

1996

HERITAGE COUNCIL OF WESTERN AUSTRALIA

AND



HERITAGE AGREEMENT
COSSACK HISTORIC TOWN

CONVEYANCER
CROWN SOLICITOR'S OFFICE
PERTH

TELEPHONE : (09) 264 1711

CSO : 5620/93

EXEMPT from W.A. Stamp Duty

for Commissioner of State Taxation

WESTERN AUSTRALIA STAMP DUTY
02/Sep/96 25277103 NDP *****0.00
EXEMPT (SECTION 119 OF THE STAMP ACT)

THIS AGREEMENT is made on the 27th day of August 1996.

BETWEEN:

HERITAGE COUNCIL OF WESTERN AUSTRALIA of 292 Hay Street, East Perth
Western Australia ("the Council")

AND

[REDACTED] & [REDACTED] ("the
Owner")

RECITALS:

- A. The Owner is the owner of the Place as holder of a lease registered under the Land Act 1933 over the Land.
- B. The Place is entered in the Register of Heritage Places on an interim basis pursuant to the Act.

NOW THE PARTIES AGREE as follows:-

OPERATIVE PROVISIONS

1. **Definitions**

In this Agreement unless the contrary intention appears:

"Act" means the Heritage of Western Australia Act 1990;

"Agreement" means this agreement as it may from time to time be varied as permitted by its terms;

"Business Development Plan" means the plan in respect of Cossack Historic Town described in Item 4 of the Schedule;

"Conservation Plan" means each of the plans in respect of Cossack Historic Town described in Item 5 of the Schedule;

"Conservation Works" means the works, if any, specified as such in the Conservation Plans;

"Cossack Historic Town" means Cossack Precinct as described in entry Number 3239 in the Register of Heritage Places and the whole of Jarman Island as described in entry Number 2337 in the Register of Heritage Places;

"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;

"Incentives" means the incentives to be granted to the Owner to secure the conservation of the Significant Fabric or the Place, as set out in Item 6 of the Schedule;

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

"Lease" means the lease granted to the Owner under section 33 of the Land Act 1933 in respect of Reserve Number 36813 and Reserve Number 44103

"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 registered under the Land Act 1933 as the holder of the Lease;

(b) the owner or owners of the Land from time to time, as the expression "owner" is defined in the Act;

"Place" means the places described in Item 1 of the Schedule and situated on the Land;

"Significant Fabric" means those parts of the fabric of the Place as are specified in Item 2 of the Schedule;

"Town Planning Management Plan" means the plan in respect of Cossack Historic Town described in Item 7 of the Schedule;

and

words and expressions having defined meanings in the Act, 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.

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 will continue for the term of the Lease unless terminated earlier with the 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 Lease.
- (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 written consent of the Council.
- (d) Subject to sub-clause (e), on an owner of the Place transferring the whole of the interest of that owner in the Lease to another person, the transferring 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 and will not apply to the provisions of clause 3.1.

3. **DEVELOPMENT, CONSERVATION, MANAGEMENT, MAINTENANCE**

3.1 **Conservation Works, Development**

- (a) The owner of the Place must undertake the conservation of the Place:
 - (1) as recommended by the Business Development Plan and the Town Planning Management Plan; and
 - (2) by the completion of any Conservation Works,in each case in accordance with plans and specifications first approved by the Council.
- (b) The owner of the Place must carry out development of the Place in accordance with the Business Development Plan and the Town Planning Management Plan;
- (c) Subject to subclauses (b) and (c) the owner of the Place must not 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 of the Place must maintain the buildings and structures on the Place;

- (a) in the case of the Significant Fabric, as restored and adapted with the approval of the Council; and

(b) in the case of any other buildings and structures on the Place, as presently found or as constructed in accordance 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 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.

3.4 **Entry of the Place in the Register**

The Owner consents to the entry of the Place in the Register on a permanent basis under the Act and waives all rights the Owner may otherwise have to be given any notice of the entry or to make or have considered any submissions with respect to the same.

3.5 **Grant of Incentives**

- (a) It is acknowledged that in order to secure the conservation of the Place, the Council has recommended that the Incentives be granted to the Owner.
- (b) The Incentives will be applied and granted as set out in Item 5 of the Schedule.

- (c) It is acknowledged that, pursuant and subject to section 37 of the Act, the Owner may cease to be entitled to certain of the Incentives and may become liable to pay amounts previously remitted on account of rates, taxes or charges in whole or in part if, amongst other things, the Owner commits a contravention of any of the provisions of this Agreement.

3.6 **Conservation Management Plans**

- (a) The Council must by 31 August 1996 produce a Conservation Plan for Cossack Precinct.
- (b) The Owner must by 31 December 1996 produce to the satisfaction of the Council a Conservation Plan for Jarman Island. The Council undertakes to co-operate with and assist the Owner in this regard.
- (c) The Owner may vary a Conservation Plan from time to time but only in accordance with the approval of the Council.

3.7 **Business Development Plan**

- (a) The Owner must by 31 December 1996 produce to the satisfaction of the Council a Business Development Plan for the period January 1997 to June 2001.
- (b) The purpose of the Business Development Plan is to stimulate interest in Cossack Historic Town and make it more accessible to the public.
- (c) The Business Development Plan is to be based on and to incorporate the Conservation Plans as well as incorporating in respect of Cossack Historic Town:

- (i) a financial plan that achieves its self-sufficiency;
 - (ii) a marketing strategy to enhance its use;
 - (iii) a schedule of conservation and development projects to be undertaken; and
 - (iv) a schedule of educational and tourism initiatives to be introduced.
- (d) The Owner may vary the Business Development Plan from time to time but only in accordance with the approval of the Council

3.8 **Town Planning Management Plan**

- (a) The Owner must by the 31st December 1996 produce to the satisfaction of the Council a Town Planning Management Plan.
- (b) The purposes of the Town Planning Management Plan are:
 - (i) to assist the conservation of Cossack Historic Town; and
 - (ii) to stimulate interest in Cossack Historic Town and make it more accessible to the public.
- (c) The Town Planning Management Plan is to be based on the Conservation Plans and is to incorporate guidelines for the development of new buildings and infrastructure and for land use in Cossack Historic Town.
- (d) The Owner may vary the Town Planning Management Plan from time to time but only in accordance with the approval of the Council.

3.9 **Management**

- (a) The Owner must conserve and manage Cossack Historic Town in accordance with the provisions of the Business Development Plan and the Town Planning Management Plan.
- (b) The Owner must ensure that the public is permitted access to the Land and the Place at all reasonable times. The Owner must use its best endeavours to ensure that the public is permitted access to other properties in Cossack Historic Town which possess cultural heritage significance.
- (c) The Council and the Owner must use their best endeavours to ensure the continuance of the existing Cossack Management Committee made up by the Site Manager and representatives from the three mining and exploration companies operating in the area, from Roebourne Prison, from Western Australian Tourism Commission, from the local community (two members), from the Council, from the Owner and from the Historical Society.
- (d) The Owner must consult with the Cossack Management Committee in regard to its management of Cossack Historic Town.
- (e) The Owner must employ at its cost a Site Manager, resident in Cossack Historic Town and responsible for the conservation and management of Cossack Historic Town.
- (f) The Owner must continue the present employment of Mr Brian Hoey as Site Manager, resident at Cossack Historic Town at his current

normal time salary and, in respect of his other conditions of employment, in accordance with the Public Service Award 1992; and must pay his salary and other employment costs with effect from 1 July 1996 and may only terminate his employment on or after 30 June 1997 and only after giving the Council 30 days notice of the proposed termination.

- (g) The Owner must allow Mr C Bulmur to continue to occupy the kiosk premises and operate the kiosk on the Land until 31 October 1996. The Owner must thereafter use its best endeavours to ensure the continued occupation and operation of the kiosk.
- (h) The Owner must in conjunction with the Council, produce by 31 December 1996 a program for the interpretation of the Place and thereafter implement that program.
- (i) With effect from 1 July 1996 all costs of and incidental to the development, conservation, management and maintenance of the Land are the responsibility of the owner of the Place.

3.10 **Reporting**

The Owner must report annually each July with effect from July 1997 to the Council regarding the implementation of the Business Development Plan and the Town Planning Management Plan and the conservation and management of Cossack Historic Town in relation to those plans in the previous 12 months.

4. **COUNCIL'S RIGHTS OF ENTRY AND POWERS OF INSPECTION**

4.1 **Council's right of entry and powers of inspection**

- (a) Subject to subclause (b) the Council may, through its nominated representative or nominated officer from time to time, 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 subclause (c), the Council must comply with any reasonable requirements imposed by the owner of the Place for the purpose of exercising the rights of the Council under subclause (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 subclause (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.

5. **DEFAULT**

5.1 **Events of default**

- (a) An Event of Default occurs if:
 - (i) 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

- (ii) 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 may 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 is intended to 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 will 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 must be conducted entirely at the risk of the owner of the

Place and the owner of the Place must 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 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 must 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.

6 **GENERAL**

6.1 Any variation of this Agreement must be in writing 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 must 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 must pay or reimburse the Council on demand for all the Council's costs and expenses in relation to:
- (i) the exercise or enforcement by the Council of any right, power or remedy under this Agreement; and
 - (ii) 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 must pay all its own legal costs and expenses in relation to the preparation, execution and stamping of this Agreement.

SCHEDULE

Item 1 - The Place

The places which are named in column A below, are located at the relevant addresses detailed in column B below and are described in the relevant Register of Heritage Places entries detailed in column C below.

A	B	C
Place Name	Address	Entry No.
Jarman Island Lighthouse & Quarters	Jarman Island	2337
Galbraith's Store	Pearl Street West	2344
Customs House & Bond Store	Pearl St & The Strand	2345
The Old Court House	Pearl & Perseverance Sts	2346
Post and Telegraph Office	Pearl Street	2347
Police Quarters, Lockup & Service Buildings	Pearl Street	3229
Cossack School	Fraser Street	3230
Land Backed Wharf	Cossack Road	3231
Cossack Cemetery	Settlers Beach Road	3232
Registrar's Office and Residence	Pearl Street	3233

Item 2 - Significant Fabric

The whole of the Place.

Item 3 - Land

That part of the land contained in Reserve Number 44103 (De Witt Location 331) ("Jarman Island") and in Reserve Number 36813 (Cossack Lots 106, 107, 124, 126, 168, 326 to 337 inclusive, 422, 423, 442, 443 and 444) which is subject to the Lease.

Item 4 - Business Development Plan

The Business Development Plan which is to be produced by the Owner in accordance with clause 3.7 and which on completion will be annexed to this Agreement as Annexure 1.

Item 5 - Conservation Plans

The Conservation Plans for Cossack Precinct and Jarman Island which are to be produced by the Council and the Owner respectively in accordance with clause 3.6 and which on completion will be incorporated into the Business Development Plan.

Item 6 - Incentives

The Council agrees to grant to the Owner, subject to its usual terms and conditions relating to funding, grants to be used for conservation purposes totalling \$120,000.

The Council must pay the Incentives as follows:

Financial Year 1996-1997 -	\$60,000, and reimbursement on a monthly basis of salary and other employment costs of Brian Hoey
Financial Year 1997-1998 -	\$40,000
Financial Year 1998-1999 -	\$20,000

The Council must transfer to the Owner ownership of the plant and equipment described in Annexure 2 in consideration for payment of the sum of \$5,000.

Item 7 - Town Planning Management Plan

The Town Planning Management Plan which is to be produced by the Owner in accordance with clause 3.8 and which on completion will be annexed to this Agreement as Annexure 3.

CERTIFICATE UNDER SECTION 32 OF THE HERITAGE
OF WESTERN AUSTRALIA ACT

I, the Hon. Richard Lewis JP, MLA, Minister for Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act.

Dated the *27th* day of *August* 1996


MINISTER FOR HERITAGE



EXECUTED AS A DEED

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

Maurice Anthony Owen
Signature of authorised person

CHAIR PERSON.
Office held

MAURICE ANTHONY OWEN
Name of authorised person

Ian Hadyn Baxter
Signature of authorised person

DIRECTOR
Office held

IAN HADYN BAXTER
Name of authorised person.

THE COMMON SEAL of [REDACTED])
[REDACTED] was hereunto affixed by)
the authority of a resolution of the)
Council in the presence of:)

[REDACTED]
Signature of President

[REDACTED]
Name of President

[REDACTED]
Signature of Chief Executive Officer

[REDACTED]