

Heritage Council of Western Australia

And



VARIATION OF  
HERITAGE AGREEMENT

1 FORREST PLACE  
PERTH

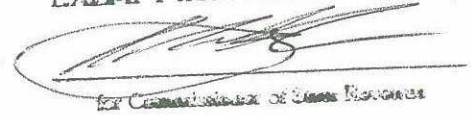
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VARIATION OF  
HERITAGE AGREEMENT  
1 Forrest Place Perth

5/18/11) HERITAGE OF WA Act 1991  
EXEMPT from W.A. Stamp Duty

  
for Commissioner of State Revenue

THIS DEED OF VARIATION is made on the 21<sup>st</sup> day of June 2004  
between the following parties:

1. HERITAGE COUNCIL OF WESTERN AUSTRALIA of 108 Adelaide Terrace, East Perth, Western Australia (the Council"); and
2. [REDACTED] of care of [REDACTED] and [REDACTED] (the "Owner of the Place").

WESTERN AUSTRALIA STAMP DUTY  
23/06/04 14:25 001987772-001  
DUP \$ \*\*\*\*\*.00  
0/5 \$ \*\*\*\*\*.00  
EXEMPT 100 %

**RECITALS:**

- A. The Council and the [REDACTED] as the then owner entered into a Heritage Agreement made the 27th June 1997.
- B. Thereafter the [REDACTED] sold the Land to the Owner of the Place.
- C. The Owner of the Place is the registered proprietor of the Land.
- D. The Parties have reached agreement and have agreed to vary the terms of the Heritage Agreement as set out in this Deed.

**BY THIS DEED** the parties agree as follows:

**Part 1  
Definitions & Interpretation**

**A. Definitions**

In this Deed the following definitions shall apply.

**"Approved Drawings"** means those drawings approved by the Development Committee for the Council as advised in correspondence dated 25th October 2002 and 25th November 2002.

**"Building"** means the building upon the Land.

**"Conservation Plan"** means the Conservation Plan in respect of the Place as varied from time to time.

**“Current Approved Works”** means those Approved Works which are approved by the Council and are referred to in the Approved Drawings;

**“Deed”** means this deed of variation;

**“Effective Date”** means the 27<sup>th</sup> of June 1997.

**“Event of Default”** is defined in clause 5.1;

**“Ground Floor”** means the ground floor of the Building;

**“Heritage Agreement”** means the original Heritage Agreement dated 27th June, 1997 as varied by this Deed;

**“Land”** means the land described in Item 3 of the Schedule;

**“Mezzanine Floor”** means the mezzanine floor of the Building.

**“Owner of the Place”** means:

- (a) [REDACTED], for so long as that corporation is the registered proprietor of the Land;
- (b) any other owners, “owner” having the meaning ascribed to it by section 3(2) of the Act;

**“Parties”** mean the parties to this Deed;

**“Reinstatement Obligations”** means those obligations of the Owner of the Place set out in clause 3.9 of this Deed;

**“Reinstatement Timeframe”** means the specific period of time for any reinstatement as required by clause 3.9;

**“Schedule”** means The Schedule to the Heritage Agreement;

**“Signage Strategy”** means those principles and criteria relating to signage on the Place referred to in clause 3.5.

**“Upper Floors”** means those floors in the Building being above the Mezzanine Floor.

## **B. Interpretation**

- (i) Where any word or term is defined in the Heritage Agreement it shall share the same meaning in this Deed save where such word or term is differently defined in this Deed or if the context shall reasonably require the same;
- (ii) Where any term or word is defined both in the Heritage Agreement and in this Deed then the definition as contained in this Deed shall prevail;
- (iii) If there is any conflict or inconsistency between the provisions set out in the body of this Deed or those set out in the body of the Heritage Agreement then

the provisions in this Deed shall to the extent of such conflict or inconsistency prevail;

- (iv) Where any Part is referred to in this Deed or is designated as a heading then (save and excepting Part 7) those Parts and headings are the same as used in the Heritage Agreement.

## **Part 2 Commencement, Duration and Scope of this Agreement**

The parties hereby agree to a variation to Part 2 of the Heritage Agreement as follows:

- A. Clause 2.2** shall be amended by the deletion of subclauses (c), (d) and (e) and their replacement with the following:
  - (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 which consent will not be unreasonably withheld or delayed;
  - (d) subject to sub-clause 2.2(e), on the person who is at the time the Owner of the Place ("Outgoing Owner") transferring the whole of that person's interest as registered proprietor of the Place and the Land to another person ("the Incoming Owner") the Outgoing Owner shall be released from all future obligations and 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 of the Place under or in connection with this Agreement which shall then apply to the Incoming Owner.
  - (e) The provisions of sub-clause 2.2(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 Outgoing Owner to the Incoming Owner.

## **Part 3 Development and Conservation**

The parties hereby agree to a variation to Part 3 of the Heritage Agreement as follows:

- A.** There shall be added to **clause 3.1** the following subclauses namely:
  - (c) The Council has approved the Current Approved Works which are to be carried out in accordance with the Approved Drawings;
  - (d) The Owner of the Place may not vary the Approved Drawings except with the approval in advance in writing of the Council;
  - (e) The Current Approved Works have been set out in the Approved Drawings.
- B. Clause 3.2** shall be deleted and replaced with the following:

### 3.2 Maintenance

- (a) The Owner of the Place shall maintain the Significant Fabric, with the approval of the Council, in a proper, safe and sound standard of repair and condition in all respects, in accordance with:
  - (1) The Conservation Plan; and
  - (2) The Maintenance Plan;to the reasonable satisfaction of the Council.
- (b) The Owner of the Place must, no later than the 31 December 2004, submit to the Council for its reasonable approval a maintenance plan for the Place, based on the provisions of the Conservation Plan. The Council may, as a condition of granting its approval, require that amendments or additions be made to the maintenance plan submitted by the Owner of the Place but only insofar as such amendments or additions are reasonable. Any such amendments or additions required by the Council will be deemed to be incorporated in the maintenance plan approved by the Council. The maintenance plan, which is approved by the Council in accordance with this clause, will be the "Maintenance Plan" for the purposes of this Agreement.
- (c) If the Owner of the Place fails to comply with its obligations under clause 3.2(b) and such failure continues for a period of at least thirty (30) days after the service of a notice by the Council on the Owner of the Place requiring compliance the Council may, without limiting or affecting its rights under this Agreement, provide to the Owner of the Place a maintenance plan for the Place which shall be reasonable and be deemed the "Maintenance Plan" for the purposes of this Agreement. The Owner of the Place must pay all costs reasonably incurred in relation to the construction of the Maintenance Plan.

C. **Clause 3.3** shall be deleted and replaced with the following provisions:

### 3.3 Conservation Plan

- (a) The Owner of the Place must produce, at the Owner's expense, by either the 30th day of June 2004, or one month after the practical completion of the building construction works for the Place (commenced prior to the date of this Deed) whichever is the latter, an updated Conservation Plan for the Place (incorporating the Current Approved Works). Such Conservation Plan must be to the reasonable satisfaction of the Council and utilize the services of a consultant approved in writing in advance for such role by the Council. The Council undertakes to cooperate and assist the Owner of the Place in this regard;
- (b) The Owner of the Place may vary the Conservation Plan from time to time but only in accordance with the approval in advance in writing of the Council;
- (c) When carrying out any development the Owner of the Place shall comply with the Conservation Plan and without prejudice to the generality hereof shall implement the policies and procedures prescribed in the Conservation Plan subject nevertheless to any variation which has the prior written approval of the Council;

**D. Clause 3.4** shall be deleted and replaced with the following:

- (a) Except with the prior written approval of the Council which shall not unreasonably be withheld, the Owner shall:
  - (i) use the Place or permit it to be used only for purposes classified as permitted uses in the Zone within which the Place is situated under the City of Perth City Planning Scheme as at the time this Agreement is executed; and
  - (ii) ensure the Ground Floor Banking Chamber remains accessible to the public during normal trading hours provided that this paragraph will not be construed to prevent the Owner from utilising portions of the Ground Floor Banking Chamber for purposes which are consistent with the cultural heritage significance of the Place.
- (b) The Council, in giving approval for changes to the above uses, shall take into account the cultural heritage significance of the Place and of the changing technological and commercial circumstances governing the operation of commercial banking services in Australia.
- (c) The Council acknowledges that so long as the Ground Floor Banking Chamber remains accessible to the public as per clause 3.4(a)(ii) the Owner of the Place shall be entitled to use (or permitted to use) the following parts of the Place for the respective uses or purposes set out below, namely:
  - (i) the Ground Floor and the Mezzanine Floor of the Building for retail purposes;
  - (ii) the Upper Floors for commercial offices and/or such other use as the City of Perth shall permit; and
  - (iii) any part of the Building for a banking or finance corporation business.

**E. Clause 3.5** shall be deleted and replaced with the following provisions:

**3.5 Signage Strategy.**

The Owner of the Place shall prepare basic design strategies for signage and provide details of the same to the Council. Upon such Signage Strategy being agreed the same shall be documented and included as an annexure to the Conservation Plan. Thereafter the Owner of the Place will ensure that all signs, notices and/or advertisements to be affixed to the Place must be in accordance with the Signage Strategy and must be subject to obtaining the prior written approval of the Council. The Council will not withhold or delay such approval in the event that such proposed signs, notices or advertisements are in accordance with the principles and criteria set out in the Signage Strategy.

**F. A clause 3.7** shall be added in the following terms:

**3.7 Current Approved Works**

The Current Approved Works shall be completed by 31st December 2004.

**G.** By the inclusion of a **clause 3.8** in the following terms:

### **3.8 Storage of Fabric**

The Owner of the Place shall ensure that there shall be stored in the Place in such secure position with such labelling and in such manner as is reasonably satisfactory to the Director of the Council for each specific item stored each of the following, namely:

- (a) the window frames, sills, sashes, glazing and immediate masonry surrounds of the four arched windows;
- (b) the original window frames, sills, sashes, glazing and immediate masonry surrounds of the windows which have been removed for the ATMs;
- (c) the pair of centrally located, bronze clad, glaze swing doors originally located on the western side of the east vestibule and the pair of centrally located bronze clad fixed panels that were originally located on the southern side of the east vestibule;

provided always that if any of such items or articles shall remain in situ there should be no obligation to store the same nor to reinstate.

**H.** A **clause 3.9** shall be added as follows:

### **3.9 Reinstatement Obligations**

The Owner of the Place has the following Reinstatement Obligations, namely:

- (a) within 12 months of the termination of all Ground Floor and Mezzanine Floor retail tenancies, the Owner of the Place shall ensure that the 4 arched windows and associated fabric referred to in clause 3.8 be reinstated.
- (b) As to the building fabric removed for the ATMs as referred to in clause 3.8(b) - in the event the relevant portion of the Place shall cease to be used by either the Commonwealth Bank of Australia or any other banking or financial service, then the Owner of the Place shall ensure that the fabric associated with the same shall be reinstated within a period of 12 months of the cessation of such banking or financial usage.

**I.** **Clause 5.3** shall be removed and replaced with the following:

### **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 or maintenance of the Land or the Place and without limitation all Development or maintenance 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, maintenance 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.



## **J. New Part**

The Parties hereto have agreed to add to the Heritage Agreement those provisions set out below under Part 7 namely:

### **Part 7 Additional Obligations**

#### **7.1 Future Tenancies**

- (a) The Owner of the Place will use its best endeavours to ensure that tenants which are granted leases within the Building following the date of this Deed (the "Tenants") will be given notice of the following:
- (i) the Building is subject of a Heritage Agreement;
  - (ii) no Tenant may commence its tenant's fit out nor affix its fixtures and fittings to the Place without obtaining the prior written approval of the City of Perth and of the Council (where dealing with the fabric of the Building);
  - (iii) the Tenant must ensure that its signage shall comply with the Signage Strategy for the Building and that it first obtains the approval in writing of the City of Perth and the Council, and the Council shall ensure that such approval is not to be unreasonably withheld or delayed;
  - (iv) any matter or activity which would be governed by the Heritage Agreement or the Conservation Plan or any enquiry of or referral to the Council must be first referred by the Tenant to a manager appointed by the Owner of the Place. All tenant enquiries as to such matters and referrals to the Council must be presented by or through such manager; and
- (b) The lease documentation for Tenants in the Building to be used by the Owner of the Place (in relation to tenancies entered into after the date of this Deed) must ensure that each Tenant is obliged to observe the above procedures.

#### **7.2 Insurance**

The Owner of the Place will act in a prudent manner to hold and retain such insurance policies with a reputable insurance company so that in the event of damage to the Building such policy would provide for reinstatement and reasonable restoration of the Place, provided however that in the event such damage or destruction is so serious or substantial as would reasonably prevent or make impractical such reinstatement and restoration, then the Owner of the Place shall not be required to reinstate or restore the Place. The owner of the Place shall upon request from time to time provide a copy of such policy and certificates of currency to the Council.

#### **7.3 Conservation Consultant**

The Owner of the Place has agreed to appoint a consultant (approved in advance by the Council) to carry out the following duties:

- (a) the supervision of the Current Approved Works;
- (b) any other obligations under the Heritage Agreement or the Conservation Plan; and
- (c) for the performance of any Reinstatement Obligation which may in the future be required to be performed,

Such consultant must provide the Council with written progress reports detailing the progress of such works and obligations at reasonable intervals taking into account such works as may then be required.

EXECUTED AS A DEED.

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



*[Handwritten Signature]*

Signature of authorised person

*[Handwritten Signature]*

Signature of authorised person

DIRECTOR

Office held

CHAIRMAN

Office held

IAN BAXTON

Name of authorised person

PATRIC DE VILLIERS

Name of authorised person

Signed for and on behalf of  
[Redacted] )  
[Redacted] by authority of )  
its Directors in accordance with )  
section 127 of the Corporations Act )

[Redacted]

Print name

[Redacted]

Print name

CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA ACT

I, the Hon. Tom Stephens, MLC, Minister for Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act 1990.

Date the

21<sup>st</sup>

day of

June

2004

\_\_\_\_\_  
MINISTER FOR LOCAL GOVERNMENT & REGIONAL DEVELOPMENT;  
HERITAGE; THE KIMBERLEY, PILBARA AND GASCOYNE;  
GOLDFIELDS-ESPERANCE