



Shire of
Serpentine
Jarrahdale

SHIRE OF SERPENTINE JARRAHDAL

and

**Darling Downs Residents Association
Incorporated (DDRA)**

MEMORANDUM OF UNDERSTANDING

**Covering Maintenance and Improvements
of the following Reserves:
R35601, R35603, R35701, R35702, R35706,
R38830, R39190 and Lot 55 Empire Rose**

Shire of Serpentine Jarrahdale
6 Paterson Street
Mundijong, WA 6123
Phone: (08) 9526 1111
Fax: (08) 9526 5441

This AGREEMENT is

BETWEEN

The Shire of Serpentine Jarrahdale (**the Shire**)
of 6 Paterson Street, Mundijong, WA 6123

AND

The Darling Downs Residents Association Incorporated (**the DDRA**)
of 51 Kentucky Drive, Darling Downs, WA 6122

Henceforth defined as the Parties.

RECITALS:

- A. The Shire is the management body for the area comprising Reserves R35601, R35603, R35701, R35702, R35706, R38830, R39190, and Lot 55 Empire Rose (the Land), which are covered under various Management Orders. Under these Management Orders, the Land is under the care and control of the Shire for the purpose of "Public Recreation" or "Public Access Ways" (PAWs). An indicative map of the Land is provided in Annexure 1.
- B. A number of bridle trails, arenas, and training tracks, as well as other facilities, have been constructed on the Land (Improvements). The Parties have agreed to assume joint responsibility, to help ensure the Land and the Improvements are developed and maintained to an appropriate standard.
- C. The DDRA is a not for profit organisation operating in the Serpentine Jarrahdale Shire. This organisation is predominantly focussed on issues related to the area that is locally known as the Darling Downs Equestrian Estate (DDEE) (see Annexure 1 for an indicative map of this area), which includes the Land. This Land is also locally known as the '70 acres'. The DDRA aims to appropriately support DDEE residents, users of the Land and Improvements within the DDEE, and to assist in pertinent activities of the Shire. One of the identified roles of the DDRA is to initiate, implement, or facilitate, appropriate maintenance and developments for the Land and Improvements. These activities will be expedited through appropriate collaboration with the Shire, in line with this MOU.
- D. The Parties have agreed to enter into a cooperative arrangement to formalise the understanding reached between them, on terms mutually agreeable and beneficial to both Parties.

OPERATIVE PART:

The Parties agree:

PURPOSE

The purpose of this Agreement is to confirm the intentions of the Parties to work cooperatively in connection with the Land, to help ensure that the Improvements are managed and maintained to a standard, which is mutually acceptable and can create positive outcomes for both Parties and associated stakeholders.

The intention of this Agreement is to create a collaborative framework, where both Parties act in ways that honour the spirit of the partnership and continue to foster a positive, collaborative relationship.

1. OBJECTIVES

The Parties agree that their objectives include the following:

- (a) For the DDRA to collaborate with the Shire to develop and maintain a Strategic Development Plan (SDP), which will be updated after the DDRA Annual General Meeting (AGM) each year. This SDP will identify appropriate strategic developments and modifications for the Land and Improvements over a forthcoming two-year program.
- (b) The DDRA and the Shire will collaborate to develop an agreed Annual Management Plan (AMP), which will be forwarded to the Shire for ratification and implementation by the dates defined in Clause 6. The DDRA will provide appropriate updates to this program as a part of the Quarterly Reports (see Clause 4.2), to help ensure that the DDRA and the Shire's works programs are congruent and align with the defined purposes of this Agreement.
- (c) The Shire will provide financial support to the DDRA as specified in Clause 5, to cover identified expenditures aligned with the SDP and AMP.
- (d) Activities conducted by DDRA volunteers, in accordance with the SDP, AMP, or other works programs, will be carried out by appropriately qualified persons, as specified in Clause 4.3.

2. TERM

This Agreement commences on 1 July 2020 and will expire three years after that date, unless terminated earlier in accordance with Clause 10, or extended in compliance with Clause 11.

3. RELATIONSHIP BETWEEN THE PARTIES

This Agreement is a statement of the intentions of the Parties. Nothing contained or implied in this Agreement constitutes either Party as a partner, agent or representative of any other party, or creates any partnership, agency or trust, and no Party has the authority to bind any other Party in any way.

Consequently, this Agreement will not create any formal contractual relationship that is legally binding on one or more of the Parties, beyond what is specified in this document.

4. THE DDRA RESPONSIBILITIES

In consideration of its responsibilities, the DDRA agrees to:

- (a) commit to developing and implementing the SDP and AMP as defined in Clauses 1 and 6;
- (b) promote the Shire in radio, printed or television advertisements/communications as and when these opportunities arise;
- (c) invite the Shire President, Councillors, and the Shire Chief Executive Officer to appropriate events (e.g. welcoming or opening ceremonies), as is appropriate to demonstrate the close collaboration between the Parties;
- (d) provide the Shire with a progress report each quarter, in accordance with Clause 4.2, which delivers information on the acquittal of funding and the works/maintenance; and
- (e) promptly advise the Shire in writing if there are significant changes in DDRA Office Holders.

4.1 Financial Management

The DDRA agrees to:

- (a) maintain a system of accounting, which appropriately complies with the *Western Australian Associations Incorporation Act 2015*, pertinent Australian Accounting Standards, and accepted financial management principles and practices; and
- (b) comply appropriately with its obligations under *the Western Australian Associations Incorporation Act 2015*, including the guidance and requirements for managing liquidity and paying debts, as and when they become due and payable.
- (c) Provide an annual financial report within 3 months of the end of the financial year.
- (d) any uncommitted funds remaining at the end of their term shall be returned to the Shire within 30 days.

4.2 Quarterly Report

Pursuant to achieving the objectives defined in Clauses 1(b) and 4(d), the DDRA agrees to provide a Quarterly Report to the Shire, which includes the following information:

- (a) agreed works defined within the AMP, or other pertinent activities that have been conducted during the preceding quarter;
- (b) the approximate number of hours of volunteer activities conducted during the quarter covered by the report;
- (c) costs of pertinent MOU related purchases or expenditures; and
- (d) identified modifications or reprioritisations identified for the AMP over the forthcoming quarter, including changes or additional works to be completed by the Shire.

The Quarterly Reports will cover the periods from February to April, May to July, August to October, and November to January. These Quarterly Reports will be made available to the nominated Shire representative by the dates specified in Clause 6.

4.3 Risk Management/Training of Volunteers

The DDRA will take appropriate steps to help ensure that volunteers participating in

activities in accordance with Recital C and Clause 1(d) shall:

- (a) conduct pertinent works in compliance with appropriate Occupational Health and Safety legislation and standards; and
- (b) be given appropriate training for the activities that they are being asked to conduct, with particular emphasis on the safe operations of equipment with which the volunteer is unfamiliar, that they are required to utilise for the achievement of their tasks.

4.4 Public Liability and Personal Accident Insurance

The DDRA shall maintain adequate Public Liability Insurance for a sum of not less than \$ 20,000,000 and associated Personal Accident Insurance. Such insurance policies must be maintained with reputable insurers to cover the work being conducted by volunteers under the auspices of this MOU.

4.5 Clearance of Vegetation and Revegetation Activities

Vegetation clearance and revegetation activities will be conducted in accordance with the agreed SDP and AMP. Prior to clearance or revegetation works, where there is a significant risk to compliance with the Shire's Local Planning Scheme, Council Policy or State legislation, the DDRA shall discuss controls and implementation processes with appropriate Shire representatives. Defined controls will then be implemented appropriately during the works.

5. THE SHIRE'S RESPONSIBILITIES

In consideration of its responsibilities, the Shire agrees to provide funding and support to the DDRA to complete the SDP and AMP activities. Both Parties agree that the base amount of funding that will be provided in each Financial Year will be \$20,000 from 2021/22FY, with the exemption of \$10,000 provided for 2020/21FY only.

Subject to Council approval, additional funding will be provided to support SDP or AMP defined works, improvements and related expenditures. These funds shall be transferred to the DDRA's nominated bank account as specified in Clause 6.

The Shire also agrees to:

- (a) work with the DDRA to facilitate the planning or implementation of work that will be implemented through the SDP, AMP, and Quarterly Report updates, and provide requested guidance on management activities and developments within the Land and the DDEE;
- (b) provide maintenance activities and other assistance within the Land and the DDEE, when requested by the DDRA and in accordance with the SDP, AMP, and Quarterly Report updates;
- (c) provide support and maintenance assistance (as resources are available) to achieve the defined objectives and activities outlined in the SDP, AMP, and Quarterly Reports; and
- (d) collaborate with the DDRA to source funding through other channels, to help minimise the Shire's costs for achieving the defined objectives and activities outlined in the SDP and AMP.

6. KEY ANNUAL MANAGEMENT DATES

The Parties agree to provide the deliverables in accordance with the guidelines in Table

1 and the other material defined in this clause.

Table 1: Key Management Dates and Milestones

Milestone/Deliverable	Responsible Party	Approximate Date Each Year
Provide the November to January Quarterly Report to the Shire	DDRA	Last week in February
Provide the February to April Quarterly Report to the Shire	DDRA	Last week in May
Provide the updated AMP to the Shire	DDRA	2 nd week in June
Provide the funding in accordance with Clause 5	The Shire	2 nd week in July
Provide the May to July Quarterly Report to the Shire	DDRA	Last week in August
Provide annual financial report to the Shire	DDRA	Within 3 months of the end of each financial year
Provide the August to October Quarterly Report to the Shire	DDRA	Last week in November
Provide the updated SDP to the Shire	DDRA	Within eight weeks of the AGM date
Updated SDP review and authorisation by the Shire	The Shire	Within eight weeks of the submission of the SDP to the Shire

The Shire's payment to the DDRA for the 2020/21 Financial Year will be paid within four weeks of the Execution Date. This will ensure that the required funding is provided to support ongoing operations and developments planned by the DDRA.

7. NO RIGHT TO EXCLUSIVE POSSESSION

The DDRA acknowledges that this Agreement is non-exclusive and does not convey to the DDRA any right to exclusive possession over the Land. Any improvements or developments to the Land shall be retained and included in the Shire's Asset Register.

8. CONFIDENTIALITY AND DISCLOSURE

Each Party undertakes and agrees to:

- (a) not make public announcements or statements, or publish or release information in relation to this Agreement, or proposed collaboration, without prior communication to the other Party; and
- (b) keep confidential, information that it receives from the other Party, which is marked as 'Confidential', or which a Party notifies the other Party as being confidential.

9. DISPUTE RESOLUTION

In the event of a dispute between the Shire and the DDRA concerning this Agreement, the following actions shall be initiated:

- (a) The aggrieved Party shall give written notice to the other Party, setting out the material particulars of the dispute.
- (b) Each Party shall appoint a senior officer with the authority to negotiate a settlement. These representatives of the Parties shall meet within ten (10) business days of the date of the receipt of the notice outlined in Clause 9(a).

(c) The Parties' representatives will negotiate in good faith and use their best endeavours to attempt to resolve the dispute.

10. RIGHT TO TERMINATE ON NOTICE

Notwithstanding any other provision of this Agreement, the Parties agree that either Party may terminate this Agreement for any reason upon six (6) months written notice to the other Party. Uncommitted funds provided by the Shire to the DDRA shall be returned to the Shire within 30 days of the termination date.

11. VARIATIONS

This Agreement may be reviewed and modified as agreed by both Parties. Modifications and variations to this Agreement, which are agreed by both Parties, may be applied and executed in conformance with standard contractual and legal practices, and may be subject to Council approval.

12. COSTS

Both Parties agree to bear costs they incur in connection with the preparation and execution of this Agreement.

13. GOVERNING LAW

This Agreement is governed by, and is to be interpreted in accordance with, the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

14. NO FETTER

Notwithstanding any other provision of this Agreement, the DDRA acknowledges that the Shire is a local government established by the *Local Government Act 1995 (WA)*, and in that capacity, the Shire may be obliged to determine applications for approvals having regard to statutes governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Shire shall not be taken to be in default under this Agreement by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Agreement fetter the Shire in performing its statutory obligations or exercising any discretion.

Signing Page

The Parties attest that this Agreement:

- (a) has not been made under duress by, to, or from any party;
- (b) may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument;
- (c) shall become effective upon signature by all of the authorised officials listed below, and the Execution Date will be the latest date listed for signing; and
- (d) will remain effective until modified or terminated as specified in this Agreement.

The following signatories acknowledge that they have reviewed and agree with the requirements specified in this Agreement and have the right to enter into this Agreement on behalf of their organisation.

The Parties also specifically agree as follows:

- (a) The DDRA agrees to apply funds and fulfil their obligations in accordance with the terms and conditions contained in this Agreement:

OFFICE HOLDER SIGNATURE

Office Held: President - DDRA
Full Name: Keith Ellis
Address: 51 Kentucky Drive
Darling Downs, WA, 6122

Date: _____

OFFICE HOLDER SIGNATURE

Office Held: Vice President - DDRA
Full Name: Peter Benson
Address: 31 Rain Lover Court
Darling Downs, WA, 6122

Date: _____

- (b) The Shire agrees to provide the funds and support in accordance with the terms and conditions contained in this Agreement:

Chief Executive Officer

Full Name: Paul Martin

Date: _____

