

HERITAGE AGREEMENT

**Aberdeen Hotel and St Johns Building
76-88 Aberdeen Street, Northbridge**

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and

[REDACTED]

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HERITAGE AGREEMENT

Aberdeen Hotel and St Johns Building 76-88 Aberdeen Street, Northbridge

THIS AGREEMENT is made on the 30th day of December 2003 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]

RECITALS:

- A. The Owner is the registered proprietor of the Place.
- B. The Place is entered in the Register of Heritage Places on a permanent basis pursuant to the Act.

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 5 of the Schedule, and appended as Annexure B, as may from time to time be varied with the prior written approval of the Council;

"Construction Completion Date" means:

- (a) in the case of "immediate action" as described in Annexure C, the date within 18 months after the Effective Date of this Agreement; and

- (b) in the case of "medium term action" 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 the later of:

- (d) the period commencing on the Effective Date and expiring on the relevant 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;

"Development" has the same meaning as in the Act;

"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;

"Management Plan" means the plan denoted as the "Management Plan" for the purposes of this Agreement by clause 3.2(a) or 3.2(b) (as the case may be);

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

"Owner " means [REDACTED] as trustee for the [REDACTED]

- (a) [REDACTED] is trustee for the [REDACTED]
[REDACTED]
[REDACTED] 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 section 3(2) of 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.
- (b) All of the obligations of the Owner 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 under this Agreement are not assignable by the Owner without the prior written consent of the Council.
- (d) Subject to sub-clause (e), on the person who is at the time the Owner ("**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 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 transferring Owner to another person.

**PART 3
DEVELOPMENT AND CONSERVATION**

3.1 Conservation Works – Development

- (a) The Owner of the Place must undertake the conservation of the Place in accordance with the Conservation Plan, described in item 5 of the Schedule, and is required to carry out the conservation works, within the Construction Completion date, described in item 6 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 not 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.

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 which is identified in item 4 of the Schedule. 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 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 to comply with all relevant statutory and other requirements in connection with the Development of the Land, and the Owner 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

The Owner must appoint a consultant approved in advance in writing by the Council to supervise any Development of the Place or other action which requires the approval of the Council under clause 3.1. At the time that the Council notifies the Owner pursuant to clause 3.1 that it approves of any Development of the Place or other action proposed to be carried out ("**Relevant Work**"), the Council may specify in its notice of approval that the conservation consultant engaged by the Owner pursuant this clause 3.4 will be required to provide reports to the Council in respect of the Relevant Work. If the Council so specifies in respect of the Relevant Work, the Owner must procure that the conservation consultant engaged for the purposes of the Relevant Work provides reports to the Council of the kind and in the manner set out in the Council's notification of approval.

3.5 Insurance

The Owner will 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 Significant Fabric 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 shall, using monies recovered from its insurance policy and its own monies, fully and properly replace, reinstate or restore the destroyed or damaged fabric.

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 for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner 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 is in breach 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 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

The Land and the Place shall remain at the risk of the Owner 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 and maintenance of the Land or the Place shall be conducted entirely at the risk of the Owner and the Owner 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 maintenance or occupation of the Land or the Place by the Owner or any person claiming through or under the Owner.

5.4 Interest on overdue money

If the Owner 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 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.

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, extend any time period for performance by the Owner of any of its obligations under this Agreement.

6.5 Costs

- (a) The Owner 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 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

Aberdeen Hotel and St Johns Building, which is situated at 76-88 Aberdeen Street, Northbridge and 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

Lot 14 on Diagram 95241 being the whole of the land comprised in Certificate of Title Volume 2139 Folio 638.

Item 4: Management Plan

The Management Plan is to be based on the provisions contained in Annexure A.

Item 5: Conservation Plan

Aberdeen Hotel and St Johns Building, Northbridge Conservation Plan prepared for the Department of Housing and Works on behalf of Main Roads Department by Palassis Architects in March 2002, a copy of which is appended to this agreement as Annexure B.

Item 6: Conservation Works

Aberdeen Hotel and St Johns Building, Northbridge Schedule of Conservation Works prepared for the Department of Housing and Works on behalf of Main Roads Department by Palassis Architects with Structural Engineering Advice by Wood & Grieve Engineers in March 2002, a copy of which is appended to this agreement as Annexure C.



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

CHAIR

Office held

I. J. H. BAXTER

Name of authorised person

PATRIC DE VILLIERS

Name of authorised person

THE COMMON SEAL of [REDACTED] is affixed in the presence of:

[REDACTED Signature]

Signature of authorised person

[REDACTED Signature]

Signature of authorised person

[REDACTED Office]

Office held

[REDACTED Office]

Office held

[REDACTED Name]

Name of authorised person

[REDACTED Name]

Name of authorised person

**CERTIFICATE UNDER SECTION 32
OF THE HERITAGE OF WESTERN AUSTRALIA ACT 1990**

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.

Dated the *30th* day of *December* 2003.

A handwritten signature in black ink, appearing to read 'Tom Stephens', written over a horizontal line.

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

Annexure A

Management Plan guidelines

A Management Plan for the building and grounds must be put in place to incorporate all regular and occasional maintenance items, checks, monitoring and repair work, as well as for any essential conservation works. The Owner is to appoint a conservation consultant in the terms of clause 3.4 of the Agreement to develop the Management Plan. The aim of the Management Plan should be:

- To provide guidelines which will enable implementation of the conservation policies, designed to enhance and protect the cultural heritage significance of the place; to ensure that all decisions affecting the use and fabric of the place respect this significance;
- To facilitate observance of the policies in the routine management and longer term development of the buildings and grounds as a place of significance, important to the community;
- To facilitate appropriate use and operation of the place and occasional public access (such as commercial use which would allow for public access);
- To identify and have in place the necessary professional expertise to facilitate a high level of management; to use that professional expertise to ensure conservation practice, presentation and interpretation of the significance elements are properly carried out; and
- To compile, review and update regular maintenance programs and the associated funding, prepared by management staff in consultation with professional heritage consultants approved by the Heritage Council of Western Australia. This should set out a program of regular inspections, maintenance and repair works, and should include specific direction on the manner in which work is to be undertaken, particularly where replacement work is to be involved.

Annexure B

Conservation Plan

Aberdeen Hotel and St Johns Building, Northbridge Conservation Plan prepared for the Department of Housing and Works on behalf of Main Roads Department by Palassis Architects in March 2002, a copy of which is appended to this agreement as Annexure B.