

Heritage Council of Western Australia

and

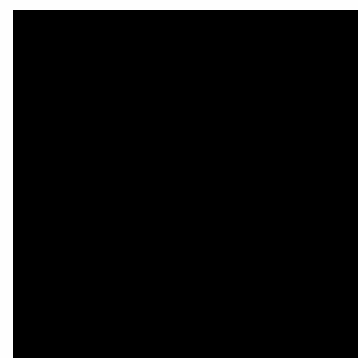


HERITAGE AGREEMENT

Old York Hospital

TABLE OF CONTENTS

Part 1	Definitions & Interpretation	1
1.1	Definitions	1
1.2	Interpretation	2
Part 2	Commencement, Duration and Scope of this Agreement	2
2.1	Commencement and duration of this Agreement	2
2.2	Scope of this Agreement	2
Part 3	Development and Conservation	2
3.1	No Development without the Council's Approval	2
3.2	Conservation Plan	3
3.3	Maintenance	3
3.4	Compliance with Statutes	3
Part 4	Council's Rights of Entry and Powers of Inspection	3
Part 5	Default	3
5.1	Events of default	3
5.2	Rights and remedies of Council	4
5.3	Land and Place at risk of Owner	4
5.4	Interest on overdue money	4
Part 6	General	4
6.1	Variation to be in writing	4
6.2	Governing Law	4
6.3	Further assurances	4
6.4	Extension of time by Council	4
6.5	Costs	5
	The Schedule	6



HERITAGE AGREEMENT
Old York Hospital, Brook Street, York

THIS AGREEMENT is made on the _____ day of _____ 1998 between the following parties:

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

RECITALS:

- A. _____ are the registered proprietors 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.

WESTERN AUSTRALIA GOVERNMENT
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PAGE 1

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 to be prepared in accordance with clause 3.2 of this agreement.

"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 of this agreement;

"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) _____ are the registered proprietors 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 the _____ 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 which would not be unreasonably be withheld.
- (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

The Owner shall not:

- (1) carry out any development on or of the Place; or
- (2) without prejudice to the generality of sub-clause (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.



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 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.

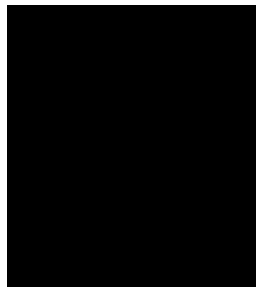
6.4 Extension of time by Council

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.



5 Costs

- (a) The Owner shall pay or reimburse the Council on demand for all the Council's reasonable 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

Old York Hospital, situated at Brook Street, York, which consists of the Land described in Item 3 and the works and buildings on it

Item 2:

Significant Fabric

- The 1896 building referred to as the "Old York Hospital";
- the former morgue;
- the 1942 former laundry;
- the former 1952 Nurse Quarters; and
- the former 1941 Maternity Block.

Item 3:

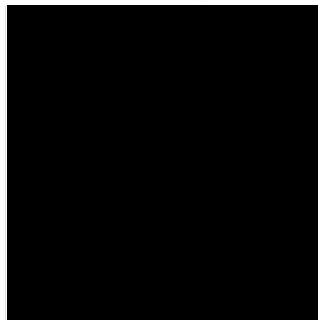
Land

York Lots 572 & 585, being the whole of the land comprised in Certificate of Title, Volume 1470, Folio 786.

Item 4:

Conservation Plan

To be prepared as per clause 3.2.



EXECUTED AS A DEED.



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

Signature of authorised person

DIRECTOR

Office held

IAN BAYTER

Name of authorised person

Signature of authorised person

CHAIRMAN

Office held

MAURICE OWEN

Name of authorised person

Signed by:

In the presence of:

Signature of Witness

[Redacted]

Name of Witness (please print)

In the presence of:

Signature of Witness

[Redacted]

Name of Witness (please print)



CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA ACT
1990

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 16th day of OCTOBER 1998



MINISTER FOR HERITAGE

