

**Heritage Council of
Western Australia**

and

[REDACTED]

HERITAGE AGREEMENT

Ferndale, Nannup Road, Balingup

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See 115
EXEMPT from W.A. Stamp Duty
Alphell
for Commissioner of State Revenue

HERITAGE AGREEMENT
Ferndale, Nannup Road, Balingup

THIS AGREEMENT is made on the 9th day of February, 2000 between the following parties:

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

RECITALS:

- A. The Owner is the registered proprietor of the land.
- 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

WESTERN AUSTRALIA STAMP DUTY
14-FEB-00 001365765-001
DIP \$ *****.00
D/S \$ *****.00
EXEMPT 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 the Schedule as may from time to time be varied with the approval of the Council;

"Conservation Works" means the works specified in Annexure C;

"Construction Completion Date" means:

- (a) in the case of urgent works as described in Annexure C, the date 1 year after the Effective Date of this Agreement;
- (b) in the case of essential works as described in Annexure C, the date 2 years after the Effective Date of this Agreement;
- (c) in the case of medium term works as described in Annexure C, the date 5 years after the Effective Date of this Agreement; and
- (d) in the case of long term works as described in Annexure C, the date 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;

"**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 and will not apply to the provisions of clause 3.1.
- (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 No Development without the Council's Approval

- (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 approved in advance in writing 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 Significant Fabric, as restored and adapted with the approval 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.

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

Ferndale which is situated at Nannup Road Balingup and consists of the Land described in Item 3 and the works and the buildings on it.

Item 2: Significant Fabric

The whole of the place.

Item 3: The Land

Formerly that part of Lot 26 on Plan 4526, being part of the land comprised in Certificate of Title Volume 2121 Folio 780 as is defined in Heritage Council of Western Australia survey drawing No. 0702 prepared by Steffanoni Ewing and Cruickshank Pty. Ltd. Annexure A, **and now being Lot 100 on Plan 23110 and being the whole of the land comprised in Certificate of Title Volume 2153 Folio 157.**

Item 4: Conservation Plan

"Ferndale, Nannup Road near Hay Road, Balingup Conservation Plan" prepared by Considine & Griffiths Architects Pty Ltd with Robin Chinnery for the Department of Contract and Management Services on behalf of the Department of Conservation and Land Management, December 1998, a copy of which is appended to this Agreement as Annexure B.

Item 5: Conservation Works

The Schedule of works described in 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

A/DIRECTOR
HERITAGE COUNCIL OF WA.

Office held

[Handwritten signature]

Signature of authorised person

CHAIRMAN

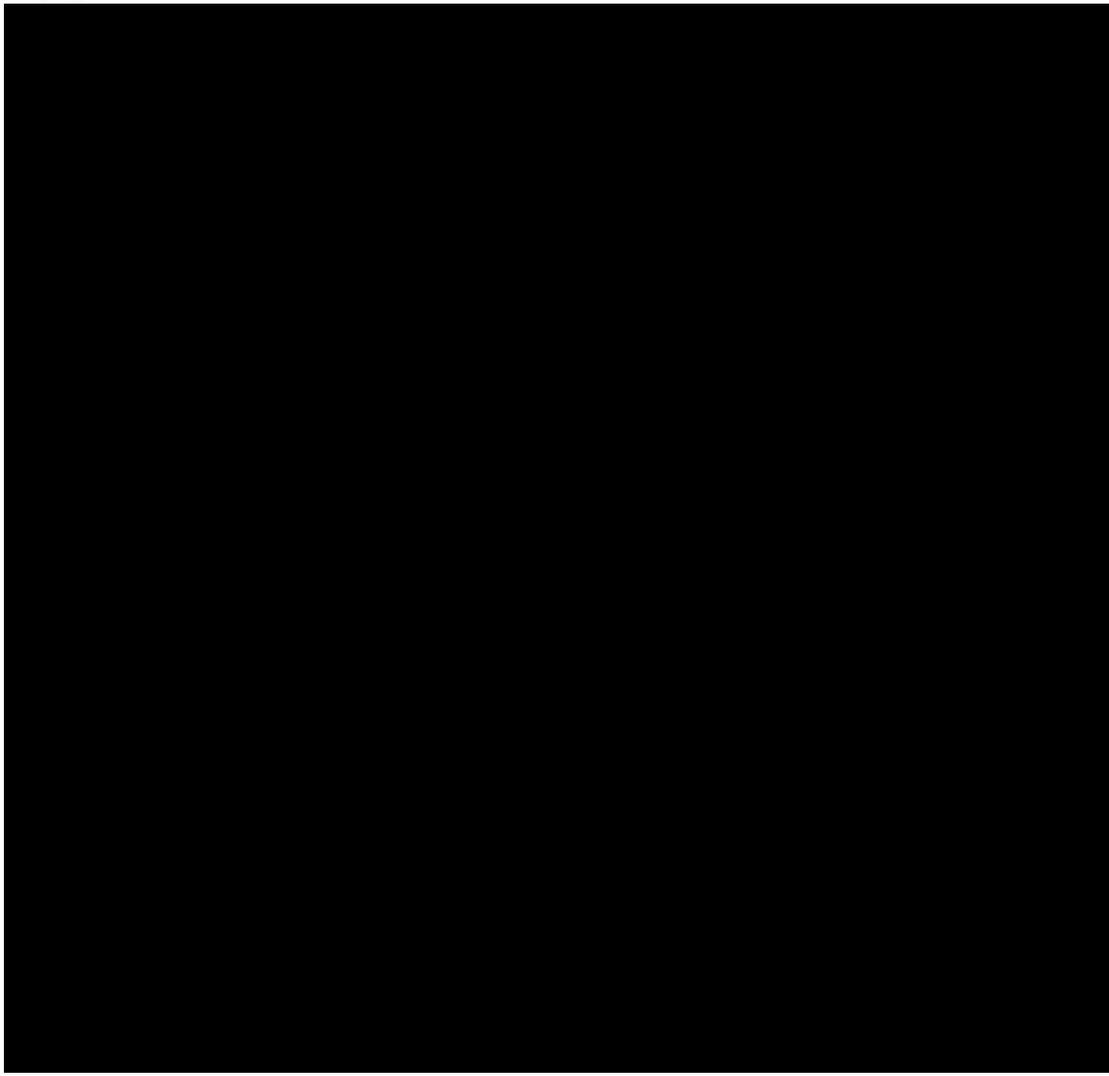
Office held

STEPHEN CARRICK

Name of authorised person

MAURICE OWEN

Name of authorised person



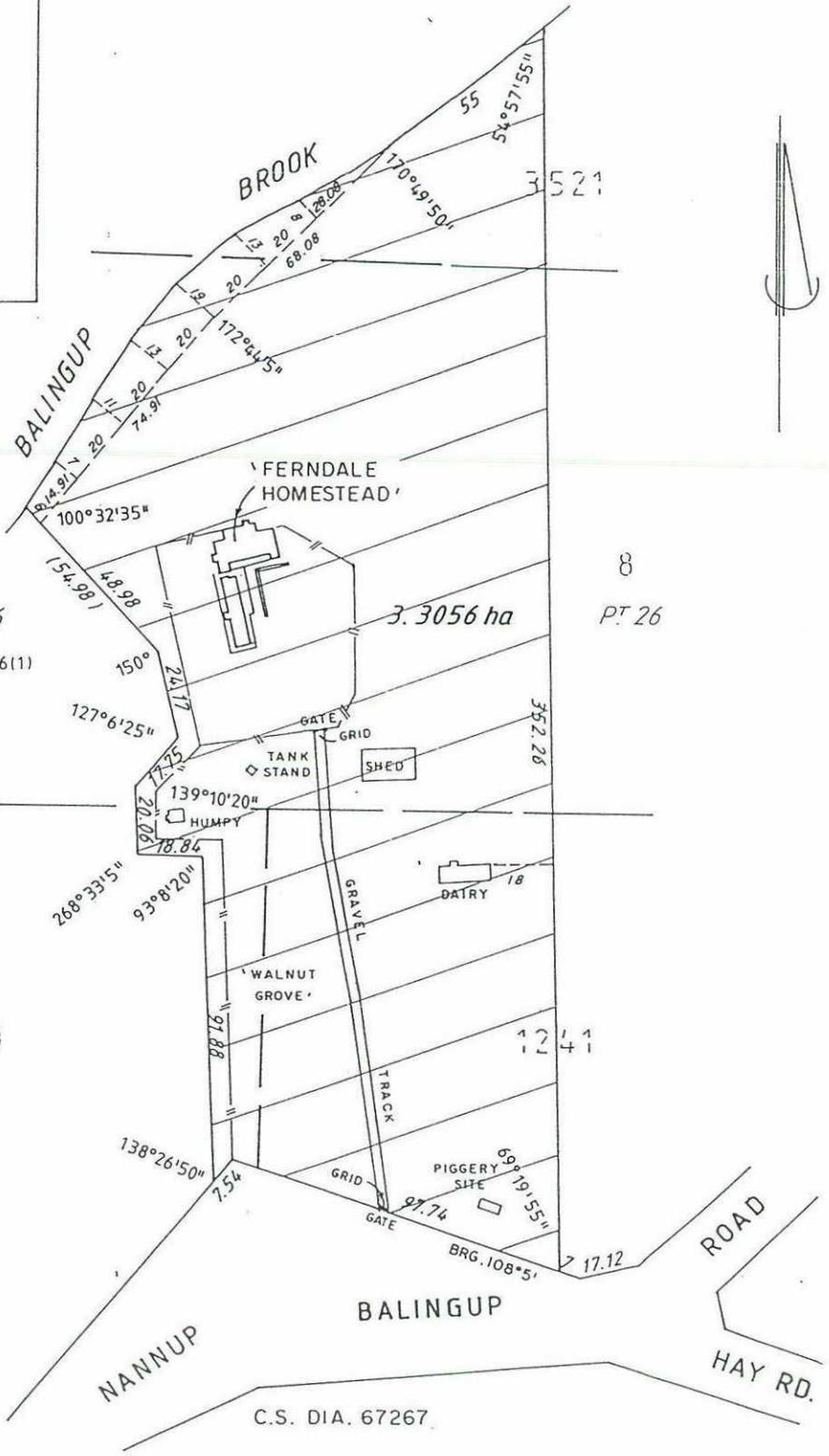
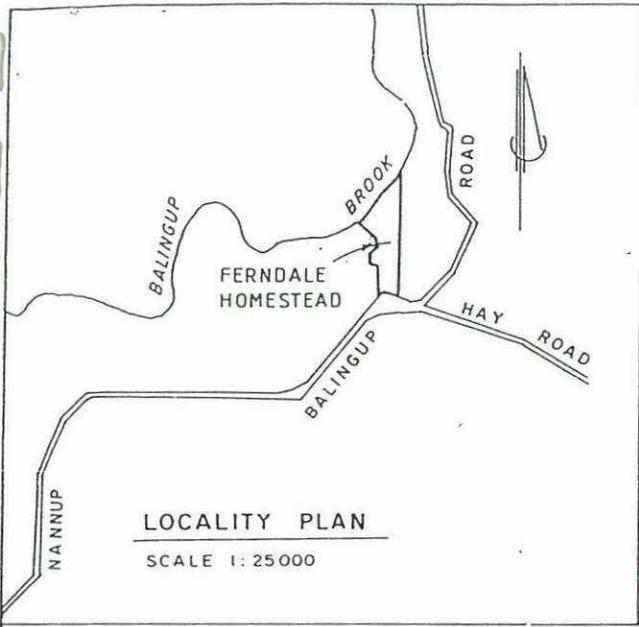
CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN
AUSTRALIA ACT

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 ^{05th} day of FEBRUARY 2000.



MINISTER FOR HERITAGE



STEFFANONI EWING & CRUICKSHANK PTY LTD
282 Rokeby Road Subiaco W.A. 6008

Licensed Surveyors

Surveyed	MAM	Plan	4526 (1)
Drawn	MAM PGD	Diagram	
Scale	1:2000	Certificate of Title	
File	2227/97	Vol. 1062 Fol. 125	
Date	6.6.97	I-Plan	BALINGUP NE (25)

CLIENT	HERITAGE COUNCIL OF WESTERN AUSTRALIA	H.C.W.	
TITLE	PLAN SHOWING 'FERNSDALE HOMESTEAD' BALINGUP.	DWG. N	
			0707

ANNEXURE C - CONSERVATION WORKS
Ferndale Homestead, Nannup-Balingup Road, Balingup

To ensure correct decisions are made within issues of conservation and development, it is desirable that the Owner be guided by the advice of experts and professionals. A specialist consultant should be appointed to assist with the implementation of works and the undertaking of annual inspections. In addition, architects, archaeologists and other professional disciplines skilled in conservation should be consulted to offer specialised advice.

Due regard should be given to the Inspection Schedules and site plans which form part of the Conservation Works documentation.

Urgent Works - to be completed within 1 year

- Obtain a structural engineer's report for the entire complex, with particular reference to cracking in the buildings, the condition of the random rubble foundations walls, roof structure, floor structures, and the whole of the "humpy". The north rooms to the homestead are of particular concern. It may be necessary to dismantle the linen store north-east corner wall and reconstruct it once the footing has been attended to. Other sites requiring urgent attention include the walls to rooms 7, 9, 10 and 13 (refer to Figure 75 of the Conservation Plan).
- Patch disused service entry holes in masonry walls.
- Investigate causes of cracking between main wall and later chimney to the west of room 2 and carry out remedial work to stabilise chimney.
- Lower ground levels to the east side and south sides of the house and "humpy", and take measures to control stormwater run-off.
- Stabilise walls to "humpy", repair lintels, seal openings, and protect remaining sections of walling until full reconstruction can be carried out.
- Replace rotten floor timbers and boards, in rooms 13 and 14 in particular (refer to Figure 75 of the Conservation Plan).
- Replace stairs to sleepout entry.
- Carry out stabilising works to old kitchen chimney and hearth in Room 7 (refer to Figure 75 of the Conservation Plan).
- Repair pier to north west corner of sleepout.
- Check over roofs and implement repairs to sheeting, gutters, downpipes and flashings if necessary.
- Repair verandah floors.
- Re-point all sections of walls where joints have eroded, including granite foundation walls.
- Remove render repairs to east fence of kitchen wall, treat cause of damp, and re-point lower 10 courses of wall.
- Carry out basic repairs to dairy to keep water out.

- Preparation and implementation of a continuous maintenance plan (which includes pest control).

Essential Works - to be completed within 2 years

- Repair all remaining cracks to walls (refer to Figures 76 to 78 of the Conservation Plan).
- Reconstruct west wall and chimney to the "humpy".
- Remove and replace deeply eroded bricks and repoint all brick joints which have been eroded.
- Repair plasterwork where required.
- Obtain an arborist's report on the trees, and implement recommendations, including the preparation of anticipatory replacements for significant trees.
- Create easily accessible termite inspection traps in all timber floors, and clean out all floor cavities.
- Re-point all chimneys.
- Reinstate opening treatments where these are missing.
- Replace aluminium framed flyscreen doors.
- Strip out electrics and renew. Use surface mounted conduits and switches.
- Repair internal walls to room 9, and investigate wall finishes under present plasterboard lining; and then consider returning to earlier finishes if practicable.

Medium Term Works - to be completed with 5 years

- Reinstate path from access drive to the "humpy".
- Remove concrete sections to verandahs and reinstate timber floors when concrete falls into disrepair.
- Re-establish window to room 6 if works to this room are to be undertaken which would allow its re-establishment.
- Remove "Somerset Grove" and inaccurate interpretation signage. Introduce appropriate interpretation of *Ferndale*.
- Reinstate fences around the homestead garden.
- Prepare paint scrapes to exterior and interior walls and joinery, and redecorate only those rooms which are in need of redecoration.
- Generally remove poor plaster and make good with pug and plaster.
- Reinstate missing architraves, skirtings, trims etc.
- Replace missing hardware.
- Repair windows and re-putty glass, then redecorate joinery.
- Reconstruct built-in furniture in accordance with physical evidence.
- Replace roof in short length sheet galvaboard (Z600) custom orb profile sheeting and paint in accordance with physical evidence, or replace with shingles.

- Replace sheerline and other inappropriate gutter profiles. If the roof is re-shingled, considered not having gutters.
- Replace fibro cement cladding to the east side of quarters and reclad with weatherboards.
- Remove concrete haunches to timber posts and replace with pieced in timber.
- Research and interpret archaeological sites.

Long Term Works - to be completed with 10 years

- Replace rainwater goods to suit the form of roofing chosen as recommended above.
- Refit range to fireplace in kitchen.