

Heritage Council of Western Australia

and

[REDACTED]

and


[REDACTED]

**HERITAGE AGREEMENT**

**1915 BLOCK ALBANY PRIMARY SCHOOL, 70-88 ALBANY HIGHWAY,  
ALBANY**

## TABLE OF CONTENTS

<b>Part 1 Definitions &amp; Interpretation</b>	<b>1</b>
1.1 Definitions	1
1.2 Interpretation	2
<b>Part 2 Commencement, Duration and Scope of this Agreement</b>	<b>2</b>
2.1 Commencement and Duration of this Agreement	2
2.2 Scope of this Agreement	2
<b>Part 3 Development and Conservation</b>	<b>3</b>
3.1 Conservation Works, Development	3
3.2 Conservation Consultant	3
3.3 Maintenance	3
3.4 Compliance with Statutes	3
3.5 Insurance	4
<b>Part 4 Council's Rights of Entry and Powers of Inspection</b>	<b>4</b>
4.1 Council's rights of entry and powers of inspection	4
<b>Part 5 Default</b>	<b>4</b>
5.1 Events of default	4
5.2 Rights and remedies of Council	4
5.3 Land and Place at Risk of Owner of the Place	5
5.4 Interest on overdue money	5
<b>Part 6 General</b>	<b>5</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>Part 7 Acknowledgements</b>	<b>6</b>
7.1 Responsible Entity	6
7.2 Custodian as agent	6
7.3 Responsible Entity as principal	6
7.4 Limitation of Custodian's Liability	6
7.5 Definitions	7
7.6 Override	7
<b>The Schedule</b>	<b>8</b>
<b>Annexure A Survey Drawing No 3463</b>	
<b>Annexure B Conservation Plan</b>	
<b>Annexure C Conservation Works</b>	

  
for Commissioner of State Revenue

HERITAGE AGREEMENT  
Albany Primary School

THIS AGREEMENT is made on the            day of            2002 between the following parties:

1. HERITAGE COUNCIL OF WESTERN AUSTRALIA of 108 Adelaide Terrace, East Perth, (the "Council"); and
2. [REDACTED] (the "Owner of the Place"); and
3. [REDACTED]

RECITALS:

- A. The Owner of the Place 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.

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;

"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:

- (a) in the case of immediate action as described in Annexure C, the date 2 years after the Effective Date of this Agreement;
- (b) in the case of medium term action as described in Annexure C, the date 5 years after the Effective Date of this Agreement; and
- (c) in the case of long term action as described in Annexure C, the date 10 years after 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;

ABN 66 012 878 629  
WESTERN AUSTRALIA STAMP DUTY  
21/11/02 08:13 001365779-001  
DUP \$ \*\*\*\*\*.00  
O/S \$ \*\*\*\*\*.00  
EXEMPT 100 %



"Event of Default" is defined in clause 5.1;

"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) [REDACTED] for so long as [REDACTED] is the registered proprietor; and
- (b) any other Owner or Owners of the Land from time to time, "Owner" having the meaning ascribed to it by 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 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 an Owner of the Place transferring the whole of the interest of that Owner of 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 of the Place 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.
- (b) The Owner of the Place 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 of the Place 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) within one month of the end of each financial year during the Construction Period, and (b) within one month of completion of the Conservation Works as defined in this Agreement.

#### **3.3 Maintenance**

- (a) 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, in accordance with the Conservation Plan, 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 Place shall give to the Council a proper, detailed and comprehensive written report regarding the maintenance and state of the Significant Fabric and the level of compliance with this Agreement by the Owner of the Place.

#### **3.4 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 government authority.

### 3.5 Insurance

The Owner of the Place 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 of the Place 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 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 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

An Event of Default occurs if:

- (a) 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
- (b) 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, the Owner of the Place and [REDACTED].

### **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.

## Part 7 Acknowledgements

### 7.1 Responsible Entity

[REDACTED] "the Responsible Entity") is the responsible entity of the [REDACTED] ("the Trust").

### 7.2 Custodian as agent

- (a) The Responsible Entity has appointed [REDACTED] [REDACTED] as its agent to hold the assets of the Trust on behalf of the Responsible Entity in accordance with a custody agreement dated 27 June 2000 between the Custodian and the Responsible Entity ("the Custody Agreement").
- (b) The parties agree that:
- (i) any reference to the Custodian as the Owner of the Place in this Agreement means the Custodian in its capacity as custodian of assets of the Trust and as agent for the Responsible Entity; and
  - (ii) any act or omission of the Custodian in respect of this Agreement in its capacity as agent for the Responsible Entity is taken to have been done (or failed to have been done) by the Responsible Entity.
- (c) The parties acknowledge and agree that the Custodian is bound to comply with the obligations of the Owner of the Place (whether express or implied) under this Agreement ("the Custodian's Obligations") only to the extent that it is properly instructed by the Responsible Entity, or is otherwise required under the terms of the Custody Agreement or any applicable law, to do so.

### 7.3 Responsible Entity as principal

- (a) The Responsible Entity agrees that it:
- (i) is bound by all of the Custodian's Obligations as if every reference in this Agreement to the Owner of the Place was a reference to the Responsible Entity; and
  - (ii) will properly instruct the Custodian to comply with the Custodian's Obligations to the extent that only the Custodian can perform the relevant Custodian's Obligation.
- (b) Each Custodian's Obligation is discharged if it is complied with by either the Responsible Entity or the Custodian.
- (c) Any duty or obligation of the Council under this Agreement is discharged if it is complied with in favour of either the Responsible Entity or the Custodian.

### 7.4 Limitation of Custodian's Liability

- (a) The Custodian enters into this Agreement only as agent of the Responsible Entity. The Custodian can only act in accordance with the terms of the Custody Agreement and is not liable under any circumstances to any party under this Agreement. This limitation of the Custodian's liability applies despite any other provision of this

Agreement and extends to all liabilities and obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.

- (b) The Custodian is not obliged to do or refrain from doing anything under this Agreement (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in paragraph (a) of this clause.
- (c) No attorney, agent, receiver or receiver and manager appointed in accordance with this Agreement has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

#### 7.5 Definitions

For the purposes of this clause 7:

"Trust" means the managed investment scheme currently known as the [REDACTED]; [REDACTED] created by the Trust Deed.

"Trust Deed" means the deed of trust dated 21 July 1995 between [REDACTED] and [REDACTED] as amended by supplemental deeds dated 15 August 1995, 23 April 1996, 22 July 1999 and 22 May 2000 (and as amended from time to time).

#### 7.6 Override

This clause 7 applies despite any other provision of this Agreement or any principle of equity or law to the contrary.

### The Schedule

**Item 1: The Place**

*1915 Block, Albany Primary School*, which is situated at 70-88 Albany Highway, Albany and consists of that part of the Land and the works and buildings on it hachured on Heritage Council of Western Australia survey drawing No 3463 prepared by Steffanoni & Cruickshank Pty Ltd, a copy of which is appended to this Agreement as Annexure A.

**Item 2: Significant Fabric**

The whole of the Place.

**Item 3: Land**

Lot 1274 on Deposited Plan 181827 being the whole of the land comprised in Crown Land Title Volume 3009 Folio 581.

**Item 4: Conservation Plan**

*Albany Primary School* Conservation Plan, prepared by David Heaver for the Department of Contract and Management Services and the Education Department of Western Australia, c. March 2001, a copy of which is appended to this agreement as Annexure B.

**Item 5: Conservation Works**

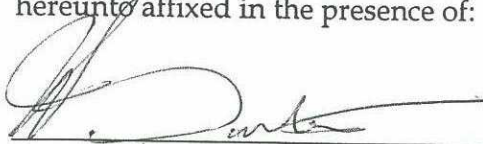
The Schedule of Works forming Annexure C.

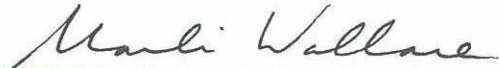


EXECUTED AS A DEED.

THE COMMON SEAL of the HERITAGE )  
COUNCIL OF WESTERN AUSTRALIA was )  
hereunto affixed in the presence of: )



  
\_\_\_\_\_  
Signature of authorised person

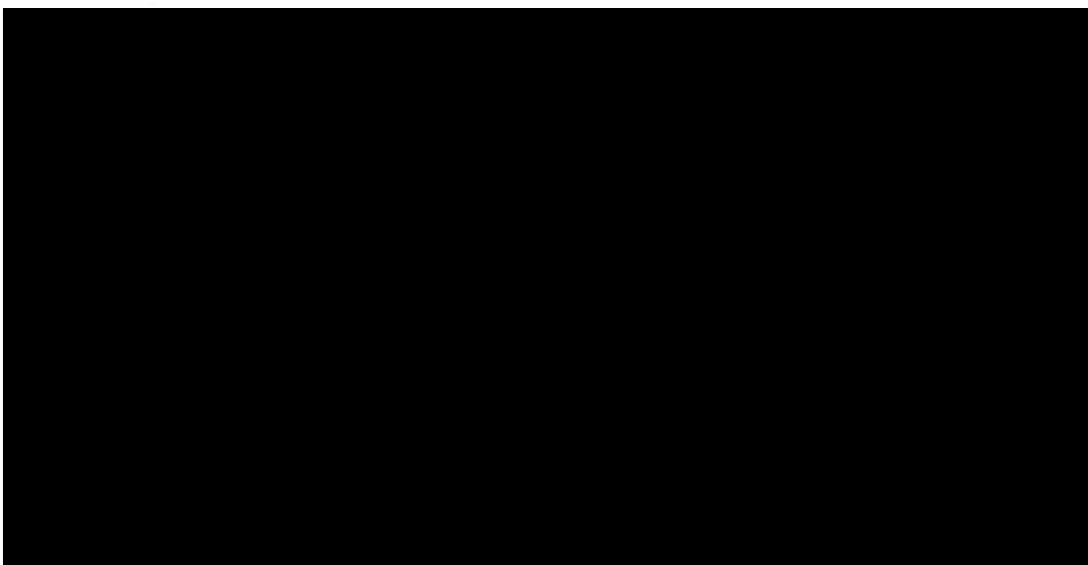
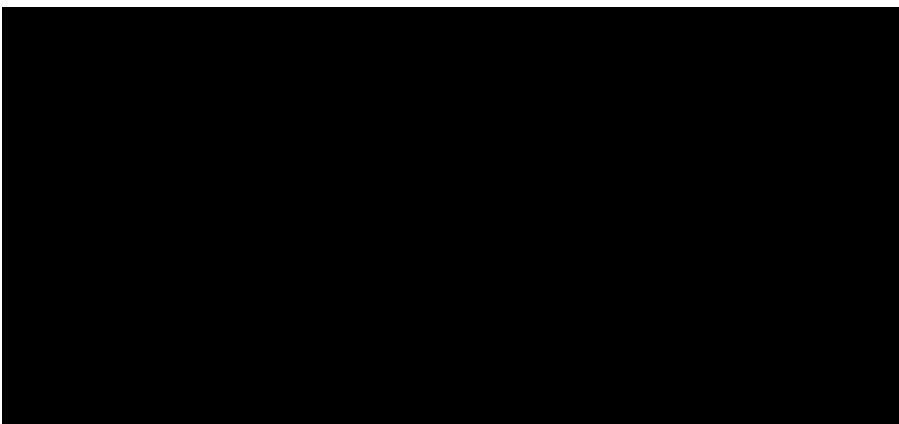
  
\_\_\_\_\_  
Signature of authorised person

DIRECTOR  
\_\_\_\_\_  
Office held

CHAIR  
\_\_\_\_\_  
Office held

IAN BAXTER  
\_\_\_\_\_  
Name of authorised person

MARLI WALLACE  
\_\_\_\_\_  
Name of authorised person



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

I, The Hon. Dr J. M. 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 20 day of Nov 2002

Judy Edwards  
MINISTER FOR THE ENVIRONMENT AND HERITAGE