

**Heritage Council of
Western Australia**

and



HERITAGE AGREEMENT

Ocean View, 134 Solomon Street, Beaconsfield

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EXEMPT from W.A. Stamp Duty

[Signature]
S(18)(1) HERITAGE of WA AUSTRALIA ACT 1990

HERITAGE AGREEMENT

Ocean View, 134 Solomon Street, Beaconsfield

THIS AGREEMENT is made on the 24th day of August 2004 between the following parties:

1. HERITAGE COUNCIL OF WESTERN AUSTRALIA of 108 Adelaide Terrace, East Perth, Western Australia (the "Council"); and
2. [REDACTED]

W.A. Stamp Duty
WESTERN AUSTRALIA STAMP DUTY
DEE 03/09/04 15:22 001365785-001
SD \$ *****.00 PEN \$*****.00
EXEMPT 100 %

RECITALS:

- A. [REDACTED] is the registered proprietor of the Land.
- B. The Place is entered in the Register of Heritage Places on a permanent basis pursuant to the Act.

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 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 works specified in item 5 of the Schedule;

"Construction Completion Date" means:

- (a) in the case of immediate action as described in Annexure B, the date within 1 year after the Effective Date of this Agreement;
- (b) in the case of medium term action as described in Annexure B, the date within 3 years after the Effective Date of this Agreement; and
- (c) in the case of long term action as described in Annexure B, the date within 5 years 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 of the Place 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 Council;

"**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 of the Place**" means:

- (a) [REDACTED], for so long as he is the registered proprietor;
- (b) any other Owner or Owners of the Land from time to time, "Owner" having the meaning ascribed to it by 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;

"**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; and
- (d) a reference to any thing is a reference to the whole and each part of it.

Part 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 of the Place.
- (b) All of the obligations of the Owner of the Place 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 of the Place under this Agreement are not assignable by the Owner of the Place without the prior written consent of the Council.
- (d) Subject to sub-clause (e), on the person who is at the time the Owner of the Place ("Outgoing Owner") transferring the whole of that person's interest in the Place and the Land to another person, the Outgoing Owner is released from all personal liability under this Agreement. For the avoidance of doubt, this clause 2.2(d) operates only to release the Outgoing Owner personally and does not release, vary or otherwise affect the obligations of the Owner of the Place under or in connection with this Agreement.
- (e) The provisions of sub-clause (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 Outgoing Owner to another person.

Part 3 Development and Conservation

3.1 Conservation Works - Development

- (a) The Owner of the Place must undertake the conservation of the Place in accordance with the Conservation Plan and is required to carry out the conservation works, within the Construction Completion date, described in item 5 of the Schedule.
- (b) The Owner of the Place shall not:
 - (1) carry out any development on or of the Place; or
 - (2) without prejudice to the generality of sub-clause (b)(1), 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
 - (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.

3.2 Maintenance

- (a) The Owner of the Place must maintain the Significant Fabric, buildings and structures on the Place (as restored, constructed or adapted with the approval in advance in writing of the Council) in accordance with the Conservation Plan and in any event 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 of the Place 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 of the Place.

3.3 Compliance with Statutes

Nothing in this Agreement removes, limits or modifies the obligations on the Owner of the Place to comply with all relevant statutory and other requirements in connection with the development of the Land, and the Owner of the Place is 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.

3.4 Conservation Consultant

- (a) The Owner of the Place 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) A written progress report complying with paragraph (a) must be submitted to the Council at each of the following times:
 - (i) not later than 31 July in each year during the period when the Owner of the Place is carrying out, or is obliged to carry out, Conservation Works;
 - (ii) not later than 30 days after the Immediate Conservation Works are completed;
 - (iii) not later than 30 days after the Medium Term Conservation Works are completed; and
 - (iv) not later than 30 days after the Long Term Conservation Works are completed.

3.5 Insurance

The Owner of the Place will maintain an insurance policy with a reputable insurance company approved in advance in writing by the Council, sufficient to enable full and proper replacement, reinstatement or restoration of the Place in the case of damage or destruction and provide a copy of such a policy and a Certificate of Currency to the Council. In the event of damage or destruction the Owner of the Place shall, using monies recovered from its insurance policy and its own monies, fully and properly replace, reinstate or restore the destroyed or damaged fabric.

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 sub-clause (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 sub-clause (c), the Council will comply with any reasonable requirement imposed by the Owner of the Place for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner of the Place must do all things necessary to enable the Council to exercise its rights of inspection as set out in sub-clause (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

(a) An Event of Default occurs if:

- (1) the Owner of the Place 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 of the Place 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 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 of the Place

The Land and the Place shall remain at the risk of the Owner of the Place in all respects, notwithstanding any provisions in this Agreement dealing with the development or maintenance of the Land or the Place and without limitation all development or maintenance of the Land or the Place shall be conducted entirely at the risk of the Owner of the Place and the Owner of the Place shall indemnify and keep indemnified and save harmless the Council, the Minister and any of their respective servants or agents 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 Owner of the Place or any person claiming through or under the Owner of the Place.

5.4 Interest on overdue money

If the Owner of the Place 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 Owner of the Place 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.

Part 6 General

6.1 Variation to be in writing

No variation of this agreement will be effective unless in writing and executed by the Council and the Owner of the Place.

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 of the Place, extend any time period for performance by the Owner of the Place of any of its obligations under this Agreement.

6.5 Costs

- (a) The Owner of the Place 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; and
 - (2) any act or omission by the Owner of the Place 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.

The Schedule

- Item 1: The Place**
The Ocean View situated at 134 Solomon Street, Beaconsfield and consists of the Land and all the buildings and structures on it.
- Item 2: Significant Fabric**
The whole of the Place
- Item 3: Land**
Lot 9 on Plan 4558 being the whole of the land comprised in Certificate of Title Volume 1055 Folio 604.
- Item 4: Conservation Plan**
Ocean View 134 Solomon Street, South Fremantle Conservation Plan" prepared by Laura Gray, Heritage and Conservation Consultant and Irene Sauman, Historian for [REDACTED], December 2001 a copy of which is appended to this Agreement as Annexure A.
- Item 5: Conservation Works**
The Schedule of Works described in Annexure B.

EXECUTED AS A DEED.

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



[Handwritten signature]

Signature of Authorised Person

Chairman of the Heritage Council of Western Australia

Name of Authorised Person:
Patric de Villiers

[Handwritten signature]

Signature of Authorised Person

Director of the Heritage Council of Western Australia

Name of Authorised Person:
Ian Baxter

In the presence of
[Redacted signature]

Signature of Witness

[Redacted name]

Name of Witness (please print)

In the presence of
[Redacted signature]

Signature of Witness

[Redacted name]

Name of Witness (please print)

SIGNED

by *[Redacted]*
in the presence of:
[Redacted]

Witness

[Redacted name]

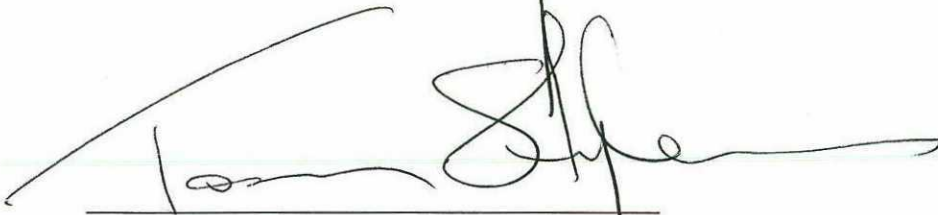
Name (please print)

[Redacted signature area]

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

I, the Hon. Tom Stephens, MLC, 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 2ND day of *September* 2004.

A handwritten signature in black ink, appearing to read 'Tom Stephens', written over a horizontal line. The signature is stylized and cursive.

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

Annexure A - Conservation Plan