

Heritage of Western Australia Act 1990
Section 29

HERITAGE AGREEMENT

between

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and

[REDACTED] N
[REDACTED])

in respect of

**DESIGN GUIDELINES
FOR DEVELOPMENT FRONTING ONTO
CLONTARF**

(HCWA Place No. 2401

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	Design Guidelines	Page 5
3.3	Development	Page 6
3.4	Compliance with Statutes	Page 6
Part 4	Council's Rights of Entry and Powers of Inspection	
4.1	Council's rights of entry and powers of inspection	Page 6
Part 5	Default	
5.1	Events of default	Page 6
5.2	Rights and remedies of Council	Page 7
5.3	Land at risk of Owner	Page 7
5.4	Interest on overdue money	Page 7
Part 6	Notices	
6.1	Form of notices	Page 8
6.2	Address for notices	Page 8
Part 7	General	
7.1	Variation to be in writing	Page 8
7.2	Governing Law	Page 8
7.3	Further assurances	Page 8
7.4	Extension of time by Council	Page 9
7.5	Costs	Page 9
The Schedule		Page 10
Executed as a Deed		Page 11
Certificate		Page 12
Annexures		Page 13

HERITAGE AGREEMENT

CLONTARF 295 Manning Road South Perth

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. [REDACTED],
[REDACTED], Manning, Western Australia,
6152 (the "Owner").

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 Owner is the Registered Proprietor of the Land.
- C. The Place has been identified as being of cultural significance, and is entered in the Register of Heritage Places on a permanent basis pursuant to the Act on 14 December 2001.
- D. The Council and the Owner wish to enter this Agreement to provide for the harmonious development of Land within the curtilage of the Place so as to retain the cultural heritage significance of the Place 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 3 of the Schedule, as may from time to time be varied with the prior written approval of the Council;

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

"**Design Guidelines**" are described in Item 4 of the Schedule

“Development” means the development or use of the Land, 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; and
- (c) any act or thing that is likely to change the character of the Place or the external appearance of any building.

“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;

“Land” means the land described in Item 2 of the Schedule;

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

“Owner” means:

- (a) subject to clause 2.2(d), [REDACTED], for so long as [REDACTED] IN [REDACTED] is the registered proprietor of the Land; and
- (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

“Register” means the Register of Heritage Places as 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 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 Owner doing or refraining from doing anything includes a reference to the Owner 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 shall be of permanent effect unless terminated with the written consent of the Council.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (i) applies to the Land;
 - (ii) binds the Land; and
 - (iii) binds the Owner.
- (b) All of the obligations of the Owner under this Agreement dealing with development of the Land or any part of the Land or the alteration of any building, natural feature or other object on the Land 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, which consent shall not be unreasonably withheld.
- (d) Subject to clause 2.2(e), on the person who is at the time the Owner (“**Outgoing Owner**”) transferring the whole of that person's interest in 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 under, or in connection with, this Agreement.
- (e) The provisions of clause 2.2(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**

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.

3.2 Design Guidelines

The parties agree that all Development of the Land shall fully comply with the Design Guidelines unless the parties agree to a variation as provided in Clause 7.1.

3.3 Development

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

- (a) carry out any Development on the Land;
- (b) without prejudice to the generality of clause 3.3(a), do or permit to be done anything on or in relation to the Land or 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 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 Owner to comply with all relevant statutory and other requirements in connection with the Development of the Land, and the Owner 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 clause 4.1(b) the Council shall, through its nominated representative or nominated officer from time to time, have the power to enter the Land at reasonable times, and on reasonable prior notice, for any purpose related to the provisions of this Agreement, including without limitation to inspect the Land with a view to ensuring compliance with the provisions of this Agreement.
- (b) Subject to clause 4.1(c), the Council will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the Council under clause 4.1(a).
- (c) The Owner 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 Land and ensuring access to and use of any facility at the Land which is necessary to facilitate inspection.

PART 5 DEFAULT

5.1 Events of default

An Event of Default occurs if:

- (a) 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 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 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 Land 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, including applying to the court for an order for specific performance, 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 at risk of Owner

- (a) The Land shall remain at the risk of the Owner in all respects, notwithstanding any provisions in this Agreement dealing with the Development of the Land. Without limitation, all Development of the Land shall be conducted entirely at the risk of the Owner and the Owner 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 or occupation of the Land by the Owner or any person acting through, on behalf of, or under the direction of the Owner.
- (b) The indemnity provided by the Owner 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 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, 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 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 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) 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
- (d) 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 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 Owner:** [REDACTED]

**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 Owner.

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

7.5 Costs

- (a) The Owner shall pay or reimburse the Council on demand for all costs and expenses incurred by the Council in relation to:
 - (i) the exercise or enforcement by the Council of any right, power or remedy under this Agreement, at law, in equity or otherwise; and
 - (ii) any act or omission by the Owner causing Damage to the Council, including (without limitation) 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: Place

Clontarf (HCWA Place No. 2401), located at 295 Manning Road, South Perth, 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, whether or not entered in the Register.

Item 2: Land

Lots 101, 102, 103, 104 and 117 on Deposited Plan 70746, being the whole of the land contained in, respectively, Certificates of Title Volume ____ Folio ____, Volume ____ Folio ____, Volume ____ Folio ____, Volume ____ Folio ____ and Volume ____ Folio ____.

Item 3: Conservation Plan

CLONTARF Conservation Management Draft Plan prepared by Allom Lovell Hocking Conservation Consultants (October 1998).

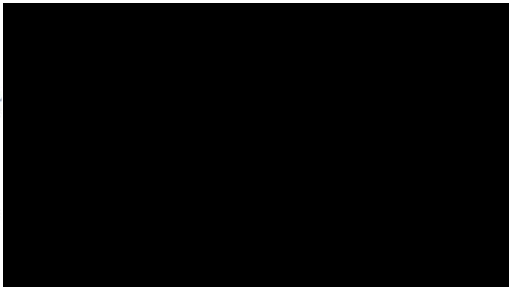
Item 4: Design Guidelines

The Design Guidelines are described in Annexure A.

EXECUTED AS A DEED

For [REDACTED] IN WESTERN AUSTRALIA,
INC [REDACTED]

SIGNED BY)
As Attorney for the [REDACTED])
[REDACTED] Western Australia (incorporated))
[REDACTED] pursuant to Power of)
Attorney dated 14th day of February 2008)
registered Dealing K600711 PA.)

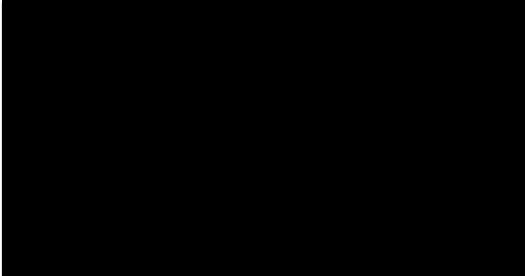


Signature of Witness: [REDACTED]
Witness Full Name: [REDACTED]

Address: [REDACTED] [REDACTED] [REDACTED]

Occupation: *Admin. Support Officer*

SIGNED BY)
As Attorney for the [REDACTED])
[REDACTED] in Western Australia (incorporated))
[REDACTED] pursuant to Power of)
Attorney dated 14th day of February 2008)
registered Dealing K600711 PA.)



Signature of Witness: [REDACTED]
Witness Full Name: [REDACTED]

Address: [REDACTED]

Occupation: *Admin. Support Officer*

Attestation Clause for use in Western Australia

SIGNED by)
as Attorney for the)
)
)
) pursuant to Power)
of Attorney dated 14th day of February)
2008 registered Dealing K600711 PA.)



Signature of Witness:

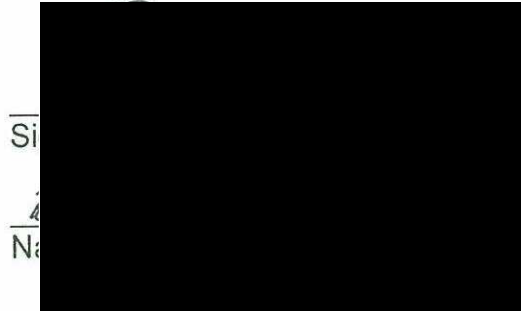
)

Address:

Occupation: *Admin Support Officer*



SIGNED by)
as Attorney for the)
) in Western Australia (Incorporated))
A.B.N. 41 872 516 792 pursuant to Power)
of Attorney dated 14th day of February)
2008 registered dealing K600711PA.)

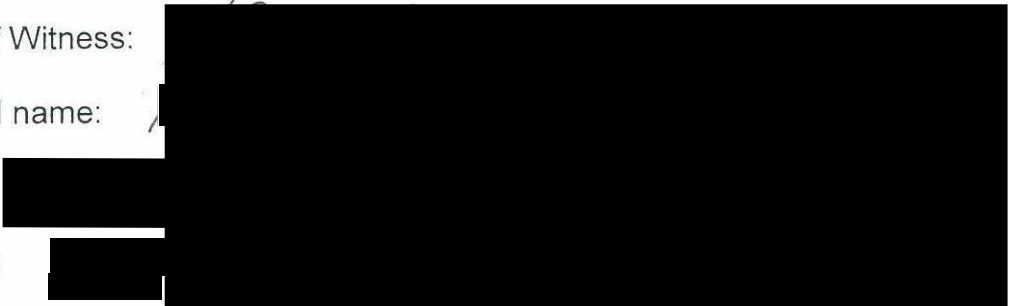


Signature of Witness:

Witness Full name:

Address:

Occupation:



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



Graeme Gammie
EXECUTIVE DIRECTOR





Marion Fulker
CHAIRPERSON

16 June 2011

Date signed

17/6/11

Date signed

Annexure A

Design Guidelines

In recognition of the heritage significance of the Clontarf College Campus, the following Design Guidelines apply to lots 101, 102, 103, 104 and 117. These require the design of dwellings on the lots to be sympathetic and complementary to the built form heritage values of the campus.

Openings

For elevations facing streets or other public spaces, openings may be single or grouped doors and windows in masonry walls. Openings shall not be grouped into window walls, where glazing predominates (i.e. no greater than 50% glass).

Materials and Colours

These shall reflect the characteristic materials and colours of the gold boom and interwar buildings of the Clontarf campus, as follows:

- Limestone walls with red brickwork trim.
- Rendered brickwork in off white, cream, pastel and pale stone colours with red brickwork base coursing may extend to sill height of ground floor openings.
- Windows are to have timber, steel or coloured aluminium frames.
- Roofs shall be of orange, red, brown or terracotta tiles in Marseille pattern or slate, and have a minimum roof pitch of 27 ½ degrees wherever visible from Clontarf campus, a street or public open space.
- Verandahs shall incorporate regular rendered brick, timber or steel posts.
- Verandah roofs shall be integrated with the design of the residence in style, character, materials and colour.
- Materials not referred to above will not be permitted to be used.

Housing Style

- Residential design should not replicate historical styles. Rather, development should be a contemporary interpretation and should incorporate design characteristics from the Clontarf campus.
- Eaves to front facades are to be a minimum width of 400mm, excluding gutters, with exposed under eaves with rafters, bird boards and adequate ventilation.
- The use of verandahs, colonnades and terraces is encouraged, particularly to emphasise separation between ground and first floors in two-storey residences.