

Heritage Agreement

Duncraig House

56 Duncraig Road
APPLECROSS

Heritage Council of Western Australia

And



The Heritage Council of Western Australia

108 Adelaide Terrace, EAST PERTH, WA, 6004

PO BOX 6201, EAST PERTH, WA, 6892

TEL: (08) 9221 4177

FAX: (08) 9221 4151

www.heritage.wa.gov.au

Table of contents

<i>Clause</i>	<i>Page</i>
1 Definitions and interpretation	1
1.1 Definitions	1
1.2 Interpretation	2
2 Commencement, duration and scope of this Agreement	2
2.1 Commencement and duration of this Agreement	2
2.2 Scope of this Agreement	2
3 Development and conservation	3
3.1 Conservations Works, Development	3
3.2 Conservation Consultant	3
3.3 Maintenance	3
3.4 Compliance with statutes	3
3.5 Insurance	3
3.6 Entry of the Place in the Register	4
4 Council's rights of entry and powers of inspection	4
4.1 Council's rights of entry and powers of inspection	4
5 Default	4
5.1 Events of default	4
5.2 Rights and remedies of Council	4
5.3 Land and Place at risk of Owner	5
5.4 Interest on overdue money	5
6 General	5
6.1 Variation to be in writing	5
6.2 Governing law	5
6.3 Further assurances	5
6.4 Extension of time by Council	6
6.5 Costs	6
Schedule	
Annexure A –	
Duncraig House, Duncraig Road Applecross – Conservation Plan	
Annexure B –	
Conservation Works	

This agreement

is made on 14 July 2004 between the following parties:

1. **Heritage Council of Western Australia**
of 108 Adelaide Terrace, East Perth, Western Australia
(Council)
2. [REDACTED]
of [REDACTED]
(Owner)

Recitals

- A. The Owner is the registered proprietor of the land.
- B. The Place is entered in the Register of Heritage Places on an interim basis pursuant to the Act.

The parties agree with each other as follows:

14 JUL 2004 10:47
WESTERN AUSTRALIA HERITAGE COUNCIL
108 ADELAIDE TERRACE EAST PERTH WA 6001
TEL: 9447 1234 FAX: 9447 1235
WWW.HCWA.GOV.AU
BY: [REDACTED] FOR HERITAGE COUNCIL
CLIENT 1007

1 Definitions and interpretation

1.1 Definitions

In this Agreement unless the contrary intention appears:

Act means the Heritage of Western Australia Act 1990;

this Agreement means this agreement as it may from time to time be varied as permitted by its terms;

Conservation Plan means the Conservation Plan in respect of the Place described in Item 4 of the Schedule as may from time to time be varied with the approval of the Council;

Conservation Works means the conservation works set out in Item 5 of the Schedule;

Construction Completion Date means the date 12 months after the Effective Date of this Agreement;

Construction Period means:

- (a) the period commencing on the Effective Date and expiring on the Construction Completion Date; or
- (b) any longer period agreed between the Council and the Owner in writing;

Damage means losses, costs, damages, liabilities, expenses, actions, suits or claims of any kind;

Effective Date means the date on which this Agreement is sealed by the last signatory which is party to it;

Event of Default is defined in clause 5.1;

Land means the land described in Item 3 of the Schedule;

Minister means the Minister responsible for the administration of the Act;

Owner means having the meaning ascribed to it by section 3(2) of the Act;

Place means the place described in Item 1 of the Schedule and situated on, or forming part or the whole of, the Land;

Register means the Register as defined in the Act;

Significant Fabric means those parts of the fabric of the Place as are specified in Item 2 of the Schedule; and

words and expressions having defined meanings in the Act, unless otherwise defined in this clause, have the meanings so defined in the Act.

1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (b) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (c) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Agreement or any part of it.
- (d) A reference to anything is a reference to the whole and each part of it.

2 Commencement, duration and scope of this Agreement

2.1 Commencement and duration of this Agreement

Subject to the provisions of this Agreement, this Agreement commences on the Effective Date and shall be of permanent effect unless terminated with the prior written consent of the Council.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (1) applies to the Land and the Place;
 - (2) binds the Land and the Place; and
 - (3) binds the Owner.
- (b) All of the obligations of the Owner under this Agreement are covenants made pursuant to section 29(10) of the Act and are intended to run with the Land.
- (c) The rights and obligations of the Owner under this Agreement are not assignable by the Owner without the prior written consent of the Council such consent not to be unreasonably withheld.
- (d) Subject to subclause (e), on the Owner transferring the whole of the interest of the Owner in the Place and the Land to another person, the Owner is released from all personal liability under this Agreement.
- (e) The provisions of subclause (d) will not apply in respect of any liability or claim which arose prior to the date of registration of the transfer of the whole of the interest of the transferring Owner to another person.

3 Development and conservation

3.1 Conservations Works, Development

- (a) The Owner must undertake the conservation of the Place in accordance with the Conservation Plan and is required to carry out the Conservation Works described in Item 5 of the Schedule by the specified construction completion date:
- (b) The Owner shall not:
 - (1) carry out any development on or of the Place; or
 - (2) without prejudice to the generality of subclause (b)(1), do or permit to be done anything on or in relation to the Place which in the reasonable opinion of the Council adversely affects the cultural heritage significance or characteristics of the Place, or
 - (3) sub-divide or make application to sub-divide the land,
except as permitted by this clause or as otherwise approved in advance in writing by the Council which approval shall not be unreasonably withheld.

3.2 Conservation Consultant

- (a) The Owner must appoint a consultant approved in advance in writing by the Council to supervise the Conservation Works and must commission the consultant to provide the Council with written progress reports detailing the Conservation Works which have been completed.
- (b) The written progress reports must be submitted to the Council within one (1) month of completion of the Conservation Works as defined in this Agreement, or otherwise as set out in the Conservation Plan.

3.3 Maintenance

- (a) The Owner shall maintain the Significant Fabric, as restored and adapted with the approval in advance in writing of the Council, in a proper, safe and sound standard of repair and condition in all respects to the reasonable satisfaction of the Council.
- (b) At intervals of no greater than 365 days during the currency of this Agreement, the Owner shall give to the Council a proper, detailed and comprehensive written report regarding the maintenance and state of the Significant Fabric and the level of compliance with this Agreement by the Owner.

3.4 Compliance with statutes

Nothing in this Agreement removes, limits or modifies the obligations on the Owner to comply with all relevant statutory and other requirements in connection with the development of the Land, and the Owner is responsible to obtain all approvals consents and licences required for development of the Land, including planning approvals and building licences from all relevant bodies and authorities including the local authority.

3.5 Entry of the Place in the Register

The Owner consents to the entry of the Place in the Register on a permanent basis under the Act and waives all rights the Owner may otherwise have to be given any notice of the entry or to make or have considered any submissions with respect to the same.

4 Council's rights of entry and powers of inspection

4.1 Council's rights of entry and powers of inspection

- (a) Subject to subclause (b) the Council shall, through its nominated representative or nominated officer from time to time, have the power to enter the Place at reasonable times, and on reasonable prior notice, for any purpose related to the provisions of this Agreement, including without limitation, to inspect the Place with a view to ensuring compliance with the provisions of this Agreement.
- (b) Subject to subclause (c), Council will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the Council under subclause (a).
- (c) The Owner must do all things reasonably necessary to enable the Council to exercise its rights of inspection as set out in subclause (a), including without limitation, ensuring that reasonable access is provided to all parts of the Place and ensuring access to and use of any facility at the Place which is necessary to facilitate inspection.

5 Default

5.1 Events of default

- (a) An Event of Default occurs if:
 - (1) the Owner is in breach of or does not comply with any of its obligations under this Agreement and the breach or non-compliance continues for 30 days, or such longer period as is reasonable for rectification having regard to the nature of the breach or non-compliance, after receipt of written notice from the Council to effect compliance; or
 - (2) the Owner repudiates or commits a fundamental breach of this Agreement.

5.2 Rights and remedies of Council

In the event any Event of Default occurs, the Council shall be entitled to exercise any one or more of the following powers:

- (a) through its agents, contractors or employees, enter the Place and take such actions as are in the Council's reasonable opinion necessary to rectify the Event of Default (including attending to any construction or other works); together with or separately from
- (b) any rights and remedies which may be available to the Council at law or in equity; together with or separately from
- (c) the rights, powers and remedies available to the Council under the Act,

and nothing in this Agreement limits or prejudices or shall hinder the exercise by the Council or the Minister or any other person of any of the rights, powers or remedies available to the Council, the Minister or that person under the Act if an Event of Default occurs, or any other event occurs which is a breach of any provision of the Act.

5.3 Land and Place at risk of Owner

The Land and the Place shall remain at the risk of the Owner in all respects, notwithstanding any provisions in this Agreement dealing with the development of the Land or the Place and without limitation all development of the Land or the Place shall be conducted entirely at the risk of the Owner and the Owner shall indemnify and keep indemnified and save harmless the Council against all Damage incurred or suffered by the Council arising from or in connection with the development or occupation of the Land or the Place by the Owner or any person claiming through or under the Owner except where such Damage arises by virtue of any requirements of the Council carried out by the Owner in accordance with the directions of Council pursuant to this Agreement or by the Council itself (as the case may be) in which case the Council will indemnify and keep indemnified the Owner against all Damage.

5.4 Interest on overdue money

If the Owner becomes liable to pay any amount of money to the Council pursuant to this Agreement or arising from any matter the subject of this Agreement and such amount remains unpaid for a period of 7 days from the date when it was first due for payment under this Agreement the Owner shall pay to the Council interest on that amount from and including the due date for payment of the amount to but excluding the actual date of payment of that amount. The interest to be paid on demand by the Council, is to be calculated on daily balances, and is to be at the rate then payable on judgment debts pursuant to the provisions of the Supreme Court Act.

6 General

6.1 Variation to be in writing

- (a) No variation of this Agreement will be effective unless it is in writing and executed by the Council and the Owner.
- (b) No variation of the Conservation Works will be effective unless variation is approved in writing by the Council as part of the Development Referral Process prior to any such variation of the Conservation Works being carried out by the Owner.
- (c) The Council will ensure that any request for a variation by the Owner in the manner outlined in paragraph (a) of this clause will be dealt with in an expeditious manner, particularly where the Owner indicates justification that the matter is urgent.”

6.2 Governing law

This Agreement is governed by the laws of the State of Western Australia and the parties submit to the jurisdiction of that State.

6.3 Further assurances

Each party shall do all things and execute all further documents as are necessary to give full effect to this Agreement.

6.4 Extension of time by Council

The Council may, at the Council's discretion and by written notice to the Owner, extend any time period for performance by the Owner of any of its obligations under this Agreement.

6.5 Costs

- (a) The Owner shall pay or reimburse the Council on demand for all the Council's costs and expenses in relation to:
 - (1) the exercise or enforcement by the Council of any right, power or remedy under this Agreement including clause 5; and
 - (2) any act or omission by the Owner causing Damage to the Council, including the Council's legal costs and expenses.

- (b) Each party shall pay all its own legal costs and expenses in relation to the preparation, execution and stamping of this Agreement.

Schedule

1 **Place**

Duncraig House is located at 56 Duncraig Road Applecross Western Australia 6153 and which consists of the Land described in Item 3 and the works and buildings on it.

2 **Significant Fabric**

The whole of the Place.

3 **Land**

Lot 14592 on Deposited Plan 33897 currently comprised in Certificate of Crown Land Title Volume 3129 Folio 191.

4 **Conservation Plan**

Duncraig House, Duncraig Road, Applecross – Conservation Plan prepared by Palassis Architects and dated December 2000, a copy of which is appended to this Agreement as Annexure “A”.

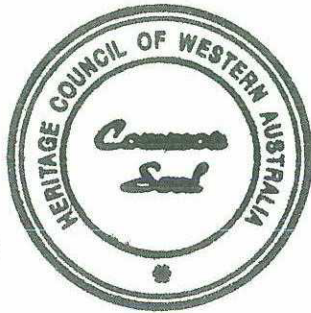
5 **Conservation Works**

The schedule of works described in Annexure “B”.

Executed as a deed:

The common seal of
Heritage Council of
Western Australia

is affixed in the presence of:



Patric de Villiers

Signature of authorised person

CHAIR

Office held

PATRIC DE VILLIERS

Name of authorised person

Ian H Baxton

Signature of authorised person

DIRECTOR

Office held

IAN H BAXTON

Name of authorised person

The common seal of

██
is affixed in the presence of:

██

Signature of authorised person

██

Office held

██

Name of authorised person

██

Signature of authorised person

██

Office held

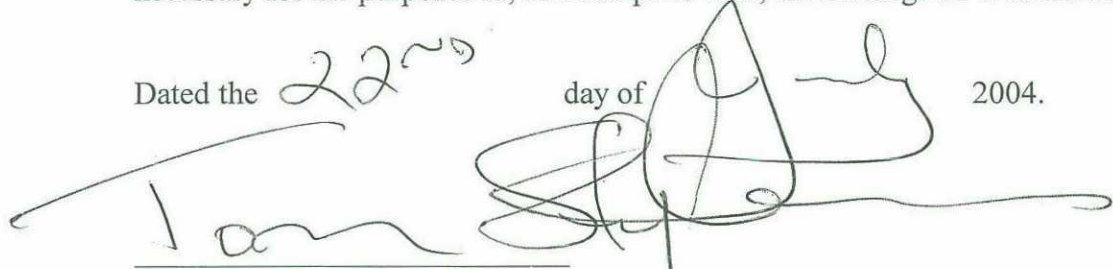
██

Name of authorised person

**CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA
ACT**

I, **The Hon Tom Stephens, MLA, Minister for Heritage** hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act 1990.

Dated the 22nd day of April 2004.

A large, stylized handwritten signature in black ink, appearing to read 'Tom Stephens', is written over the date and day of the month. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**MINISTER FOR LOCAL GOVERNMENT & REGIONAL DEVELOPMENT; HERITAGE;
THE KIMBERLEY, PILBARA AND GASCOYNE; GOLDFIELDS-ESPERANCE**

Annexure A –

Duncraig House, Duncraig Road Applecross – Conservation Plan