

**Heritage Council of  
Western Australia**

**and**

**East Perth Redevelopment Authority**

**HERITAGE AGREEMENT**

**178 (Lot 125) Aberdeen Street, Northbridge**

## TABLE OF CONTENTS

<b>Part 1</b>	<b>Definitions &amp; Interpretation</b>	
1.1	Definitions	1
1.2	Interpretation	2
<b>Part 2</b>	<b>Commencement, Duration and Scope of this Agreement</b>	
2.1	Commencement and duration of this Agreement	2
2.2	Scope of this Agreement	2
<b>Part 3</b>	<b>Development and Conservation</b>	
3.1	No Development without the Council's Approval	3
3.2	Maintenance	3
3.3	Compliance with Statutes	3
3.4	Conservation Consultant	3
3.5	Entry of the Precinct in the Register	3
3.6	Insurance	3
<b>Part 4</b>	<b>Council's Rights of Entry and Powers of Inspection</b>	
4.1	Council's rights of entry and powers of inspection	4
<b>Part 5</b>	<b>Default</b>	
5.1	Events of default	4
5.2	Rights and remedies of Council	4
5.3	Land and Place at risk of Owner	5
5.4	Interest on overdue money	5
<b>Part 6</b>	<b>General</b>	
6.1	Variation to be in writing	5
6.2	Governing Law	5
6.3	Further assurances	5
6.4	Extension of time by Council	5
6.5	Costs	5
	<b>The Schedule</b>	<b>7</b>

S 119 of Stamp Act  
EXEMPT from W.A. Stamp Duty

HERITAGE AGREEMENT  
178 (Lot 125) Aberdeen Street, Northbridge

*Manralang*  
For Commissioner of State Revenue

THIS AGREEMENT is made on the 27<sup>th</sup> day of June 2002 between the following parties:

1. HERITAGE COUNCIL OF WESTERN AUSTRALIA of 108 Adelaide Terrace, East Perth, Western Australia (the "Council"); and
2. East Perth Redevelopment Authority, PO Box 6892, East Perth, Western Australia (the "Owner").

**RECITALS:**

- A. East Perth Redevelopment Authority is the registered proprietor of the Land.
- B. The Place is part of the Precinct, which is entered in the Register of Heritage Places on an interim basis pursuant to the Act.
- C. The Council considers that the Precinct is of cultural heritage significance for, among others, the reasons set out in item 2 of the Schedule.

**AGREEMENT:**

The parties agree with each other as follows.

ABN 66 012 878 629  
WESTERN AUSTRALIA STAMP DUTY  
DEC 04/07/02 08:38 001365778-008  
FEE \$ \*\*\*\*\*0  
SD \$ \*\*\*\*\*.00 PEN \*\*\*\*\*.00  
EXEMPT 100 %

**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 Policies" means the conservation policies set out in Annexure A;

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

"Development" has the same meaning as in the Act;

"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 4 of the Schedule;

"Management Strategy" means the management strategy described in Annexure B;

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

"Owner" means:

- (a) the person described on page 1 of this Agreement as the Owner, for so long as that person 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 3 of the Schedule;

“**Precinct**” means the precinct described in Item 1 of the Schedule, being the Aberdeen Street Precinct;

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 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 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 the person who is at the time the Owner (“Outgoing Owner”) transferring the whole of that person’s interest in the Place and 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 and does not release, vary or otherwise affect the obligations of the Owner.

- (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 shall not:
- (1) carry out any Development on or of the Place; or
  - (2) without prejudice to the generality of sub-clause (1):
    - (i) 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 Precinct; or
    - (ii) demolish or destroy the buildings, structures or significant fabric comprising the Place,
- in any case except as approved in advance in writing by the Council.
- (b) The Owner must ensure that any Development on or of the Place complies with and gives effect to:
- (i) the Conservation Policies; and
  - (ii) the guiding conservation principles set out in item 1 of Annexure B,
- and the Owner must implement and give full effect to the Management Strategy.

#### **3.2 Maintenance**

The Owner must maintain the Place (as restored, constructed or adapted with the approval in advance in writing of the Council) in accordance with the Management Strategy 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.

#### **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 Place, and the Owner is responsible for obtaining all approvals consents and licences required for Development of the Place, including planning approvals and building licences, from all relevant bodies and authorities including the local authority.

#### **3.4 Conservation Consultant**

The Owner must appoint a consultant approved in advance in writing by the Council to supervise any Development.

#### **3.5 Entry of the Precinct in the Register**

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

### **3.6 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 Place 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 Place.

#### **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**

- (a) 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 or maintenance of the Land or the Place and 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 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 maintenance 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:**

All the land contained described below (located at 154 to 188 Aberdeen Street Northbridge) and all buildings, structures and works which are on that land:

Lot 26 on Plan 508, being the whole of the land comprised in Certificate of Title Volume 1865 Folio 489.

Lot 27 on Plan 508, being the whole of the land comprised in Certificate of Title Volume 1072 Folio 360.

Lot 121 on Plan 31661, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 801.

Lot 122 on Plan 31661, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 802.

Lot 123 on Plan 31661, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 803.

Lot 124 on Plan 31661, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 804.

Lot 125 on Plan 31661, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 805.

Lot 127 on Plan 31661, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 806.

Lot 115 on Plan 31663, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 825.

Lot 116 on Plan 31663, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 826.

Lot 117 on Plan 31663, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 827.

Lot 118 on Plan 31663, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 828.

Lot 119 on Plan 31663, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 829.

Lot 120 on Plan 31663, being the whole of the land comprised in Certificate of Title Volume 2221 Folio 830.

That portion of Lot 9000 on Plan 31661, being part of the land comprised in Certificate of Title Volume 2221 Folio 807, as is situated between Lot 121 on Plan 31661 and Lot 120 on Plan 31663 and extending from Aberdeen Street in a northerly direction to the prolongation of the most northern boundary of Lot 121.

That portion of the south western section of Aberdeen Street as is situated between Palmerston Street to the south east, the southern boundaries of the subdivisional lots comprising the precinct described above to the north east and north west and the centre line of Aberdeen Street to the south west.

**Item 2: The Precinct**

*Aberdeen Street Precinct*, containing the Land and the Place described in Items 3 and 4, is an almost continuous row of single storey brick and iron residences from 154 to 188 Aberdeen Street Northbridge inclusive, has cultural heritage significance for the following reasons:

- the precinct is rare as an example of a considerably intact streetscape of late nineteenth century and early twentieth century residential and associated commercial buildings still extant within close proximity to Perth's city centre;
- individual buildings have scale, massing and detail of aesthetic value which provides a visual cohesion within the precinct and contributes to the historic character of the area;
- the place is important as a reflection of the diversity of cultural changes and events that occurred over the course of a century. The changing ownership of the properties within the precinct reflects population movement and changing attitudes towards what became inner-city housing, as well as being evidence of the expansion and development of Perth residential quarters during and immediately after the gold boom;
- the precinct is highly valued by the community for its association with the history of Northbridge and for contributing to their continuing sense of place;
- the precinct contains important individual places such as 156 Aberdeen Street (1883-84), one of the first substantial houses to be constructed in the area and associated with Richard A. Sholl, Post Master General for Western Australia who built and lived in this house, and 162 Aberdeen Street (c.1892), associated with the Torre family who are well known within the Northbridge area and who ran a boarding house for newly arrived migrants in the post war years in this house, and from 1961 for its association with the Catholic Order, the Daughters of Saint Vincent de Paul who worked among the homeless and dispossessed.
- The residential building at No. 158 Aberdeen Street is of little significance.

**Item 3: The Place**

The Land described in Item 4 and the works, structures and buildings on it.

**Item 4: Land**

Lot 125 on Plan 31661, and being all of the Land contained in Certificate of Title Volume 2221 Folio 805, and situated at 178 Aberdeen Street, Northbridge.

EXECUTED AS A DEED.

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

[Signature]

Signature of authorised person

DIRECTOR

Office held

IAN BAXTER

Name of authorised person

[Signature]

Signature of authorised person

CHAIR

Office held

MARLE WALLACE

Name of authorised person



THE COMMON SEAL of EAST PERTH REDEVELOPMENT AUTHORITY is affixed in the presence of:

[Signature]

Signature of authorised person

Chairman

Office held

Ken Michael

Name of authorised person

[Signature]

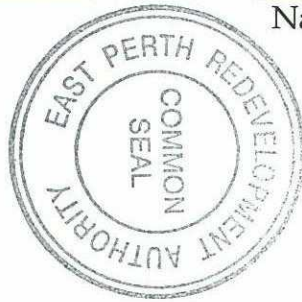
Signature of authorised person

Chief Executive Officer

Office held

Anthony Morgan

Name of authorised person



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

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 1 day of July 2002.

Judy Edwards  
MINISTER FOR THE ENVIRONMENT AND HERITAGE

**Aberdeen Street Heritage Precinct  
Conservation Policies  
Heritage Council of Western Australia  
June 2002**

**Character**

1. The design of new buildings and additions should relate to the significance of the Precinct and the character of adjoining buildings.
2. New buildings are to be designed in a contemporary manner that is sympathetic to the Precinct and should not create a false impression of age or style.
3. The design of new buildings and additions should relate to and use as reference points the materials and details of adjacent buildings within the Precinct. New materials may be introduced provided that they are complimentary to the significance of the Precinct.
4. The use of height references in existing building (such as string coursings, eaves, window head/sill heights and the like) for height references in new buildings and new additions to existing buildings is encouraged.

**Visual Setting**

5. New buildings and additions should visually relate to the existing heritage buildings within the Precinct and should not visually dominate or obscure views or sightlines to the existing heritage buildings within the Precinct.

**Scale**

6. The size and proportion of new buildings and additions within the Precinct should reflect the predominant size and proportions of adjacent buildings within the Precinct.

**Height**

7. New development on Lots that either contain or are adjacent to heritage buildings should aim to maintain the established streetscape height that is dominated by single storey dwellings. Generally this will be achieved through limiting building heights to a single storey with a minimal eaves height of 3 metres at the street frontage and 2 storeys or up to 9m in height at the rear.
8. New development on vacant Lot 115 is to have a minimum front setback equivalent to the front setback of the building line of the existing heritage building on the adjoining Lot 116.
9. New development on vacant Lots 117 & 119 to have a minimum front setback equivalent to the front setback of adjoining heritage buildings.

**Fencing**

*Front Fences*

10. New fencing should be compatible in height with the fences of adjoining heritage buildings and of a suitable material and spacing to adjoining heritage buildings and surrounding fences within the Precinct. The exact reproduction of traditional fence styles should be avoided.

### **Outbuildings**

11. Garages, sheds and other outbuildings should be erected of compatible materials to the primary building.

### **Landscaping**

12. New landscaping should be compatible with the character of any surrounding heritage buildings.

### **Signage**

13. Any signage on new buildings should be contemporary in nature and compliment the character and significance of the Precinct.

**Aberdeen Street Heritage Precinct  
Management Strategy  
Heritage Council of Western Australia  
June 2002**

The management strategy is that the Owner must, in respect of the Place:

- (a) observe and give effect to the guiding conservation policies set out in item 1; and
- (b) comply with the maintenance requirements set out in item 2.

**Item 1**

**Guiding Conservation Policies**

- Policy 1            The existing building must be retained and conserved on the site.
- Policy 2            No alteration and additions should occur which will diminish the streetscape value of the precinct.
- Policy 3            The existing building must remain the dominant structure on the site.
- Policy 4            If reconstruction or replacement of material is to occur, the new material should match the existing.

**Item 2**

**Maintenance Requirements**

- Requirement 1    Regularly check and maintain all fabric that contributes to the cultural heritage significance of the Precinct, as identified in the Statement of Significance, including, but not limited to walls, roof, verandahs, fences, timber joinery and the like.
- Requirement 2    Ensure there is adequate drainage to the perimeter of the building.
- Requirement 3    Institute a regular programme of termite detection and treatment.
- Requirement 4    Regularly check and clean gutters and downpipes.
- Requirement 5    Maintain gardens in order to retain visual permeability to the existing building.