Heritage of Western Australia Act 1990
Section 29

HERITAGE AGREEMENT

between

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and

[redacted]

in respect of

STATION MASTER'S HOUSE, LEONORA

(HCWA Place No. 15851)

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HERITAGE AGREEMENT

STATION MASTER'S HOUSE
Kurrajong Street
Leonora

THIS AGREEMENT is made between the following parties:

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** a corporate body established pursuant to the *Heritage of Western Australia Act 1990,* of 491 Wellington St, Perth, Western Australia 6000 (the "Council"); and
2. [redacted]

RECITALS:

A. The Council's objects are to identify, conserve and, where appropriate, enhance those places which are of significance to the cultural heritage of Western Australia; facilitate development that is in harmony with the cultural heritage; and promote public awareness and knowledge of Western Australia's cultural heritage.

B. The Owner is the Registered Proprietor of the Land.

C. The Place has been identified as being of cultural significance, and was entered in the Register of Heritage Places on a permanent basis pursuant to the Act on 17 October 2003.

D. The Council and the Owner wish to enter this Agreement to provide for the conservation of the Place so as to retain its cultural heritage significance for present and future generations.

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 (WA) 1990*;

"Agreement" means this Agreement as it may from time to time be varied as permitted by its terms;

"Conservation Policy" means the policy specified in Item 3 of the Schedule;

"Conservation Works" means the works specified in Item 5 of the Schedule;

"Construction Completion Date" means:

(a) in the case of **"Urgent Works"** as described in Item 5 of the Schedule, 12 months after the Effective Date; and

(b) in the case of **"Short-term Works"** as described in Item 5 of the Schedule, two years after the Effective Date; and

(c) in the case of **"Medium-term Works"** as described in Item 5 of the Schedule, five years after the Effective Date;

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

"Development" means the development or use of the Place, including:

(a) any demolition, erection, construction, alteration of or addition to any building or structure on the Land;

(b) the carrying out on the Land of any excavation or other works;

(c) any act or thing that is likely to change the character of the Place or the external appearance of any building;

(d) any act or thing that would constitute an irreversible alteration of the Significant Fabric; and

(e) a material change in the Use of the Place;

"Effective Date" means the date on which this Agreement is certified by the Minister pursuant to Section 32(1) of the Act;

"Event of Default" is defined in clause 5.1;

"Fabric" means all the physical material of the Place including, but not limited to:

(a) components, fixtures, contents and objects, including those that are temporarily removed for repair, safekeeping, exhibition or other purposes;

(b) building interiors, sub-surface remains and excavated material; and

(c) natural material such as the landform, vegetation, streams, soil and rock.

"Land" means the land described in Item 4 of the Schedule;

"Maintenance" means the continuous protective care of the Significant Fabric as specified in Item 6 of the Schedule;

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

"Owner" means:

(a) [redacted]

(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;

"Register" means the Register of Heritage Places as defined in the Act;

"Significant Fabric" means the elements of Fabric specified in Item 2 of the Schedule;

and

"Use" means the functions of the Place as well as the activities and practices that may occur at the Place.

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 rule of construction applies to the disadvantage of a party on the basis that the party was responsible for drafting this Agreement or any part of it;

(d) a reference to this Agreement or any other document or instrument includes the Agreement, document or instrument (as the case may be) as varied or replaced, notwithstanding any change in the identity of the parties;

(e) a reference to the Owner doing or refraining from doing anything includes a reference to the Owner causing a person to do, or causing a person to refrain from doing, that thing (as the case may be);

(f) a reference to any thing is a reference to the whole and each part of it; and

(g) words and phrases having defined meanings in the Act, unless otherwise defined in this Agreement, have the meanings so defined in the Act.

PART 2
COMMENCEMENT, DURATION AND SCOPE OF THIS AGREEMENT

2.1 Commencement and Duration of this Agreement

(a) This Agreement is made pursuant to Section 29 of the Act and is conditional upon the Minister

(i) being satisfied that this Agreement is necessary for the purposes of, and complies with, the Act; and

(ii) certifying that fact upon each executed copy of this Agreement.

(b) 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:

(i) applies to the Land and the Place;

(ii) binds the Land and the Place; and

(iii) binds the Owner.

(b) All of the obligations of the Owner under this Agreement dealing with development or use of the Land or any part of the Land or the conservation or care of any building, natural feature or other object on the Land 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, which consent shall not be unreasonably withheld.

(d) Subject to clause 2.2(e), on the person who is at the time the Owner (**"Outgoing Owner"**) transferring the whole of that person's interest in the Place 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 personally and does not release, vary or otherwise affect the obligations of the Owner under, or in connection with, this Agreement.

(e) The provisions of clause 2.2(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 Outgoing Owner to another person.

PART 3
DEVELOPMENT AND CONSERVATION

3.1 Conservation Policy

The parties acknowledge that the Conservation Policy is the primary guiding document for the conservation and future use of the Place and should be read in conjunction with this Agreement as an essential reference document. For the avoidance of doubt, all express obligations on the Owner in this Agreement which are derived from the Conservation Policy are described in the Annexures.

3.2 Conservation Works

The Owner must undertake the conservation of the Place in accordance with the Conservation Policy and is required to carry out the Conservation Works, by the Construction Completion Date. All such works must be referred to the Council for advice prior to the works actually being undertaken.

3.3 Development

Unless approved in advance in writing by the Council, the Owner shall not:

(a) carry out any Development;

(b) without prejudice to the generality of clause 3.3(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

(c) sub-divide or make application to sub-divide the Land.

3.4 Maintenance

The Owner shall ensure that the Significant Fabric, as restored and adapted with the approval of the Council, is kept in a proper, safe and sound standard of repair and condition in all respects, in accordance with the Conservation Policy.

3.5 Conservation Consultant

The Owner must appoint a consultant approved in advance in writing by the Council to supervise the Conservation Works and any Development of the Place or other action which requires the approval of the Council under clause 3.3.

3.6 Reporting

(a) All reports required in this clause shall be prepared on behalf of the Owner by the consultant appointed pursuant to clause 3.5, or such other person with the necessary skills approved in writing in advance by the Council.

(b) The Owner must ensure that a proper, detailed and comprehensive written report describing the completed Conservation Works is provided within 30 days after the Construction Completion Date of each category of Conservation Works (i.e., "Urgent Works", "Short-term Works" and "Medium-term Works", respectively).

(c) The Owner must ensure that a proper, detailed and comprehensive written report is provided to the Council within 60 days after receipt of a written request from the Council for a report describing

(i) all Conservation Works, Maintenance, or Development activities which the Owner has undertaken pursuant to this agreement since the later of the Effective Date or the date of any previous report;

(ii) the condition of the Significant Fabric at the time of the report; and

(iii) any other matters regarding the conservation of the Place as specified in the written request;

provided that no more than one such report shall be required within any 12-month period.

(d) In the event that the Council requires further information, detail, explanation or other clarification beyond that provided in a submitted report, the Council will notify the Owner in writing of the particular information required and the time in which the Owner is to provide that information, which shall not be less than 30 days from the date of receipt of the written notice from the Council.

(e) The Owner's failure to provide any report or additional information required under this Clause 3.6 shall constitute an Event of Default.

3.7 Insurance

(a) 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 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 destroyed or damaged fabric.

(b) In the event of a dispute between the parties as to whether replacement, reinstatement or restoration of the Significant Fabric is practical and feasible, following an occurrence of damage to or destruction of the Place, prior to seeking any legal remedies the parties will attempt to resolve the dispute through good faith negotiation and, if necessary, informal mediation facilitated by a neutral mediator acceptable to all parties to the dispute. The parties will each bear their own costs associated with any such negotiation or informal mediation.

3.8 Compliance with Statutes

The provisions of this Agreement are in addition to the Act and any other written laws and nothing in this Agreement removes, limits or modifies the obligations on the Owner to comply with all relevant statutory and other requirements in connection with the Development of the Land, and the Owner 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 clause 4.1(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 clause 4.1(c), the Council will comply with any reasonable requirement imposed by the Owner for the purpose of exercising the rights of the Council under clause 4.1(a).

(c) The Owner must do all things necessary to enable the Council to exercise its rights of inspection as set out in clause 4.1(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 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 business 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 City or the Council to effect compliance; or

(b) 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

(a) 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. 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, subject to clause 5.3(b), indemnify and keep indemnified and save harmless the Council, the Minister, the State of Western Australia and any of their respective servants or agents (each an '**Indemnified Party**') against all Damage incurred or suffered by any of them arising from or in connection with the Development, maintenance or occupation of the Land or the Place

by the Owner or any person acting through, on behalf of, or under the direction of the Owner.

(b) The indemnity provided by the Owner in clause 5.3(a) shall be reduced proportionately to the extent that it can be shown any Damage has been caused by a negligent or deliberately malicious act or omission by an Indemnified Party.

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 (WA) 1935*.

PART 6
NOTICES

6.1 Any notice, report or other communication which must be given, served or made under or in connection with this Agreement:

(a) must be in writing in order to be valid;

(b) is sufficient if executed by the Party giving, serving or making the notice, or if executed on such Party's behalf by any officer, director, attorney or solicitor having the authority to so act for such Party;

(c) is sufficient, in the case of the Owner's obligations under clause 3.6, if executed by the relevant consultant appointed pursuant to clause 3.5;

(d) will be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by facsimile or sent by email to the address of that person identified in clause 6.2 or at such other address or number as is notified in writing by that person to the other Parties from time to time; and

(e) will be deemed to be served, given or made:

(i) if delivered by hand, on delivery;

(ii) if sent by prepaid post, on the second day after the date of posting;

(iii) if sent by facsimile, on receipt of a transmission report confirming successful transmission; and

(iv) if sent by email, on receipt of confirmation of successful delivery.

6.2 The details of each Party for the purposes of giving notice are as follows:

(a) the **Council**: Heritage Council of Western Australia
PO Box 7479
Cloisters Square
PO WA 6850
Phone: (08) 6552 4000 Fax: (08) 6552 4001
Email: info@stateheritage.wa.gov.au
ATTENTION: Manager, Conservation & Assessment

(b) the **Owner**: [redacted]

[redacted]

PART 7
GENERAL

7.1 Variation to be in writing

No variation of this Agreement will be effective unless in writing and executed by the Council and the Owner.

7.2 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.

7.3 Further assurances

Each party shall do all things and execute all further documents as are necessary to give full effect to this Agreement.

7.4 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.

7.5 Costs

(a) The Owner shall pay or reimburse the Council on demand for all costs and expenses incurred by the Council in relation to:

(i) the exercise or enforcement by the Council of any right, power or remedy under this Agreement, at law, in equity or otherwise; and

(ii) any act or omission by the Owner causing Damage to the Council,

including (without limitation) 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: **Place**

Station Master's House, Leonora (HCWA Place No. 15851), located on Kurrajong Street, Leonora, and consists of:

(a) the Land;

(b) all buildings, structures and works on the Land from time to time; and

(c) any thing in connection with the Land, entered or deemed to be entered in the Register.

Item 2: **Significant Fabric**

The Significant Fabric consists of the entire house. The laundry outbuilding and remains of the tank stand and clothes line on the south side are of some significance.

Item 3: **Conservation Policy**

Stationmaster's House Leonora: Conservation Works prepared by Annabel Wills (November 2013), attached in Annexure C.

Item 4: **Land**

[redacted]

Item 5: **Conservation Works**

The schedule of works described in Annexure A.

Item 6: **Maintenance**

The schedule of maintenance activities described in Annexure B.

EXECUTED AS A DEED

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

HERITAGE COUNCIL OF WESTERN AUSTRALIA
Common Seal

Graeme Gammie
EXECUTIVE DIRECTOR

29/11/13
Date signed

Marion Fulker
CHAIRPERSON

4.12.13
Date signed

For the OWNER:

[redacted]

26 November, 2013
Date signed

26 November, 2013
Date signed

CERTIFICATE UNDER SECTION 32
OF THE HERITAGE OF WESTERN AUSTRALIA ACT (WA) 1990

I, the Hon. Albert Jacob, MLA, Minister for Environment; Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the *Heritage of Western Australia Act (WA) 1990*.

Dated the 10th day of December 2013.

Albert Jacob, MLA
Minister for Environment; Heritage

Annexure A

Conservation Works

Note: All of the following works that involve alteration or replacement of existing fabric should be undertaken in consultation with the Heritage Council. Replacement should be made using like-for-like materials where possible.

Urgent works (to be completed within 12 months of the Effective Date)

1. Thoroughly investigate all timber elements, including the entire timber sub-structure, stumps, floor substructure, floor, framework, roof structure and timber wall cladding for termites, and treat as necessary
2. Install Termite monitoring and prevention system
3. Undertake any other reconstruction or restoration works deemed necessary in response to the termite investigation
4. Repair and replace where required weatherboards to rear and side wall
5. Repair and replace roof gutters and downpipes as required using ogee profile gutters and round galvanised downpipes. Ensure all downpipes discharge into a drainage system that directs water away from the building
6. Restore timber window frames and sashes and reinstate glazing to all windows
7. Ensure gradient around the building directs rainfall away from the building

Short-term works (to be completed within two years of the Effective Date)

1. Inspect roof sheeting and assess extent of damage. If damage is minimal, re-sheet as required using short sheets of galvanised roof sheets. If entire roof requires replacement, use short sheets of galvanised sheeting
2. Restore external timber elements, particularly gable ends and southwest weatherboard walls
3. Remove paint from chimneys, restore chimneys and flashings to match existing
4. Reconstruct the damaged entry hall walls and ceiling
5. Restore mini-orb walls and ceilings; prepare surfaces and repaint to match existing as required

Medium-term works (to be completed within five years of the Effective Date)

1. Reinstate Electrical and plumbing services
2. Restore external timber weatherboards
3. Restore corrugated iron walls. Remove existing paint, prepare surfaces and repaint
4. Reinstate verandah balustrade sections, restore and/or reconstruct as necessary
5. Restore existing kitchen and bathroom fit-outs and/or introduce new sympathetic fittings and fixtures as necessary
6. Restore remaining internal elements as required, with minimal intervention
7. Make provision for a toilet installation

Annexure B

Maintenance

Maintenance of the place includes informed supervision of minor and major works and vigilant attention to security in order to reduce deterioration and protect the place from the risks of fire, vandalism and theft. Ask cleaners and building users to report any defects they note, including broken windows or hardware, leaks in the roof, falling pieces of masonry wood dust from termites, and so on.

Any repairs are to be undertaken in accordance with the conservation policies and appropriate specialist advice obtained from professionals skilled in conservation work.

Weekly tasks

1. Verify that all firefighting equipment and detection devices are in good working order and ensure all points of egress remain unobstructed.
2. Verify that doors and windows are locked during periods when the building is unoccupied.
3. Change defective light globes and fuses and attend to minor faults in the electrical system.

Quarterly tasks

1. Inspect for termites and other vermin as necessary
2. Inspect roof cladding, flashings and rainwater plumbing and repair as necessary.
3. Ensure that rain gutters are free of debris and check that gutters and down pipes flow freely.
4. Check all electrical fittings, switchboards, etc., for safe operation.
5. Check all plumbing services for leaks.
6. Clean all light fittings.
7. Check joinery and paint finishes for deterioration and repair damaged elements.
8. Clean windows and painted surrounds.
9. Check doors for closing and locking and all means of escape.

Annual tasks

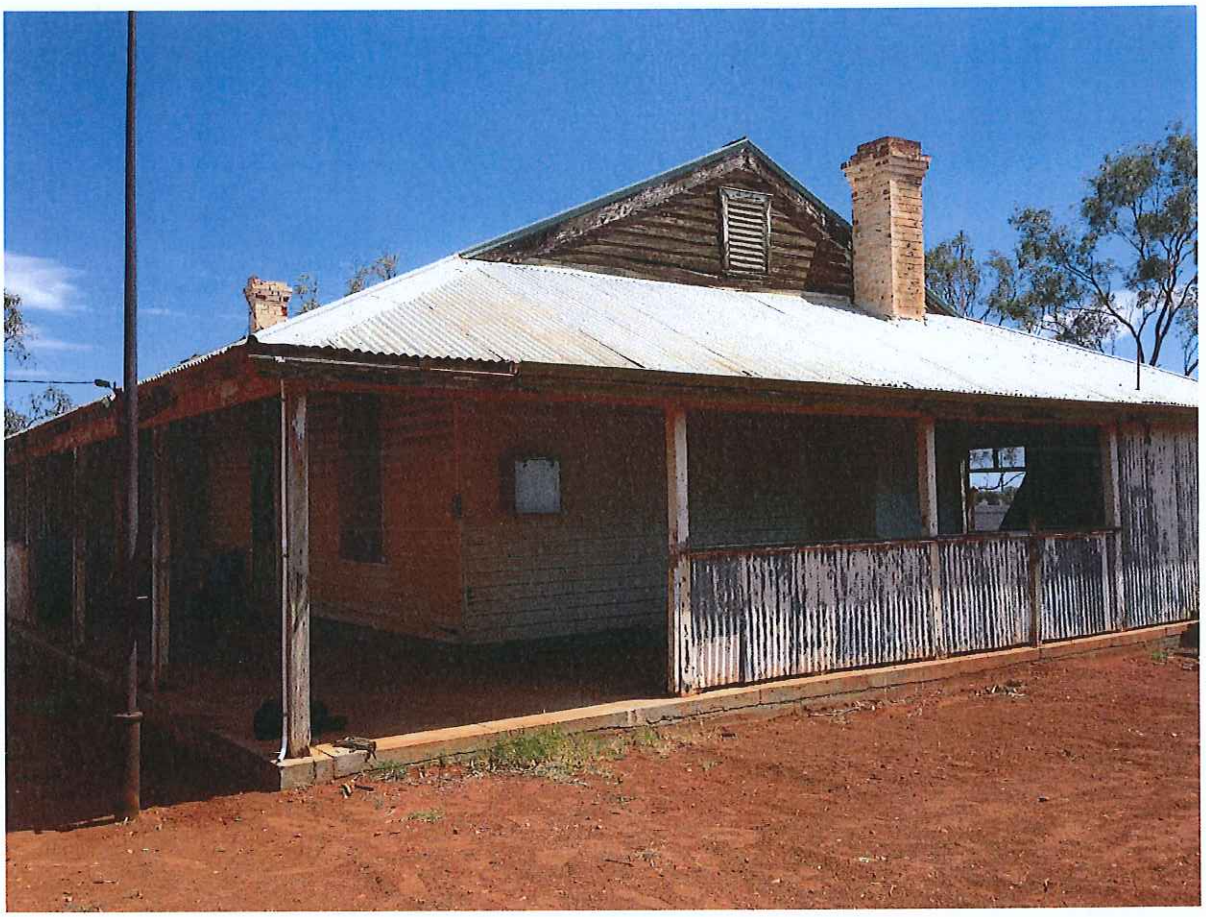
1. Inspect structure for cracks and signs of movement or other failure.
2. Rod all rainwater and soil drainage systems.
3. Check door and window hardware. Oil locks and hinges for smooth working.
4. Clean chimneys (if fireplaces are used)

Annexure C

Conservation Policy

Stationmaster's House Leonora: Conservation Works prepared by Annabel Wills (November 2013).

STATION MASTERS HOUSE
LEONORA



Conservation Works

November 2013

Annabel Wills Architecture Pty Ltd

Architecture + Heritage

Urgent works (to be completed within 12 months of the Effective Date)

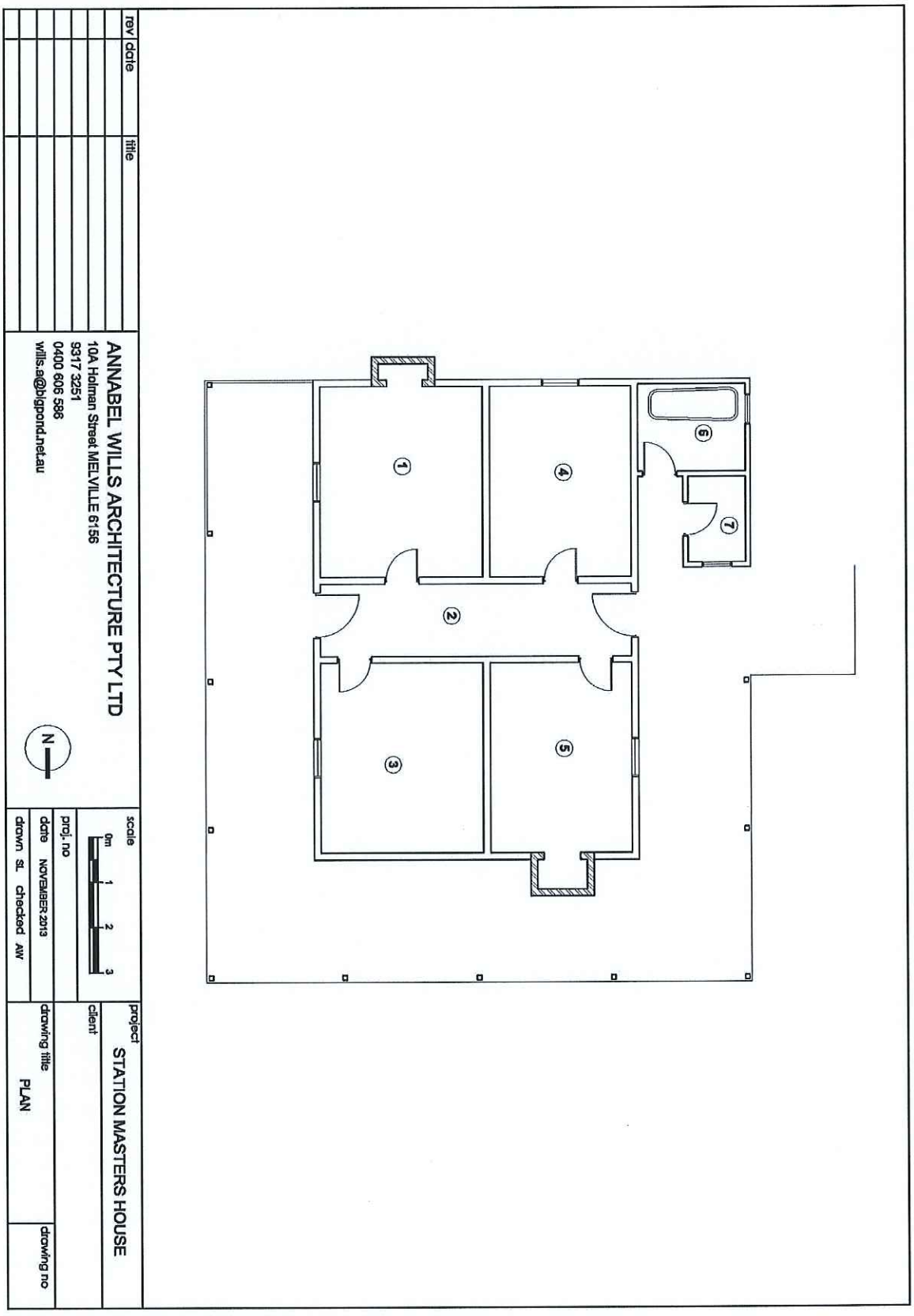
1. Thoroughly investigate all timber elements, including the entire timber sub-structure, stumps, floor substructure, floor, framework, roof structure and timber wall cladding for termites, and treat as necessary
2. Install Termite monitoring and prevention system
3. Undertake any other reconstruction or restoration works deemed necessary in response to the termite investigation
4. Repair and replace where required weatherboards to rear and side wall
5. Repair and replace roof gutters and downpipes as required using ogee profile gutters and round galvanised downpipes. Ensure all downpipes discharge into a drainage system that directs water away from the building
6. Restore timber window frames and sashes and reinstate glazing to all windows
7. Ensure gradient around the building directs rainfall away from the building

Short-term works (to be completed within two years of the Effective Date)

1. Inspect roof sheeting and assess extent of damage. If damage is minimal, re-sheet as required using short sheets of galvanised roof sheets. If entire roof requires replacement, use short sheets of galvanised sheeting
2. Restore external timber elements, particularly gable ends and southwest weatherboard walls
3. Remove paint from chimneys, restore chimneys and flashings to match existing
4. Reconstruct the damaged entry hall walls and ceiling
5. Restore mini-orb walls and ceilings; prepare surfaces and repaint to match existing as required

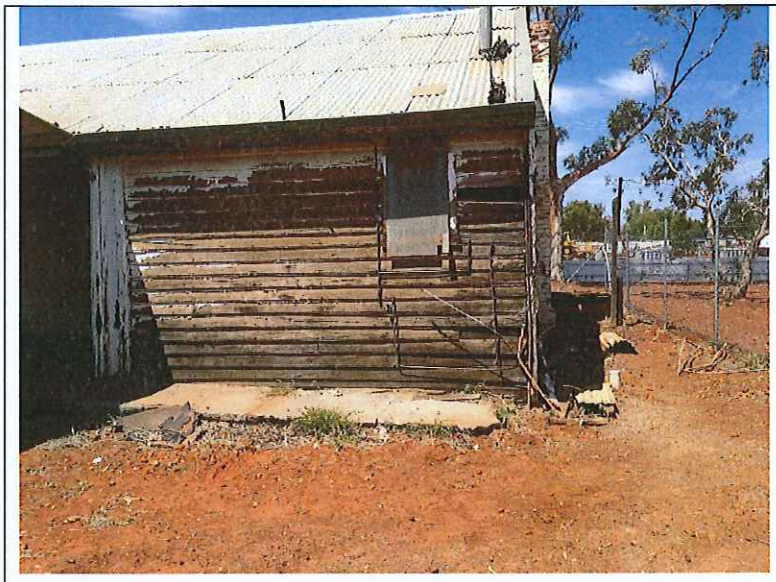
Medium-term works (to be completed within 4 years of the Effective Date)

1. Reinstate Electrical and plumbing services
2. Restore external timber weatherboards
3. Restore corrugated iron walls. Remove existing paint, prepare surfaces and repaint
4. Reinstate verandah balustrade sections, restore and/or reconstruct as necessary
5. Restore existing kitchen and bathroom fit-outs and/or introduce new sympathetic fittings and fixtures as necessary
6. Restore remaining internal elements as required, with minimal intervention
7. Make provision for a toilet installation


rev
date
title
ANNABEL WILLS ARCHITECTURE PTY LTD
10A Holman Street MELVILLE 6156
9317 3251
0400 606 588
wills.a@bigpond.net.au
N
scale
0m 1 2 3
proj. no
date NOVEMBER 2013
drawn SL checked AW
project
STATION MASTERS HOUSE
client
drawing title
PLAN
drawing no
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Photos 26/10/2013

	Front of building showing missing gutters and windows temporarily secured
	South wall with extensive damage and missing weatherboards

	Rear (west) wall
	Entry corridor with holes in walls

	Termite damage to external walls
	Timber column to verandah

	Rear window to store room
	Bathroom

	Internal wall showing gap between wall and floor
	View under floor of building