Shire of Brookton

AGENDA

Special Meeting of Council to consider a Deed of Indemnity

To be held:
Thursday 29 October 2026 at 3:00pm
Shire of Brookton Council Chambers
14 White Street, Brookton

This meeting will be recorded in line with Local Government Act.

NOTICE OF MEETING

Dear Councillor, Resident or Ratepayer,

Notice is hereby given that a Special Meeting of the Brookton Shire Council will be held on Thursday 29th October 2026 in the Council Chambers at the Shire Administration Centre commencing at 3.00pm.

The business to be transacted is shown in the agenda.

Gary Sherry
CHIEF EXECUTIVE OFFICER
28th October 2026

DISCLAIMER

The recommendations contained in the Agenda are subject to confirmation by Council. The Shire of Brookton warns that anyone who has any application lodged with Council must obtain and should only rely on written confirmation of the outcomes of the application following the Council meeting, and any conditions attaching to the decision made by the Council in respect of the application. No responsibility whatsoever is implied or accepted by the Shire of Brookton for any act, omission or statement or intimation occurring during a Council meeting.

Shire of Brookton

Living Values

Collaborate

We will be supportive, applaud courage, celebrate success for us and the community. We will adapt to new circumstances, apply curiosity and share new things.

I will

- listen hard, speak less, and ask questions for understanding and clarity.
- share ideas, remind my colleagues of our work goals and demonstrate my leadership behaviours. acknowledge when things are going well and when we are facing difficulties.
- seek ways of working together and recognise when we succeed in our work.
- Compliment others when they are courageous and speak up.

Learn

We will grow our knowledge and experience and have pride in ourselves, our efforts and community.

I will

- seek and accept new ways of doing things.
- research and share newfound skills and knowledge.
- ask for assistance and input when I'm not sure.

Integrity

We will demonstrate honest and open behaviour at all times. Our communications will be respectful, with empathy and be fully accountable for our own actions.

I will

- communicate honestly with colleagues and respect their views.
- actively contribute to a culture of trust and openness in the Shire.
- be brave and speak up when things are not right.
- offer my colleagues support regardless of their background, role or experience.

Resilient

We will meet the many challenges, identify and apply solutions and lean on our colleagues.

I will

- be sure to include and engage with my workmates in a positive and constructive manner.
- look after myself, be mindful of my self-esteem and that of others.
- maintain a 'can-do' approach and seek support from others. be aware that my behaviour may impact on others and reduce their confidence.
- know my strengths and aware of my weaknesses.

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1.10.26 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Shire President, Cr Rod Wallis, will declare the Meeting open.

On behalf of Council, I would like to acknowledge that this meeting is being held on the traditional lands of the Nyoongar People and pay respect to all Elders, past, present, and emerging. I wish to acknowledge and respect local people's continuing culture and the contribution they make to Country and its life.

Recording of proceedings

In accordance with Regulation 14I Local Government (Administration) Regulations this meeting is being recorded. Recordings will be available on the Shire's website.

By being present at this meeting, members of the public consent to the possibility that their voice will be recorded.

2.10.26 RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

Elected Members (Voting)

Cr RJ Wallis	President
Cr L McCabe	Deputy President
Cr C Andretta	
Cr BJ Copping	
Cr G Crouch	
Cr PL Harben	
Cr KA Toop	

Staff (Non-Voting)

Mr GA Sherry	Chief Executive Officer
Mr S Billingham	Manager Corporate and Community
Mr K D'Alton	Acting Manager Infrastructure Works
Ms S Spencer	Executive Governance Officer

Apologies

Nil at this time.

Leave of Absence

Nil

Members of the Public

Nil at this time.

3.10.26 USE OF COMMON SEAL

Nil.

This information will be provided at the next Ordinary Council Meeting.

4.10.26 DELEGATED AUTHORITY – ACTIONS PERFORMED

Nil.

This information will be provided at the next Ordinary Council Meeting.

5.10.26 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Regulation 11 of the Local Government (Administration) Regulations 1996 requires that a summary of each public question asked and the response given is included in Council Minutes. Questions Taken on Notice at one Council meeting will be researched and a written response provided to the questioner, assuming that Council has their contact information. These responses to questions taken on notice will be included in minutes of the following Meeting.

Nil.

6.10.26 PUBLIC QUESTION TIME

Nil at this time.

7.10.26 APPLICATIONS FOR LEAVE OF ABSENCE

Nil at this time.

8.10.26 PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil.

9.10.26 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Nil.

This action will be completed at the next Ordinary Council Meeting.

10.10.26 ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION

Nil at this time.

11.10.26 DISCLOSURE OF INTERESTS

Members and Officers to declare Financial, Proximity or Impartiality Interests & submit forms to the Chief Executive Officer at the commencement of the meeting and prior to the item.

Disclosure of Financial & Proximity Interests

a. Members must disclose the nature of their interest in matters to be considered at the meeting. (Sections 5.60B and 5.65 of the *Local Government Act 1995*).

b. Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of *the Local Government Act 1995*).

Disclosure of Interest Affecting Impartiality

a. Members and staff must disclose their interest in matters to be considered at the meeting in respect of which the member or employee has given or will give advice.

Nil at this time.

12.10.26 TECHNICAL & DEVELOPMENT SERVICES REPORT

12.10.26.01 2026/27 – USE OF THE COMMON SEAL – ARC INFRASTRUCTURE DEED OF INDEMNITY ROBINSON ROAD ROUND ABOUT

File No:	Not applicable
Date of Meeting:	29 October 2026
Location/Address:	Not applicable
Name of Applicant:	Not applicable
Name of Owner:	Not applicable
Author/s:	Kevin D'Alton – Acting Manager Infrastructure & Works
Authorising Officer:	Gary Sherry – Chief Executive Officer
Declaration of Interest:	Nil
Voting Requirements:	Simple Majority
Previous Report:	Nil

Summary of Report:
Council is requested to authorise the application of the Shire of Brookton's Common Seal to a Deed of Indemnity in favour of ARC Infrastructure in connection with the proposed road resurfacing works at the Robinson Road roundabout, Brookton.

The deed is required by ARC Infrastructure in relation to the works and any associated access or interface with the adjoining rail reserve. As the works are scheduled to commence before the next ordinary Council meeting, Council's consideration is required at this meeting to avoid delaying the project.

Description of Proposal:
This draft Deed of Indemnity, included at, relates to incidental access to the rail reserve to complete asphalt works at the roundabout on Robinson Road

The Shire is preparing to undertake mill and fill works at the Robinson Road roundabout as part of its 2026/27 Roads to Recovery (R2R) program.

The works are located adjacent to the railway reserve. Although the road resurfacing is not intended to be undertaken within the rail reserve, incidental access and coordination with ARC Infrastructure may be required to facilitate the works and manage the interface with railway infrastructure.

ARC Infrastructure has requested a Deed of Indemnity as part of its approval requirements. The proposed deed is provided at Attachment 12.10.26.01A.

The deed requires the Shire to indemnify ARC Infrastructure against costs, expenses and liabilities arising in connection with the works, subject to the terms of the deed. This represents a potential liability for the Shire and should be considered in conjunction with the project's operational and safety requirements.

The works have been planned over several months in consultation with Main Roads Western Australia (Main Roads WA) and ARC Infrastructure. On 28 October 2026, ARC Infrastructure advised that the draft deed was required for its approval.

The works are scheduled for the week commencing 2 November 2026. The next ordinary Council meeting will occur after the planned works commencement date. Council approval

is therefore sought at this meeting to enable the deed to be finalised and executed in time for the project, subject to ARC Infrastructure's approval and satisfaction of any other applicable requirements.

Background:
The Robinson Road roundabout resurfacing forms part of the Shire's 2026/27 R2R program.

The proposed treatment involves milling approximately 40 mm from the existing pavement and replacing it with 40 mm of compacted black asphalt over an estimated area of 1,100 m².

The works are intended to improve the road surface, restore ride quality and extend the service life of the pavement.

Given the proximity of the roundabout to railway infrastructure, the Shire has coordinated planning with Main Roads WA and ARC Infrastructure to identify relevant access, traffic management, safety and rail-interface requirements.

Finalisation of the Deed of Indemnity is one of the requirements to be addressed before the works proceed.

Consultation:
ARC Infrastructure, Main Roads WA

Statutory Environment:
Local Government Act 1995 (WA), section 9.49A — execution of documents by a local government, including the application of the Common Seal.
Rail Freight Systems Act 2000 (WA) — relevant to the rail infrastructure and operational context.

Relevant Plans and Policy:
Shire of Brookton 10 Year Road Maintenance Plan.

Financial Implications:
The resurfacing works are being undertaken as part of the Shire's adopted 2026/27 R2R program.

There is no separate direct cost identified for applying the Common Seal. However, the Deed of Indemnity creates a potential financial exposure for the Shire in respect of the costs, expenses and liabilities covered by its terms.

The extent of that exposure will depend on the circumstances of any claim and the deed's final wording. The deed should therefore be reviewed and its terms confirmed before execution.

Risk Assessment:
The overall risk is assessed as Medium, having regard to the time constraints associated with the scheduled works and the potential liability arising from the indemnity.

The principal risks are:
- Legal and financial: The deed may expose the Shire to costs, expenses or liabilities arising in connection with the works.

- Operational: Delayed execution or approval of the deed may delay the planned resurfacing works and affect delivery of the R2R program.
- Safety and rail interface: Inadequate coordination of access, traffic management and railway interface requirements could create risks to workers, road users and railway operations.

These risks are to be managed by confirming the final deed requirements with ARC Infrastructure, ensuring the deed is executed only in its approved final form, and satisfying applicable access, traffic management and safety requirements before the works proceed.

The works must not proceed on the assumption that Council's approval alone constitutes ARC Infrastructure's approval or satisfies any other required construction, access or safety authorisations.

Consequence / Likelihood	Insignificant	Minor	Moderate	Major	Extreme
Almost Certain	Medium	High	High	Severe	Severe
Likely	Low	Medium	High	High	Severe
Possible	Low	Medium	Medium	High	High
Unlikely	Low	Low	Medium	Medium	High
Rare	Low	Low	Low	Low	Medium

Risk Rating	Action
LOW	Monitor for continuous improvement.
MEDIUM	Comply with risk reduction measures to keep risk as low as reasonably practical.
HIGH	Review risk reduction and take additional measures to ensure risk is as low as reasonably achievable.
SEVERE	Unacceptable. Risk reduction measures must be implemented before proceeding.

Community & Strategic Objectives:
The proposed resurfacing will improve the condition and ride quality of the Robinson Road roundabout, supporting safer and more reliable road access for the community.

The project also supports the Shire's road maintenance program and the delivery of infrastructure improvements funded through Roads to Recovery.

Comment:
The proposed resurfacing is a planned road maintenance project intended to improve pavement condition and extend the service life of the Robinson Road roundabout.

The proximity of the works to the railway reserve requires coordination with ARC Infrastructure and Main Roads WA. ARC Infrastructure's request for a Deed of Indemnity was received on 28 October 2026, shortly before the scheduled commencement of the works. The timing does not allow the matter to be considered at the next ordinary Council meeting without potentially delaying the project.

Council is therefore requested to consider the deed and authorise the use of the Common Seal, subject to the final deed being confirmed as acceptable to the Shire. This will allow the

Shire to complete the necessary documentation while ensuring the indemnity is considered as part of Council's decision.

OFFICER'S RECOMMENDATION
That Council:

1. ***approves the application of the Shire of Brookton's Common Seal to the Deed of Indemnity included at Attachment 12.10.26.01A in favour of ARC Infrastructure in connection with the Robinson Road roundabout resurfacing works;***

2. ***authorises the Shire President and the Chief Executive Officer to execute the deed in accordance with section 9.49A of the Local Government Act 1995.***

Attachments

Attachment 12.10.26.01A Deed of Indemnity

DEED OF INDEMNITY

This deed is executed on the day of 2026

Between the parties

Arc Infrastructure Pty Ltd
ABN 42 094 721 301
of Level 3, 1 George Wiencke Drive, Perth Airport, Western Australia 6105

(Arc)

and

Shire of Brookton
ABN 74 164 408 055
of 14 White Street, Brookton WA 6306

(Principal)

Background

1 Arc acts as agent of the Network Lessee in relation to the Network Lessee's rights under the Government Lease concerning the Corridor Land.

2 The Principal has engaged the Contractor to carry out the Works in, on or over the Corridor Land.

3 The Works to be carried out by the Contractor have the potential to affect the Corridor Land and Arc's operations on the Corridor Land.

4 The Principal executes this deed with Arc in respect of any Claim, Liability, costs or expenses that Arc may suffer as a consequence of the Contractor carrying out the Works.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed, the parties agree as set out in the Operative part of this deed.

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Perth Airport Western Australia 6105
GPO Box S1411 Perth WA 6845
T - +61 8 9212 2800
E - ask@arcinfra.com
Arc Infrastructure Pty Ltd
ABN 42 094 721 301
arcinfra.com

1 Definitions and Interpretation

1.1 Deed components

This deed includes any annexure.

1.2 Definitions

In this deed:

(1) **Arc Indemnified Parties** means:

(a) Arc and its officers, directors, employees, agents and contractors; and

(b) each Related Body Corporate of Arc and their officers, directors, employees, agents and contractors.

(2) **Claim** means any claim, demand, action or proceeding of any nature, whether actual or threatened and whether in an action in contract, tort (including negligence), in equity, liability, under statute or any other basis.

(3) **Contractor** means Boral Resources (W.A.) Ltd (ABN 57 008 686 904) and includes the Contractor's Personnel.

(4) **Corridor Land** means land designated as corridor land under Part 3 of the *Rail Freight System Act 2000* (WA).

(5) **Government Leases** means, as the context requires, the:

(a) Rail Freight Corridor Land Use Deed (StandardGauge) and Railway Infrastructure Lease dated 17 December 2000 entered into by the Network Lessee and other parties; or

(b) Rail Freight Corridor Land Use Deed (NarrowGauge) and Railway Infrastructure Lease dated 17 December 2000 entered into by the Network Lessee and other parties,

each as amended and restated by separate Amendment and Restatement Deeds dated 16 May 2029.

(6) **Liability** means:

(a) any cost, expense, liability, claim, charge, loss, outgoing or payment of any kind, including legal charges and disbursements (on a full indemnity basis) and interest; and

(b) any diminution in value or deficiency of any kind or character that a party pays, suffers or incurs or is liable for,

and, if the context permits also includes any claim or demand for the payment of money, whether liquidated or not.

(7) **Network Lessee** means, as the context requires:

(a) Arc Infrastructure StandardGauge Pty Ltd ABN 35 094 819 360; or

(b) Arc Infrastructure NarrowGauge Pty Ltd ABN 73 094 736 900.

(8) **Personnel** means the directors, officers, employees, agents, contractors, licensees, assignees and invitees of a party.

(9) **Rail Safety Management Plan** means the rail safety management plan prepared by or on behalf of the Principal and reviewed by Arc on 28/10/2026

(10) **Related Body Corporate** has the meaning given to that expression in the *Corporations Act 2001* (Cth).

(11) **Works** means all non-invasive works associated with the asphalting works at the Robinson Rd roundabout (L31 – 105.670km) inside the rail corridor to be carried out by the Contractor pursuant to a contract entered into between the Principal and the Contractor and in accordance with the Rail Safety Management Plan.

1.3 Interpretation

(1) Headings are for convenience only and do not affect the interpretation of this deed.

(2) In this deed, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) a reference to a clause, party, attachment or schedule is a reference to a clause of, and a party, attachment and schedule to, this deed;

(c) a reference to this deed includes any attachment or schedule;

(d) a reference to a right includes a remedy, power, authority, discretion or benefit;

(e) a reference to an agreement or document is to the agreement or document as amended, varied, supplemented, novated or replaced from time to time, except to the extent prohibited by this deed;

(f) a reference to a party to this deed or another deed or document includes the party's successors, permitted substitutes and assigns (and, if applicable, the party's legal personal representatives);

(g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

(h) a reference to conduct includes, but is not limited to, an omission, statement and undertaking, whether or not in writing;

(i) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether or not in writing;

(j) a reference to 'including' means 'including but not limited to' and 'include' and 'includes' have corresponding meanings;

(k) a reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.3(2)(k) implies that performance of part of an obligation constitutes performance of the obligation;

(l) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed;

(m) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and

(n) a reference to a person includes that person's successors and legal personal representatives.

2 Indemnity

The Principal will indemnify the Arc Indemnified Parties from and against any cost or expense incurred by the Arc Indemnified Parties and any Liability arising from any Claim that may be brought by any person against any of the Arc Indemnified Parties for or in respect of personal injury to or the death of any person or any loss or damage of any kind whatsoever to the extent that loss or damage arises out of or as a consequence of any act or omission by the Contractor or the Principal or their respective Personnel in connection with the Works provided always that the Principal will not be liable to the Arc Indemnified Parties in respect of any such loss or damage or Liability to the extent that loss or damage or Liability was caused or contributed to by any negligent act or omission of the Arc Indemnified Parties.

3 General

3.1 Governing law and jurisdiction

This deed is governed by the laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

3.2 Waivers

(1) Waiver of any right, power, authority, discretion or remedy arising on default under this deed must be in writing and signed by the party granting the waiver.

(2) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this deed does not result in a waiver of that right, power, authority, discretion or remedy.

(3) This clause 3.2 itself may only be waived by written waiver.

3.3 Variation

Any variation of this deed must be in writing and signed by the parties.

3.4 Severance

If a provision of this deed is wholly or partly invalid or unenforceable, the provision or part must be treated as deleted from this deed. This will not affect the validity or enforceability of the remaining provisions.

3.5 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one deed.

Signing page

Executed as a Deed

Executed by
Arc Infrastructure Pty Ltd
ABN 42 094 721 301
in accordance with section 127 of the *Corporations Act 2001*

sign here ► _____
Director

print name _____

sign here ► _____
Director/Company Secretary

print name _____

The common seal of the **Shire of Brookton**
ABN 74 164 408 055
was hereunto affixed in the presence of:

sign here ► _____
Signature of Chief Executive Officer

print name _____

sign here ► _____
Signature of Shire President

print name _____

16.10.26 ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

17.10.26 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

Nil at this time.

18.10.26 CONFIDENTIAL REPORTS

Nil.

19.10.26 NEXT MEETING & CLOSURE

The next Ordinary meeting of the Council will be held on Thursday 19th November 2026 in the Council Chambers at the Shire Administration Centre commencing at 3:00pm.