

COMMISSIONER OF MAIN ROADS

AND

SHIRE OF SERPENTINE-JARRAHDALE

**CONSTRUCTION ACCESS AGREEMENT
(THOMAS ROAD)**

Business Day means a day other than a Saturday, Sunday or a public holiday in Western Australia.

Issue is defined in clause 6.1.

Main Roads' Personnel means Main Roads' employees, agents, consultants, contractors, representatives and invitees including Main Roads' Representative.

Main Roads' Representative means the person nominated in Schedule 3 as Main Roads' Representative or other person from time to time nominated in writing by Main Roads to the Shire.

Party means a party to this Agreement.

Project means Byford Rail Extension as part of the WA Government's METRONET program.

PTA means the Public Transport Authority of Western Australia.

Schedule means the schedule to this Agreement which forms part of this Agreement.

Shire's Representative means the person nominated in Schedule 3 as the Shire's Representative or other person from time to time nominated in writing by the Shire to Main Roads in accordance with this Agreement.

Site means the site as shown in the site plan at Schedule 1.

Works means the design and construction of works relating to the Project as further described in Schedule 2.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (b) if a word or phrase is defined, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) monetary references are references to Australian currency unless otherwise specifically expressed;
- (d) clause headings do not affect interpretation or construction;
- (e) a gender includes the other genders;
- (f) a reference to all or any part of a law includes that law as amended, consolidated, re-enacted or replaced from time to time and any regulations, by-laws, requisitions or orders made under it from time to time;
- (g) reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the Parties;
- (h) 'including' means 'including, but not limited to';
- (i) the expressions 'for example' and 'such as' are not words or expressions of limitation; and
- (j) reference to a 'person' includes a body corporate.

2. ACCESS

2.1 Grant of Access

The Shire hereby grants to Main Roads and Main Roads' Personnel Access to the Site for the purpose of undertaking the Works on the terms and conditions of this Agreement.

2.2 Access Conditions

- (a) Main Roads will perform the Works at the Site without any payment from the Shire.
- (b) Main Roads is responsible for the Site at all times as from the date of this Agreement and agrees to occupy and use the Site at its own risk.
- (c) Main Roads is responsible for obtaining all Authorisations necessary for the performance of the Works at the Site.
- (d) The timing for completion of the Works at the Site is as set out in Schedule 2.

3. NO WARRANTY

The Shire gives no warranty as to the quality, safety or suitability of the Site for use by Main Roads or Main Roads' Personnel for the purpose of undertaking the Works.

4. INSURANCES

Main Roads agrees to effect and maintain all appropriate and necessary insurances in respect of Access to the Site for the purpose of undertaking of the Works.

5. INDEMNITY

Main Roads will indemnify the Shire against any damage, loss, costs, claims, causes of action, lawsuits and the like suffered or incurred by, or made against, the Shire to the extent caused or contributed to by any breach of this Agreement by Main Roads or Main Roads' Personnel.

6. SHIRE APPROVAL OF DESIGN AND IMPLEMENTATION PLAN

6.1 Main Roads acknowledgement

Main Roads acknowledges that the design of the road requires the approval of the Shire as the agency with current care, control and management of the Site.

6.2 Main Roads election

Main Roads must do one of the following, at its election:

- (a) request the Shire to undertake a preliminary review of the 85% detailed design drawings so as to make a preliminary assessment as to whether the design is likely to be acceptable subject to review and approval by the Shire of an associated Implementation Management Plan; or
- (b) request the Shire to undertake a full review of both of the following sets of documents together:
 - (i) the 85% detailed design drawings; and
 - (ii) a proposed Implementation Plan.

If Main Roads elects (a), then approval by the Shire of the 85% detailed design drawings is preliminary only, in that it is subject to the subsequent lodgement by Main Roads, and review and approval by the Shire, of an Implementation Management Plan.

6.3 Implementation Management Plan

Main Roads is to lodge with the Shire for its review and approval, a proposed Implementation Management Plan for the Works.

The Implementation Management Plan is to systematically address, at minimum, the matters referred to in **Schedule 4**.

The Parties are to confer concerning any issues that the Shire may identify in respect of the Implementation Management Plan, and to confer to attempt to agree any modifications to the 85% detailed design drawings that may be appropriate to address the Shire's issues. This sub-clause is not to be read as limiting the Shire's discretion under sub-clause **6.2**.

6.4 Shire approval of final design

Following achievement of Shire approval of:

- (a) 85% detailed design drawings; and
- (b) an Implementation Management Plan;

- Main Roads is to cause Final Design Drawings to be submitted to the Shire for its review and approval.

The Final Design shall not be a revised design from that approved at the 85% detailed design stage, but shall be a detailed refinement of the 85% detailed design stage.

If anything in the proposed Final Design Drawings involves any departures from measures set out in the Implementation Management Plan approved by the Shire, Main Roads is to cause a modified proposed Implementation Management Plan to be lodged with the Shire accordingly, for review and approval.

MRWA agrees to work cooperatively and in good faith with the Shire to address any design concerns, amendments or modifications made, required or requested by the Shire, and to liaise with Project Partners, utilities, agencies and other stakeholders affected by design issues.

All approvals of design drawings and Implementation Management Plan versions, shall be in the Shire's discretion.

6.5 Not to proceed until approval of Final Design and Implementation Management Plan

Except to the extent otherwise approved by the Shire in writing, Main Roads is to ensure that Works do not proceed until:

- (a) the Shire approves the Final Design; and
- (b) the Shire approves the Implementation Management Plan.

Works are only to proceed in accordance with (a) and (b).

6.6 Revisions to Final Design for Implementation Management Plan

In the event that during the course of the Project, Main Roads Personnel are of the view that the design, or any measures under the approved Implementation Management Plan, ought to be varied, Main Roads is to ensure that revised final design drawings and a revised Implementation Management Plan are submitted to the Shire for review and approval. No departures from the approved final design drawings or the approved

Implementation Management Plan are to be implemented until and unless so approved by the Shire.

All proposed revisions of final design drawings, and all proposed revisions of the Implementation Management Plan lodged with the Shire, are to be in at least two formats:

- (a) one format highlighting the revisions to the document relative to the last Shire-approved version; and
- (b) the other version 'a clean' or consolidated version

- and the Shire shall be entitled to assume that there are no other revisions incorporated, and that the two versions are consistent with one another, except as to their manner as presentation as described in (a) and (b). In the case of the Implementation Management Plan, this shall be the done by (a) being in 'track-changes' and (b) being in 'accept changes' format.

All documents shall have a Revisions Panel to enable ready identification of successive versions.

7. TRAFFIC MANAGEMENT

7.1 Acknowledgements

Main Roads acknowledges that the temporary closure or obstruction of access of roads (including but not limited to portion of Thomas Road) that may be necessary, proposed or desirable for incidental to the Works:

- (a) requires assessment as to its acceptability by the Shire;
- (b) requires compliance by the Shire with various statutory requirements including certain minimum periods of public notice; and
- (c) is one of the subject matters that must be included within the Implementation Management Plan.

8. ROAD RESERVE INFRASTRUCTURE

Main Roads is to ensure that, in the design and construction of Works, the infrastructure the subject of this clause is appropriately:

- (i) protected; or
- (ii) reinstated or replaced

- to a standard equal to or better than its pre-existing state, in terms of its functionality and appearance. This obligation includes, without limitation, ensuring functionality when account is taken of any changes in levels resulting from the Works.

The infrastructure the subject of this clause is:

- (a) Shire infrastructure in the road reserve, including pavement, kerbing, streetscaping, landscaping, lighting, footpaths, drainage assets and verges; and
- (b) other entities' infrastructure in the road reserve.

Main Roads acknowledges and agrees that, to the extent that it causes or permits construction or establishment of any temporary alterations or infrastructure within any Shire reserves or other property, including but not limited to:

- (a) temporary access roads;

- (b) site offices, lay down areas for storage of construction material; and
- (c) worker parking areas

- these are to be removed and the site made good to the satisfaction of the Shire on a timeframe to form part of the Implementation Management Plan.

9. CROSSOVERS AND PRIVATE PROPERTY

Main Roads is to ensure that, in the design and construction of Works:

- (a) any lawfully approved cross-overs to; and
- (b) any fences, gates, gardens, vegetation or other items on properties immediately adjoining any affected roads including but not limited to Thomas Road

- which may be removed, damaged, altered or otherwise affected by Works, are reinstated or replaced to a standard that:

- (i) is equal to or better than its pre-existing state; and
- (ii) has been the subject of agreement with the affected landowner and occupier, or at least consultation efforts by Main Roads that are reasonable in all the circumstances.

Main Roads acknowledges that its indemnification of the Shire under this Agreement extends to claims by private landowners in respect of matters falling within the subject matter of this clause.

10. LAND ACQUISITION

Within 14 days of the date of this Agreement, Main Roads is to give to the Shire details in writing of:

- (a) what if any private land Main Roads says is required to be acquired for or in connection with the Works;
- (b) what stage consultations have reached with the landowners/interest-holders in such land with regard to a negotiated acquisition;
- (c) any information in Main Roads' Personnel's knowledge bearing upon how likely it is that land acquisition issues could delay, complicate or impede the Works;
- (d) details as to the means by which Main Roads intends to achieve acquisition, including what entity is to be the acquiring authority;
- (e) details of whether Main Roads says that any role is requested of the Shire in the land acquisition process PROVIDED HOWEVER THAT Main Roads acknowledges that the Shire is not obliged or expected to be the acquiring authority in respect of any acquisition, except to the extent that the Shire in its absolute discretion agrees to do so, and only on the basis that all of its costs thereof are indemnified by Main Roads;
- (f) whether any agreement has been obtained from landowners/occupiers to early entry for Works ahead of legal acquisition, and if so the terms of such agreement; and
- (g) any other factors which Main Roads, acting in good faith to the Shire as authority with formal care, control and management of the roads within the Site, ought to disclose in respect of land acquisition issues relevant to the Works.

Main Roads is responsible to keep the Shire updated as to progress on a continuous basis in relation to all of (a) to (g) above.

Main Roads acknowledges that its indemnification of the Shire under this Agreement extends to and includes liability in respect of any claim of trespass, tort, breach of statutory duty or other civil wrong in respect of anything done, or affecting, private land ahead of legal acquisition of the same, or done contrary to any term of agreement with private interest-holders or otherwise unreasonably affecting private interest holder's interests.

11. PROGRESS MEETINGS

The Parties agree to undertake regular progress meetings on the following basis. Main Roads agrees to ensure attendance of itself and the head contractor, and to use all reasonable endeavours to include other Project Partners. Meeting details:

- (1) Regularity of meetings: **Monthly**
- (2) Duration of meetings: allow at least **1 ½ hours**
- (3) Location of meetings: **AT SITE OFFICE, AND TO INCLUDE WALK-THROUGH IF REQUESTED BY MAIN ROADS OR THE SHIRE. If COVID lockdown dictates, then Main Roads and head contractor to attend on-site, and the Shire remotely, by video conference.**
- (4) Seniority of attendees:

Main Roads: **Ilario Spagnolo, Project Director**

Main Roads' head contractor: **Richard Christie, Project Technical Lead**

Shire: **Reza Najafzedah, Director Infrastructure Services; Andrew Trosic, Director Development Services; Prad Maha, Manager Design**
- (5) Agenda: unless agreed otherwise by the Parties, there is to be a rolling agenda as follows:
 1. **[where appropriate]**: progress with provision/review/approval of 85% detailed design;
 2. **[where appropriate]**: progress with provision/review/approval of Implementation Management Plan;
 3. **[where appropriate]**: progress with provision/review/approval of Final Design drawings;
 4. **[where appropriate]**: Works progress since last meeting;
 5. any issues encountered;
 6. update on any grievances or other pertinent communications from stakeholders;
 7. update on how proposed to be resolved;
 8. whether any Impacts Monitoring undertaken since last meeting – results;
 9. whether any modifications to Implementation Management Plan considered appropriate by either party;
 10. whether any modifications to Final Design drawings considered appropriate by either Party;
 11. update on land acquisition;

12. any issue arising in respect of any matter covered by the Implementation Management Plan, identified by either Party;
13. progress in obtaining Approvals; and
14. any other issue that either Party, acting proactively and in good faith, should reasonably raise as affecting or potentially affecting the project and its smooth and orderly delivery.

12. HANDOVER OF COMPLETED WORKS

The Parties acknowledge:

- (1) The Works relate primarily to a portion of the Thomas Road road reserve;
- (2) In so far as the Thomas Road road reserve is located within the Shire of Serpentine-Jarrahdale, the Shire currently has care, control and management of that road reserve pursuant to section 55(2) of the *Land Administration Act 1995*;
- (3) The Works comprise a package of works which, along with other packages of works undertaken on other parts of Thomas Road, form part of the State government's Metronet Project;
- (4) The State is committed to completing the packages of works on Thomas Road with all possible expedition, and once those packages are completed, to transfer, care, control and management of Thomas Road, east of the Kwinana Freeway (including the Works – so far as they are located within the Thomas Road road reserve) to the Commissioner of Main Roads.

The Commissioner of Main Roads:

- (1) Acknowledges that the Shire would not have appropriate resources to maintain the section of Thomas Road which is the subject of the Works on a long-term basis following the completion of the Works, noting that the Works include the raising of Thomas Road over the rail tracks as described in Schedule 2; and
- (2) Undertakes to use all reasonable endeavours to secure the handover of care, control and management of the section of Thomas Road within the Shire of Serpentine-Jarrahdale's district, from the Shire to the Commissioner at the earliest reasonable time.

13. RESOLUTION OF ISSUES

13.1 Consideration by the Parties' Representatives

If at any time, any disagreement or dispute or issue under or in connection with this Agreement (**Issue**) arises:

- (a) the Parties will ensure that the Issue is first promptly referred to the Parties' Representatives for resolution; and
- (b) the Parties' Representatives will consider the Issue referred to it and give due consideration to submissions by any Party in connection with the Issue.

13.2 Formal settlement

- (a) If any Issue remains unresolved following referral and meetings held under clause 6.1, any Party may give a written notice to the other Party in accordance with clause 6.2(b).
- (b) The notice must:
 - (i) state that the notice is given under this clause;

- (ii) describe the nature of the Issue; and
 - (iii) nominate an Authorised Officer of that Party to negotiate the Issue on that Party's behalf.
- (c) Within 2 Business Days of receipt of such notice, the other Party must nominate by notice in writing to the other Party, its Authorised Officer to negotiate the Issue on that Party's behalf.
- (d) The Parties' Authorised Officers must genuinely negotiate with a view to resolving the disagreement within 5 Business Days of the receipt of the notice referred to clause 6.2(c).
- (e) If the Parties' Authorised Officers fail to resolve the Issue in accordance with clause 6.2(d), the Issue will be submitted to a dispute resolution mechanism to be agreed between the Authorised Officers (taking into account the nature of the Issue) within a further 5 Business Days.

14. GENERAL PROVISIONS

14.1 Means of giving notice

Any notice or other communication in connection with this Agreement is taken to have been duly given when made in writing and delivered or sent by hand, post or email to the Party to which such notice or communication is intended to be given, at the respective addresses of the Parties set out below or to such other address as may from time to time be notified in writing by one Party to the other for the purposes of this clause.

Main Roads	Ilario Spagnolo Office of Major Transport Infrastructure Delivery (OMTID) 34 - 50 Stirling Street Perth WA 6000 +61 (08) 9323 4120 ilario.spagnolo@mainroads.wa.gov.au
Shire	Paul Martin Shire of Serpentine Jarrahdale 6 Paterson Street Mundijong, WA 6123 +61 (08) 9526 1100 pmartin@sjshire.wa.gov.au

14.2 Receipt after posting

Any notice or other communication sent by post will be taken to have been received at the expiration of six Business Days after the date of posting.

14.3 Unfettered discretion

Nothing in this Agreement in any way restricts or otherwise affects the unfettered discretion of the Parties as to the exercise of their respective statutory powers and to the extent of any conflict between the Parties' respective statutory powers and this Agreement, the former prevails.

14.4 Governing law

This Agreement is governed by and will be construed in accordance with the laws of Western Australia.

14.5 Successors

This Agreement is binding on the Parties and their respective successors and permitted assigns, and will be enforceable by and against the Parties or those successors and permitted assigns.

14.6 Variations and waivers to be in writing

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by any Party from any such provision, will be of any effect unless it is in writing, signed by the Parties or, (in the case of a waiver) by the Party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to, or for which, it may be made or given.

14.7 Waiver

No failure, delay, relaxation or indulgence by a Party in exercising any right conferred on such Party by this Agreement will operate as a waiver of such right, nor will any single or partial exercise of any such right nor any single failure to do so, preclude any other or future exercise of it, or the exercise of any other right under this Agreement.

14.8 Further assurances

Each Party to this Agreement must do all things and sign all deeds and other documents as may reasonably be required by the other Party so as to carry out and give effect to the terms and conditions of this Agreement and to perfect, protect and preserve the rights of the other Party to this Agreement.

14.9 Entire agreement

The Parties agree that the provisions expressly set out or incorporated by reference in this Agreement represent the whole agreement between the Parties with respect to the transactions evidenced by this Agreement.

14.10 Authority to sign

Each person signing this Agreement as an authorised officer or agent of any Party warrants to the other Party that, as at the date of signing, he or she has full authority to execute this Agreement on behalf of that Party.

EXECUTED as an Agreement.

Signed for and on behalf of the
COMMISSIONER OF MAIN ROADS

Signature of witness

Signature of authorised officer

Name of witness

Name of authorised officer

Signed for and on behalf of the
SHIRE OF SERPENTINE-JARRAHDALE

Signature of witness

Signature of authorised officer

Name of witness

Name of authorised officer

Schedule 1 Site Plan

Schedule 2 Particulars of Works

1. Description of Works

The Works includes the following:

- (a) the design and construction of the relevant portion of:
 - (i) the raising of Thomas Rd, between Wungong Rd and South Western Highway, to go over the existing and new proposed rail tracks as part of the Byford Rail Extension project;
 - (ii) an underpass at Butcher Road to allow for local traffic connectivity; and
 - (iii) associated works,
- (b) the liaison and coordination in respect of service relocations as necessary;
- (c) compliance with Authorisations including development approvals, safety, environmental, quality and traffic management requirements; and
- (d) communication and engagement with relevant stakeholders.

2. Timing of Works

It is the expectation of Main Roads that the Works will be completed on or before June 2023.

Schedule 3 Parties' Representatives

1. Shire's Representative

Paul Martin
Shire of Serpentine Jarrahdale
6 Paterson Street, Mundijong, WA 6123
+61 (08) 9526 1100
pmartin@sjshire.wa.gov.au

2. Main Roads' Representative

Ilario Spagnolo
Office of Major Transport Infrastructure Delivery (OMTID)
34 - 50 Stirling Street, Perth, WA 6000
+61 (08) 9323 4120
ilario.spagnolo@mainroads.wa.gov.au

Schedule 4

Matters required to be addressed in Implementation Management Plan

1. Traffic management:

All proposed traffic management details relevant and pertaining to the Works, including without limitation:

- 1.1 each road or portion of road that is requested to be closed or its access restricted;
- 1.2 the extent and nature of closure or restriction requested;
- 1.3 the exact purpose(s) of the proposed closure or restriction;
- 1.4 the commencement and concluding time for each proposed closure or restriction;
- 1.5 a full rationale for the proposed closure/restriction regime for the affected roads, both individually and collectively, including a full consideration of all alternatives and options;
- 1.6 a commitment to regular communication with the Shire as to all aspects of traffic management, including liaising with the Shire about Local Government legislation compliance as regards to closure and restrictions, and to not proceeding with closures or restrictions until receipt of confirmation of Shire compliance with said requirements;
- 1.7 evidence of identification of key stakeholders and identification and articulation of likely issues that stakeholders might have;
- 1.8 systematic considerations of addressing all anticipated, known and emerged stakeholder issues;
- 1.9 evidence of what consultations with stakeholders have occurred up to the time of the issue of the proposed Implementation Management Plan;
- 1.10 proposals as to the form, nature and subject matter of consulting or further consulting with stakeholders, and commitments to update and fully inform the Shire as to same;
- 1.11 proposals as to how the closure would be implemented – whether by road blocks, hoardings, fences, traffic control personnel or other means; and
- 1.12 proposals for reduced speeds and how these would be legally and physically implemented.

2. Hours of work

Whether Main Roads intends to undertake or cause or permit to be undertaken, work outside of the hours of 7.00am to 7.00pm, Monday to Friday, and if so:

- 2.1 Over what period or periods;
- 2.2 over what hours;
- 2.3 at what location(s);
- 2.4 why work outside of 7.00am-7.00pm Monday to Friday is considered necessary or desirable; and
- 2.5 without limiting requirements of part 3 below, any noise- or vibration- mitigation measures proposed to be undertaken to mitigate the effects of working outside of 7.00am-7.00pm, Monday to Friday.

3. Noise, vibration, dust, odour, spillage/dragging and other impacts

For **each** of the following categories of potential impacts (**Impacts**) in turn, the details identified below. The categories of potential impacts are:

- (a) noise;
- (b) vibration;
- (c) dust;
- (d) light spill;
- (e) odour (eg, bitumen);
- (f) spillage or dragging of sand, mud, gravel or other materials; and
- (g) other potential analogous off-site impact sources.

The details required to be set out for each of the above Impact types are:

- 3.1 Specific identification of each anticipated source of potential Impacts (separately and systematically for each Impact category);
- 3.2 At which location(s) these are anticipated and if when;
- 3.3 The extent of area potentially affected in the absence of mitigation measures;
- 3.4 The nature of landholding/land use in each area potentially affected by the Impact in the absence of mitigation measures;
- 3.5 Whether any, and if so what, consultations have occurred with landholders/occupiers of potentially affected land in relation to the Impact;
- 3.6 Whether any assessments by appropriately-qualified experts have been undertaken to project or estimate the likely nature and extent of the relevant Impact (eg, noise assessments);
- 3.7 A commitment to providing to the Shire copies of any such assessments that are undertaken;
- 3.8 In the case of noise, identification of whether it is anticipated, projected or assessed that any works might exceed assigned levels under the *Environmental Protection (Noise) Regulations 1996 (Noise Regulations)*;
- 3.9 In the case of noise, identification of whether it is anticipated, projected or assessed that any works might exceed assigned levels under the Noise Regulations, but for the operation of any exemptions or penalty factors (identify the relevant exemption or penalty factor);
- 3.10 In the case of Impacts other than noise, identification of whether any and if so which particular industry standard, code or similar is intended to be worked to for the purpose of establishing an objective standard for acceptable versus unacceptable levels of impacts;
- 3.11 Details of all mitigation measures that are proposed;
- 3.12 Details of any monitoring regime that is proposed (**Impact Monitoring**); and
- 3.13 A commitment to providing to the Shire the results of any Impact Monitoring that is undertaken.

4. Equestrian-friendly design

Provision of the following details:

- 4.1 Demonstrate the nature and result of consultations with equestrian stakeholders in the locality;

- 4.2 Evidence of any equestrian expert input into equestrian-friendly design of the Works – relating both to the implementation of the Works and the final result of the Works;
- 4.3 Identification of all issues associated with both the implementation and the final result, which could reasonably be expected to relate to equestrian activities; and
- 4.4 How the design engages with each of the above issues.

5. Off-site impacts of final product

A consideration of the same matters as referred to in 3(g) above, to the extent that their subject matter is relevant, to the final intended result of the design. By way of non-exhaustive example, this could include matters such as increased ongoing traffic noise from higher volumes of traffic, combined with passing over an elevated bridge. An example of an implementation measure might be consideration of noise walls.

6. Environmental considerations

Identification of all potential environmental impacts; how these are proposed to be avoided or mitigated; and evidence of appropriate consideration of all alternatives/options. This consideration applies both to the implementation stage and the intended final product.

7. Road reserve infrastructure

The road reserve infrastructure matters referred to in clause 8 of this Agreement.

8. Crossovers and private property

The matters referred to in clause 9 of this Agreement.

9. Land acquisition

The matters referred to in clause of this Agreement.