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**Heritage Council of  
Western Australia**

**and**



**HERITAGE AGREEMENT**

**House at 26 King Street, East Fremantle**

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EXEMPT from W.A. Stamp Duty

*[Signature]*  
for Commissioner of State Taxation

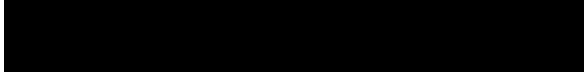
## HERITAGE AGREEMENT

House, 26 King Street, East Fremantle

THIS AGREEMENT is made on the 9<sup>th</sup> day of May 2000 ~~199~~ between the following parties:

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

### RECITALS:

- A.  is the registered proprietor of the
- B. The Place is entered in the Register of Heritage Places on an 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 Works" means the works specified in Annexure A;

"Construction Completion Date" means

- (a) in the case of immediate action as described in Annexure A, the date two years after the Effective Date of this Agreement;
- (b) in the case of medium term action as described in Annexure A, the date within two to five years after the Effective Date of this Agreement; and
- (c) in the case of long term action as described in Annexure A, the date within five to ten 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;

"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) 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 and will not apply to the provisions of clause 3.1.

### Part 3 Development and Conservation

#### 3.1 Conservation Works, Development

- (a) The Owner and the Owner of the Place must, during the Construction Period, undertake the conservation of the Place by the completion of the Conservation Works, in accordance with plans and specifications first approved by the Council.
- (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 or of the Significant Fabric,

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

#### 3.2 Maintenance

The Owner of the Place shall maintain the buildings and structures on the Place:

- (a) in the case of the Significant Fabric, as restored and adapted with the approval in advance in writing of the Council; and
- (b) in the case of any other buildings and structures on the Place, as constructed in accordance with the approval in advance in writing 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.



## 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

- (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**

The *house*, which is situated at 26 King Street, East Fremantle and consists of the Land described in Item 3 and the works and the buildings on it.

**Item 2:                   Significant Fabric**

The whole of the place.

**Item 3:                   Land**

Part of Lot 454 on Plan 2005, being the whole of the land comprised in Certificate of Title Volume 2113 Folio 742.

**Item 4:                   Conservation Works**

The Schedule of works described in Annexure A.

EXECUTED AS A DEED.

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

Maurice Owen  
Signature of authorised person

CHAIRMAN  
Office held

MAURICE OWEN  
Name of authorised person

Ian Baxter  
Signature of authorised person

DIRECTOR  
Office held

IAN BAXTER  
Name of authorised person



SIGNED

by

in the presence of:

Witness

Name (please print)

SIGNED

by

in

Witness

Name (please print)

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

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 1990.

Dated the 9<sup>TH</sup> day of MAY 2000.



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MINISTER FOR HERITAGE



## ANNEXURE A - CONSERVATION WORKS

### House at 26 King Street, East Fremantle

To ensure correct decisions are made within issues of conservation and development, it is desirable that the Owner be guided by the advice of experts and professionals. A specialist consultant should be appointed to assist with the implementation of works and the undertaking of annual inspections. In addition, architects, archaeologists and other professional disciplines skilled in conservation should be consulted to offer specialised advice.

#### **Immediate action within two years**

##### Exterior

1. Remove pepper trees nearest to house and reduce ground levels against the house across the west and south of the house to 300mm below bearers.
2. Remove general garden debris and generally clear scrub to reduce fire risk.
3. Jack up north east corner of house and re-stump as necessary.
4. Examine all stumps, jack up floors to level and re-place rotten stumps with matching timber stumps. Leave in place viable subsided stumps and fit bolted splices at adjusted floor level. Make good seating of floorboards over joists.
5. Remove all existing roof sheeting to main house, strengthen roof framing by adding 100 x 50mm collar ties to every second set of pair rafters, where there are no collar ties, and replace all roof plumbing, then re-sheet roof with short length sheets of Z 600, corrugated iron.
6. Remove all gutters and down pipes and replace with ogee gutters and circular downpipes.
7. Record, then carefully demolish front verandah. Replace floor framing and floor in timber construction using traditional sizes and timbers, then re-erect verandah framing and detailing, finishing floor with 125mm boards. Replace bull-nosed verandah to match existing with custom blue orb rolled sheets. Do not reinstate existing balustrade.
8. Replace sections of rusticated boards to front elevation, where boards have deteriorated.
9. Remove all creepers from walls. Remove all section of fibro cement wall repairs to side and rear elevations of the house, remove rotten boards and replace with primed jarrah weatherboards to match existing. Fit new stop beads at corners to match original detail.

##### Interior

Repair any loose plaster to ceilings by re-adhering damaged sections or re-applying lime plasters to laths.

#### **Medium term action within two to five years**

##### Exterior

1. Dismantle gable fascia timbers and reassemble correctly replacing deteriorated timbers as necessary.
2. Repair sunhood in front wall and replace missing timbers.

3. Service windows, replace rotten members, replace broken sash cords, re-putty glass, and replace missing hardware and re-paint.
4. Remove pepper tree (*Schinus spp.*) nearest rear of house and consider removing the flame tree (*Erithryna*).
5. Stabilise kitchen chimney and re-point brickwork.
6. Re-point chimneys and replace missing bricks.
7. Eradicate morning glory creeper.

#### Interior

1. Patch up lath and plaster walls and ceilings throughout.
2. Remove carpets to room 2 and investigate unevenness in floor, then repair as necessary.

#### **Long term action within five to ten years**

#### Exterior

1. If the laundry outbuilding is to be retained, repair brickwork, timber framing and weatherboards.
2. Investigate original paint colours and repaint to the patterns determined.

#### Interior

1. Check floor level in say 20 locations (with a dumpy level) say every ten years to monitor for settlement of stumps. Re-level if settlement is excessive.
2. Undertake inspection in ceiling space every ten years to check ceiling to plaster to lath and lath to joist connection. Rectify as required.
3. Undertake regular termite inspections and treat and rectify damage as required.
4. Conserve fireplace and surround to room 2, remove paint from surround, re-varnish timber and conserve slate hearth.
5. Conserve remains of gas mantle in room 2.
6. Conserve fireplace and surround to room 4, do not paint surround. Conserve firebox and granolithic hearth.
7. Remove paint from floor in room 3 and re-stain to match other rooms.
8. Conserve fireplace and slate hearth in room 3 and repair split skirting adjacent to chimney breast.
9. Reinstate firebox in room 5.
10. Remove fibro cement lining to east wall of room 6 and reinstate oregon boards to match remainder of room. Repair joinery and external ledge and braced tongue & grooved timber faced door. Repair fibrous plaster ceiling or replace with oregon boards. Replace kitchen fittings as required and consider retaining gas cooker.
11. Remove fibro cement lining to east wall of room 7 and reinstate oregon boards to match remainder of room. Consider replacing metal-framed louvres with side hung casement windows. Conserve bath, but replace other fittings to suit adaptive re-use.



# East Fremantle. Site Layout and Floor Plan

