

**Heritage Council of
Western Australia**

and



HERITAGE AGREEMENT

Southern portion of the Old Burswood Canal

TABLE OF CONTENTS

PART 1 Definitions & Interpretation	1
1.1 Definitions	1
1.2 Interpretation	2
PART 2 Commencement, Duration and Scope of this Agreement	3
2.1 Commencement and Duration of this Agreement	3
2.2 Scope of this Agreement	3
PART 3 - Development and Conservation	3
3.1 Interpretation Plan	3
3.2 Interpretation Works - Development	4
3.3 Immediate Interpretation In Literature	4
3.4 Maintenance	4
3.5 Compliance with Statutes	5
3.6 Conservation Consultant	5
3.7 Insurance	5
3.8 Entry of the Place in the Register	5
PART 4 Council's Rights of Entry and Powers of Inspection	5
4.1 Council's rights of entry and powers of inspection	5
PART 5 Default	6
5.1 Events of default	6
5.2 Rights and remedies of Council	6
5.3 Land at Risk of Owner of the Land	7
5.4 Interest on overdue money	7
PART 6 General	7
6.1 Variation to be in writing	7
6.2 Governing Law	7
6.3 Further assurances	7
6.4 Extension of time by Council	7
6.5 Costs	8
THE SCHEDULE	8
Item 1: The Place	8
Item 2: The Land	8

Deisee
for Commissioner of State Revenue

HERITAGE AGREEMENT

The Peninsula
Lot 203 Great Eastern Highway, Burswood

ABN 66 012 878 629
WESTERN AUSTRALIA STAMP DUTY
2004/08/04 08:18 001365783-001
FEE \$ *****
SD \$ *****.00 PEN *****.00
EXEMPT 100 %

THIS AGREEMENT is made on the nineteenth day of August 2004
between the following parties:

1. **Heritage Council of Western Australia** of 108 Adelaide Terrace, East Perth, Western Australia (the "Council"); and
2. [REDACTED] of [REDACTED],
[REDACTED].

RECITALS:

- A. [REDACTED] is the registered proprietor of the Land.
- B. The Place is The Old Burswood Canal, which is entered in the Register of Heritage Places on an interim/permanent basis pursuant to the Act (Annexure C).
- C. The Interpretation Material is located on the Land and will recognise the Place.
- D. The Crown will be the ultimate registered proprietor of the Land, which will be vested in the Town of Victoria Park.

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;

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

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

"Event of Default" is defined in clause 5.1;

"Interpretation Material" means all items and things which are built, made, created or dealt with as part of the Interpretation Works;

"Interpretation Plan" means the Interpretation Plan approved by the Council in accordance with clause 3.2;

"Interpretation Works" means all actions to be undertaken in respect of the interpretation of the Place as set out in the Interpretation Plan;

"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 Land " means:

- (a) [REDACTED], for as long as [REDACTED] is the registered proprietor of the Land; and
- (b) any other registered proprietor of the Land from time to time or the "owner" of the Land as that term is defined by the Act;

"Place" means the place described in item 1 of the Schedule.;

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; and
- (d) a reference to any thing is a reference to the whole and each part of it.

PART 2

Commencement, Duration and Scope of this Agreement

2.1 Commencement and Duration of this Agreement

Subject to the provisions of this Agreement, this Agreement commences on the Effective Date and shall be of permanent effect unless terminated with the prior written consent of the Council.

2.2 Scope of this Agreement

- (a) This Agreement:
1. applies to the Interpretation Material and the Land;
 2. binds the Interpretation Material and the Land; and
 3. binds the Owner of the Land.
- (b) All of the obligations of the Owner of the Land 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 Land under this Agreement are not assignable by the Owner of the Land without the prior written consent of the Council.
- (d) Subject to sub-clause (e), on the person who is at the time the Owner of the Land ("Outgoing Owner") transferring the whole of that person's interest in the Land to another person, the Outgoing Owner is released from all personal liability under this Agreement. For the avoidance of doubt, this clause 2.2(d) operates only to release the Outgoing Owner personally and does not release, vary or otherwise affect the obligations of the Owner of the Land under or in connection with this Agreement.
- (e) The provisions of sub-clause (d) will not apply in respect of any liability or claim which arose prior to the date of registration of the transfer of the whole of the interest of the Outgoing Owner to another person.

PART 3

Development and Conservation

3.1 Interpretation Plan

- (a) The Owner of the Land must, no later than six months after the Effective Date, submit to the Council for its approval an interpretation plan for the Land. The Council may, as a condition of granting its approval, require that amendments, additions or deletions be made to the interpretation plan submitted by the Owner of the Land, having regard to the matters set out in the annexure to this Agreement. The Owner of the Land must then promptly:

- (i) make any such amendments, additions or deletions requested by the Council;
and
 - (ii) submit the amended interpretation plan to the Council for approval.
- (b) The interpretation plan, which is approved or approved as amended by the Council in accordance with this clause, will be the "Interpretation Plan" for the purposes of this Agreement.
 - (c) The Owner of the Land may vary the Interpretation Plan from time to time, but only in accordance with the approvals in advance in writing of the Council.

3.2 Interpretation Works - Development

- (a) The Owner of the Land must undertake the interpretation of the Place in accordance with the Interpretation Plan and is required to carry out the Interpretation Works, within a timeframe of two (2) years from the date of completion of the Interpretation Plan (Annexure A).
- (b) The Owner of the Land 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 of the Place or the Interpretation Material, or
 3. sub-divide or make application to sub-divide the Land, other than that prescribed by "The Burswood Lakes Structure Plan and Precinct Plan Amendment" dated 22 April 2003.

except as permitted by this clause or as otherwise approved in advance in writing by the Council.

3.3 Immediate Interpretation In Literature

The Owner of the land must display interpretative material recognising the history of the Old Burswood Canal in the Sales and Marketing Suite which is located at The Peninsula development, for as long as it exists.

3.4 Maintenance

- (a) The Owner of the Land must maintain the Land and the Interpretation Material (as constructed or adapted with the approval in advance in writing of the Council) in accordance with the Interpretation 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.

- (b) At intervals of no greater than 365 days during the currency of this Agreement, the Owner of the Land shall give to the Council a proper, detailed and comprehensive written report regarding the maintenance and state of the Interpretation Material and the level of compliance with this Agreement by the Owner of the Land.

3.5 Compliance with Statutes

Nothing in this Agreement removes, limits or modifies the obligations on the Owner of the Land to comply with all relevant statutory and other requirements in connection with the development of the Land, and the Owner of the Land 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.

3.6 Conservation Consultant

The Owner of the Land must appoint and use a consultant approved in advance in writing by the Council to prepare the Interpretation Plan and to supervise the Interpretation Works.

3.7 Insurance

The Owner of the Land 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 Interpretation Material 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 of the Interpretation Material the Owner of the Land shall, using monies recovered from its insurance policy and its own monies, fully and properly replace, reinstate or restore the destroyed or damaged Interpretation Material.

3.8 Entry of the Place in the Register

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

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 Land at reasonable times, and on reasonable prior notice, for any purpose related to the provisions of this Agreement, including without limitation to inspect the Land 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 Land for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner of the Land 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 Land and ensuring access to and use of any facility on the Land 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 Land 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 Land 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 visit the Land 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 at Risk of Owner of the Land

The Land shall remain at the risk of the Owner of the Land in all respects, notwithstanding any provisions in this Agreement dealing with the development or maintenance of the Land and without limitation all development or maintenance of the Land shall be conducted entirely at the risk of the Owner of the Land and the Owner of the Land shall indemnify and keep indemnified and save harmless the Council, the Minister and any of their respective servants or agents against all Damage incurred or suffered by any of them arising from or in connection with the development, maintenance or occupation of the Land by the Owner of the Land or any person claiming through or under the Owner of the Land.

5.4 Interest on overdue money

If the Owner of the Land 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 Land 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 judgement 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 Land.

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

6.5 Costs

- (a) The Owner of the Land 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 Land 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

Land Description - The Old Burswood Canal;

Portion of Lot 9752 on Deposited Plan 216181, being part of Crown Reserve 36630 and being part of the land comprised in Crown Land Title Volume 3119 Folio 914; and

Portion of Lot 3 on Diagram 73662, being part of the land comprised in Certificate of Title Volume 2049 Folio 92; and

Portion of Swan Location 35 being part of the land in Diagrams 1949 and 4858 and being part of the land comprised in C.O.T volume 2049 Folio 94; and

Portion of Lot 101 on Deposited Plan 26569, being part of the land comprised in Certificate of Title Volume 2120 Folio 877; and Portion of Lot 10749 on Deposited Plan 242736, being part of Crown Reserve 39361 and being part of the land comprised in Crown Land Title Volume 3119 Folio 915, as together are defined in Heritage Council of Western Australia survey drawing No. 3570 prepared by Steffanoni Ewing and Cruickshank Pty Ltd (Annexure C).

Item 2:

The Land

The Public Open Space bounded by Road 1 (Bow River Crescent) to the east, Super lot 21 to the north, Super lot 22 to the south and The Peninsula site boundary to the West as indicated in "The Burswood Lakes Structure Plan and Precinct Plan Amendment" dated 22 April 2003, and on Lot 203 being the whole of the land comprised in Certificate of Title Volume 2224 Folio 822, as shown on the plan attached to this Agreement and marked Annexure B.

EXECUTED AS A DEED.

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

[Handwritten signature]



Signature of authorised person

CHAIR HERITAGE COUNCIL

Office held

PATRIC DE VILLIERS

Name of authorised person

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

[Handwritten signature]

Signature of authorised person

DIRECTOR

Office held

IAN BAXTER

Name of authorised person

SIGNED

By
in the presence of:

[Handwritten signature]
Witness

STEPHEN CARRICK

Name (please print)

SIGNED by the said [redacted],
as [redacted]
[redacted] under a Power of
Attorney document dated 12 September 2003
in the presence of:

[redacted signature]

Signature of authorised person

[redacted]

Office held

[redacted]

Name of authorised person

SIGNED by the said [redacted],
as Attorney for [redacted]
[redacted] under a Power of
Attorney document dated 12 September 2003
in the presence of:

[redacted signature]

Signature of authorised person

[redacted]

Office held

[redacted]

Name of authorised person

SIGNED

by
in the presence of:

[redacted signature]

Witness

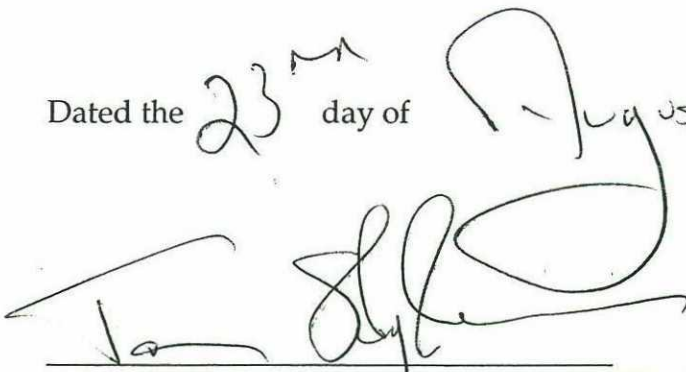
[redacted]

Name (please print)

CERTIFICATE UNDER SECTION 32 OF THE HERITAGE OF WESTERN
AUSTRALIA ACT

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 23rd day of August 2004

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: Design & other considerations - Interpretation Material

- (a) Interpretative plaque to be provided on the Land in a public area associated with the canal
- (b) Interpretative elements through landscape design of the Land
- (c) Use of Interpretation Material to develop an understanding of the natural and historical heritage of the Place
- (d) viewing platform (pocket park) on the Land to incorporate interpretative elements specific to the Old Burswood Canal.

Annexure B – Plan showing Land

EX LOT 203
ON DP 35753
C/T: 2224-822

VICTORIA

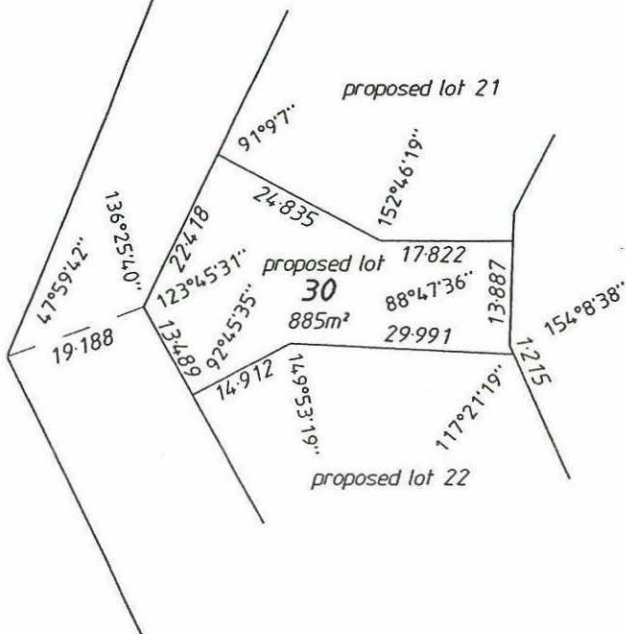
PARK

DRIVE

▲ 39361

10749

203



SCALE 1 : 1000

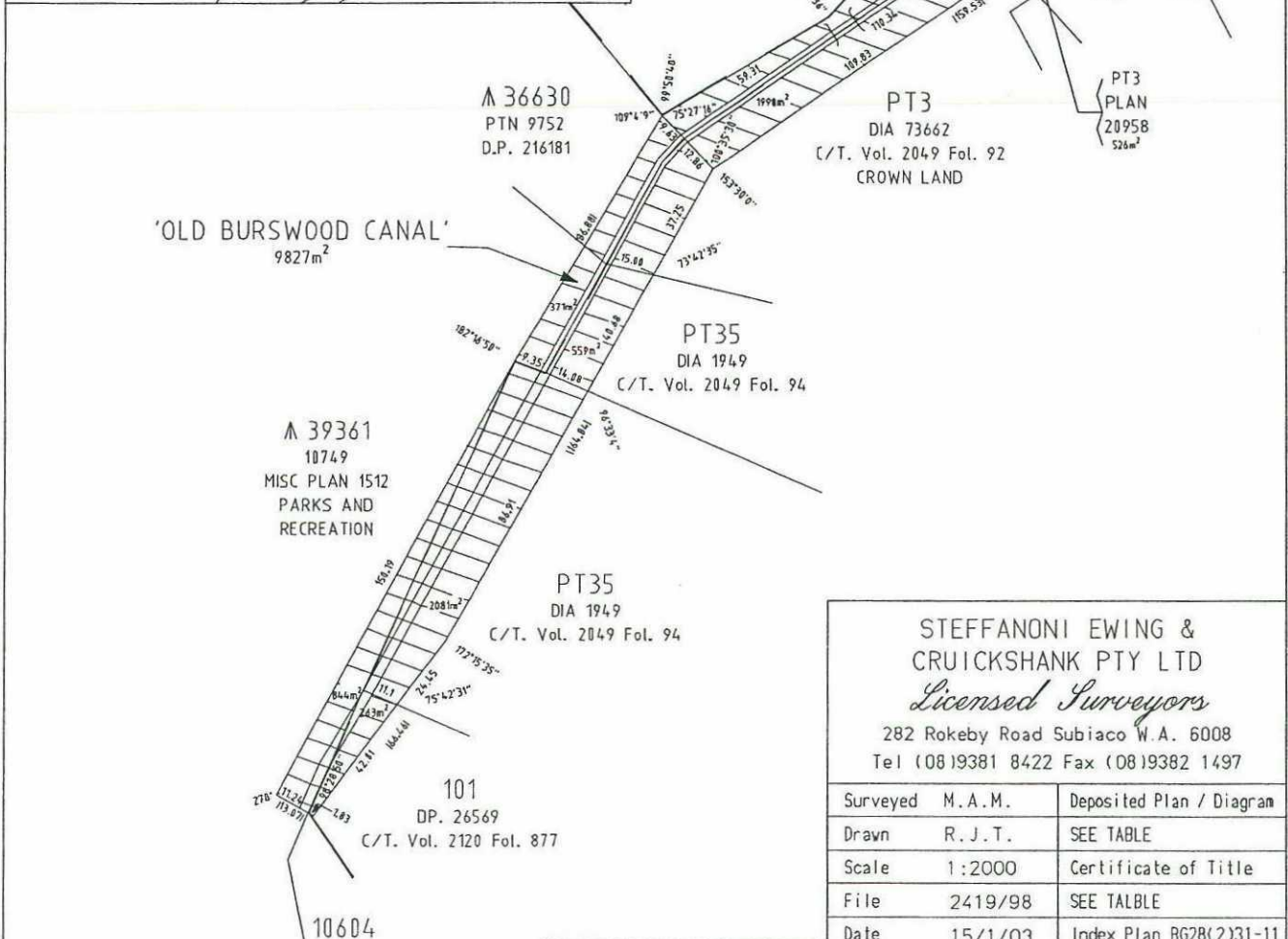
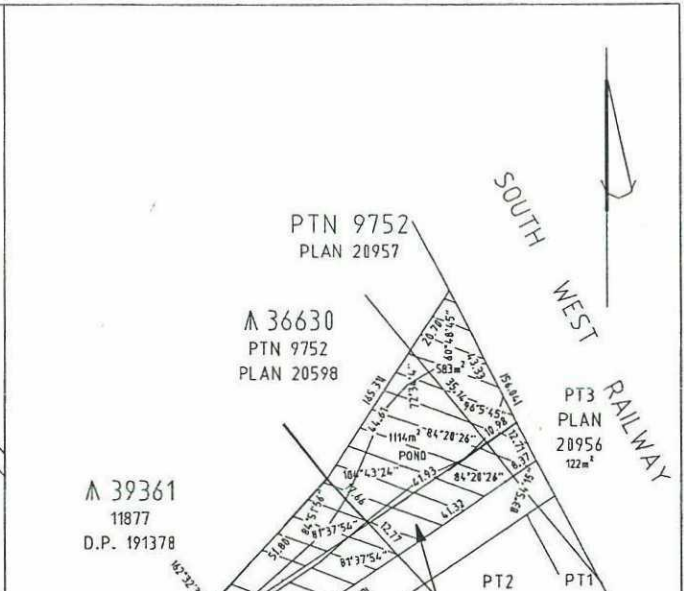
**GIUDICE
SURVEYS**

8 Stirling Street
FREMANTLE WA
T: 9335 6222
E: giudice@inet.net.au

LICENSED LAND SURVEYORS

BURSWOOD DWGL30HP 28/07/04

Annexure C – Plan showing Place



STEFFANONI EWING & CRUICKSHANK PTY LTD
Licensed Surveyors
282 Rokeby Road Subiaco W.A. 6008
Tel (08) 9381 8422 Fax (08) 9382 1497

Surveyed	M.A.M.	Deposited Plan / Diagram
Drawn	R.J.T.	SEE TABLE
Scale	1:2000	Certificate of Title
File	2419/98	SEE TABLE
Date	15/1/03	Index Plan BG28(2)31-11

TITLE
PLAN SHOWING 'OLD BURSWOOD CANAL' BURSWOOD

CLIENT
HERITAGE COUNCIL OF WESTERN AUSTRALIA

HCWA DRAWING No. 3570

Deposited Plan / Diagram	
D.P. 191378	DIA. 1949
D.P. 216181	DIA. 4858
D.P. 20956	DIA. 73662
D.P. 20957	
D.P. 20958	
D.P. 26569	
Certificate of Title	
C/T 2049/92	CLT 3119/914
2049/94	3119/916
2120/877	LR 3038/335