

# Memorandum of Understanding

In relation to the Byford Health Hub

Between

Shire of Serpentine-Jarrahdale

and

East Metropolitan Health Service

## Parties

**Shire of Serpentine-Jarrahdale** (ABN 98 924 720 841) a local government established under the *Local Government Act 1995* (WA).

Address: 6 Paterson Street, Mundijong, Western Australia

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

**(Shire)**

and

**East Metropolitan Health Service** (ABN 11 297 417 435), a body corporate health service provider established under section 32 of the *Health Services Act 2016* (WA).

Address: 10 Murray Street, Perth, Western Australia 6000

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

**(EMHS)**

## Background

- A The Shire has care, control, and management of the Reserve pursuant to the registered Management Order.
- B EMHS proposes to develop a portion of the Reserve for the purpose of building a health facility (**Byford Health Hub**) and in order to do so requires the Crown Subdivision to be completed so that it has care, control, and management of that portion of the Reserve (**EMHS Lot**).
- C As part of Crown Subdivision, EMHS is supportive of the Shire to have care, control and management of the remainder of the Reserve (**Shire Lot**).
- D In order to facilitate the Crown Subdivision, the Minister will first need to revoke the Management Order.
- E If Crown Subdivision is approved by the Minister with EMHS being granted with the care, control, and management of the EMHS Lot, EMHS will develop, construct, and maintain a proposed area of the EMHS Lot for a right of way access between the EMHS Lot and the Shire Lot.
- F EMHS is supportive of the Shire's request to share the use of the proposed area allocated for access between the EMHS Lot and the Shire Lot on a continual basis with no obligation for the Shire to contribute to the construction or maintenance of that area.

## Purpose

The Shire and EMHS enter into this Memorandum of Understanding (**MOU**) as a statement of intent to encourage cooperation in order to progress the Crown Subdivision and commence the Development. The Parties acknowledge that this MOU does not create a legally binding agreement between the Parties except for clause 4.1 in relation to the terms and conditions of the Access Agreement.

In this MOU the following terms and definitions apply:

## 1. Definitions

**Access Agreement** means the agreement between the Shire and EMHS entitled ‘*Access Agreement for Technical Studies: Lot 103 (No. 3) Bushman Glade*’ dated 10 October 2022, which was varied by Deed of Variation and executed on [insert date] copy annexed hereto as Annexure 3;

**Accessway** means, pending site investigations and the Minister’s approval for EMHS to have care, control and management of the Reserve as part of Crown Subdivision in which the Minister may grant an access easement for the benefit of the Shire to access the Shire Lot, the proposed portion of the Reserve burdening the EMHS Lot, generally identified on the sketch annexed hereto as Annexure 1;

**Authority** means every governmental or semi-governmental body, municipal council and any other board, person, or authority now or in the future exercising under any Act any control or jurisdiction over or power in connection with the Land or with any business at any time conducted on or from the Land and **Authorities** shall have a corresponding meaning.

**Crown Subdivision** means, pending approval by the Minister, the subdivision of Reserve 53923 to create two crown reserves, being:

- (a) a reserve comprising the portion of the Reserve upon which the Byford Health Hub will be located with care, control and management of that reserve being placed with EMHS which includes the Accessway (**EMHS Lot**); and
- (b) a reserve comprising the balance of Reserve 53923 with care, control and management of that reserve being placed with the Shire (**Shire Lot**);

generally in accordance with the sketch annexed hereto as **Annexure 1**;

**Development** means to carry out the necessary works on the EMHS Lot for the Byford Health Hub;

**EMHS’s Agents** means each of EMHS’s employees, agents, contractors and any other person who, at any time, is on the Reserve with the consent of EMHS and any Department of Finance employees, agents, contractors or other persons who needs to access the Reserve for the Development;

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

**Management Order** means the management order issued under section 46 of the LAA in respect of Reserve 53923, 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;

**MOU** means this Memorandum of Understanding which constitutes the entire agreement between the Parties and commences on execution by all Parties and continue until the Sunset Date unless terminated earlier in accordance with the provisions of this MOU or extended by the parties in writing.

**Nominated Officer** means the position title of the officer nominated by each party to receive Notice and/or deal with Dispute.

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

**Party** means the Shire or EMHS according to the context;

**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

**Sunset Date** means 31 December 2028 or such later date as may be agreed by the parties from time to time.

## 2. Revocation, Crown Subdivision and New Management Orders

### 2.1 Revocation of Management Order

Subject to and conditional upon approval by the Minister for the Crown Subdivision, and in consideration of the commitments made by EMHS in this MOU, the Shire agrees for the purposes of section 50(1)(a) of the LAA, that its Management Order be revoked to facilitate the Crown Subdivision if the Shire is satisfied that:

- (a) the Crown Subdivision creates an access easement over the Accessway in favour of the Shire Lot; and
- (b) appropriate and binding arrangements (whether by the terms of the access easement or otherwise) are in place to ensure that EMHS are responsible, at its cost, to construct and maintain the Accessway.

### 2.2 Crown Subdivision

- (a) For the purpose of the Development, subject to the results of the site investigation and survey, the Shire agrees for EMHS to apply for the Crown Subdivision of the Reserve into two separate Lots (EMHS Lot and Shire Lot).
- (b) If, as part of Crown Subdivision, the Minister grants an access easement on the EMHS Lot for the benefit of the Shire to access the Shire Lot, then EMHS will consent to this process if required.
- (c) EMHS is agreeable to bear the costs associated with the Crown Subdivision which includes:
  - (i) Survey preparation and lodgement;
  - (ii) Preparation of documents for an access easement by Department of Planning, Lands and Heritage (**DPLH**); and
  - (iii) Lodgement fees to Landgate from DPLH.

Each party will bear their own legal costs and any other incidental costs not expressly included above.

## **2.3 New Management Order**

To enable the Development to occur, both parties agree that it is subject to the Minister granting the Crown Subdivision and placing the care, control and management of the portion of the subdivided Reserve with:

- (a) EMHS for the purpose of the Development on the EMHS Lot; and
- (b) the Shire for the control and management of the Shire Lot.

## **3. Development**

### **3.1 EMHS role**

EMHS is committed to the delivery of the proposed Byford Heath Hub as part of the McGowan and WA Labour Government election commitment.

EMHS considers the Development is a complex process which can only be progressed in separate stages, and each stage depends on various factors such as the result of the site investigations; consultations with multiple stakeholders; ensuring each stage complies with the relevant legislation/regulations; and submitting applications to various Authorities for approval, all of which cannot proceed until after Crown Subdivision.

Upon Crown Subdivision being approved by the Minister and EMHS being granted the care, control and management of the allocated portion of the Reserve, EMHS will:

- (a) do what is reasonably necessary to progress the Development;
- (b) work cooperatively with the Shire and seek an extension of time for the Sunset Date if the Development is not commenced by the Sunset Date, and
- (c) consult with the Shire and support the Shire, and take all necessary actions and steps, to seek approval from the Minister to regain care, control and management of the entire Reserve if the Development cannot occur or continue for whatever reason.

### **3.2 Shire role**

The Shire agrees to:

- (a) work cooperatively with EMHS to enable the Crown Subdivision to be completed; and
- (b) consider any request from EMHS to extend the Sunset Date and not unreasonably deny such request.

### **3.3 Termination**

If the Development cannot occur or continue for any reason, both parties agree that:

- (a) either Party may terminate this MOU by giving at least 90 days' notice to the other Party;
- (b) the Shire and EMHS must take all necessary steps and actions for a revocation of any management order that may be granted to EMHS as part of the Crown Subdivision and

for the Shire to seek approval from the Minister for the Shire to be granted care, control and management of the entire Reserve.

#### **4. Access**

##### **4.1 Access**

From the date of this MOU and until such time as:

- (a) Crown Subdivision has occurred and EMHS is granted a new Management Order on the EMHS Lot; or
- (b) the termination of this MOU,

the Shire agrees that EMHS and EMHS Agents have access to the portion of the Reserve proposed to be the EMHS Lot with all necessary plant and equipment for the Development on the same terms and conditions as the Access Agreement.

##### **4.2 Accessway**

The parties acknowledge and agree that, pending approval from the Minister for Crown Subdivision and pending the outcome of the site investigation:

- (a) the Accessway will be located entirely on the EMHS Lot;
- (b) EMHS will construct and maintain the Accessway at its full cost and expense; and
- (c) for the avoidance of doubt, subject to clause 2.2(b), the Shire has no obligation to contribute to the construction or maintenance of the Accessway as defined in clause 1.

##### **4.3 Work cooperatively**

Both parties agree to:

- (a) work cooperatively and in good faith in relation to the development of the Shire's Lot and EMHS's Lot, and any shared or common infrastructure or services; and
- (b) consult, cooperate and coordinate with each other in relation to each party's works and work collaboratively together to avoid any inference, delays, impediments or nuisance to each other's works, in the event that the Shire undertakes works on the Shire Lot during the Development.

#### **5. General provisions**

##### **5.1 No Fetter**

EMHS acknowledges and agrees:

- (a) that the Shire is a local government established by the *Local Government Act 1995* (WA);
- (b) in its capacity as a local government, the Shire will be obliged to comply with statutory obligations imposed by law; and

- (c) no provision of this MOU may unlawfully restrict or otherwise fetter the discretion of the Shire in the lawful exercise of any of its functions and powers as a local government (as distinct from a commercial participant in the terms and conditions of this MOU),

provided that this clause will not serve to relieve the Shire from responsibility for performance of its obligations arising pursuant to this MOU, except to the extent necessary to avoid any unlawful restriction or fetter of the Shire's discretion.

## 5.2 Costs

Each party bears its own legal costs in relation to the drafting, negotiation and finalisation of this MOU.

## 5.3 Variation

This MOU may be varied only by written agreement between the Parties.

## 5.4 Notice

Any notice to be given under this MOU by one of the Parties to the other:

- (a) must be in writing and is given for all purposes by delivery in person or by prepaid post or by email to the Nominated Officer of the receiving party at the address set out in this MOU in Annexure 2, provided that the Notice sent by email 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; and
- (b) 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 or within 24 hours of sending the email unless there is an out of office response from the recipient in which case the email must be redirected to the appropriate email.

## 5.5 Acts by Agents

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

## 5.6 Applicable law

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

## 5.7 Dispute

If a dispute or disagreement (**Dispute**) arises between the Parties under or in connection with this MOU, 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 Nominated Officer from the Parties, as listed in Annexure 2, 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 process, the Parties may engage one or more appropriately qualified and experienced experts to assist and meet the cost thereof equally.



Signing page

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**Signed by the Parties as a Memorandum of Understanding**

Dated 2023

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

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Full Name

SIGNED FOR AND ON BEHALF OF EAST METROPOLITAN HEALTH SERVICE in accordance with section 41(7) of the *Health Services Act 2016* (WA) for that purpose.

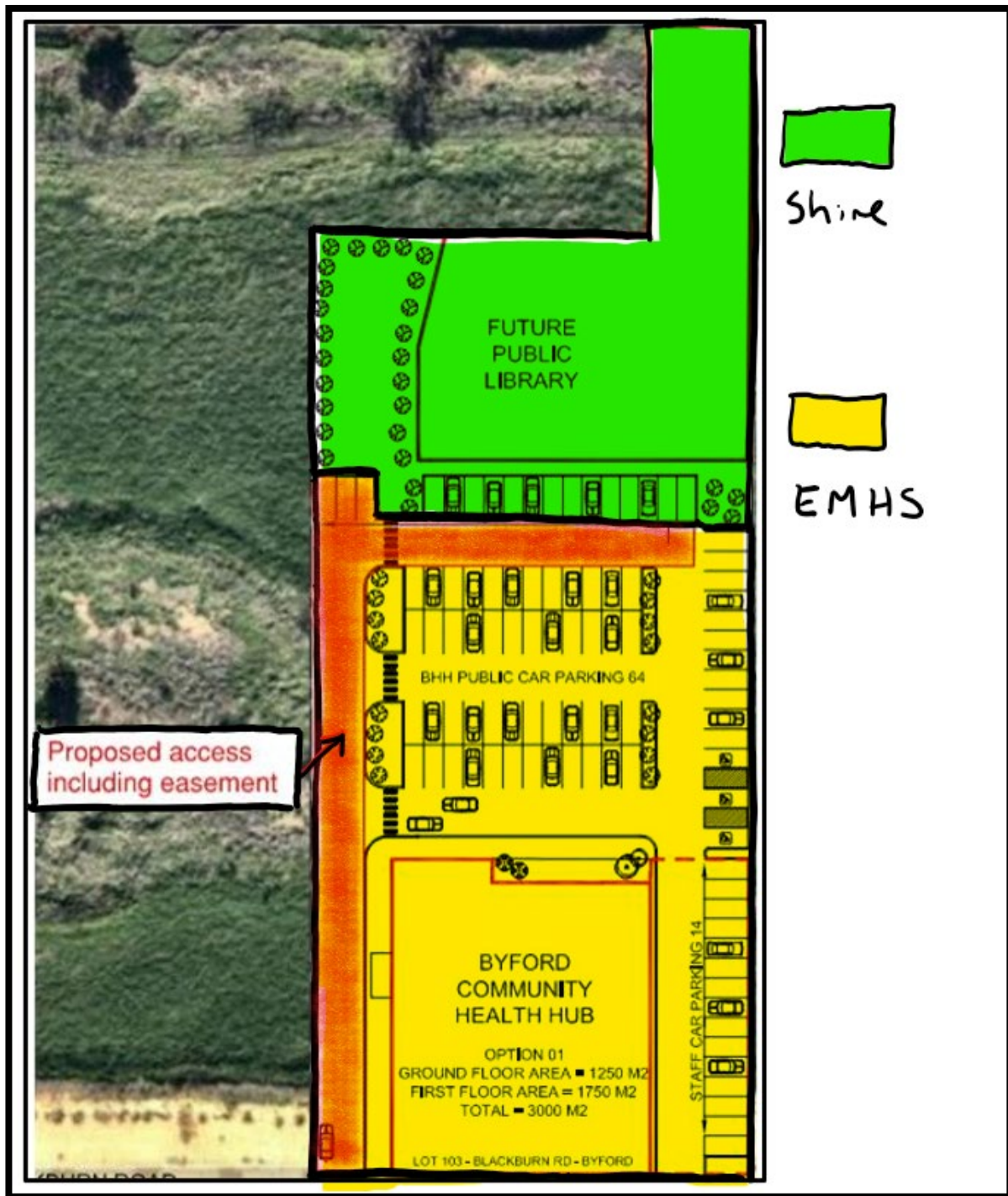
\_\_\_\_\_  
Signature of Chief Executive

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Full Name

Annexure 1 – Crown Subdivision



Annexure 2 – Address for Service and Nominated Officer

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**Shire of Serpentine-Jarrahdale**

Position title of the Nominated Officer to receive Notices and/or deal with Dispute:

[Shire to insert]

Postal Address:

[Shire to insert]

Email Address:

[Shire to insert]

**East Metropolitan Health Service**

Position title of the Nominated Officer to receive Notices and/or deal with Dispute:

Executive Director Clinical Service Strategy & Population Health

Postal Address:

East Metropolitan Health Service  
Office of the Chief Executive  
10 Murray Street  
PERTH WA 6000

Email Address: [EMHS.CECorrespondence@health.wa.gov.au](mailto:EMHS.CECorrespondence@health.wa.gov.au)

Annexure 3 – Copy of Access Agreement

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