

**Heritage Council of
Western Australia**

and



HERITAGE AGREEMENT

**Geraldton Customs House Complex,
7 – 9 Francis Street, Geraldton**

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for Commissioner of State Revenue

HERITAGE AGREEMENT

Geraldton Customs House Complex, Francis Street, Geraldton

THIS AGREEMENT is made on the 20th day of December 1999 between the following parties:

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

2. [REDACTED]

WESTERN AUSTRALIA STAMP DUTY
09-FEB-00 001365764-001
DUP \$ *****.00
D/S \$ *****.00
EXEMPT 100 %

RECITALS:

- A. The Owner 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 I

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 the Schedule as may from time to time be varied with the approval of the Council;

"Conservation Works" means the works specified in Annexure B;

"Construction Completion Date" means:

- (a) in the case of urgent works as described in Annexure B, the date 1 year after the Effective Date of this Agreement;
- (b) in the case of essential works as described in Annexure B, the date 2 years after the Effective Date of this Agreement;
- (c) in the case of medium term works as described in Annexure B, the date 5 years after the Effective Date of this Agreement; and
- (d) in the case of long term works as described in Annexure B, the date 10 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) the Owner, for so long as the Owner is the registered proprietor of the Land;
- (b) the Owner or Owners of the Land from time to time, as the expression "Owner" is defined in 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.

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 Owner of the Place 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 and will not apply to the provisions of clause 3.1.
- (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 transferring Owner to another person.

Part 3

Development and Conservation

3.1 No Development without the Council's Approval

- (a) The Owner and the Owner of the Place:
 - (1) acknowledge and agree that the recommendations of the Conservation Plan shall be considered and used as a guide for the conservation of the place;
 - (2) must during the Construction Period undertake the conservation of the Place by the completion of the Conservation Works in accordance with plans and specifications approved in advance in writing by the Council.
- (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 of the Significant Fabric,

except as permitted by this clause or as otherwise approved in advance in writing by the Council.

3.2 Maintenance

The Owner of the Place shall maintain the Significant Fabric, as restored and adapted with the approval of the Council, in a proper, safe and sound standard of repair and condition in all respects to the reasonable satisfaction of the Council.

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.

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 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 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 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 advance, 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

Geraldton Customs House Complex which is situated at 7 – 9 Francis Street, Geraldton and consists of the Land described in Item 3 and the works and the buildings on it.

Item 2: Significant Fabric

The whole of the place.

Item 3: The Land

Lots 20 and 21 on Diagram 95780, being the whole of the land comprised in Certificates of Title Volume 2140 Folios 670 and 671 respectively.

Item 4: Conservation Plan

"Geraldton Customs House Complex, Francis Street, Geraldton, Conservation Plan" prepared by Palassis Architects Pty Ltd commissioned by the Commonwealth of Australia Department of Finance and Administration, October 1999, a copy of which is appended to this Agreement as Annexure A.

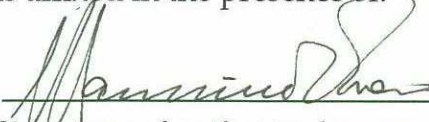
Item 5: Conservation Works

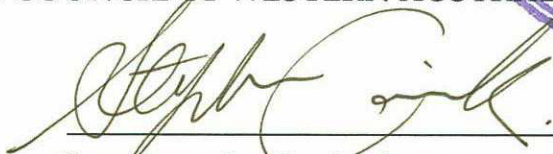
The Schedule of works described in Annexure B.

EXECUTED AS A DEED.



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


Signature of authorised person


Signature of authorised person

CHAIRMAN
Office held

MANAGER CONSERVATION
Office held ASSESSMENT

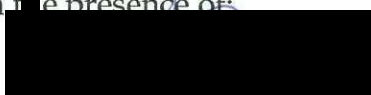
DAVID OWEN
Name of authorised person

STEPHEN CARRICK
Name of authorised person

SIGNED

by

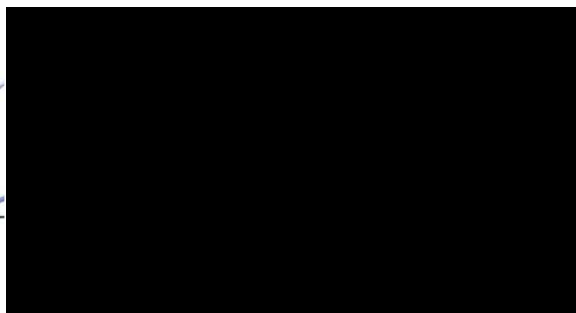
in the presence of:



Witness



Name (please print)



SIGNED

by

in the presence of:

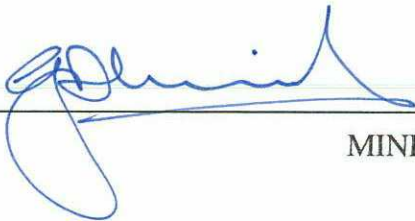
Witness

Name (please print)

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

I, The Hon. Graham Kierath, 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 ^{5th} day of FEBRUARY 2006

A handwritten signature in blue ink, appearing to read 'G Kierath', is written over a horizontal line.

MINISTER FOR HERITAGE

ANNEXURE B - CONSERVATION WORKS

Geraldton Customs House Complex, 7 – 9 Francis Street, Geraldton

To ensure correct decisions are made within issues of conservation and development, it is desirable that the Owner be guided by the advice of experts and professionals. A specialist consultant should be appointed to assist with the implementation of works and the undertaking of annual inspections. In addition, architects, archaeologists and other professional disciplines skilled in conservation should be consulted to offer specialised advice.

Annual requirements

- Fireplaces and chimneys

The original appearance and use of the fireplaces is to be maintained. If the fireplaces in the house are being used, the chimneys are to be swept clean on an annual basis. (CPP20)

- Protection from termites

The following measures should be taken to reduce the likelihood of serious damage occurring as a result of termite infestation:

- (1) Annual inspections are to be made of timber floors, walls or roof fabric and any other elements that may be attract termites. Bait boxes are to be installed around the buildings to assist in monitoring the presence of termites.
- (2) Remove any material that could either attract or introduce termites to the buildings. Stacks of paper or discarded timber should not be left on floors, and firewood should not be stacked against walls.
- (3) Any termite colonies that may be found in the vicinity of the buildings are to be eradicated.
- (4) The buildings are to be kept dry and well ventilated.
- (5) If evidence of live termites is discovered, the workings of the termites should not be disturbed. Only persons suitably qualified to do so should attempt to carry out toxic treatment of termite workings (toxic substances should only be used in instances where the presence of termites has been properly established). (CPP 19)

Essential Works - to be completed within 2 years

- Wall ventilation points

All ventilation points should be kept clear of debris or rising ground levels, so as to promote the free circulation of air in the wall cavity. Fretted terracotta vent covers should be replaced with covers of the same style and material. (CPP 18)

- External Paintwork – timberwork and joinery

Window and other timber joinery be painted and deteriorated timberwork repaired as necessary to maintain the tidy presentation and sound condition of the buildings. (CPP 16)

Medium Term Works - to be completed with 5 years

- Electrical fittings

The condition of the electrical services in the residence is to be checked by a qualified electrician, and upgraded as deemed necessary to meet present day standards. Original bakelite fittings are to be preserved, but rewired if necessary and safety devices installed as required. When repainting walls, skirtings or architraves, the fittings are to be masked or removed in order to protect them from becoming marked.

The glass light fitting in the residence dining room is to be preserved, and replacement light fittings in other parts of the house should be incandescent pendant lamps of either a contemporary (present day) design or similar styling as the dining room fitting. (CPP 22)

Long Term Works - to be completed with 10 years

- Review of the Conservation Plan

A review of the Conservation Plan is to take place within ten years from the date of the certification of this heritage agreement and at regular intervals thereafter. Any new information that comes to light should be noted in the rear of this conservation plan for inclusion in the review. (CPP 33)

- External Paintwork – masonry

The external paint work is to be inspected by a professional heritage consultant within ten years to determine the extent of deterioration and provide a recommendation in regards to undertaking the course of action outline below:

Remove the impervious painted finish from the external face of the masonry walls and to reinstate a lime-based paint of a similar composition, tone and colour as the place was originally finished in. Layers of paint in sheltered parts of the building should be analysed to determine the composition of the earliest paint scheme. (CPP 17)

General requirements

- Future Use of the place

In the event that the place or parts thereof are no longer used by customs, then a new use should be found which would be in keeping with the types of use associated with the place or otherwise sympathetic to the buildings' patterns of use.

- Conservation of significant interior elements

The conservation of floors, skirtings, architraves, doors and windows, ceilings and other internal fixtures is required. Penetrations for electrical fittings or access (eg: inspection hatches for termite treatments) are to be avoided. When upgrading the interiors, the opportunity is to be taken to reinstate the original finishes, drawing on the advice of a specialist consultant. (CPP 21)

- Door hardware

The external appearance of the original door hardware is to be preserved, and the moving parts reconditioned when worn out. Replacement of existing original hardware with new hardware is not acceptable. When repainting the doors, the hardware should be removed and reinstalled when the paint is dry. (CPP23)

- Moveable elements

The cast iron grate in the residence living room fireplace should remain part of the property, serving its intended function. (CPP 24)

- Residence gardens

Gardens on the front and sides of the residence are to be treated as part of the significant cultural fabric of the place unless further research establishes that they have limited significance.

The general layout of these gardens are not to be altered, nor are mature plantings to be removed without due consideration for its part in the overall composition of the garden, its age and health. Where significant plantings are removed due to poor health, a replacement planting should be made of the same species. This does not apply to specific plantings or features that are known to have been introduced with the landscaping works undertaken in 1991. (CPP 26)

- Front Fence

In the event that the existing fence requires replacement, a new fence should be constructed to replicate the form of the original that is shown in the photographs taken shortly after the complex was built. (CPP 27)

- Handling of asbestos

The intervention of building fabric containing asbestos products, identified in a site specific asbestos audit, should only be undertaken by an approved contractor who is operating in strict accordance with Worksafe requirements and all statutory regulations and directives relating to the handling of asbestos products. (CPP 28)

- Signage

All signage at the site is to be low key (it should not become a feature in and of itself) and discreetly located. (CPP29)

- Interpretation

For any of the buildings put to a relatively public use, provision should be made for the introduction of materials that will assist visitors in understanding the significance of the place and its various components, particularly the aspects that are not readily evident from looking at the place's fabric. Any material that

introduced for this purpose should be subtle, not intruding upon the place's character or atmosphere. (CPP 30)

- Documentation of works

For both properties, a ledger of works should be initiated and kept on site. Whenever, by deliberate action, a significant alteration is made to the building fabric of any structure in the homestead complex, the extent, nature, expense and date of the work should be recorded (using annotated drawings and photographs to advantage). The ledgers should be available to be viewed by any member of the public that the owner considers to have a legitimate interest in the place. (CPP31)

- Updating of records relating to the place

Up-to-date information regarding the known history and condition of the place should be provided to the various heritage organisations that maintain records of the place. (CPP 32)