

Heritage Council of Western Australia

and



HERITAGE AGREEMENT

**Activ Foundation Workshop
98 Stirling Hwy, North Fremantle**

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EXEMPT from W.A. Stamp Duty

Sec. 119

for Commissioner of State Revenue

HERITAGE AGREEMENT
Activ Foundation Workshop

THIS AGREEMENT is made on the _____ day of _____ 1999 between the following parties:

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

RECITALS:

- A. The owner is the registered proprietor of the land.
- B. The Place is entered in the Register of Heritage Places on an interim basis pursuant to the Act.

AGREEMENT:

The parties agree with each other as follows.

WESTERN AUSTRALIA STAMP DUTY
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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 of the Schedule as may from time to time be varied with the approval of the Council;

"**Conservation Works**" means the works specified in item 5 of the Schedule;

"**Construction Completion Date**" means the date that is 18 (eighteen) months from 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;

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 written consent of the Council.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (1) applies to the land and the Place;
 - (2) binds the land and the Place; and
 - (3) binds the Owner.
- (b) All of the obligations of the Owner under this Agreement are covenants made pursuant to section 29(10) of the Act and are intended to run with the Land.
- (c) The rights and obligations of the Owner under this Agreement are not assignable by the Owner without the prior written consent of the Council.
- (d) Subject to sub-clause (e), on an Owner transferring the whole of the interest of that Owner in the Place and the Land to another person, the transferring 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.

Part 3
Development and Conservation

3.1 Conservation Works, Development

- (a) The Owner must undertake the conservation of the Place in accordance with the Conservation Plan and is required to carry out the conservation works.
- (b) The Owner 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,except as permitted by this clause or as otherwise approved, in advance in writing, by the Council.

3.2 Conservation Consultant

- (a) The Owner must appoint a consultant approved in advance, in writing, 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) every six months during the Construction Period, and (b) within one month of completion of the Conservation Works as defined in this Agreement.

3.3 Maintenance

The Owner 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.

3.4 Compliance with Statutes

Nothing in this Agreement removes, limits or modifies the obligations on the Owner to comply with all relevant statutory and other requirements in connection with the development of the Land, and the Owner is responsible for obtaining all approvals consents and licences required for development of the Land, including planning approvals and building licences, from all relevant bodies and authorities including the local government authority.

3.5 Permanent Registration

The Owner agrees to the entry of the Place into the Register of Heritage Places on a permanent basis.

Part 4
Council's Rights of Entry and Powers of Inspection

4.1 Council's rights of entry and powers of inspection

- (a) Subject to sub-clause (b) the Council shall, through its nominated representative or nominated officer from time to time, have the power to enter the Place at reasonable times, and on reasonable prior notice, for any purpose related to the provisions of this Agreement, including without limitation to inspect the Place with a view to ensuring compliance with the provisions of this Agreement.

- (b) Subject to sub-clause (c), the Council will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner must do all things necessary to enable the Council to exercise its rights of inspection as set out in sub-clause (a), including without limitation ensuring that reasonable access is provided to all parts of the Place and ensuring access to and use of any facility at the Place which is necessary to facilitate inspection.

Part 5 Default

5.1 Events of default

An Event of Default occurs if:

- (1) 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
- (2) the Owner repudiates or commits a fundamental breach of this Agreement.

5.2 Rights and remedies of Council

In the event any Event of Default occurs, the Council shall be entitled to exercise any one or more of the following powers:

- (a) through its agents, contractors or employees enter the Place and take such actions as are in the Council's opinion necessary to rectify the Event of Default (including attending to any construction or other works); together with or separately from
- (b) any rights and remedies which may be available to the Council at law or in equity; together with or separately from
- (c) the rights, powers and remedies available to the Council under the Act,

and nothing in this Agreement limits or prejudices or shall hinder the exercise by the Council or the Minister or any other person of any of the rights, powers or remedies available to the Council, the Minister or that person under the Act if an Event of Default occurs, or any other event occurs which is a breach of any provision of the Act.

5.3 Land and Place at risk of Owner

The Land and the Place shall remain at the risk of the Owner in all respects, notwithstanding any provisions in this Agreement dealing with the development 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 and the Owner shall indemnify and keep indemnified and save harmless the Council, the Minister and any of their respective servants or agents against all Damage incurred or suffered by any of them arising from or in connection with the development or occupation of the Land or the Place by the Owner or any person claiming through or under the Owner.

5.4 Interest on overdue money

If the Owner becomes liable to pay any amount of money to the Council pursuant to this Agreement or arising from any matter the subject of this Agreement, the Owner shall pay to the Council interest on that amount from and including the due date for payment of the amount to but excluding the actual date of payment of that amount. The interest is to be paid on demand by the Council, is to be calculated on daily balances, and is to be at the rate then payable on judgment debts pursuant to the provisions of the Supreme Court Act.

**Part 6
General**

6.1 Variation to be in writing

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

6.2 Governing Law

This Agreement is governed by the laws of the State of Western Australia and the parties submit to the jurisdiction of that State.

6.3 Further assurances

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

6.4 Extension of time by Council

The Council may, at the Council's discretion and by written notice to the Owner, extend any time period for performance by the Owner of any of its obligations under this Agreement.

6.5 Costs

- (a) The Owner shall pay or reimburse the Council on demand for all the Council's costs and expenses in relation to:
 - (1) the exercise or enforcement by the Council of any right, power or remedy under this Agreement; and
 - (2) any act or omission by the Owner causing Damage to the Council, including the Council's legal costs and expenses.
- (b) Each party shall pay all its own legal costs and expenses in relation to the preparation, execution and stamping of this Agreement.

The Schedule

Item 1: *Activ Foundation Workshop* which is situated at **98 Stirling Highway, North Fremantle** and consists of the Land described in Item 3 and the works and buildings on it.

Item 2: **Significant Fabric**
The whole of the Place.

Item 3: **The Land**
North Fremantle Lot 492, being the whole of the land comprised in Crown Land Record Volume 2124 Folio 100.

Item 4: **Conservation Plan**
"Activ Foundation Workshop North Fremantle Conservation Plan", prepared by Smith and Hooke Architects for the Department of Contract and Management Services on behalf of the Disability Services Commission, April 1998, 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 the HERITAGE)
COUNCIL OF WESTERN AUSTRALIA was)
hereunto affixed in the presence of:

Maurice Owen
Signature of authorised person

Ian Baxton
Signature of authorised person

CHAIRMAN
Office held

DIRECTOR
Office held

MAURICE OWEN
Name of authorised person

IAN BAXTON
Name of authorised person

Signed by:
[Redacted]
Signature

[Redacted]

In the presence of:
[Redacted]
Signature
[Redacted]
Name of Witness (please print)

In the presence of:
[Redacted]
Signature
[Redacted]
Name of Witness (please print)

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

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.

Dated the 9th day of JUNE 1999



MINISTER FOR HERITAGE

CONSERVATION WORKS

Urgent

(to be completed in eighteen months)

Both Workshop and Infants' School

- Joinery and woodwork should be maintained.
Regular maintenance should be augmented by periodic replacement in similar details and material as required. This will include external maintenance to windows and doors and making good window flashings in the workshop.
- External walls should be maintained and conserved, including the stone decorations and the foundation stone.

The external walls of both buildings have substantial maintenance problems. The limestone walls are deteriorating and the mortar in the brick sections is fretting badly. Mortars of similar colour and strength should be used in repair work. The lime mortar in the workshop is inadequate for the exposed position and needs to be replaced with a mix capable of withstanding the exposed location.

This work is to be investigated and documented by a conservation professional. (as stipulated in 3.2 of the Heritage Agreement for Activ Foundation Workshop)

- All maintenance and repairs to the less significant elements of the place should be carried out with due deference to the cultural significance of the place as a whole. Uncontrolled, ad hoc changes that visually affect the buildings should not be permitted.
- **Other matters**
Dangerous materials, asbestos, lead paints and other dangerous building materials should be dealt with in accordance with DOSHWA regulations.

Infants' School

- Rainwater goods should be checked and made good

Medium

(to be completed within 5 years)

Workshop

- Asbestos roofing materials should be replaced.
It is likely that the asbestos roof is not original and therefore investigation of the original is desirable in order that any replacement improves the authenticity. If the asbestos is original then fibrous cement products should be used as replacements. DOSHWA regulations to be followed.