

Heritage Council of
Western Australia

and

~~ACN: 080119 400~~

HERITAGE AGREEMENT

Houses at 51 - 53 Goderich Street, East Perth

TABLE OF CONTENTS

Part 1	Definitions & Interpretation	
1.1	Definitions	1
1.2	Interpretation	2
Part 2	Commencement, Duration and Scope of this Agreement	
2.1	Commencement and duration of this Agreement	2
2.2	Scope of this Agreement	3
Part 3	Development and Conservation	
3.1	Conservation Works, Development	3
3.2	Maintenance	3
3.3	Compliance with Statutes	4
3.4	Conservation Consultant and Reporting	4
Part 4	Council's Rights of Entry and Powers of Inspection	
4.1	Council's rights of entry and powers of inspection	4
Part 5	Default	
5.1	Events of default	4
5.2	Rights and remedies of Council	5
5.3	Land and Place at risk of Owner of the Place	5
5.4	Interest on overdue money	5
Part 6	General	
6.1	Variation to be in writing	5
6.2	Governing Law	5
6.3	Further assurances	6
6.4	Extension of time by Council	6
6.5	Costs	6
	The Schedule	7

[Handwritten Signature]

for Commissioner of State Revenue

HERITAGE AGREEMENT
Houses at 51 - 53 Goderich Street

THIS AGREEMENT is made on the _____ day of _____ 2000 between the following parties:

- 1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** of 108 Adelaide Terrace, East Perth, Western Australia (the "Council"); and
- 2. _____ a (the "Owner").

RECITALS:

- A. _____
- B. The Place is entered in the Register of Heritage Places on an permanent basis pursuant to the Act.

AGREEMENT:

The parties agree with each other as follows.

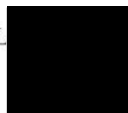
Part 1
Definitions & Interpretation

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 4 in the Schedule as may from time to time be varied with the approval of the Council;
- "Conservation Works" means the works specified in Annexure B;
- "Construction Completion Date" means:
 - (a) in the case of short-term works as described in Annexure B, the date 1 year after the Effective Date of this Agreement; and
 - (b) in the case of medium term works as described in Annexure B, the date 3 years after the Effective Date of this Agreement;

TAX INVOICE - ABN 45 320 599 544
WESTERN AUSTRALIA STAMP DUTY
17/11/00 08:56 001365771-001
DUP \$ *****.00
D/S \$ *****.00
EXEMPT 100 %



"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;

"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) the Owner, for so long as the Owner is the registered proprietor of the Land;
- (b) the Owner or Owners of the Land from time to time, as the expression "Owner" is defined in 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 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 Owner of the Place transferring the whole of the interest of the Owner in the Place and the Land to another person, the Owner is released from all personal liability under 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 and will not apply to the provisions of clause 3.1.

Part 3
Development and Conservation

3.1 Conservation Works, Development

- (a) The Owner and the Owner of the Place must, during the Construction Period, undertake the conservation of the Place:
- (1) as recommended by the Conservation Plan;
 - (2) by the completion of the Conservation Works,
- in each case in accordance with plans and specifications first approved by the Council.
- (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 of the Significant Fabric,
- except as permitted by this clause or as otherwise approved in advance in writing by the Council.

3.2 Maintenance

The Owner of the Place shall maintain the buildings and structures on the Place:

- (a) in the case of the Significant Fabric, as restored and adapted with the approval in advance in writing of the Council; and
- (b) in the case of any other buildings and structures on the Place, as constructed in accordance with the approval in advance in writing of the Council,

in a proper, safe and sound standard of repair and condition in all respects to the reasonable satisfaction of the Council.

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 and Reporting

- (a) The Owner must appoint a consultant approved 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) The written progress reports must be submitted to the Council (a) within one month of the end of each financial year during the Construction Period, and (b) within one month of completion of the Short Term and Medium Term Conservation Works as defined in this agreement.

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 of the Land or the Place and without limitation all development 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 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**
Houses at 51 - 53 Goderich Street situated at 51 - 53 Goderich Street, East Perth, which 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**
Portion of Perth Town Lot E18, being the whole of the land comprised in Certificate of Title Volume 1125 Folio 499.
- Item 4: Conservation Plan**
Two Houses, 51 & 53 Goderich Street, East Perth, Conservation Plan, prepared for [REDACTED] by Ron Bodycoat, February 2000, a copy of which is appended to this Agreement as Annexure A.
-
- Item 5: Conservation Works**
The Schedule of works described in Annexure B

EXECUTED AS A DEED.

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

Maurice Owen
Signature of authorised person

[Signature]
Signature of authorised person

CHAIRMAN
Office held

Director
Office held

MAURICE OWEN
Name of authorised person

IAN RAYTON
Name of authorised person

SIGNED

by

[Redacted signature]

[Redacted signature]



Witness

[Redacted witness name]

Name (please print)

[Redacted]

CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN AUSTRALIA ACT

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 1990.

Dated the 14TH day of NOVEMBER 2000 .



MINISTER FOR HERITAGE



Essential Maintenance

Prior to Work commencing

1 Base Plans

Base plans should be prepared and regularly updated to record all fabric details, services, surface features, levels and contours, boundaries, easements and data relevant to the structure.

Retain an up-to-date copy of the base plans for easy reference.

2 Asbestos Cement & Hazardous Materials

Any asbestos cement or other hazardous materials should be assessed professionally to determine status and hazard and to discover necessary treatment to stabilise, replace or remove the element in keeping with the character and profile of the original.

3. Consultants

Conservation and management of the Two Houses should involve professional consultants who can provide advice and direction for a diversity of issues, and would include the following as necessary:

- conservation of the fabric in consultation with architects and engineers
- materials conservation, applicable to environmental affects on the fabric of the buildings and landscape environment
- archival recording and conservation of historic records and artifacts
- management generally, for a heritage place within the context of the City
- archaeologists for below-surface investigation and recording.

Regular inspections, maintenance and repair work should be carried out with appropriate professional expertise and utilising only trades people who are capable of the specific tasks, under the direction of the conservation team in liaison with management.

It is important that a Conservation Consultant is retained to comment on and to advise about conservation proposals for the place, restoration processes and the extent of work necessary or proposed for the significant fabric. This advice should apply as well to any proposals for changes to the fabric and the addition of new elements.

It is of critical importance that as much as possible of the existing original fabric in sound condition is retained, repaired and recycled in the original locations. New elements must match the size, profile and general characteristics of the material they replace where these are of cultural heritage significance.

Ongoing requirements

1. Public Safety

When work is in progress, properly barricade areas or securely close up the works, which the public or unauthorised people should not access. Place notices to explain the hazard and the risk and wherever possible, encourage the public to see and inspect the structure opened up and the conservation work in progress.

Ongoing requirements (cont'd)

2. Engineering and Conservation Assessment

From time to time, carry out a detailed assessment with a conservation architect and structural engineer experienced in heritage structures to assess and record:

- the structural integrity of each element of the structure, in particular fixings and any deteriorated elements
- the condition of the structural frame and building footings and foundation material
- all defects and the work required to be done to repair or replace structural elements and the urgency and priority.

Commission and carry out in consultation with the Conservation Consultant, at least an annual survey of conservation and maintenance work necessary for each element of the place. Program and budget for completion of all necessary work.

3. Protective Coatings

Assess the extent of deterioration of protective coatings to metalwork and timber particularly structural elements and in concealed locations; seek professional advice regarding the causes of deterioration and the necessary process/materials to reinstate protective coatings or the alternative methods, appropriate to the value of the place for re-protection.

4. Monitoring

Ensure that regular assessment, monitoring and recording of the condition and performance of key structural elements of the building fabric is carried out and any problems are addressed and resolved; in particular assess the status of the roof structures and carry out any necessary repair works

Short Term Works

1. Exterior

- 1.1 Remove the entire existing corrugated metal roof covering, flashings and gutters; renew timber battens as necessary; re-sheet in corrugated custom orb BHP zincalume finish short sheets – unpainted, and including all appropriate flashings, as a legitimate and appropriate roofing material; renew all gutters in sheet metal, Ogee pattern; renew chimney flashings as necessary; replace all downpipes in round section sheet metal with shoes issuing over gratings into stormwater lines; check and upgrade soakwells. Take care to locate downpipes in appropriate locations.
- 1.2 Retain and repair roof battens and rafters to verandah roofs; retain any existing shingles
- 1.3 Repair/replace as necessary timber fascias, scotia mouldings, barges and timber eaves linings, all to match the existing original details.
- 1.4 Restore the verandah gable to No. 51 and the verandah spandril boarding and framing to No. 53; remove the timber screen and brick planter at the western end of the verandah to No. 53.

Short Term Works

1. Exterior (cont.)

- 1.5 Demolish the entire introduced fabric of the link between the Two Houses (Area 7). (Note all Areas are identified in figure 8 on page 55 of the Conservation Plan, unless otherwise referenced)
- 1.6 Remove the verandah enclosure to No. 51 – (Areas 17 & 18).
- 1.7 Remove the masonry bases to verandah posts to No. 51 (Areas 8, 17, 18) renew all posts full height in timber to the original size and detail; repair/replace/refix verandah beams and decorative mouldings to match the surviving original (to Areas 1, 8, 17, 18) and repair rafters as may be necessary.
- 1.8 Rebuild the south verandah to No. 53 (Area 4), making allowance for height adjustment for clearance under the edge beam and for future upgrading of service areas in the adjoining House. Should restoration to face brickwork of the south wall of the original building prove to be unreasonable in view of the extent of deterioration and the major changes to openings, brick repairs and painted or rendered finish would be appropriate and acceptable.
- 1.9 Renew all water, sewerage, drainage, gas and electrical services; remove all exposed conduits, cabling and pipework, ensure new services are fully concealed externally wherever possible; provide new meters and electrical boards in appropriate locations.
- 1.10 Prepare and paint surfaces originally painted, taking care to apply appropriate historic colours.
- 1.11 Remove all redundant fixings, plugs in external brickwork.
- 1.12 Remove fretted and deteriorated brickwork to external walls and chimneys; treat for rising damp by pressure injection method at the base of walls where rising damp is manifested; rebuild brickwork to match to openings cut for doorways into the link and to openings cut for air-conditioners; remove paint from external brickwork, repoint jointing and restore tuck-pointing, all to match the original face brickwork; repair and repaint rendered bases to north verandah walls (Areas 1, 8, 17, 18).

Note: the removal of paint from earlier face brickwork shall be subject to appropriate trials on site; re-assessment following trials may determine that paint removal is not an appropriate option where unreasonable destruction of the original brick fabric is a likely result. In such a case, the brickwork shall be prepared and repainted an appropriate paint type and colour. Tuck-pointing to external walls of the House at No. 53 is likely to be a later refinement; restoration of tuck-pointing to this House, or reinstatement of the original mortar jointing shall be determined in the process of trials for paint removal and restoration of brickwork. A discreet panel of original brickwork should, at least, be provided in an appropriate location for interpretive purposes.

Short Term Works

1. Exterior (cont.)

- 1.13 Replace missing window sashes – casement and balance hung – in small panes to match the original; repair frames, sills and beadings, and replace all hardware.
- 1.14 Replace all external doors with appropriate paneled doors and all new hardware; repair frames and refix as necessary; repair/replace beadings to match the original.
- 1.15 In the context of upgrading for reuse, build in new timber frames and (as appropriate) new French doors and fanlights over, including small paned glazing, to former window openings between Areas 13/17 and 14/18.
- 1.16 Replace with timber or concrete floors and steps to verandahs (Areas 1, 8, 17, 18); replace the grano floor to Verandah (Area 4) with an appropriate alternative paving.

2. Interior

- 2.1 Assess and treat for termites and other vermin.
- 2.2 Repair floor framing and floor boarding to match the original boarding, replacing introduced repairs with boarding to match the original; adjust the levels of flooring transition in the archway between Areas 9 & 10 to No. 51.
- 2.3 Investigate the possibility of introducing sub-floor cross ventilation.
- 2.4 Take up granolithic introduced into previously boarded floors, but retain grano infill and hearth at the site of the removed fireplace to Area 9; assess the existing concrete floors to Areas 5, 11, 15, 16 in the context of upgrading these areas for new service rooms – Kitchens and Bathrooms.
- 2.5 Restore fireplaces and hearths and reinstate appropriate timber overmantels in Areas 2, 10. The fireplaces are not required to be reinstated in Areas 3 & 11 (kitchens), however, the chimneys to these former fire places are to be retained in the roof-scape.
- 2.6 Install new concealed services throughout.
- 2.7 Repair/replace/refix to match the surviving original timber skirtings, architraves and associated mouldings.
- 2.8 Restore window and door frames and sashes; provide new 4-panel moulded timber doors to all internal openings.
- 2.9 Assess the status of all lath and plaster ceilings; restore wherever possible and replace (in plasterboard sheeting where restoration is inappropriate); restore existing run plaster cornices and ceiling roses; where cornices or ceiling roses do not currently exist, the introduction of simple elements is appropriate, in the character of the original or of the period, and preferably simpler than any existing, so as to allow an interpretive statement to show that a change has been introduced.

- 2.10 Remove asbestos ceiling linings and replace with plasterboard.
- 2.11 Repair plastered walls and run plaster skirtings; provide new to match where currently missing.

Short Term Works

2. Interior (cont.)

- 2.12 Provide new hardware to all windows and doors.
- 2.13 Prepare and paint all internal surfaces, taking care to apply appropriate historic colours.
- 2.14 Design and install new bathroom and kitchen facilities to Areas 3, 5, 11, 15, 16 incorporating appropriate alterations and sympathetic upgrading of the external wall fabric, retaining original details wherever possible.

3. Grounds

- 3.1 Retain and restore the brick fence, coping and gateway to Forrest Avenue; adjust the extent as may be required for new development west beyond the gateway; remove the return wall behind No. 51 and remove the brick fence to Goderich Street outside No. 53. The addition of wrought iron railing to the existing wall for security purposes would be acceptable along the Forrest Avenue side of the House for the distance of the length of the existing cottage.
- 3.2 Prepare an archival record of the outbuilding against the fence to Forrest Avenue should the building be removed or adapted in the future.
- 3.3 Prepare a landscape plan, assess the heritage value of all of the existing planting for conservation as appropriate, and adjust crossovers, kerbing and on-site paving and parking for vehicles.

Long Term Works for the Whole Complex

- 1 Provide appropriate fencing and gates to the Goderich Street boundary, in an historic style suitable for the style of the two houses to the approval of the Development Committee.
- 2 Complete the landscaping and paving of open areas of the site.
- 3 Install a smoke alarms to both houses, and external security lighting.