Heritage of Western Australia Act 1990
Section 29

HERITAGE AGREEMENT

between

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and

[redacted]

in respect of

MANAGER'S RESIDENCE
portion of
BUTTER FACTORY and MANAGER'S RESIDENCE (fmr), NARROGIN

(HCWA Place No. 19879)

TABLE OF CONTENTS

Part 1	**Definitions & Construction**	
1.1	Definitions	Page 3
1.2	Construction	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 Works	Page 6
3.2	Development	Page 6
3.3	Maintenance	Page 6
3.4	Conservation Consultant	Page 6
3.5	Reporting	Page 6
3.6	Insurance	Page 7
3.7	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 8
5.2	Rights and remedies of Council	Page 8
5.3	Land and Place at risk of Owner	Page 8
5.4	Interest on overdue money	Page 9
Part 6	**Notices**	
6.1	Form of notices	Page 9
6.2	Address for notices	Page 9
Part 7	**General**	
7.1	Variation to be in writing	Page 10
7.2	Governing Law	Page 10
7.3	Further assurances	Page 10
7.4	Extension of time by Council	Page 10
7.5	Costs	Page 10
7.6	No Waiver	Page 10
The Schedule		Page 11
Signatures		Page 12
Certification		Page 13
Annexures		Page 14

HERITAGE AGREEMENT

Manager's Residence
172 Federal Street
Narrogin

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 Level 2, 491 Wellington Street, Perth, Western Australia 6000 (the "Council"); and
2. [redacted] Western Australia, 6312 (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 was entered in the Register of Heritage Places on a permanent basis pursuant to the Act on 31 May 2013.

D. Pursuant to the Government Heritage Property Disposal Process the Owner is required to enter into an agreement with the Council binding on the current and successive owners of the Place to ensure its ongoing conservation and maintenance.

E. The Council and the Owner 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 & CONSTRUCTION

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;

"Completion Date" means:

(a) in the case of **"Short-term Works"** as described in Item 4 of the Schedule, the second anniversary of the Effective Date; and

(b) in the case of **"Medium-term Works"** as described in Item 4 of the Schedule, the fifth anniversary of the Effective Date;

"Conservation Works" means the works specified in Item 4 of the Schedule;

"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;

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

"Maintenance" means the continuous protective care of the Significant Fabric as specified in Item 5 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] 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;

"Register" means the Register of Heritage Places as defined in the Act;

"Significant Fabric" means all the physical material of the Place 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 Construction

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 and the Place;

(ii) binds the Land and the Place; and

(iii) binds the Owner.

(b) All of the obligations of the Owner 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 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 Place 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) shall 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

The Owner is required to carry out the Conservation Works by the Completion Date. All such works must be referred to the Council for advice prior to the works actually being undertaken.

3.2 Development

Unless approved in advance in writing by the Council, the Owner 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;

(c) sub-divide or make application to sub-divide the Land; or

(d) remove or demolish or make application to remove or demolish any Significant Fabric.

3.3 Maintenance

The Owner shall ensure that:

(a) 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; and

(b) reasonable measures are taken to secure the Place against trespass, vandalism, vermin and pests during any period in which the place is to be unoccupied for at least 90 consecutive days.

3.4 Conservation Consultant

The Owner 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.

3.5 Reporting

(a) All reports required in this clause shall be prepared on behalf of the Owner 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 Owner must ensure that a proper, detailed and comprehensive written report describing the completed Conservation Works is provided within 30 days after the Completion Date of each category of Conservation Works (i.e., "Short-term Works" and "Medium-term Works", respectively).

(c) The Owner must ensure that a proper, detailed and comprehensive written report is provided to the Council within 60 days after receipt of a written request from the Council for a report describing

  (i) all Conservation Works, Maintenance, or Development activities which the Owner has undertaken pursuant to this agreement since the later of the Effective Date or the date of any previous report;

  (ii) the condition of the Significant Fabric at the time of the report; and

  (iii) 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 shall notify the Owner in writing of the particular information required and the time in which the Owner is to provide that information, which shall not be less than 30 days from the date of receipt of the written notice from the Council.

(e) The Owner's failure to provide any report or additional information required under this Clause 3.6 shall constitute an Event of Default.

3.6 Insurance

(a) The Owner shall 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 Significant Fabric 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 shall, using monies recovered from its insurance policy and its own monies, fully and properly replace, reinstate or restore the destroyed or damaged Significant Fabric.

(b) In the event of a dispute between the parties as to whether replacement, reinstatement or restoration of the Significant Fabric is practical and feasible, following an occurrence of damage to or destruction of the Place, prior to seeking any legal remedies the parties shall attempt to resolve the dispute through good faith negotiation and, if necessary, informal mediation facilitated by a neutral mediator acceptable to all parties to the dispute. The parties shall each bear their own costs associated with any such negotiation or informal mediation.

3.7 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/or Conservation or Maintenance of the Place, and the Owner is responsible for ascertaining the need for and obtaining all approvals, consents, licences and permits required for Development of the Land and/or Conservation or Maintenance of the Place, including planning approvals and building permits, 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, 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 clause 4.1(c), the Council shall 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 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 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 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, 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 and Place at risk of Owner

(a) 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, Conservation or Maintenance of the Land or the Place. Without limitation, all Development, Conservation or Maintenance of the Land or the Place 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, Conservation, Maintenance or occupation of the Land or the Place 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 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 Owner's obligations under clause 3.5, if executed by the relevant consultant appointed pursuant to clause 3.4;

(d) shall 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) shall 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 7479
Cloisters Square PO WA 6850
Phone: (08) 6552 4000 Fax: (08) 6552 4001
Email: info@stateheritage.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 shall be effective unless in writing and executed by the Council and the Owner and certified by the Minister.

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 its discretion and by written notice to the Owner, extend any time period for performance by the Owner of any of obligations of the Owner 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.

7.6 No Waiver

Any failure to enforce this Agreement or any forbearance, delay or indulgence granted by one party to the other party will not be construed as a waiver of any rights, privileges or immunities created under this Agreement.

THE SCHEDULE

Item 1: **Place**

Manager's Residence portion of *Butter Factory and Manager's Residence (fmr), Narrogin* (HCWA Place No. 19879), located at 172 Federal Street, Narrogin, Western Australia, 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 in Annexure A.

Item 3: **Land**

The whole of Lot 2 on Diagram 18266 being the whole of the land contained in Certificate of Title Volume 1177 Folio 225.

Item 5: **Conservation Works**

The schedule of works described in Annexure B.

Item 5: **Maintenance**

The schedule of maintenance activities described in Annexure C.

EXECUTED AS A DEED

THE COMMON SEAL of the **HERITAGE COUNCIL OF WESTERN AUSTRALIA** is affixed by authority of its Board in the presence of:

Graeme Gammie
EXECUTIVE DIRECTOR

20/11/2014
Date signed

Marion Fulker
CHAIRPERSON

25.11.14
Date signed

HERITAGE COUNCIL OF WESTERN AUSTRALIA
Common Seal

[redacted]

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

I, the Hon. Albert Jacob, MLA, Minister for Environment; Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the *Heritage of Western Australia Act (WA) 1990*.

Dated the 27th day of November 2014.

Albert Jacob, MLA
Minister for Environment; Heritage

Annexure A

Annexure A

Significant Fabric

Elements of Some Significance

- Original form and plan, including roof form
- Original masonry walls and render
- Original decorative ceilings
- Original external and internal joinery, including windows, doors,
- Fireplaces
- Original light fittings
- External W.C.

Elements of Little Significance

- Bathroom fit out and fittings
- Kitchen fit out
- Rear enclosed rooms: bedroom, W.C., laundry
- Timber outhouse
- Floor coverings, window treatments

Intrusive Elements

- Metal window screens

Annexure B

Conservation Works

Short-term Works (to be completed within two years of the Effective Date)

1 Carry out a thorough termite inspection of the subfloor structure in the dining room and living room; replace any damaged timber floor boards.

2 Inspect the pantry sub-floor structure and repair as needed.

3 Repair loose parapet brick work and roof tiling west of the pantry room.

4 Repair 10mm wide crack in brickwork inside pantry room, as per recommendations of BG & E Engineers Report (December 2012), attached as Annexure D.

5 Remove fire risks from garden.

6 Clean roof and clear gutters of debris.

7 Investigate cause of water damage to eaves and rectify; prepare and paint affected surfaces.

8 Repair 3-9mm wide cracks as per recommendations of BG & E Engineers Report (December 2012), attached as Annexure D.

9 Identify and rectify source of water damage to ceiling and walls of bathroom; prepare and paint affected surfaces. Ensure room is well ventilated; consider installing an exhaust fan.

10 Repair any damaged joinery and prepare and paint affected surfaces.

11 Replace missing weatherboards to outhouse and prepare and paint.

12 Divert rear downpipe discharges from paving to drain.

13 Clean chimneys. Remove fireplace panels to interior and make good any damage caused by fixings.

14 Repoint fretting and eroded mortar joints.

Medium-term Works (to be completed within five years of the Effective Date)

1 Repair smaller cracks (less than 3mm wide).

2 Repair rear walls of extension (may contain asbestos); prepare and paint affected surfaces.

3 Remove oil tank if no longer needed and make good any damage caused by fixings.

4 Clean all exterior surfaces. If repairing masonry, repair then clean before repainting.

5 Investigate render wall adjacent to gas cylinders for damage caused by damp and rectify; prepare and repaint.

Annexure C

Maintenance

The Programme below will form part of the maintenance regime for this place. The programme will be the responsibility of the Owner or the Owner's nominee. Should the property be sold the new proprietor shall nominate the person responsible for carrying out this maintenance schedule. The Heritage Council of Western Australia should be notified of any change of the person responsible.

This schedule is concerned with the significant heritage fabric and the presentation of the place. It does not aim to cover all the statutory requirements concerning plant and machinery. The required inspection of these items should form part of a broader more comprehensive schedule prepared by the proprietor or building manager.

This schedule should be regarded as provisional and should be adapted by mutual agreement to suit circumstance and experience. This schedule should be regarded as a minimum standard. The schedule should be adhered to in any period where the place is wholly or partially unoccupied.

Should the place be subject to damage by fire, infestation, seismic or building activity or alteration of the foundation, an inspection of the building frame by a qualified structural engineer will be required and any recommendations implemented.

Periodic Maintenance Schedule

As needed:

- Keep grass and other vegetation on the perimeter of structures trimmed short.
- Maintain ground levels around buildings to ensure that the masonry wall of the foundation is visible by 300mm in the clear.
- Promptly remove graffiti.

Annually:

- Sweep chimneys and clean fireplaces (if in use).
- Inspect buildings for termites and other potentially damaging pests; treat as necessary.
- Inspect exterior painted timber for deterioration; repaint as necessary.
- Clean gutters and downpipes for free flow, prior to winter.
- Inspect for rising damp or water penetration and repair immediately as necessary.

Five Yearly:

- Inspect metal roofing, fixings, wall flashings, box gutters and downpipes for corrosion and repair as necessary
- Inspect and repair external glazing as necessary.