstanding that no architectural heritage changes have occurred, I understand, you advised Ms Barclay, that the recent storms had created a situation where the roof was no longer functional to keep wet weather out, and you needed to use lots of buckets inside the house – hence your need to undertake works per the below

Based on the above, and as I have been advised, you are satisfied that compliance with the LMA has occurred.

2. Proposed Property Works

The existing dwelling on the above site is listed under Table Walk/5 – Local Heritage Places of the Town of Walkerville Development Plan as "The Briar's House". The listing specifically encompasses the overall form, materials and original details of the two storey 1880s residence, including colonnaded elevations, central square tower, sandstone and render wall and chimney detail. It is worth noting that the listing specifically excludes later alterations and additions.

In your letter to me, you advise that you are interested in undertaking some repair work to the existing roof, gutters and drain pipes of the dwelling that were damaged from a recent hail storm.

Schedule 3(4)(2) of the *Development Regulations 2008* defines the following acts and activities as being excluded from the definition of development (other than in respect of a State heritage place, or as otherwise indicated below):

Other than in respect of a local heritage place, the repair, maintenance or internal alteration of a building—

- (a) that does not involve demolition of any part of the building (other than the removal of fixtures, fittings or non load-bearing partitions); and*
- (b) that will not adversely affect the structural soundness of the building or the health or safety of any person occupying or using it; and*
- (c) that is not inconsistent with any other provision of this Schedule.*

The above clause of the Regulations specifically seeks that a development application is lodged with the Council to endorse any repair or maintenance work (including roof, gutters and downpipes) carried out to a Local Heritage Place.

You also advised that you are interested in repainting parts of the existing building the same colour as the existing surface.

Schedule 3(4)(4a) of the *Development Regulations 2008* defines the following acts and activities as being excluded from the definition of development (other than in respect of a State heritage place, or as otherwise indicated below):

The external painting of a local heritage place—

- (a) where the painting involves the repainting of an existing painted surface in the same or similar colours and so as to provide the same or similar texture, finish and effect; or*
- (b) without limiting paragraph (a), where the painting does not materially affect the heritage value of the place.*

Based on the above clause, you are able to paint the existing external painted surfaces of the heritage place with exactly the same colour as the existing surface, without the need to lodge a development application. It is important to note that the above clause specifically excludes the painting of any surface of the existing heritage place that are not already painted i.e. sandstone walls.

Prior to the above work being undertaken, Council requires the following information to be lodged:

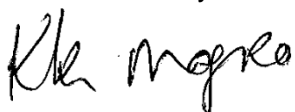
- a completed application form (see attached);
- a copy of the certificate of title of the relevant land;
- a completed electricity declaration form (see attached);
- a site plan, prepared to a scale not less than 1:200, showing the location and nature of the relevant repairs as well as colours;
- an elevation plan, prepared to a scale not less than 1:100, showing the type and colour of gutters, corrugated iron roofing and any ridge capping details including profile, brand etc;
- technical details and specifications as required; and
- the relevant application fee (to be calculated based on cost of works).

In order to maintain the integrity of the heritage value of "The Briars House" there are very limited building products and construction techniques that Council's heritage architect will accept in relation to the proposed repair work. Before preparing the development application, I would encourage you to either engage the services of a private Heritage Architect, or contact Council's Planning and Environment Department on 8342 7100 in order to seek free preliminary advice from Council's Heritage Architect. In order to seek free heritage advice Council would require a rough site plan showing the location and extent of the proposed repairs.

In summary, notwithstanding the intent of the LMA (which I suggest could be interpreted to include maintenance), your advice is that you have concurred with the conditions therein.

Property works (such as roof and gutter repairs) are however determined under the Development Regulations to be classified as development and as such you must lodge an application and seek the requisite approvals prior to proceeding with such works.

Yours Sincerely



Kiki Magro
Chief Executive Officer