

Deed of Variation of Heritage Agreement

Heritage Council of Western Australia

[REDACTED]
[REDACTED]

and

[REDACTED]
[REDACTED]

FREEHILL
HOLLINGDALE
& PAGE

BARRISTERS & SOLICITORS

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Reference: PMW:9852504

PERTH SYDNEY MELBOURNE CANBERRA BRISBANE SINGAPORE HANOI HO CHI MINH CITY
CORRESPONDENT OFFICES IN JAKARTA AND KUALA LUMPUR

This deed

is made on

2000 between the following parties:

S. 18(i) H&C
2 (W&ST) 1

1. **Heritage Council of Western Australia**
(Council)

EXEMPT from W.A. Stamp Duty

2. [REDACTED]
[REDACTED]

for Commissioner [REDACTED]

- (Lessee)

3. [REDACTED] Ltd

WESTERN AUSTRALIA STAMP DUTY

30-MAR-00

001365766-001

*** [REDACTED] *** [REDACTED] *** [REDACTED]

11/5 \$ ***** [REDACTED] .00

EXEMPT from W.A. Stamp Duty

(Guarantor)

Recitals

- A. The Council, the Lessee and the Guarantor have entered into the Heritage Agreement relating to the Brewery Site.
- B. The parties have reached agreement as set out in this Document and have agreed to vary the terms of the Heritage Agreement as set out in this Document.

This deed witnesses

that in consideration of, among other things, the mutual promises contained in this Document, the parties agree:

1 Definitions and interpretation

1.1 Definitions

In this Document, unless the contrary intention appears words have the same meaning in this Document as in the Heritage Agreement and the following words have the following meanings:

Head Lease means the Lease dated 18 June 1992 made between the Minister for Lands, the Lessee and the Guarantor as varied by the deeds of variation made between the parties to the head lease dated 16 September 1992, 5 November 1992, 24 December 1992, 2 February 1993 and 15 November 1996 and includes any other variation to the Head Lease;

Heritage Agreement means the Heritage Agreement dated 19 January 1993 made between the Council, the Lessee and the Guarantor in respect of the Brewery Site; and

Plan means each plan annexed to this Document marked "Plan A", "Plan B", "Plan C" and "Plan D" respectively.

2 Variation of Heritage Agreement

2.1 Access Areas

In accordance with Clause 17.4 of the Heritage Agreement the parties agree that the area the subject of Clause 17.1(b)(i) will be the areas coloured light green, dark green and blue on Plan A, Plan B and Plan C.

2.2 Additional Access Areas

If the Council elects by written notice to the Lessee (which the Council may do at anytime) the access areas coloured yellow on Plan C will be deemed to form part of the public access areas referred to in Clause 17.1(b) of the Heritage Agreement, to the same extent as if a plan incorporating the yellow access areas had been agreed in terms of Clause 17.4 of the Heritage Agreement and Clause 2.1 of this Document.

2.3 Construction/Maintenance Access

The Lessee and the Council agree that the area coloured green and hatched on Plan C is the construction and maintenance access area agreed for the purposes of clause 17.9 of the Heritage Agreement.

2.4 Variations to the Heritage Agreement

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

- (a) by the addition of the following clause 17.7:

“17.7 The Council may from time to time authorise the use of any part of the area coloured dark green on the Plan A agreed by the parties for the purpose of Clause 17.1(b) of this Agreement for alfresco dining subject to such conditions as the Council may prescribe.”

- (b) by the addition of the following clause 17.8:

“17.8 If the public access areas agreed by the Lessee and the Council for the purpose of Clause 17.1(b)(i) include any area over or through the carpark constructed on Lot 1034 forming part of the Brewery Site (**Lot 1034**) the Lessee will, at its own expense, undertake:

- (a) any works within that carpark required to be conducted in relation to the provision of public access over that carpark whether required by an authority or at law including without limitation the provision or erection of any sign, barrier, fence, lighting, lift or ramp (including any lift or ramp for disabled persons); and
- (b) any modifications to the Lessee's works arising from or in connection with the provision of public access over or through the carpark.”

- (c) by the addition of the following clause 17.9:

“17.9 The Lessee will allow such persons as the Council may nominate from time to time access to agreed areas of Lot 1034 for the

purpose of constructing and maintaining facilities to enable the public to have access to and egress from Kings Park over the access areas the subject of Clause 17.1(b) and agrees to those persons undertaking works for the purpose of constructing and maintaining those facilities. The nominated persons will not be deemed to be acting on behalf of the Council and the Council will not be responsible for their acts or defaults.”

3 Consents

This Document is subject to and conditional on the consent of the Minister for Lands as lessor under the Head Lease but only to the extent that that consent is required pursuant to the Head Lease.

4 Supplemental

This Document is supplemental to the Heritage Agreement.

5 Ratification

Other than as amended in terms of this Document the Council, the Guarantor and the Lessee ratify and confirm the terms of the Heritage Agreement.

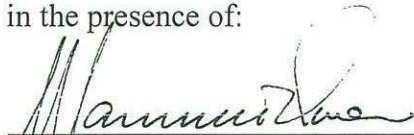
6 Plan annexed to the Heritage Agreement

The parties confirm that Plan D a copy of the plan annexed to the Heritage Agreement and endorsed with the following acknowledgment dated 19 January 1993:

“Heritage Council of Western Australia, [REDACTED] hereby acknowledge that the land coloured green on this plan is the portions of the external grounds of the Swan Brewery which Heritage Council of Western Australia and [REDACTED] have agreed is to be the subject of clause 17.1(b)(i) of the Swan Brewery Heritage Agreement.”

Executed as a deed:

The common seal of
Heritage Council of Western Australia
is fixed to this document
in the presence of:


Chairman

MAURICE OWEN.
Name (please print)


Director

IAN BAXTER
Name (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.

Dated the ^{20th} 27 day of MARCH 2000



MINISTER FOR HERITAGE

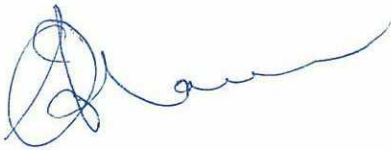






Minister's Consent

I Douglas James Shave MLA, Minister for Lands, hereby consent to the within Document.



Douglas James Shave, MLA
Minister for Lands

