

1995

THE HERITAGE COUNCIL OF WESTERN AUSTRALIA

AND

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HERITAGE AGREEMENT  
THE GRAND CENTRAL, BUNBURY

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CONVEYANCER  
CROWN LAW DEPARTMENT  
PERTH  
TELEPHONE NO: 264 1711  
WP: camp5dhornh

THIS HERITAGE AGREEMENT is made as a Deed on the 2nd day of June 1995

B E T W E E N :

THE HERITAGE COUNCIL OF WESTERN AUSTRALIA a body corporate pursuant to the Heritage of Western Australia Act 1990 of 292 Hay Street, East Perth, Western Australia ("the Council").

AND

RECITALS

- A. [REDACTED] is the registered proprietor of the Place.
- B. The buildings situated on the Place are known as The Grand Central and were formerly used for various purposes including those of a temperance hotel and a boarding house.
- C. The Place is entered in the Register of Heritage Places under an interim registration under Section 50 of the Act.

OPERATIVE PART

1. Interpretation

1.1 Definitions

In this Heritage Agreement unless the context otherwise requires:

"Act" means the Heritage of Western Australia Act 1990 and includes all statutes varying, consolidating or

replacing it and all regulations, proclamations, orders and by-laws issued under it;

"Heritage Agreement" means this deed as supplemented, varied or amended from time to time;

"Minister" means the Minister responsible for the administration of the Act;

"Owner" means:

- (a) while [REDACTED] is the registered proprietor of the Place - [REDACTED] or
- (b) when [REDACTED] ceases to be the registered proprietor of the Place - the owner of the Place from time to time;

and includes at any time a mortgagee or encumbrancee in possession of the Place;

"Place" means Bunbury Town Lot 191, subject of Certificate of Title Volume 1901 Folio 902 and includes all works and buildings thereon or therein.

#### 1.2 Interpretation

In this Heritage Agreement, unless the context otherwise requires:

Headings are for convenience only and do not affect the interpretation of this Heritage Agreement;

Words importing the singular include the plural and vice versa;

Words importing a gender include every gender;

Every covenant or agreement expressed or implied in which more persons than one covenant or agree binds



such persons and every two or more of them jointly and each of them severally; and

Where the Council is renamed or ceases to exist and is reconstituted or replaced or where its powers or functions are transferred to any other association, body or authority a reference to the Council means the association, body or authority (as the case may be) established or constituted in its place or assuming its powers or functions.

2. Application of Act

This Heritage Agreement is made by the Council on behalf of the Crown pursuant to Section 29(1) of the Act and is governed by and must be construed in accordance with the Act.

3. Term

This Heritage Agreement comes into effect on its execution and will remain in effect until terminated by agreement of the Council and the Owner.

4. Owner's Covenants

The obligations imposed on the Owner by clauses 5 to 7 and clause 9 have effect as covenants made pursuant to Section 29(10) of the Act, intended to run with the Place.

5. Use

Except with the prior written approval of the Council which must not be unreasonably withheld, the Owner may use the Place or permit it to be used only for purposes classified as permitted uses for the Place

under the Town Planning Scheme applicable to the Place from time to time.

6. Alteration

The Owner may not do any act or thing to alter or change in any way the works, buildings or other improvements on or in the Place without the prior written approval of the Council, which must not be unreasonably withheld.

7. Maintenance

The Owner must keep the works, buildings and other improvements on or in the Place in the state of repair existing on completion of the 1993 renovation and restoration and must carry out all repairs and maintenance necessary for such purposes:

- (a) in a proper and workmanlike manner to the reasonable satisfaction of the Council; and
- (b) in accordance with plans and specifications approved by the Council which must not be unreasonably withheld.

8. Grant of Approval

In determining whether or not to grant any approval required under clause 5, clause 6 or clause 7 or whether repairs and maintenance have been carried out in a proper and workmanlike manner, the Council must have regard to:

- (a) "A Report of a Survey and Assessment of the Cultural Heritage and Significance of the Old Grant Central Hotel at 83-89, Victoria Street,



Bunbury" prepared in July 1991 by Ian Molyneux and Associates;

(b) the Australian ICOMOS Charter for the Conservation of Places of Cultural Heritage Significance, also known as the Burra Charter; and

(c) the provisions of Schedule A.

9. Inspection

The Owner must permit the Council and persons authorised by it at any reasonable time upon reasonable written notice to enter upon the Place and to inspect the Place and its state of repair and condition in order to establish whether the Owner has complied with and, at the time of the inspection, continues to comply with the Owner's obligations under this Heritage Agreement.

10. Dispute Resolution

10.1 If the Council is of the opinion that the Owner has not complied with any of the Owner's obligations under clause 5, clause 6, clause 7 or clause 9, the Council may by notice in writing specifying the default require the Owner to remedy the default within the reasonable time specified in the notice.

10.2 If the Owner fails to comply with the requirements contained in a notice served pursuant to clause 10.1, the Owner will be deemed to dispute its liability to comply with

the requirements. The Council must refer the matter in dispute to the President of the Western Australian Branch of the Royal Australian Institute of Architects, who must nominate a member of the Institute who is not a member of the Council but who has appropriate qualifications and experience in heritage related matters, for determination by the nominee as an expert and not as an arbitrator.

10.3 The Council must give the Owner notice in writing of the nomination of the expert.

Within 14 days of receipt of that notice the Owner may make written submissions to the expert regarding the matters in dispute and must deliver a copy of its submissions to the Council. Within 14 days of the Owner making any submissions the Council may respond to them in writing and must deliver a copy of its response to the Owner. Within 7 days thereafter the Owner may reply to any new matters raised by the Council in its response and must deliver a copy of its reply to the Council. The expert must consider any submissions and reply made by the Owner and any response made by the Council.

10.4 The expert's determination must address all issues considered relevant to the dispute including the time within which any action



required by either of the parties must be taken and the liability of the parties or either of them for the costs of the determination. The expert's determination will be final and binding upon the parties.

10.5 If the Owner fails to comply with any determination made pursuant to clause 10.4 within the time (if any) specified in the determination, the Council and persons authorised by it may enter upon the Place or any part of it and carry out any works reasonably necessary to remedy the default and the Owner must pay to the Council on demand the reasonable costs of those works.

11. Remission of taxes and rates

The Council represents that it has supported and has taken all steps within its powers to secure the remission pursuant to sections 36 and 37 of the Act (such remission to take effect only on execution of this Heritage Agreement) of the following moneys payable by the Owner in respect of the Place for the period 1 July 1991 to 30 June 1998,

- (a) all land tax payable under the Land Tax Act 1976 including all arrears, interest on arrears and penalties for late payment;
- (b) all sewer rates payable to the Water Authority of Western Australia including all arrears, interest on arrears and penalties for late payment;



- (c) one half of the general rates payable to the City of Bunbury excluding any arrears, interest or arrears and penalties for late payment; and
- (d) one half of the water rates payable to the Bunbury Water Board excluding all arrears, interest on arrears and penalties for late payment.

12. Loan Subsidy

- 12.1 The Council acknowledges that the Owner has been granted a loan from National Australia Bank for the express purpose of enabling the Owner to carry out conservation and restoration work on the Place. The loan has a five year term and interest at  $9\frac{1}{2}\%$  per annum, payable monthly in arrears, accrues on the amount lent and advanced.
- 12.2 The Council agrees to subsidise the interest payable on the loan by paying to National Australia Bank on the Owner's behalf the sum of \$395.83 per month for a period of two years commencing from the later of the date on which this Heritage Agreement is executed and the date on which a sum of not less than \$50,000 is actually advanced under the loan to the Owner by National Australia Bank.
- 12.3 If any default in the performance or observation of any of the Owner's obligations under this Heritage Agreement occurs prior to 1 July 1997 resulting in the Council exercising its powers under clause 10.5 the Council may cease to make any further payments payable

under clause 12.2 and the Council may require immediate repayment from the owner of all sums paid under clause 12.2 together with interest thereon at 9<sup>1</sup>/<sub>2</sub>% per annum calculated from the date of their payment to National Australia Bank to the date of their repayment to the Council.

- 12.4 The Owner must not sell, transfer, assign, mortgage, charge or otherwise dispose of the Place prior to 1 July 1997 without the prior written consent of the Council which consent must not unreasonably be withheld.

13. Charge

The Owner hereby charges the Place in favour of the Council for the purposes of securing the due and punctual observance and performance by the Owner of the Owner's obligations under clauses 12.3 and 12.4 and authorises the Council to lodge an absolute caveat pursuant to this clause at the Land Titles Office, Perth against the Certificate of Title to the Place.

14. Consent to Permanent Registration

The Owner consents to the Place being entered by the Council in the Register of Heritage Places under a permanent registration under section 51 of the Act and waives all rights the Owner may have in terms of the Act to be given notice of the Place being entered in the Register of Heritage Places or to make or have considered submissions in that regard.



15. Costs and Expenses

The Owner must pay or reimburse the Council on demand for all of the Council's costs and expenses in relation to any default by the Owner in complying with any of the Owner's obligations, which default has caused cost or expense to the Council, including the Council's legal costs and expenses.

**SCHEDULE A**

**THE GRAND CENTRAL HOTEL, BUNBURY**

**SCHEDULE OF CONDITIONS FOR THE CONSERVATION OF CULTURAL  
HERITAGE SIGNIFICANCE**

1. **EXTERIOR REQUIREMENTS**

- (i) Any proposals to change or add to the exterior of the building are to be referred to the Council for approval.
- (ii) The basic form of the existing building is to be retained, in particular its aspect to Victoria Street.
- (iii) Any additional development is to be complementary in its design to the existing building and is to be referred to the Council for approval.
- (iv) Materials and detailing are to be sympathetically handled with regard to the detailing and finishes of the existing building and to the standards of the 1993 renovation and restoration.

2. **INTERIOR REQUIREMENTS**

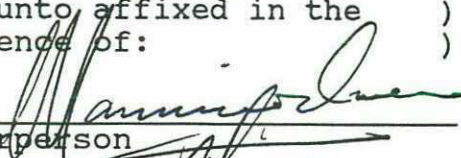
- (i) Any proposals to change or add to the interior of the building are to be referred to the Heritage Council for approval.



- (ii) The internal layout of the building is to be retained generally as it exists.
- (iii) The existing main staircase is to be retained.
- (iv) Internal details of doors, architraves, skirtings and the like is to be maintained. If required to be changed these details are to be treated in a sympathetic modern manner.
- (v) Blocking up of existing internal openings and doors is to be done in a manner which reveals their location.
- (vi) The addition of ablution and service areas to maintain current health, building code and tenancy requirements is to be done in accordance with the above schedule of conditions.

EXECUTED by the parties as a Deed.

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

  
Chairperson

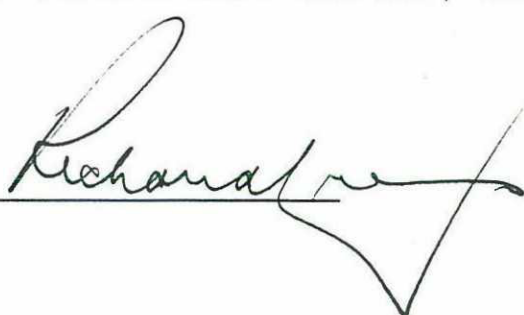
  
Member Director

THE COMMON SEAL of [REDACTED] )  
[REDACTED] )  
was duly affixed in )  
accordance with a resolution of )  
the Board of the Authority )  
[REDACTED] )

Director [REDACTED]

Director/Secretary [REDACTED]

■ KENNON RICHARD LEWIS, MLA, Minister for Heritage, certify that I am satisfied that this Heritage Agreement is necessary for the purposes of, and complies with the Heritage of Western Australia Act, 1990.

  
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Date