



HERITAGE
COUNCIL

Heritage of Western Australia Act 1990
Section 33(1)

GRANT AGREEMENT

Heritage Council of Western Australia

and

<<Grantee>>

Heritage Grants Program – <<YEAR>>

This Grant Agreement is made on _____ between the Heritage Council of Western Australia, a corporate body established pursuant to the *Heritage of Western Australia Act 1990*, of 491 Wellington Street Perth Western Australia 6000, known herein as the Grantor and <<Grantee name>> of <<Full address and postcode>> herein known as the Grantee.

RECITAL

The Grantee has applied to the Grantor for financial assistance to undertake the Project and the Grantor agrees to provide a grant subject to the terms and conditions of this Agreement.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND CONSTRUCTION

In this Agreement, unless the context otherwise requires:

Agreement means this Grant Agreement, including its recitals and any schedules or annexures.

Application means the application for funding lodged by the Grantee to the Grantor.

Auditor General means the Auditor General for the State of Western Australia.

Burra Charter is a document published by Australia International Council on Monuments and Sites (ICOMOS) defining the basic principles and procedures to be followed in the conservation of Australian heritage places.

Certificate of Currency means a certificate issued to the Grantee by an insurer under a policy of insurance obtained by the Grantee that certifies the period from the date of its issue during which the Grantee is insured under the policy.

Estimated Project Cost means the total cost of completing the Project based on the quotes provided by the Grantee in application for funding.

Event of Default means an event of default as described in Clause 8.1.

Grant Funds means the amount or amounts specified in item 2 of Schedule 1.

Grantee means the legal entity having, for the time being, responsibility for the care, control and management of the Project and includes its officers, employees, agents, volunteers, subcontractors and successors.

Grantor means the Heritage Council of Western Australia and its designees.

Heritage Architect means any person or corporate entity able to satisfy the following criteria, to the satisfaction of the Grantor:

- (a) Member of Australia International Council on Monuments and Sites (ICOMOS).
- (b) Able to provide several recent examples of projects where the consultant provided the majority of heritage conservation services to the project.
- (c) Registered with the Architects Board of Western Australia as a Practising Architect or an Architectural Corporation.
- (d) Demonstrated willingness and ability to practice within the terms of the Burra Charter (ICOMOS' charter for places of cultural significance).
- (e) Prepares Conservation Management Plans, or other documents, to Heritage Council of Western Australia or State Heritage Office standards.

Heritage Consultant means any person able to satisfy the following criteria, to the satisfaction of the Grantor:

- (a) Qualified professional (e.g. Bachelor or Masters of Architecture, Bachelor of Arts (History), etc) with considerable professional experience;
- (b) Experienced in projects of a similar nature and scope and able to provide examples if requested;
- (c) Willing and able to practice within the terms of the *Burra Charter*;
- (d) Able to follow the State Heritage Office's briefs when preparing Conservation Management Plans or other documents; and it is also highly desirable that they are also a
- (e) Member of Australia International Council on Monuments and Sites (ICOMOS).

Insolvency Event means the happening of any of the following events:

- (a) An application is made to a court for an order that a Party be wound up, declared bankrupt or that a provisional liquidator or receiver and manager be appointed, unless the application is withdrawn, struck out or dismissed within seven (7) days of it being made;
- (b) A liquidator or provisional liquidator is appointed;
- (c) An administrator is appointed to any of the Party's assets;

- (d) The Party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (e) The Party proposes a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors, or its winding up or dissolution;
- (f) The Party is insolvent as disclosed in its accounts or otherwise states that it is insolvent or it is presumed to be insolvent under an applicable law;
- (g) The Party is taken to have failed to comply with a statutory demand;
- (h) A writ of execution is levied against the Party or the Party's property; or
- (i) Anything occurs under the law of any jurisdiction, which has a substantially similar effect to any of the above paragraphs of this definition.

Place means the site, area, land, building or other work, group of buildings or other works as defined in a State Register of Heritage Places entry.

Project means the purpose or purposes set out in item 1 of Schedule 1 to be undertaken with the Grant Funds and with any other funds necessary for the Project.

Project Material means intellectual property developed and produced during the Project.

Significant Fabric means all the physical material of a Place including components, fixtures, contents and objects.

State Heritage Office means the dedicated branch of the State Government of Western Australia that directly supports the activities of the Heritage Council of Western Australia.

State Register of Heritage Places refers to the register of heritage places as established under Section 46 of the *Heritage of Western Australia Act 1990*.

Work Order means a notice requiring the owner or occupier of the land to undertake specific actions issued under the *Local Government Act 1995* Section 3(25) or under the *Building Act 2011* Section 112.

1.1 Interpretation

- (a) A reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- (b) If the Grantee consists of a partnership or joint venture, then:
 - (i) An obligation imposed on the Grantee under this Agreement binds each person who comprises the Grantee jointly and severally;
 - (ii) Each person who comprises the Grantee is deemed to agree to do all things necessary to enable the obligations imposed on the Grantee under this Agreement to be undertaken;
 - (iii) The act of one person who comprises the Grantee binds the other persons who comprise the Grantee; and
 - (iv) An Event of Default by one person who comprises the Grantee constitutes an Event of Default by the Grantee.
- (c) A reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Grantor or the Grantee.
- (d) A reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment, annexure or appendix to, this Agreement.
- (e) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (f) No rule of interpretation is to be applied to disadvantage the Grantor or the Grantee on the basis that it was responsible for preparing this Agreement.
- (g) If the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow.
- (h) A reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission.
- (i) A reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind.
- (j) A reference to a month is to a calendar month and a reference to a year is to a calendar year.
- (k) If a date stipulated for payment, or for doing an act, is not a Business Day, the payment must be made, or the act must be done, on the next Business Day.
- (l) A reference to a monetary amount means that amount in Australian currency.

2. PAYMENT AND USE OF GRANT FUNDS

- (a) Subject to the terms and conditions of this Agreement, the Grantor will pay to the Grantee the Grant Funds in accordance with the payment schedule specified in item 4 of Schedule 1.
- (b) Payment of the Grant Funds will be made directly to the Grantee and will only be made if funds are used in accordance with this Agreement unless there has been written agreement otherwise between the Parties.
- (c) Payment will only be made once a valid claim as per Clause 3.5 has been received.

- (d) At completion of the Project any unpaid portion of Grant Funds will remain the property of the Grantor.
- (e) Payment will only be issued for tasks undertaken within the dates specified in item 4 of Schedule 1.
- (f) The Grantee will use the Grant Funds solely for the Project as set out in Schedule 1.

3. OBLIGATIONS OF GRANTEE

3.1 Application Form

The Grantee has read and understood the Heritage Grants Program brochure and Application Form <<YEAR>> (the Application Form), attached as Annexure 1 and incorporated into this Agreement by this reference, and agrees to observe, perform and be bound by all the terms, conditions and provisions contained or implied in that document as if they were fully set out in this Agreement. For the avoidance of doubt, the express or implied terms and conditions of this Agreement shall overrule any inconsistency between this Agreement and the Application Form.

3.2 No changes

The Grantee will not make any changes to the Project without the prior written consent of the Grantor.

3.3 Acknowledgement of Grantor

- (a) For the duration of the Project, the Grantee will display a sign acknowledging the source of funding towards this Project to include the State Government and Heritage Council of Western Australia logos as per Schedule 2.
- (b) Use of the Grantor's logo must only be as depicted in Schedule 2.
- (c) The Grantee is required to coordinate with the Grantor and the State Heritage Office on any planned media releases, promotion materials or events.
- (d) The Grantee agrees to participate in any publicity relative to this Project, at the request of the Grantor or the State Heritage Office.

3.4 Request for information

The Grantee is to provide the Grantor with any documents or information relating to this Agreement or the Project within thirty days of receiving a request from the Grantor.

3.5 Accounts and reporting

- (a) The Grantee is to submit claims for payment using the Grantor's prescribed forms, ensuring all required attachments are included along with any other documents specified in Schedule 1 at the frequency specified in that Schedule, or as otherwise reasonably required by the Grantor.
- (b) In the event that the Grantor requires further information, detail, explanation or other clarification beyond that provided in a submitted claim or other document, the Grantor will notify the Grantee in writing of the particular information required and the time in which the Grantee is to provide that information, which shall not be less than 30 days from the date of receipt of the written notice from the Grantor.
- (c) The Grantee is to keep proper financial records in accordance with generally accepted accounting principles and practices.
- (d) The Grantee's failure to provide any report or additional information required under this Clause shall constitute an Event of Default.

3.6 Special Conditions of Grant

The Grantee agrees to comply with all special conditions specified in item 5 of Schedule 1.

3.7 General Undertaking of Grantee

The Grantee must:

- (a) At all times duly perform and observe its obligations under this Agreement and promptly inform the Grantor of any occurrence which might adversely affect its ability to do so in a material way.
- (b) Undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices.
- (c) Not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or obligations under this Agreement.
- (d) Comply with all Local, State and Commonwealth laws, rules, regulations and by-laws.
- (e) Cooperate fully with the Grantor in the administration of this Agreement.
- (f) Upon reasonable notice, provide the Grantor or its agents, with access at any reasonable time and from time to time to the Grantee's premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Grantor in order to verify compliance by the Grantee with this Agreement.

- (g) Not make application for a Project that is the subject of a Work Order.
- (h) Comply with all requests made by the Grantor in connection with this Agreement.

3.8 Grantee contribution

- (a) The Grantee is required to contribute sufficient funds to ensure that the Project as detailed in item 1 of Schedule 1 is completed in full and to the satisfaction of the Grantor.
- (b) The minimum owner's contribution is fifty per cent of the total cost of the Project unless otherwise agreed prior in writing between the Grantor and the Grantee.
- (c) All payments will be reimbursed taking into account the expected Grantee contribution.

3.9 Heritage Architect or Heritage Consultant

The Grantee will nominate a suitably qualified Heritage Architect to supervise and guide the Project and or a suitably qualified Heritage Consultant to prepare any Conservation Management Plan, and will notify the Grantor of the nomination prior to commencing the Project. The choice of Heritage Architect or Consultant must be approved in writing by the Grantor prior to commencing the Project and any change of Heritage Architect or Consultant will require written approval of the Grantor.

3.10 Development Approval

- (a) The Grantee will obtain all necessary planning and building approvals required to carry out the Project before commencement of any works.
- (b) If planning approval is not required for the Project, the Grantee is required to obtain a written statement from the local government advising no planning approval is required for the project and submit full drawings and specifications direct to the Grantor for consideration prior to commencement of the Project tasks.
- (c) In either case, the Grantee will not lodge a formal appeal against the Heritage Council of Western Australia's decision or conditions of approval.

3.11 Carrying out Project

- (a) The Grantee is to ensure that all Project tasks are carried out in accordance with the relevant professional standards including those set out in the *Burra Charter*, and
- (b) The Grantee is to employ appropriate contractors to undertake the Project and to ensure that it is carried out to the satisfaction of the Grantor.
- (c) The Grantee is to ensure that Conservation Management Plans or Conservation Management Strategies are compiled according to the applicable Standard Brief issued by the State Heritage Office.

3.12 Insurance

The Grantee will maintain adequate insurance to enable full and proper replacement, reinstatement or restoration of Significant Fabric in the case of damage or destruction and will provide a copy of such a policy or a Certificate of Currency to the Grantor. In the event of damage or destruction the Grantee shall, using monies recovered from its insurance policy and its own monies, fully and properly replace, reinstate or restore the destroyed or damaged Significant Fabric.

4. COPYRIGHT

The Grantee acknowledges that copyright subsisting in any reports, photographs or other literary or pictorial works the Grantee is required to prepare, or have prepared, and submit to the Grantor under this Agreement are the property of the Grantor on behalf of the State by operation of Section 176 of the *Copyright Act 1968* (Cth).

5. LIMITATION OF LIABILITY

The Grantee shall indemnify and keep indemnified both the State of Western Australia, its agencies and instrumentalities and the Commonwealth of Australia from and against all or any actions, suits, claims, demands, proceedings, losses, expenses or liability arising from or in relation to the undertaking of the Project and in respect of the monies paid in relation to the Project.

6. THE FREEDOM OF INFORMATION ACT 1992 AND THE FINANCIAL MANAGEMENT ACT 2006

- (a) The Grantee acknowledges and agrees that this Agreement and information regarding it are subject to the *Freedom of Information Act 1992* and that the Grantor, the Western Australian Minister for Heritage or the State Heritage Office may publicly disclose information in relation to this Agreement, including its terms and the details of the Grantee.

- (b) The parties acknowledge and agree that, despite any provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* are not limited or affected by this Agreement.
- (c) The Grantee must allow the Auditor General, or an authorised representative, to have access to and examine the Grantee's records and information concerning this Agreement.

7. NOTICES

Any notice or other communication that may or must be given under this Agreement must be in writing and issued by an authorised officer of the Party giving notice. Notices are taken to be received:

- (i) In the case of hand delivery, on the date of delivery;
- (ii) In the case of post, on the third Business Day after posting; and
- (iii) In the case of facsimile or email, on the date of transmission.
- (iv) If received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

8. DEFAULT AND TERMINATION

8.1 Event of Default by the Grantee

An Event of Default occurs if:

- (a) The Grantee breaches any of its obligations under this Agreement which continues without remedy for ten (10) Business Days after notice in writing has been served on the Grantee by the Grantor;
- (b) The Grantor has reasonable grounds to believe that the Grantee is unwilling or unable to comply with its obligations under this Agreement;
- (c) The Grantee ceases to carry on business in Western Australia; or
- (d) An Insolvency Event occurs in respect of the Grantee.

8.2 Effect of Event of Default

- (a) If an Event of Default occurs, the Grantor may either:
 - (i) Terminate the Agreement by providing a further ten (10) Business Days' notice in writing to the Grantee of the Event of Default; or
 - (ii) Suspend payment of the Award until the Event of Default is remedied.
- (b) The Grantor may, in its absolute discretion, recommence payment of the Grant Funds if and when the Grantee has rectified the Event of Default.

9. TERMINATION

- (a) Unless earlier terminated, this Agreement will terminate 12 months from the date the Grantor advises that the final payment has been released.
- (b) Any extension to the Agreement Term must be sought in writing and approved by the Grantor. Claims for payment, as detailed in Clause 3.5, must be submitted in accordance with the dates prescribed in item 4 of Schedule 1.

10. GOODS AND SERVICES TAX (GST)

- (a) For the purposes of this Agreement:
 - (i) "GST" means the goods and services tax applicable to any taxable supplies as determined by the GST Act;
 - (ii) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and includes all associated legislation and regulations; and
 - (iii) The terms "supply", "tax invoice", "taxable supply" and "value" have the same meanings as in the GST Act.
- (b) If the Grantee is registered for GST, all payments will include a GST of 10%.
- (c) If the Grantee notifies the Grantor that it is registered for GST, the Grantor will issue Recipient Created Tax Invoices (RCTI) for supplies the Grantee makes. For this purpose, the parties hereby agree that:
 - (i) The Grantor (recipient) can issue tax invoices in respect of supplies made;
 - (ii) The Grantee (supplier) will not issue tax invoices in respect of supplies made;
 - (iii) The Grantor will issue an RCTI in respect of GST payable on the supplies made by the Grantee and the Grantee will not issue tax invoices in respect of those supplies;
 - (iv) The Grantee acknowledges that it is registered for GST and the Grantee will notify the Grantor in writing if it ceases to be registered for the purposes of GST during the term of this Agreement ("the Term"); and
 - (v) The Grantor acknowledges that it is registered for GST and the Grantor will notify the Grantee in writing if it ceases to be registered for GST, or if it ceases to satisfy the requirements of the *GST Act* during the Term.

- (d) If the Grantee fails to notify the Grantor of its GST registration status, or if the Grantee is not registered for GST, the Grantor will withhold 46.5% of all payments to be issued until such time as the Grantee completes a Statement by Supplier form or otherwise notifies the Grantor in writing of its registration status and ABN.

11. RELATIONSHIP AND NO ENDORSEMENT

- (a) The Parties agree that nothing in this Agreement may be construed to make either of them a partner, agent, employee or joint venturer of the other.
- (b) The Grantee agrees that nothing in this Agreement constitutes an endorsement by the Grantor of any goods or services provided by the Grantee.

12. GRANTOR'S RIGHTS OF ENTRY AND POWERS OF INSPECTION

The Grantor, through its officers or representatives, shall be entitled to enter the Place at reasonable times, and upon reasonable prior notice, to inspect the Place to ensure compliance with the provisions of this Agreement, provided that the Grantor will comply with any reasonable requirement imposed by the Grantee for the purpose of exercising this power. Failure of the Grantee to reasonably cooperate will constitute an Event of Default.

13. WAIVER

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- (c) Any failure to enforce this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party will not be construed as a waiver of any rights.

14. NO ONGOING COMMITMENT

- (a) The Grantor makes no commitment to funding the Project except to the extent specified in this Agreement.
- (b) The Grantee acknowledges that it will be responsible for any ongoing costs as a result of the Project and that the Grantor will not be obliged to provide additional funds.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

16. ASSIGNMENT

- (a) This Agreement is personal to the Grantee and may not be assigned by the Grantee without the Grantor's consent, which may be withheld at the Grantor's discretion. The Grantor may assign its rights and obligations under this Agreement as it sees fit.
- (b) For the purposes of this Clause, the Grantee shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the Grantor, to transfer, directly or indirectly, the management or control of the Grantee.

17. VARIATION

Any modification, amendment or other variation to this Agreement must be made in writing and duly executed by both Parties.

18. DISPUTE RESOLUTION

Before resorting to external dispute resolution mechanisms, the Parties shall in good faith attempt to settle by negotiation any dispute in relation to this Agreement, and where practical, each Party shall refer the matter to personnel who have authority to intervene and facilitate some form of resolution.

19. RIGHTS AND REMEDIES

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

20. COSTS

The Grantor and the Grantee must each pay their own legal and other costs in connection with the preparation and signing of the Agreement.

21. FURTHER ASSURANCES

The Grantor and the Grantee must do everything reasonably necessary, including signing further documents, to give full effect to the Agreement.

22. GOVERNING LAW

This Agreement is governed by the laws of the State of Western Australia. The Grantor and the Grantee irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

23. SURVIVAL

The following clauses survive the termination and expiry of this Agreement;

- i) Clause 3.5(d) – Acknowledgement of Grantor;
- ii) Clause 3.9(f) – General Undertaking of Grantee;
- iii) Clause 4 – Copyright
- iv) Clause 5 – Limitation of Liability;
- v) Clause 6 – The *Freedom of information Act 1992* and the *Financial Management Act 2006*; and
- vi) Clause 11 – Relationship and No Endorsement.

EXECUTION

Executed by the Parties hereto:

For and on behalf of the Heritage Council of Western Australia:

For and on behalf of the Grantee:

Graeme Gammie
ACTING EXECUTIVE DIRECTOR
STATE HERITAGE OFFICE

Date

X

Name:

Position: *(owner, director, trustee, etc)*

Date

X

Name:

Position: *(owner, director, trustee, etc)*

Date

SCHEDULE 1

1. PROJECT

Conservation works to <<Place name>>, <<Place>>

Project tasks

- Task A
- Task B
- Heritage Architect’s fee

2. AMOUNT AND PURPOSE OF PROJECT FUNDING

- (a) The Grantor will provide financial assistance to the Grantee to undertake conservation works to <<Place>>, State Register of Heritage Places Place Number XXXX.
- (b) The Grantor agrees, subject to compliance with the terms and conditions of this Agreement by the Grantee, to provide funds of up to \$00,000.00 ex GST on a matched funding basis.
- (c) Grant Funds will be expended to undertake the Project tasks specifically outlined in item 1 of this Schedule.
- (d) Financial assistance will not be granted for requirements or tasks directly or indirectly related to the Project tasks (for example: planning application, building permit, certification or surveying fees) or for Project tasks commenced prior to this Agreement.

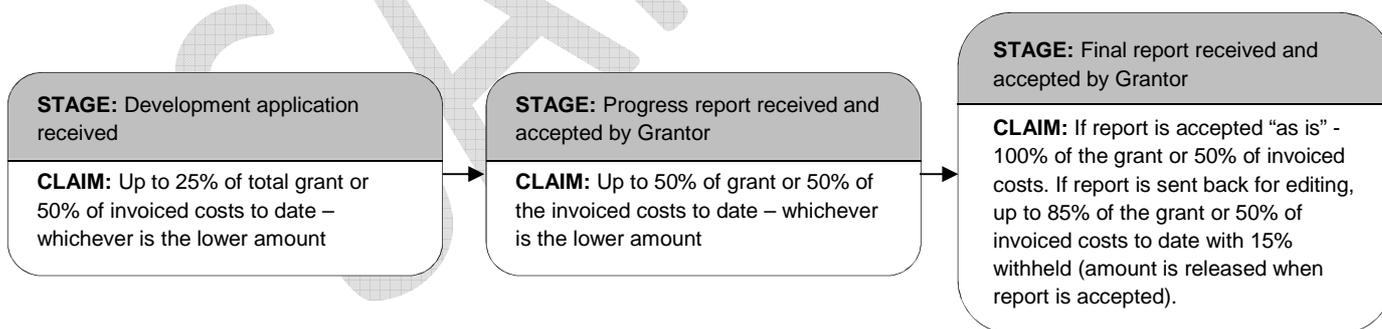
3. Method of Payment

Once approved by the Grantor, payments will be issued to the Grantee’s bank account. Payment is generally issued 28 days after receipt of the required documentation, unless otherwise advised by the Grantor.

4. Payment Schedule

Release of funds will be made as per the stages and percentages diagrammed below and once each stage has been achieved to the satisfaction of the Grantor. In addition, claims are required to be submitted by the following dates:

Required documentation	Last day for submission
Initial claim (Development Application approved)	<<DAY>>, <<DD Month YYYY>>
Progress claim/report	<<DAY>>, <<DD Month YYYY>>
Final claim/report	<<DAY>>, <<DD Month YYYY>>



5. SPECIAL CONDITIONS OF GRANT

The Grantee must not make application to Lotterywest for any of the project as described in item 1 of this Schedule.

6. NOTICE ADDRESSES

Grantor		Grantee	
Name:	Christine Otter	Name:	
Position:	Senior Grants Administrator	Position:	
Postal Address:	Heritage Council of Western Australia PO Box 7479 CLOISTERS SQUARE WA 6850	Address:	
Street Address:	Baird's Building Level 2, 491 Wellington Street PERTH WA 6000		
Phone:	08 6552 4117	Phone:	
Fax:	08 6552 4001	Fax:	
Email:	grants@stateheritage.wa.gov.au	Email:	

SAMPLE

SCHEDULE 2

SIGNAGE GUIDELINES

STATE GOV'T & HERITAGE
COUNCIL'S
LOGOS
(MONO COLOURED)



Specifications:

- * All text to be black on white background
- * Metal Sign (with star pickets)
- * Pickets should be long enough to allow a minimum of 500mm into the ground
- * Sign should have supporting frame at the back
- * Size – approximately 90cm x 60cm (Two A3 papers landscape)
- * Logos to be provided to sign-writers preferably in electronic form or as a black and white