

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and



HERITAGE AGREEMENT

**St George's Hall Facade,
508 Hay St (25 Irwin St),
Perth**

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Sec 18(1) Heritage of WA Act 1990
for Commissioner of State Revenue

HERITAGE AGREEMENT

**St George's Hall Facade,
508 Hay St (25 Irwin St),
Perth**

AGN 66 012 5/0 625
WESTERN AUSTRALIA STAMP DUTY
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G/S \$ 00000000000000000000
EXEMPT 100 %

THIS AGREEMENT is made on the 7th day of AUGUST 2007 between the following parties:

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** a corporate body established pursuant to the *Heritage of Western Australia Act (WA) 1990*, of 108 Adelaide Terrace, East Perth, Western Australia 6004 (the "Council"); and
2. [REDACTED];

RECITALS:

- A. The Council's objects are to identify, conserve and, where appropriate, enhance those places which are of significance to the cultural heritage of Western Australia; to facilitate development that is in harmony with cultural heritage values; and to promote public awareness and knowledge of Western Australia's cultural heritage.
- B. The State of Western Australia has the care, control and management of the Land and has granted a licence to the Owner to carry out construction on the Land pursuant to the CBD Courts Project ('the Licence').
- C. After completion of the CBD Courts Project the State of Western Australia intends to grant a lease of the Land to the Owner.
- D. The Place has been identified as being of cultural significance and is entered in the Register of Heritage Places on an interim basis pursuant to the Act.
- E. The Council and the Owner wish to enter this Agreement to provide for the conservation of the Place so as to retain its cultural significance for present and future generations.

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 (WA) 1990*;

"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 prior written approval of the Council;

"CBD Courts Project" means the *"public private partnership"* project initiated by the State of Western Australia whereby the private sector will fund, design, construct and operate a new court complex;

"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 the Conservation Works, the date within 6 months after the Effective Date of this Agreement; and
- (b) in the case of "Medium Term Action" as described in the Conservation Works, either the date which is 3 years after the Effective Date, or the Date of Stage 1 Practical Completion, whichever occurs sooner.

"Construction Period" means:

- (a) the period commencing on the Effective Date and ending either 3 years after the Effective Date, or the Date of Stage 1 Practical Completion, whichever occurs sooner; or
- (b) any longer period agreed between the Council and the Owner in writing;

"Damage" means losses, costs, damages, liabilities, expenses, actions, suits or claims of any kind;

"Date of Stage 1 Practical Completion" means the date, as notified in writing by the State of Western Australia, confirming that [REDACTED] has completed the required works for stage 1 of the CBD Courts Project pursuant to the Facilities Agreement;

"Development" means the development or use of the Place, including:

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the Land;
- (b) the carrying out on the Land of any excavation or other works;
- (c) any act or thing that is likely to change the character of the Place or the external appearance of any building;
- (d) any act or thing that would constitute an irreversible alteration of the Significant Fabric; and
- (e) a material change in the Use of the Place;

"Development Approval" means the approval for development dated 17 May 2005 granted by the Western Australian Planning Commission in respect to plans submitted by [REDACTED] in relation to the CBD Courts Project;

"Effective Date" means the date on which this Agreement is sealed by the Council;

"Event of Default" is defined in clause 5.1;

"Facilities Agreement" means the agreement for the CBD Courts Project between the State of Western Australia and [REDACTED] as amended and restated by Deed of Variation, and dated 3 June 2005;

"Fabric" means all the physical material of the Place including, but not limited to:

- (a) components, fixtures, contents and objects;
- (b) natural material such as the landform, vegetation, streams, soil and rock;
- (c) building interiors, sub-surface remains and excavated material; and
- (d) components, fixtures, contents and objects that are temporarily removed for purposes such as repair, safekeeping or exhibition.

"Interpretation" means all the ways of presenting the cultural significance of the Place including, but not limited to:

- (a) the treatment of the Fabric (such as maintenance, restoration or reconstruction);
- (b) the Use of and activities at the Place;
- (c) introduced explanatory material; and
- (d) exhibitions, events, publications, art works and other forms of expression whether at the Place or not.

"Land" means the land described in Item 3 of the Schedule;

"Lease" means the lease for the CBD Courts Project to be entered into between the State of Western Australia and [REDACTED], substantially in the form of Annexure G to the Facilities Agreement;

"Maintenance" means the continuous protective care of the Significant Fabric as specified in Item 6 of the Schedule;

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

"Owner" means:

- (a) subject to clause 2.2(d), [REDACTED] for so long as [REDACTED] Ltd is a licensee under the Licence or a lessee under the Lease; and
- (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;

"Register" means the Register of Heritage Places and has the same meaning as in the Act;

"Significant Fabric" means those parts of the Fabric specified in Item 2 of the Schedule;

"Term" means the term of the Lease expiring on the expiry date of that lease, and includes a reference to any shorter term in the event of the early termination of the term of the Lease and, when the context so requires, includes any period of holding over and any additional term;

"Use" means the functions of the Place as well as the activities and practices that may occur at the Place;

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;
- (d) a reference to this Agreement or any other document or instrument includes the Agreement, document or instrument (as the case may be) as varied or replaced, notwithstanding any change in the identity of the parties;
- (e) a reference to the Owner doing or refraining from doing anything includes a reference to the Owner causing a person to do, or causing a person to refrain from doing, that thing (as the case may be); and
- (f) 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 continues until the expiration of the Term.

2.2 Scope of this Agreement

- (a) For the Term this Agreement:
 - (i) applies to the Land and the Place;
 - (ii) binds the Land and the Place; and
 - (iii) binds the Owner to the extent of its interest in the Land.
- (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, which consent shall not be unreasonably withheld.
- (d) Subject to clauses 2.2(e), (f) and (g), on the person who is at the time the Owner ("**Outgoing Owner**") transferring the whole of that person's interest in the Place to another person (the "**Transfer**"), 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 clause 2.2(d) will not apply in respect of any liability or claim which arose prior to the Transfer.
- (f) The Outgoing Owner shall commission a report ("**Performance Report**") from the Conservation Consultant appointed pursuant to clause 3.5, for the purpose of assessing performance of the Outgoing Owner's obligations under this Agreement up to the date of the Transfer. The Outgoing Owner shall provide a copy of the Performance Report to the Council. The Council shall have regard to, and consider the Performance Report in determining what liabilities or claims, if any, exist against the Outgoing Owner pursuant to clause 2.2(e). The parties acknowledge that the Performance Report is not a binding and determinative statement of the existence or otherwise of liabilities or claims and shall be used as a reference only.
- (g) For the avoidance of doubt, clauses 2.2(d), (e) and (f) shall only apply to [REDACTED] as lessee under the Lease and only to the extent that [REDACTED] transfers the whole of its interest in the Lease to another person.
- (h) [REDACTED] agrees and confirms that:
 - (i) it enters into, and is bound by, this Agreement as the licensee of the Place under the Licence; and
 - (ii) this Agreement will bind it as the Owner; and
 - (iii) all undertakings, covenants and agreements of the Owner in this Agreement will be deemed to be repeated immediately after it becomes the lessee of the Place under the Lease.

PART 3 DEVELOPMENT AND CONSERVATION

3.1 Conservation Works

The Owner must undertake the conservation of the Place in accordance with the Conservation Plan and is required to carry out the Conservation Works, by the Construction Completion Date.

3.2 Development

The Owner shall not:

- (a) carry out any Development; or
- (b) without prejudice to the generality of clause 3.2(a), 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
- (c) sub-divide or make application to sub-divide the Land;

except as permitted by the Development Approval, or clause 3.1 of this Agreement or as otherwise approved (whether conditionally or unconditionally) in advance in writing by the Council.

3.3 Maintenance

- (a) The Owner shall ensure that the Significant Fabric, as restored and adapted with the approval of the Council, is kept in a proper, safe and sound standard of repair and condition in all respects, in accordance with the Conservation Plan.
- (b) Without limitation to clause 3.3(a), the Owner shall undertake the Maintenance.

3.4 Interpretation

- (a) The Owner shall undertake Interpretation activities in accordance with a plan ('Interpretation Plan') that is agreed to in writing in advance by the Council. For the avoidance of doubt, the Council is not obliged to accept any Interpretation Plan submitted by the Owner unless the Interpretation Plan is in form and substance satisfactory to the Council.
- (b) The Owner shall not undertake any Development, at or above natural ground level, until an Interpretation Plan has been agreed to in writing by the Council pursuant to clause 3.4(a) or the undertaking of the Development has otherwise been approved by the Council pursuant to clause 3.2.

3.5 Conservation Consultant

The Owner must appoint a consultant approved in advance in writing by the Council to supervise the Conservation Works and any Development of the Place or other action which requires the approval of the Council under clause 3.2.

3.6 Reporting

(a) Reports to be Prepared by Consultant

All reports required in this clause 3.6 shall be in writing and prepared on behalf of the Owner by the consultant appointed pursuant to clause 3.5, or such other person with the necessary skills and experience that is approved in writing by the Council.

(b) Reports to be Acceptable to Council

- (i) The Council shall consider all reports provided to it under this clause 3.6 and provide written notice to the Owner within 21 days of receipt of the report, indicating whether the report is acceptable or whether the report requires further information, detail, explanation or such other clarification as is reasonably required by the Council.
- (ii) In the event that the Council requires further information, detail, explanation or other clarification, the Owner shall ensure that a revised report is provided within 21 days of receipt of written notice from the Council, or within such other reasonable period nominated in writing by the Council.

(c) Monthly Reports

The Owner must ensure that a proper, detailed and comprehensive written report is provided to the Council within 7 days of the end of each month during the Construction Period. The monthly report must set out the following information:

- (i) the Conservation Works which the Owner has undertaken since the start of the Construction Period or the date of the previous monthly report, as the case may be; and
- (ii) the Development and other activities which the Owner has undertaken, if any, pursuant to clause 3.2 since the start of the Construction Period, or the date of the previous monthly report, as the case may be; and
- (iii) the condition and state of the Significant Fabric at the time of writing the report.

(d) Annual Reports

In addition to the monthly reports required pursuant to clause 3.6(c), the Owner must ensure that a proper, detailed and comprehensive written report is provided to the Council on a date which is 12 months after the Effective Date, and thereafter on every anniversary of the Effective Date during the currency of the Agreement. The annual report must set out the following information:

- (i) the Maintenance and other activities which the Owner has undertaken pursuant to clause 3.3 since the Effective Date, or the date of the previous annual report, as the case may be;
- (ii) the Conservation Works which the Owner has undertaken since the Effective Date or the date of the previous annual report, as the case may be;
- (iii) the Development and other activities which the Owner has undertaken, if any, pursuant to clause 3.2 since the Effective Date, or the date of the previous annual report, as the case may be; and
- (iv) the condition and state of the Significant Fabric at the time of writing the report.

(e) Reports on Conservation Works

The Owner must ensure that a proper, detailed and comprehensive written report which sets out the Conservation Works that have been undertaken since the date of any report provided pursuant to clause 3.6(c) is provided on the following dates:

- (i) not later than 30 days after the "Immediate Action" Conservation Works are completed; and
- (ii) not later than 30 days after the "Medium Term Action" Conservation Works are completed.

3.7 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.

3.8 Compliance with Statutes

The provisions of this Agreement are in addition to the Act and any other written laws and 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.

3.9 Permanent Entry of the Place in the Register

- (a) The Owner consents to the entry of the Place in the Register on a permanent basis under the Act and waives all rights the Owner may otherwise have regarding any notice of the entry or to make or have considered any submissions with respect to the entry.
- (b) The Council agrees that, subject to clause 3.9(c), it will not proceed with the Place being entered in the Register on a permanent basis, until such time as the Owner has completed all works pursuant to the Development Approval, or until such time as the Development Approval has lapsed.
- (c) Upon the Council receiving notice that the State of Western Australia intends to transfer, or has transferred, ownership of the Land to an entity outside of the Crown, the Council shall take such steps as are reasonably necessary to ensure entry of the Place in the Register on a permanent basis, and the Owner shall comply with clause 3.9(a) and clause 3.9(b) shall be of no effect.

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 clause 4.1(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 clause 4.1(c), the Council will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the Council under clause 4.1(a).
- (c) The Owner must do all things necessary to enable the Council to exercise its rights of inspection as set out in clause 4.1(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

An Event of Default occurs if:

- (a) the Owner 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
- (b) 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 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 (WA) 1935*.

5.4 Land and Place at risk of Owner

- (a) 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. 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, subject to clause 5.4(b), indemnify and keep indemnified and save harmless the Council, the Minister, the State of Western Australia and any of their respective servants or agents (each an '**Indemnified Party**') 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 or any person acting through, on behalf of, or under the Owner.
- (b) The indemnity provided by the Owner in clause 5.4(a) shall:
 - (i) be reduced proportionately to the extent that it can be shown any Damage has been caused by a negligent or deliberately malicious act or omission by an Indemnified Party; and
 - (ii) not apply in respect of claims in which liability is alleged to arise from any non-compliance with the provisions of the Building Code of Australia or the *Disability Discrimination Act 1992* (Cth), where that non-compliance is due to the Owner complying with the express provisions of this Agreement and thereby creating or giving rise to issues identified in Item 7 of the Schedule, to the extent that it can be shown any Damage has been caused by that non-compliance.

PART 6 NOTICES

6.1 Any notice, report or other communication which must be given, served or made under or in connection with this Agreement:

- (a) must be in writing in order to be valid;
- (b) is sufficient if executed by the Party giving, serving or making the notice or on its behalf by any attorney, director or secretary, or solicitor of such Party;
- (c) is sufficient, in the case of the Owner's obligations under clause 3.5, if executed by the relevant consultant appointed pursuant to clause 3.4;
- (d) will be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by facsimile or sent by email to the address of that person in clause 6.2 (or at such other address or number as is notified in writing by that person to the other Parties from time to time); and

- (e) will be deemed to be served, given or made:
 - (i) in the case of prepaid post on the second day after the date of posting;
 - (ii) in the case of facsimile on receipt of a transmission report confirming successful transmission;
 - (iii) (in the case of delivery by hand) on delivery.

6.2 The details of each Party for the purposes of giving notice are as follows:

the Council:

Heritage Council of Western Australia
PO Box 6201
East Perth WA 6892

Attention: Manager, Conservation and
Assessment

Phone: (08) 9221 4177

Fax: (08) 9221 4151

the Owner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]
Director

Phone: [REDACTED]

Fax: [REDACTED]

PART 7 GENERAL

7.1 Variation to be in writing

No variation of this Agreement will be effective unless in writing and executed by the Council and the Owner.

7.2 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.

7.3 Further assurances

Each party shall do all things and execute all further documents as are necessary to give full effect to this Agreement.

7.4 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.

7.5 Costs

- (a) The Owner shall pay or reimburse the Council on demand for all the Council's costs and expenses reasonably and properly incurred in relation to:
 - (i) the exercise or enforcement by the Council of any right, power or remedy under this Agreement, at law, in equity or otherwise; and
 - (ii) any act or omission by the Owner causing Damage to the Council, including (without limitation) 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: Place

St George's Hall Facade which is situated at 508 Hay Street (25 Irwin Street), Perth and consists of:

- (a) the Land described in Item 3;
- (b) all buildings, structures and works on the Land from time to time; and
- (c) any thing in connection with the Land, entered or deemed to be entered in the Register.

Item 2: Significant Fabric

The Significant Fabric is described in the Conservation Plan.

Item 3: Land

That part of Lot 981 on Deposited Plan 187858, being part of Reserve 39908 and being part of the land contained in Crown Land Title Volume 3055 Folio 960, and that part of the Hay Street Road Reserve together as shown on the Heritage Council of Western Australia Survey Drawing No. 1985 prepared by Steffanoni Ewing & Cruickshank and attached to this agreement as Annexure D.

Item 4: Conservation Plan

St George's Hall, Perth – Conservation Plan prepared by Ronald Bodycoat, Duncan Stephen & Mercer Architects for the Building Management Authority, April 1995, a copy of which is attached to this agreement as Annexure A.

Item 5: Conservation Works

The schedule of works described in Annexure B.

Item 6: Maintenance

The schedule of maintenance activities described in Annexure C.

Item 7: BCA and DDA Issues

The description of features and issues described in Annexure E

EXECUTED AS A DEED



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

A handwritten signature in blue ink, appearing to be 'H. J. ...', written over a horizontal line.

Signature of authorised person

A handwritten signature in blue ink, appearing to be 'G. I. Gauntlett', written over a horizontal line.

Signature of authorised person

The word 'Director' written in blue ink over a horizontal line.

Office held

The word 'CHAIRMAN' written in blue ink over a horizontal line.

Office held

The name 'IAN. H. BAXTER' written in blue ink over a horizontal line.

Name of authorised person

The name 'GERALD IAN GAUNTLETT' written in blue ink over a horizontal line.

Name of authorised person

Signed for and on behalf of [REDACTED] by its Attorney in the presence of:

A large black rectangular box redacting the signature of a witness.

A black rectangular box redacting the signature of a witness.
Signature of Witness
SECRETARY

A large black rectangular box redacting the occupation of a witness.

A black rectangular box redacting the occupation of a witness.
Occupation of Witness
NAMEA black rectangular box redacting the name and address of a witness.
Name and Address of Witness

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

I, The Hon. Michelle Roberts, MLA, Minister for Employment Protection; Housing & Works; Indigenous Affairs; Heritage; Land Information, hereby certify that this Agreement is necessary for the purposes of, and complies with, the *Heritage of Western Australia Act (WA) 1990*.

Dated the 21st day of August 2007.



Minister for Employment Protection; Housing & Works;
Indigenous Affairs; Heritage; Land Information

Annexure A

Conservation Plan

St George's Hall, Perth – Conservation Plan prepared by Ronald Bodycoat, Duncan Stephen & Mercer Architects for the Building Management Authority, April 1995.