

Deed of Agreement to construct and maintain Accessway at Byford Health Hub Development

Shire of Serpentine-Jarrahdale

East Metropolitan Health Service



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Details

Parties

Shire of Serpentine-Jarrahdale

Address: 6 Paterson Street, Mundijong, Western Australia

Email Address: info@sjshire.wa.gov.au

(Shire)

East Metropolitan Health Service, a health service provider established as a body corporate pursuant to section 32 of the *Health Services Act 2016 (WA)*

Address: 10 Murray Street, Western Australia

Email address: Byford.HealthHubProgram@health.wa.gov.au

(EMHS)

Background

- A The Shire has care, control, and management of the Reserve with the Management Order.
- B In connection with the Development, the Shire has agreed for EMHS to apply for Crown Subdivision of the Reserve.
- C The Shire and EMHS have agreed that EMHS will be responsible for the construction and maintenance of the Accessway and permit access over the Accessway on the terms set out in this Deed.

Agreed terms

1. Definitions

In this Deed, unless otherwise required by the context or subject matter:

Accessway means the accessway to be constructed by EMHS on the EMHS Lot on the area of the Reserve of approximately 986 m² shown as 'Land Required for Easement' on the Plan;

Crown Subdivision means, subject to the approval by the Minister, the subdivision of the Reserve, to create two crown reserves as follows:

- (a) a reserve comprising the portion of the Reserve of approximately 3,587 m² shown as 'Land Required for Health' on the Plan plus the 986 m² Accessway, upon which the Development will be located with care, control and management of that reserve being placed with EMHS (**EMHS Lot**); and
- (b) a reserve comprising the portion of the Reserve of approximately 2,077 m² shown as 'Land Required for Library' on the Plan with care, control and management of that reserve being placed with the Shire (**Shire Lot**);

Deed means this deed as supplemented, amended or varied from time to time;

Development means the Byford Health Hub to be constructed on the EMHS Lot;

DPLH means the Department of Planning, Lands and Heritage;

LAA means the *Land Administration Act 1997 (WA)*;

Management Order means the management order issued under section 46 of the LAA in respect of the Reserve with management order number O883916;

Minister means the Minister for Lands, being a body corporate continued under section 7(1) of the LAA and being the Minister to whom the administration of the LAA is from time to time committed by the Governor;

Notice means each notice, demand, consent, or authority given or made to any person under this Deed;

Party means the Shire or EMHS according to the context;

Plan means the plan titled "Byford Rail Extension" at the Schedule;

Reserve means Reserve 53923, Lot 103 on Deposited Plan 414923 and being the whole of the land comprised in Crown Land Title LR3173 Folio 472; and

Schedule means the Schedule to this Deed.

2. EMHS's obligations

2.1 Construct and maintain Accessway

- (1) EMHS must:
- (a) design, detail, construct, pave, mark and drain the Accessway at its cost to the Shire's reasonable satisfaction, prior to completion of the Development; and
 - (b) maintain, replace, and repair the Accessway in good and substantial repair and condition and to a standard to the Shire's reasonable satisfaction, inclusive of all elements relevant to vehicle and pedestrian access.
- (2) If EMHS fails to undertake any construction, repair or maintenance to the Accessway which EMHS is required to undertake pursuant to **clause 2.1(1)(b)**, the Shire may give EMHS a Notice requiring EMHS to undertake that repair or maintenance.
- (3) If EMHS fails to undertake repair or maintenance within 28 Business Days after a Notice is given pursuant to **clause 2.1(2)**, the Shire will be entitled to undertake that repair or maintenance at the cost of EMHS, such cost to be a liquidated debt recoverable from EMHS in a court of competent jurisdiction.

2.2 Maintain access

- (1) EMHS must:
- (a) at all times allow the Shire and anyone authorised by the Shire, unrestricted access and use of the Accessway for the purpose of access to and from the Shire Lot, both pedestrian and vehicular;

- (b) at all reasonable times allow members of the public to have access and use of the Accessway for pedestrian purposes.

2.3 Obligations to run with management of EMHS Lot

EMHS covenants and agrees that the obligations set out in this clause are intended to run with the EMHS Lot and in that regard in the event that EMHS relinquishes the management order for the EMHS Lot, EMHS must ensure that any replacement management body or transferee of the EMHS Lot enters into a deed of covenant with the Shire on substantially the same terms to this Deed.

3. Shire's obligations

In consideration of EMHS entering into this Deed, the Shire agrees to:

- (a) consent to the revocation of the Management Order and do all things reasonably necessary in order to facilitate the Crown Subdivision;
- (b) be responsible for any wilful, tortious or unlawful act or omission of the Shire in connection with its use of the Accessway; and
- (c) make good, or pay the cost to make good, any damage to the Accessway arising from the Shire's use of the Accessway, within a reasonable time of a Notice of the damage being given to the Shire by EMHS.

4. General provisions

4.1 Variation

This Deed may be varied only by deed executed by the Parties.

4.2 Notice

- (1) Any notice to be given under this Deed by one of the Parties to the other must be in writing and is given for all purposes by delivery in person or by prepaid post to the receiving party at the address set out in this Deed or by email to the receiving party at the email address set out in this Deed, provided that the Notice is sent as a pdf attachment to the email and is not sent as a temporary file or link and the size of the email is less than 10MB.
- (2) Any Notice given in accordance with this Deed will be deemed to be duly served in a case of posting at the expiration of five (5) Business Days after the date of posting.

4.3 Acts by agents

All acts and things which the Shire or EMHS is required to do under this Deed may be done by an officer or the agent, solicitor, contractor, or employee of that Party.

4.4 Severance and conflict

- (1) If any part of this Deed is, or becomes, void or unenforceable that part is or will be, severed from this Deed to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- (2) In the event of any conflict or inconsistency between a provision of this Deed and a provision of an Annexure or Schedule, the conflicting or inconsistent provision of this Deed will prevail and take precedence to the extent of that conflict or inconsistency.

4.5 Waiver

The Parties mutually covenant and agree that:

- (a) no right under this Deed is waived or deemed to be waived except by Notice in writing signed by the party waiving the right;
- (b) a waiver by one party under paragraph (a) of this clause does not prejudice its rights in respect of any subsequent breach of this Deed by the other party; and
- (c) a party does not waive its rights under this Deed because it grants an extension or forbearance to the other party.

4.6 Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions of this Deed.

4.7 Applicable law

This Deed shall be governed by the laws of the State of Western Australia, and where applicable the Commonwealth of Australia.

4.8 Dispute

If a dispute or disagreement (in either case “a **Dispute**”) arises between the Parties under or in connection with this Deed, they must follow the process set out below before being able to resort to litigation or an agreed arbitration process:

- (a) For a period of TEN (10) Business Days the Parties must liaise with each other in an effort to fully and finally resolve (and document the resolution of) the Dispute;
- (b) If after those TEN (10) Business Days, the Dispute remains unresolved, the Chief Executive Officers of the Parties must, for a further period of TEN (10) Business Days, liaise with each other in an effort to fully and finally resolve (and document the resolution of) the Dispute; and
- (c) In either of the above two processes, the Parties may engage one or more appropriately qualified and experienced experts to assist and meet the cost thereof equally.

4.9 Interpretation

In this Deed, unless expressed to the contrary:

- (a) Words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender includes each gender;
- (b) A reference to:
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;

- (iii) a professional body includes a successor to or substitute for that body;
 - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
 - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) this Deed or provisions of this Deed or any other deed, agreement, instrument or contract includes a reference to:
 - (A) both express and implied provisions; and
 - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Deed;
- (c) Headings do not affect the interpretation of this Deed; and
- (d) If a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them.

Signing page

EXECUTED by the Parties as a Deed

2024

Executed by the **SHIRE OF SERPENTINE JARRAHDALE** (ABN 98 924 720 841) in accordance with s9.49A of the Local Government Act 1995 (WA):

Signature of Chief Executive Officer

Print Full Name

SIGNED FOR AND ON BEHALF OF **EAST METROPOLITAN HEALTH SERVICE** in accordance with section 41 of the *Health Services Act 2016* (WA):

Signature

Name

Signature of Witness

Name of Witness

