

COPY

Heritage of Western Australia Act 1990
Section 29

HERITAGE AGREEMENT

between

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and

[REDACTED]

[REDACTED]

in respect of

LE FANU

(HCWA Place No. 3306)

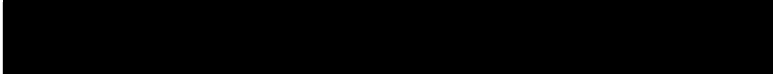
TABLE OF CONTENTS

Part 1	Definitions & Interpretation	
1.1	Definitions	Page 3
1.2	Interpretation	Page 4
Part 2	Commencement, Duration and Scope of this Agreement	
2.1	Commencement and duration of this Agreement	Page 5
2.2	Scope of this Agreement	Page 5
Part 3	Development and Conservation	
3.1	Conservation Plan	Page 5
3.2	Conservation Works	Page 6
3.3	Development	Page 6
3.4	Maintenance	Page 6
3.5	Conservation Consultant	Page 6
3.6	Reporting	Page 6
3.7	Insurance	Page 7
3.8	Compliance with Statutes	Page 7
Part 4	Council's Rights of Entry and Powers of Inspection	
4.1	Council's rights of entry and powers of inspection	Page 7
Part 5	Default	
5.1	Events of default	Page 7
5.2	Rights and remedies of Council	Page 7
5.3	Land and Place at risk of Owner	Page 8
5.4	Interest on overdue money	Page 8
Part 6	Notices	
6.1	Form of notices	Page 8
6.2	Address for notices	Page 9
Part 7	General	
7.1	Variation to be in writing	Page 9
7.2	Governing Law	Page 9
7.3	Further assurances	Page 9
7.4	Extension of time by Council	Page 9
7.5	Costs	Page 9
The Schedule		Page 10
Executed as a Deed		Page 11
Certification		Page 12

HERITAGE AGREEMENT

**Le Fanu
2 Salvado Street
Cottesloe, Western Australia**

THIS AGREEMENT is made between the following parties:

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** a corporate body established pursuant to the *Heritage of Western Australia Act 1990*, of 108 Adelaide Terrace, East Perth, Western Australia 6004 (the "Council"); and
2.  **S JOINT TENANTS,**
(the "Owners").

RECITALS:

- A. The Council's objects are to identify, conserve and, where appropriate, enhance those places which are of significance to the cultural heritage of Western Australia; facilitate development that is in harmony with the cultural heritage; and promote public awareness and knowledge of Western Australia's cultural heritage.
- B. The Owners are the Registered Proprietors of the Land.
- C. The Place has been identified as being of cultural significance, and was entered in the Register of Heritage Places on a permanent basis pursuant to the Act on 7 January 2000.
- D. The Council and the Owners wish to enter this Agreement to provide for the conservation of the Place so as to retain its cultural heritage significance for present and future generations.

AGREEMENT:

The Parties agree with each other as follows:

PART 1 DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Agreement, unless the contrary intention appears:

"Act" means the *Heritage of Western Australia Act (WA) 1990*;

"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 5 of the Schedule, as may from time to time be varied with the prior written approval of the Council;

"Conservation Policy" means the policy specified in Item 3 of the Schedule;

"Conservation Works" means the works specified in Item 6 of the Schedule;

“Construction Completion Date” means the fifth anniversary of the Effective Date;

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

“Development” means the development or use of the Place, including:

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the Land;
- (b) the carrying out on the Land of any excavation or other works;
- (c) any act or thing that is likely to change the character of the Place or the external appearance of any building;
- (d) any act or thing that would constitute an irreversible alteration of the Significant Fabric; and
- (e) a material change in the Use of the Place;

“Effective Date” means the date on which this Agreement is certified by the Minister pursuant to Section 32(1) of the Act;

“Event of Default” is defined in clause 5.1;

“Fabric” means all the physical material of the Place including, but not limited to:

- (a) components, fixtures, contents and objects, including those that are temporarily removed for repair, safekeeping, exhibition or other purposes;
- (b) building interiors, sub-surface remains and excavated material; and
- (c) natural material such as the landform, vegetation, streams, soil and rock.

“Land” means the land described in Item 4 of the Schedule;

“Maintenance” means the continuous protective care of the Significant Fabric as specified in Item 7 of the Schedule;

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

“Owners” means, subject to clause 2.2(d), [REDACTED] AND [REDACTED] AS JOINT TENANTS, for so long as [REDACTED] AS JOINT TENANTS is the registered proprietor of the Land;

“Place” means the place described in Item 1 of the Schedule;

“Register” means the Register of Heritage Places as defined in the Act;

“Significant Fabric” means the elements of Fabric specified in Item 2 of the Schedule; and

“Use” means the functions of the Place as well as the activities and practices that may occur at the Place.

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 rule of construction applies to the disadvantage of a party on the basis that the party was responsible for drafting this Agreement or any part of it;

- (d) a reference to this Agreement or any other document or instrument includes the Agreement, document or instrument (as the case may be) as varied or replaced, notwithstanding any change in the identity of the parties;
- (e) a reference to the Owners doing or refraining from doing anything includes a reference to the Owners causing a person to do, or causing a person to refrain from doing, that thing (as the case may be);
- (f) a reference to any thing is a reference to the whole and each part of it; and
- (g) words and phrases having defined meanings in the Act, unless otherwise defined in this Agreement, have the meanings so defined in the Act.

PART 2 COMMENCEMENT, DURATION AND SCOPE OF THIS AGREEMENT

2.1 Commencement and Duration of this Agreement

- (a) This Agreement is made pursuant to Section 29 of the Act and is conditional upon the Minister
 - (i) being satisfied that this Agreement is necessary for the purposes of, and complies with, the Act; and
 - (ii) certifying that fact upon each executed copy of this Agreement.
- (b) This Agreement commences on the Effective Date and terminates upon transfer of the land to another owner, unless terminated earlier with the written consent of the Council.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (i) applies to the Land and the Place;
 - (ii) binds the Land and the Place; and
 - (iii) binds the Owners.
- (b) All of the obligations of the Owners under this Agreement dealing with development or use of the Land or any part of the Land or the conservation or care of any building, natural feature or other object on the Land are personal obligations of the Owners and are not intended to run with the land as covenants made pursuant to section 29(1) of the Act. Accordingly, the parties agree that the Council will not lodge or attempt to lodge a memorial on the relevant certificate(s) of title pursuant to section 29(6) of the Act.
- (c) The rights and obligations of the Owners under this Agreement are not assignable by the Owners without the prior written consent of the Council, which consent shall not be unreasonably withheld.

PART 3 DEVELOPMENT AND CONSERVATION

3.1 Conservation Plan

The parties acknowledge that the Conservation Plan is the primary guiding document for the conservation and future use of the Place and should be read in conjunction with this Agreement as an essential reference document. For the

avoidance of doubt, all express obligations on the Owners in this Agreement which are derived from the Conservation Plan are described in the Annexures.

3.2 Conservation Works

The Owners must undertake the conservation of the Place in accordance with the Conservation Policy and are required to carry out the Conservation Works, by the Construction Completion Date. All such works must be referred to the Council for advice prior to the works actually being undertaken.

3.3 Development

Unless approved in advance in writing by the Council, the Owners shall not:

- (a) carry out any Development;
- (b) without prejudice to the generality of clause 3.3(a), do or permit to be done anything on or in relation to the Place which adversely affects the cultural heritage significance or characteristics of the Place; or
- (c) sub-divide or make application to sub-divide the Land.

3.4 Maintenance

The Owners shall ensure that the Significant Fabric, as restored and adapted with the approval of the Council, is kept in a proper, safe and sound standard of repair and condition in all respects, in accordance with the Conservation Policy.

3.5 Conservation Consultant

The Owners must appoint a consultant approved in advance in writing by the Council to supervise the Conservation Works and any Development of the Place or other action which requires the approval of the Council under clause 3.3.

3.6 Reporting

- (a) All reports required in this clause shall be prepared on behalf of the Owners by the consultant appointed pursuant to clause 3.5, or such other person with the necessary skills approved in writing in advance by the Council.
- (b) The Owners must ensure that a proper, detailed and comprehensive photographic report describing the completed Conservation Works is provided within 30 days after the Construction Completion Date.
- (c) The Owners must ensure that a proper, detailed and comprehensive photographic report is provided to the Council within 60 days after receipt of a written request from the Council for a report showing
 - (i) the condition of the Significant Fabric at the time of the report; and
 - (ii) any other matters regarding the conservation of the Place as specified in the written request;provided that no more than one such report shall be required within any 12-month period.
- (d) In the event that the Council requires further information, detail, explanation or other clarification beyond that provided in a submitted report, the Council will notify the Owners in writing of the particular information required and the time in which the Owners are to provide that information, which shall not be less than 30 days from the date of receipt of the written notice from the Council.

3.7 Insurance

The Owners will maintain an insurance policy with an S&P Category A insurance company sufficient to enable full and proper replacement, reinstatement or restoration of the Significant Fabric in the case of damage or destruction and provide a copy of a Certificate of Currency for such policy to the Council.

3.8 Compliance with Statutes

The provisions of this Agreement are in addition to the Act and any other written laws and nothing in this Agreement removes, limits or modifies the obligations on the Owners to comply with all relevant statutory and other requirements in connection with the Development of the Land, and the Owners are responsible for obtaining 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.

PART 4 COUNCIL'S RIGHTS OF ENTRY AND POWERS OF INSPECTION

4.1 Council's rights of entry and powers of inspection

- (a) Subject to clause 4.1(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 of not less than 14 days, for any purpose related to the provisions of this Agreement if the Council, on reasonable grounds, has formed the opinion that the Owners have failed to comply with this Agreement.
- (b) Subject to clause 4.1(c), the Council will comply with any reasonable requirement imposed by the Owners for the purpose of exercising the rights of the Council under clause 4.1(a).
- (c) The Owners must do all things necessary to enable the Council to exercise its rights of inspection as set out in clause 4.1(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.

PART 5 DEFAULT

5.1 Events of default

An Event of Default occurs if:

- (a) the Owners are in breach of, or does not comply with, any of its obligations under this Agreement and the breach or non-compliance continues for 30 business 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
- (b) the Owners repudiate or commit a fundamental breach of this Agreement as a whole.

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) any rights and remedies which may be available to the Council at law or in equity, including applying to the court for an order for specific performance, together with or separately from;
 - (b) 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.

5.3 Land and Place at risk of Owners

- (a) The Land and the Place shall remain at the risk of the Owners in all respects, notwithstanding any provisions in this Agreement dealing with the Development or maintenance of the Land or the Place. Without limitation, all Development and maintenance of the Land or the Place shall be conducted entirely at the risk of the Owners and the Owners shall, subject to clause 5.3(b), indemnify and keep indemnified and save harmless the Council, the Minister, the State of Western Australia and any of their respective servants or agents (each an '**Indemnified Party**') against all Damage incurred or suffered by any of them arising from or in connection with the Development, maintenance or occupation of the Land or the Place by the Owners or any person acting through, on behalf of, or under the direction of the Owners.
- (b) The indemnity provided by the Owners in clause 5.3(a) shall be reduced proportionately to the extent that it can be shown any Damage has been caused by a negligent or deliberately malicious act or omission by an Indemnified Party.

5.4 Interest on overdue money

If the Owners 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, the Owners 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 is 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 (WA) 1935*.

PART 6 NOTICES

6.1 Form of notices

Any notice, report or other communication which must be given, served or made under or in connection with this Agreement:

- (a) must be in writing in order to be valid;
- (b) is sufficient if executed by the Party giving, serving or making the notice, or if executed on such Party's behalf by any officer, director, attorney or solicitor having the authority to so act for such Party;
- (c) is sufficient, in the case of the Owners' obligations under clause 3.6, if executed by the relevant consultant appointed pursuant to clause 3.5;
- (d) will be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by

facsimile or sent by email to the address of that person identified in clause 6.2 or at such other address or number as is notified in writing by that person to the other Parties from time to time; and

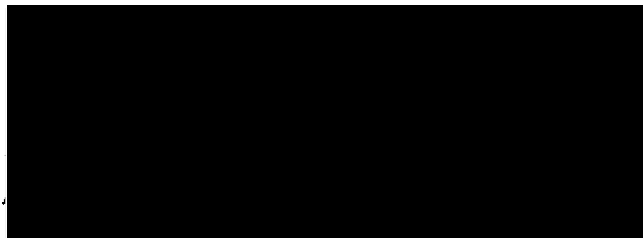
- (e) will be deemed to be served, given or made:
 - (i) if delivered by hand, on delivery;
 - (ii) if sent by prepaid post, on the second day after the date of posting;
 - (iii) if sent by facsimile, on receipt of a transmission report confirming successful transmission; and
 - (iv) if sent by email, on receipt of confirmation of successful delivery.

6.2 Address for notices

The details of each Party for the purposes of giving notice are as follows:

- (a) the **Council**: Heritage Council of Western Australia
PO Box 6201
East Perth WA 6892
Phone: (08) 9221 4177 Fax: (08) 9221 4151
Email: heritage@hc.wa.gov.au
ATTENTION: Manager, Development Referrals

- (b) the **Owners**:



PART 7 GENERAL

7.1 Variation to be in writing

No variation of this Agreement will be effective unless in writing and executed by the Council and the Owners.

7.2 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.

7.3 Further assurances

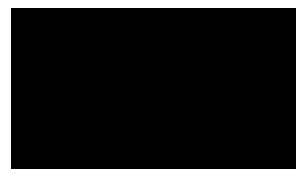
Each party shall do all things and execute all further documents as are necessary to give full effect to this Agreement.

7.4 Extension of time by Council

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

7.5 Costs

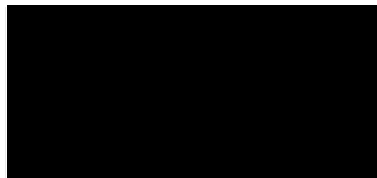
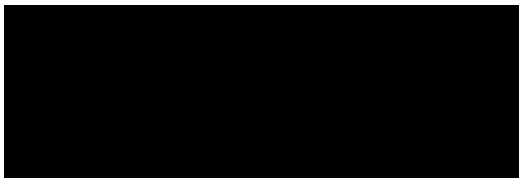
Each party shall pay all its own costs and expenses in relation to the preparation, execution and stamping of this Agreement.



THE SCHEDULE


- Item 1: Place**
- Le Fanu*, located at 2 Salvado Street, Cottesloe, Western Australia (HCWA Place No. 3306), and consists of:
- (a) the Land;
 - (b) all buildings, structures and works on the Land from time to time; and
 - (c) any thing in connection with the Land, entered or deemed to be entered in the Register.
- Item 2: Significant Fabric**
- The Significant Fabric is specified in Section 6.2 of the Conservation Plan, "Levels of Significance", at pages 95-99.
- Item 3: Conservation Policy**
- The Conservation Policy is described in Section 7.0 of the Conservation Plan, "Conservation Recommendations", at pages 101-115.
- Item 4: Land**
- Lot 121 on Diagram 97058 being the whole of the land contained in Certificate of Title Volume 2152 Folio 430.
- Item 5: Conservation Plan**
- Le Fanu, Cnr Marine Parade and Salvado Street, Cottesloe: Conservation Management Plan* prepared by Hocking Planning and Associates for [REDACTED] (November 2010).
- Item 6: Conservation Works**
- The Conservation Works are detailed in Section 8.3 of the Conservation Plan, "Schedule of Conservation Works", at pages 119-128.
- Item 7: Maintenance**
- The schedule of Maintenance tasks appears in Section 8.1.2 of the Conservation Plan, "Maintenance and Security", at pages 117-118.

EXECUTED AS A DEED



20/12/2011
Date signed

21.12.11
Date signed


Witness


Witness

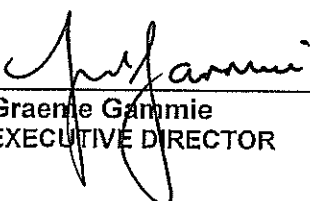

Print name of witness


Print name of witness


SOLICITOR
Occupation of witness

Maintenance Manager
Occupation of witness

THE COMMON SEAL of the HERITAGE COUNCIL OF WESTERN AUSTRALIA is affixed in the presence of:


Graeme Gammie
EXECUTIVE DIRECTOR




Marion Fulker
CHAIRPERSON

22/12/2011
Date signed

Date signed

**CERTIFICATE UNDER SECTION 32
OF THE HERITAGE OF WESTERN AUSTRALIA ACT (WA) 1990**

I, The Hon. G M Castrilli, MLA, Minister for Local Government; Heritage; Citizenship and Multicultural Interests, hereby certify that this Agreement is necessary for the purposes of, and complies with, the *Heritage of Western Australia Act (WA) 1990*.

Dated the 16th day of January 2017 *Gr*



Minister for Local Government; Heritage; Citizenship and Multicultural Interests