
**Heritage Council of
Western Australia**

and



HERITAGE AGREEMENT

Railway House, 6 Hale Street, Narrogin

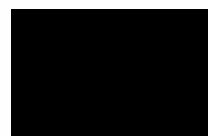


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Annexure A

See 119

for Commissioner of State Revenue

HERITAGE AGREEMENT
Railway House, 6 Hale Street, Narrogin

THIS AGREEMENT is made on the _____ day of _____ 2001 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. [REDACTED] 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.

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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;

"Development" means the development or use of any land, including:

- (a) Any demolition, erection, construction, alteration of or addition to any building or structure on the land; and
- (b) The carrying out on the land of any excavation or other works;

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

"Event of Default" is defined in clause 5.1;

"Guiding Conservation Policies" means the Guiding Conservation Policies by conservation architect, Rosemary Rosario, 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;

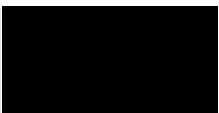
"Land" means the land described in Item 3 of the Schedule;

"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.

Part 3 Development and Conservation

3.1 No Development without the Council's Approval

The Owner of the Place shall not:

- a) carry out any Development on or of the Place which is inconsistent with the Guiding Conservation Policies;
- b) without prejudice to the generality of sub-clause (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 of the Significant Fabric; or
- c) sub-divide or make application to sub-divide the Land,

in any case except as 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.

3.4 Conservation Consultant

- (a) The Owner must appoint a consultant approved in advance in writing by the Council to supervise any Development of the place approved by the Council under clause 3.1, and must commission the consultant to provide the Council with written progress reports detailing the Development when completed.
- (b) 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 such a policy 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.

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 on an annual basis or as required, 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**
Railway House Narrogin (fmr) at 6 Hale Street, Narrogin 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:** **Land**
Narrogin Lot 1682, being the whole of the land comprised in Certificate of Title Volume 2116 Folio 557.
- Item 4:** **Guiding Conservation Policies**
The Guiding Conservation Policies by conservation architect, Rosemary Rosario, as described in Annexure A.
-

EXECUTED AS A DEED.

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



[Signature]

Signature of authorised person

Marli Wallace

Signature of authorised person

DIRECTOR

Office held

CHAIR

Office held

IAN HADIN BAXTER

Name of authorised person

MARLI WALLACE

Name of authorised person

SIGN

by

in the presence of:

ness

Name (please print)

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

I, The Hon. Judy Edwards, MLA, Minister for the Environment and Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act 1990.

Dated the *1st* day of *Oct* 2001.

Judy Edwards
MINISTER FOR THE ENVIRONMENT AND HERITAGE



Site and Landscape Policies

- Policy** The existing building must be retained, conserved on the site.
- Policy** The existing building must remain the dominant structure on the site.
- Policy** The retention of a landscape context to the building contributes to the ambiance of the place.
- Policy** Where possible retain existing levels around the perimeter of the building to aid with ground drainage.

Planning

- Policy** The original floor plan of the building must be retained intact.
- Policy** The external and internal walls of the building must be retained and conserved and no new door or window openings must be made in them. No new internal walls must be constructed in the building.
- Policy** If a future extension to the building is required this must be constructed in a way which causes minimum impact on the existing significant fabric.

Building Fabric

- Policy** Repair brickwork as necessary, replacing any badly damaged bricks with matching bricks. Remove any gray cement repairs to joints and repoint as necessary with sand lime mortar.
- Policy** Existing door and window openings must be retained and conserved where these remain.
- Policy** External joinery including window frames and sashes, must be retained, restored, primed and painted. Prior to painting, treat the timber with timber preservative with a solar protection. Paint must be good quality oil based gloss paint for external joinery.
- Policy** Where window sashes or frames are deteriorated, new elements must be constructed to match the original detail of the building.
- Policy** Conserve and retain original window hardware where this remains extant.
- Policy** Roof sheeting must be monitored for leaks and rust. Existing roof sheeting must be conserved and patched or the roof sheeting must be replaced. If the roof sheeting is replaced, corrugated galvanised iron sheets of matching dimension to the existing roof must be used. If roofing is zincalume this may be retained, however galvanized iron is recommended for future roof replacement.
- Policy** Existing chimneys must be retained and conserved.
- Policy** All gutters and downpipes must be checked and cleared as necessary. Replacement gutters must be matching (ogee) profile corrugated galvanised iron.
- Policy** Internal joinery including door frames and doors must be retained and conserved. Timber must be sanded, repaired, primed and painted. Conserve and retain original door hardware where this remains.

Policy Electrical, or other services may be altered or added to the building. They must be in surface mounted conduit or ducts etc and discreetly located. Existing original fabric must not be modified to accommodate new services.

Implementation

Policy Where necessary, conservation works must be guided by a conservation professional.