

Final certified 17/9
agreement
CIL 5/3/99

Heritage Council of
Western Australia

and



HERITAGE AGREEMENT

for

Gledden Building
723 Hay Street, Perth

TABLE OF CONTENTS

| | | |
|---------------|---|----------|
| Part 1 | Definitions & Interpretation | |
| 1.1 | Definitions | 1 |
| 1.2 | Interpretation | 2 |
| Part 2 | Commencement, Duration and Scope of this Agreement | |
| 2.1 | Commencement and duration of this Agreement | 2 |
| 2.2 | Scope of this Agreement | 2 |
| Part 3 | Development and Conservation | |
| 3.1 | No Development without the Council's Approval | 3 |
| 3.2 | Maintenance | 3 |
| 3.3 | Compliance with Statutes | 3 |
| Part 4 | Council's Rights of Entry and Powers of Inspection | |
| Part 5 | Default | |
| 5.1 | Events of default | 4 |
| 5.2 | Rights and remedies of Council | 4 |
| 5.3 | Land and Place at risk of Owner of the Place | 5 |
| 5.4 | Interest on overdue money | 5 |
| Part 6 | General | |
| 6.1 | Variation to be in writing | 5 |
| 6.2 | Governing Law | 5 |
| 6.3 | Further assurances | 5 |
| 6.4 | Extension of time by Council | 5 |
| 6.5 | Costs | 5 |
| 6.6 | Upper floors internal | 6 |
| | The Schedule | 7 |

S(861) Heritage WA Act -
EXEMPT from W.A. Stamp Duty


for Commissioner of State Revenue

WESTERN AUSTRALIA STAMP DUTY
24 FEB 99 001365741-004
0/3 000000000000000000
EXEMPT 100 %

HERITAGE AGREEMENT
Gledden Building, 723 Hay Street, Perth

THIS AGREEMENT is made on the 24th day of February 1999 between the following parties:

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

2. [REDACTED]

RECITALS:

- A. [REDACTED] is the registered proprietor of the Land.
- B. The Place was entered in the Register of Heritage Places on a permanent basis pursuant to the Act on 1 December 1995.

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 and is Annexure A as may from time to time be varied with the prior approval in writing of the Council;

"Conservation Works" means the works specified in item 5 of the Schedule and is Annexure B;

"Construction Completion Date" means:

- (a) in the case of short term works as described in Annexure B, the date 2 years after the Effective Date of this Agreement;
- (b) in the case of medium term works as described in Annexure B, the date 5 years after the Effective Date of this Agreement; and
- (c) in the case of long term works as described in Annexure B, the date 10 years after the Effective Date of this Agreement;

"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 of the Place in advance in writing;

"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 of the Place" means:

- (a) the Owner, for so long as the Owner is the registered proprietor of the Land;
- (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 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 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 Land.
- (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 prior written consent of the Council.
- (d) Subject to sub-clause (e), on the Owner of the Place transferring the whole of the interest of the Owner in the Place and the Land 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 and will not apply to the provisions of clause 3.1.

**Part 3
Development and Conservation**

3.1 Conservation Works, Development

- (a) The Owner and the Owner of the Place must undertake the conservation of the Place:
 - (1) as recommended by the Conservation Plan;
 - (2) by the completion of the Conservation Works,
 in each case in accordance with plans and specifications first approved in writing by the Council.
- (b) The Owner of the Place 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 in writing in advance by the Council.

3.2 Maintenance

The Owner of the Place shall maintain the buildings and structures on the Place:

- (a) in the case of the Significant Fabric, as restored and adapted with the approval in advance in writing of the Council; and
- (b) in the case of any other buildings and structures on the Place, as constructed in accordance 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 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.

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 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), the Council will comply with any reasonable requirement imposed by the Owner of the Place for the purpose of exercising the rights of the Council under sub-clause (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 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 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
 - (2) 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 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 of the Place

The Land and the Place shall 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 shall be conducted entirely at the risk of the Owner of the Place and the Owner of the Place shall indemnify and keep indemnified and save harmless the Council, the Minister and any of their respective servants or agents against all damage incurred or suffered by any of them 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 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

No variation of this Agreement will be effective unless in advance in writing and 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 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 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 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 of the Place 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.

6.6 Upper floors internal

The parties agree that subject to the provisions of Part 3 hereof, the Conservation Plan and the Conservation Works, the Owner of the Place may modify and renovate the upper floor layouts of the Place provided that at least one upper floor layout , floor 3 or 4, is retained in or near its original format.

The Schedule

Item 1: The Place
Gledden Building situated at 723 Hay Street, Perth, which consists of the Land described in Item 3 and the works and buildings on it.

Item 2: Significant Fabric
The whole of the Place

Item 3: Land
Lots 1 and 2 on Diagram 6874, being the whole of the land comprised in Certificates of Title Volume 980 Folio 116 and Volume 906 Folio 183 respectively

Item 4: Conservation Plan
Gledden Building, Hay and William Streets, Perth Conservation Plan prepared by Considine and Griffiths Architects Pty Ltd for [REDACTED]; 1998 at Annexure A.

Item 5: Conservation Works
Schedule of works annexed to this Agreement as Annexure B, which Schedule includes the classification of works as "Short Term", "Medium Term" and "Long Term".



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

[Signature]
Signature of authorised person

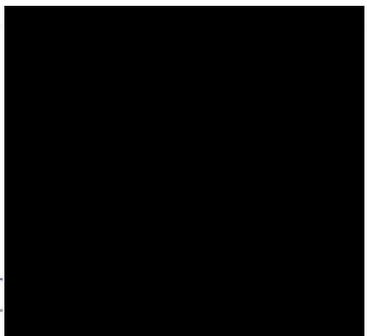
CHAIRMAN
Office held

DIRECTOR
Office held

MAURICE A. OWEN.
Name of authorised person

IAN BAXTER
Name of authorised person

The Common Seal of)
[Redacted])
was herunto affixed by)
authority of the Directors)
in the presence of:)



[Signature]
Director

[Signature]
Director/Secretary

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 24th day of FEBRUARY 1999.



MINISTER FOR HERITAGE

Annexure B

Conservation works

Complete records of the place should be collected, accessioned and stored by the Owner or lodged with the Heritage Council of Western Australia to assist with the detailed conservation of the place. Storage should be to archival standards and documents should not be removed except for supervised copying purposes.

Short term works - to be undertaken within two years

Commission a conservator to inspect all the artworks and advise on their present state and implement any works which are considered essential.

Conserve the perimeter service duct in the basement and the acid etched artwork of the glass fronts.

Investigate all areas of damp ingress and rectify causes.

Check over all roof coverings and ferrous metal mountings exposed to weather on the roof level and make good as necessary.

Check over awning roof and gutter repair as necessary.

Repair steel escape stair, if they are to be retained in toto, or repair sections to be retained, or conserve a section for interpretative purposes.

When shopfronts are replaced, replacement designs should either match the original designs or be in sympathy with them.

Medium term works - to be undertaken within five years

Repair steel windows to the light well and repaint as necessary.

Prepare paint scrapes to exterior and interior walls and joinery and redecorate representative sections of the building in the original colours, where appropriate.

Remove later ceilings to reveal plaster soffit.

Investigate original light fittings of the arcade and endeavour to reconstruct them.

Conserve the upper floor toilets.

Replace flood lighting over awning to light building exteriors.

Introduce appropriate interpretation of Gledden Buildings, such as a small plaque summarising its history and those involved in its development, together with its primary uses.

Reinstate missing architraves, skirtings, trims etc to those areas which are to be conserved at or near the original layout and detail, together with any other area where this is compatible with adaptive re-use.

Remove window mounted air-conditioning systems and install a less intrusive system.

Remove all redundant surface mounted services, except for those identified as significant.

Long term work - to be undertaken ten years

Some of these tasks may be undertaken when the existing materials or fabric require substantial repair or replacement.

Reinstate shopfronts to original alignments and treatments when leases fall in, existing commercial obligations have expired, and reinstatement becomes possible.

Reinstate original floor finish concept to ground floor, where appropriate and where possible.

Replace inappropriate windows and doors where possible.

Reveal and conserve sections of wood work flooring as representative examples of the finish.

Remove gate at top of basement stair.

Reinstate toilets at basement level in a manner sympathetic to the original intent.

Reveal pavement light floor at first floor level.

Reinstate pavement light floors to William and Hay Street entrances at ground floor level.