

**Heritage Council of
Western Australia**

and


(Owner)

HERITAGE AGREEMENT

CBH Silos, Casuarina Drive and Holman Street, Bunbury, Western Australia

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HERITAGE AGREEMENT

CBH SILOS, Bunbury, Western Australia

THIS AGREEMENT is made on the day of June 2002 between the following parties:

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

RECITALS:

- A. [REDACTED] is the registered proprietor of the Land.
- B. The Place is entered in the Register of Heritage Places on an interim/permanent basis pursuant to the Act.

AGREEMENT:

The parties agree with each other as follows.

Part 1
Definitions & Interpretation

WESTERN AUSTRALIA
LEGISLATION
ACTS
1990-2001
ACT 100

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 as may from time to time be varied with the approval of the Council;

"Conservation Works" means the works specified in item 5 of the Schedule;

"Construction Completion Date" means:

- (a) in the case of immediate action as described in Annexure C, the date within 2 years after the Effective Date of this Agreement;
- (b) in the case of medium term action as described in Annexure C, the date within 5 years after the Effective Date of this Agreement; and
- (c) in the case of long term action as described in Annexure C, the date within 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 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;

"Interpretation Plan" means the Interpretation Plan in respect of the Place described in Item 6 of the Schedule as may from time to time be varied with the approval of the Council.

"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) [REDACTED], for so long as the Owner is the registered proprietor;
- (b) any other Owner or Owners of the Land from time to time, "Owner" having the meaning ascribed to it by 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;
- (a) 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.
- (d) a reference to any thing is a reference to the whole and each 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 person who is at the time the Owner of the Place ("Outgoing Owner") transferring the whole of that person's interest in the Place and the Land to another person, the Outgoing Owner is released from all 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.

- (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 Outgoing Owner to another person.

Part 3 Development and Conservation

3.1 Conservation Works - Development

- (a) The Owner of the Place must undertake the conservation and interpretation of the Place in accordance with the Conservation Plan and the Interpretation Plan and is required to carry out the conservation and the interpretation works, within the Construction Completion date, described in item 5 of the Schedule.
- (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
 - (3) sub-divide or make application to sub-divide the Land

except as permitted by this clause or as otherwise approved in advance in writing by the Council. The Council approves development in accordance with the approved plans attached in Annexure "C".

3.2 Maintenance

- (a) The Owner must, no later than three months after the Effective Date, submit to the Council for its approval a management plan for the Place. The Council may, as a condition of granting its approval, require that amendments or additions be made to the management plan submitted by the Owner. Any such amendments or additions required by the Council will be deemed to be incorporated in the management plan approved by the Council. The management plan, which is approved by the Council in accordance with this clause will be the "Management Plan" for the purposes of this Agreement.
- (b) If the Owner fails to comply with its obligations under clause 3.2(a), the Council may, without limiting or affecting its rights under this Agreement, provide to the Owner a management plan for the Place which will be the "Management Plan" for the purposes of this Agreement. Without limiting clause 6.5, the Owner must reimburse the Council on demand for all the Council's costs and expenses in relation to the exercise or enforcement by the Council of its rights under this clause 3.2(b).
- (c) The Owner must maintain the Significant Fabric (as restored, constructed or adapted with the approval in advance in writing of the Council) in accordance with the Management Plan and, in any event in a proper, safe and sound standard of repair and condition in all respects to the reasonable satisfaction of the Council.
- (d) The Owner must prepare and submit to the Council, no less than once every 365 days during the currency of this Agreement, a detailed and comprehensive written report in respect of the maintenance and the state of the Significant Fabric and the compliance by the Owner with the Management Plan.

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 for obtaining 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.

3.4 Conservation Consultant

- (a) The Owner of the Place must appoint a consultant approved in advance in writing by the Council to supervise the Conservation Works, and must commission the consultant to provide the Council with written progress reports detailing the Conservation Works which have been completed.
- (b) A written progress report complying with paragraph (a) must be submitted to the Council at each of the following times
 - (i) not later than 31 July in each year during the period when the Owner of the Place is carrying out, or is obliged to carry out, Conservation Works;
 - (ii) not later than 30 days after the Immediate Conservation Works are completed; and
 - (iii) not later than 30 days after the Medium Term Conservation Works are completed.
 - (iv) not later than 30 days after the Long Term Conservation Works are completed.

3.5 Insurance

The Owner of the Place will maintain or cause the Strata Company to maintain an insurance policy with a reputable insurance company approved in advance in writing by the Council, sufficient to enable full and proper replacement, reinstatement or restoration of the Place in the case of damage or destruction and provide a copy of such a policy and a Certificate of Currency to the Council. In the event of damage or destruction the Owner of the Place shall, using monies recovered from its insurance policy and its own monies, properly replace, reinstate or restore the destroyed or damaged fabric.

3.6 Entry of the Place in the Register

The Owner of the Place consents to the entry of the Place in the Register on a permanent basis under the Act and waives all rights the Owner of the Place may otherwise have to be given any notice of the entry or to make or have considered any submissions with respect to the same.

3.7 Entry of the Place in the Register

- (a) The Council agrees that the Place will not be entered in the Register on a permanent basis until the earlier of:
 - (i) the date on which the Proposed Development, or any alternative Development which the Council approves in accordance with clause 3.1, has been practically completed; and
 - (ii) the date which is 36 months after the Effective Date.
- (b) The Owner:
 - (i) irrevocably consents to Permanent Registration in accordance with clause 3.7(a);
 - (ii) waives all rights the Owner may otherwise have to:
 - (A) be given any notice of; or
 - (B) make or have considered any submissions in respect of,
 Permanent Registration;
 - (iii) agrees to do anything reasonably required by the Council to enable Permanent Registration to take place expeditiously; and
 - (iv) agrees to do anything reasonably requested by the Council to assist in keeping in force the interim registration of the Place.

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 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.

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 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.

The Schedule

- Item 1: The Place**
CBH Silos, Bunbury situated at Casuarina Drive, Bunbury, Western Australia and consists of the Land and all the structures on it.
- Item 2: Significant Fabric**
The whole of the Place.
- Item 3: Land**
Lot 851 in Certificate of Title Volume 2217 Folio 854 on which the Place is situated.
- Item 4: Conservation Plan**
"CBH Silos - Conservation Plan" prepared by Ronald Bodycoat Architect, for [REDACTED], [REDACTED], May/June 2002, a copy of which is appended to this Agreement as Annexure A.
- Item 5: Conservation Works**
The Schedule of Works described in Annexure B.
- Item 6: Interpretation Plan**
"CBH Silos - Interpretation Plan" prepared by Ronald Bodycoat, Architect, for [REDACTED], [REDACTED], May/June 2002, a copy of which is appended to this Agreement as Annexure "D".



EXECUTED AS A DEED.

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

[Handwritten signature]

Signature of authorised person

Mme. Wallace

Signature of authorised person

DIRECTOR

Office held

CHAIR

Office held

IAN HADY BAXTER

Name of authorised person

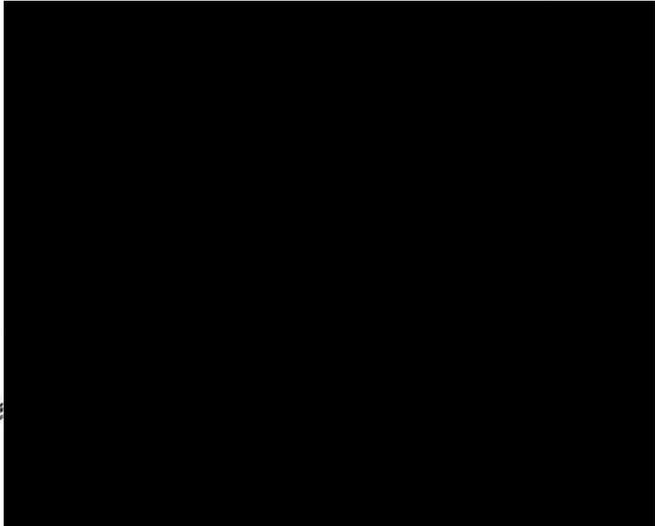
MARLI JANET WALLACE

Name of authorised person

The COMMON SEAL of [redacted] is affixed in the presence of:

[redacted]

Name Director/Secretary (Print)



CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA ACT

I, the Hon. Dr J M Edwards, MLA, Minister for the Environment and Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act 1990.

Dated the 1 day of July 2002.

Judy Edwards

MINISTER FOR HERITAGE