

Heritage Council of Western Australia

and




HERITAGE AGREEMENT


Earlsferry,
1 Earlsferry Court, Bassendean

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HERITAGE AGREEMENT
for Commissioner of State Revenue, Earlsferry, 1 Earlsferry Court, Bassendean

THIS AGREEMENT is made on the 22nd day of February 1998 between the following parties:

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

RECITALS:

- A.  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 Policy" means the Conservation Policy in respect of the Place specified in Annexure A;

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

"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 in advance in writing;

"Construction Completion Date" means the date 24 months after settlement of the sale of the first of the lots which have been created upon the subdivision of the land comprised in Certificate of Title Volume 1868 Folio 599.

"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" means:

- (a) [REDACTED], for so long as [REDACTED] is the registered proprietor of the Land;
- (b) any other owners of the Land, "Owner" having the meaning ascribed to it by section 3(2) of 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.
- (b) All of the obligations of the Owner 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 under this Agreement are not assignable by the Owner without the prior written consent of the Council.
- (d) Subject to sub-clause (e), on the Owner transferring the whole of the interest of the Owner to another person, the Owner is released from all personal liability under 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 transferring Owner to another person.

Part 3
Development and Conservation

3.1 No Development without the Council's Approval

- (a) The Owner must conserve and where necessary restore the Place:
- (1) as required by the Conservation Plan and the Conservation Policy; and
 - (2) by the completion of the Conservation Works within the Construction Period, in each case in accordance with plans and specifications first approved by the Council.
- (b) The Owner 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 by the Council.

3.2 Maintenance

The Owner shall maintain the Significant Fabric, as restored and adapted with the approval in advance in writing 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 to comply with all relevant statutory and other requirements in connection with the development of the Land, and the Owner is responsible to obtain 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 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), Council will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner 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 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 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

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 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 and the Owner shall indemnify and keep indemnified and save harmless the Council against all Damage incurred or suffered by the Council arising from or in connection with the development or occupation of the Land or the Place by the Owner or any person claiming through or under the Owner.

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.

Part 6 General

6.1 Variation to be in writing

Any variation of this Agreement must be in advance in writing executed by the Council and the Owner.

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

6.5 Costs

- (a) The Owner 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 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**
Earlsferry situated at 1 Earlsferry Court, Bassendean, which consists of the Land described in Item 3 and the works and buildings on it
- Item 2: Significant Fabric**
- The main house dating from 1902-3. known as "Earlsferry";
 - The mature Washingtonia Palms, and other mature trees on the Place.
- Item 3: Land**
The balance of the land remaining in Certificate of Title Volume 1868 Folio 599 after subdivision and the removal from the Certificate of Title of the 5 subdivided lots.
- Item 4: Conservation Plan**
"Conservation Plan: Earlsferry, Bassendean" prepared by Palassis Architects, February 1993.
-

EXECUTED AS A DEED.

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

Maurice Owen
Signature of authorised person

[Redacted Signature]
[Redacted]

CHAIRMAN
Office held

DIRECTOR
[Redacted]

MAURICE OWEN
Name of authorised person

IAN HAROLD BAXTER
[Redacted]



SIGNED

by [Redacted]

[Redacted]

in [Redacted] of [Redacted]

[Redacted]
Witness

15/1/99

[Redacted]

[Redacted] (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 22ND day of FEBRUARY 1999



MINISTER FOR HERITAGE

CONSERVATION POLICY FOR THE PLACE

1. The statement of significance for the place contained in the "Conservation Plan: Earlsferry" prepared by Kevin Palassis Architects is to form the basis for future development.
2. The future conservation of the place is to be carried out in accordance with the principles of the Australian ICOMOS Charter for the conservation of places of cultural significance (Burra Charter).
3. The first stage of works is to involve detailed site investigation as existing intrusive elements are removed.
4. A spacious garden setting is to be maintained immediately surrounding the house including the retention of the full length of the boundary on Guildford Road as part of the garden development.
5. Driveway access off Nurstead Avenue is to be retained, either in its existing position or as close as possible to its former position, and finished with an appropriate material such as a rolled gravel surface.
6. The mature Washingtonia Palms, and other mature trees on the site, are to be conserved.
7. The natural topographic features and contours of the site are to be retained, particularly the sloping banks to the north-east of the house. Any necessary works to maintain the topographic features and contours should be informed by engineering and heritage specialist advice. It is a specific requirement that this type of work be referred to the Heritage Council of Western Australia as required under Part 3 of this Agreement.
8. All new outbuildings and additions are to be of a sympathetic nature and design.
9. New lighting and services are to be installed discretely .
10. Boundary fencing is to ensure the visual vistas to the property are maintained. The fencing should be ornamental timber or suitable height brick walling.
11. The lots subdivided from the Land formerly part of the Certificate of Title Volume 1868 Folio 599 will be subject to the *Earlsferry House Development Policy* which forms appendix 1 of the Town Planning Scheme 3 approved by the Minister for Planning on 19 March 1995 for the Town of Bassendean. This is annexure C of this Agreement. Purchasers of those lots shall be given a copy of Appendix 1 of the Town Planning Scheme 3.
12. Landscaping is to be established along the boundary of the Land with the lots which were formerly part of the Land comprised in Certificate of Title Volume 1868 Folio 599, to form a buffer between the new housing and Earlsferry.

CONSERVATION WORKS - EARLSFERRY (THE MAIN HOUSE)

1. The exterior fabric, where original, is to be consolidated and conserved.
2. The exterior finishes are to be returned to original colour schemes.
3. The concrete verandah is to be lifted and replaced with timber, as per original.
4. The balustrading to the balcony is to be reinstated as per original.
5. The windows are to be reglazed (or replaced totally if necessary) to match original type.
6. PVC plumbing pipes where exposed are to be replaced to match existing cast iron.
7. Staircase balustrading is to be replaced to original design.
8. Appropriate replacement fire surrounds are to be fitted at existing hearths.
9. Intrusive ground floor toilet extensions are to be removed.
10. Finials to the roof are to be replaced, as appearing in 1950s photographs.
11. The spire is to be modified to remove the corrugated iron portion at the bottom of the "witches hat", and replaced with smooth material to match the upper portion.

EARLSFERRY HOUSE DESIGN GUIDELINES

OBJECTIVE

To ensure development on the land adjacent to Earlsferry House is developed in such a manner as to maintain the historic character of the house.

APPLICATION

This policy applies to all the land within, or previously within, Lot 500 Nurstead Avenue, Bassendean.

POLICY

1. Any development, alteration, demolition or modification of the land zoned R2.5 shall be referred to the Heritage Council for comment and/or recommendation prior to consideration by Council.
2. All development on the R10 zoned land shall comply with the following requirements:
 - a) All boundary fencing shall be ornamental picket or traditional red brick, and shall be no greater than 1.2 metres high, excepting that which is not visible from Nurstead Avenue or Guildford Road;
 - b) Dwellings shall present to Nurstead Avenue and shall be setback a minimum of 6 metres and a maximum of 9 metres from Nurstead Avenue;
 - c) Dwellings shall be no greater than one storey high;
 - d) Building materials shall be as follows:
 - i) walls - traditional red brick with light coloured (not grey) mortar or tuck-pointing;
 - ii) roof - terracotta roof tiles, Custom Orb, colorbonded or painted, zincalume - roof pitch shall be no less than 30 degrees;
 - iii) colours - each building application shall be accompanied by a comprehensive colour scheme using heritage colours to the satisfaction of Council;

- iv) roof plumbing - gutters to be ogee, ovolo or rounded - downpipes shall be round;
 - v) eaves - to be a minimum of 400mm excluding gutters. Under eaves is to be exposed with rafters, bird boards or closed with adequate ventilation - boxed eaves are prohibited;
 - vi) windows - to be timber or coloured aluminium frames, to be an upright style on all facades visible from the street - bay windows are acceptable, but corner windows should be avoided - window sills shall be projecting brick or timber;
 - vii) verandas, carports and garages - shall be constructed from brick or timber posts (not steel, aluminium or pine) and roofs shall be constructed to match those on the main dwelling, where such structures are visible from Guildford Road or Nurstead Avenue;
 - viii) driveways - internal driveways shall be brick paved or patterned to complement the colour of the main dwelling; and
- e) Satellite dishes, roof installations, all radio or television aerials, solar heaters, airconditioning units or similar external attachment, shall be located such that they are not visible from either Nurstead Avenue or Guildford Road.