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MINISTER'S OFFICE

HERITAGE COUNCIL OF WESTERN AUSTRALIA

and

[REDACTED]

HERITAGE AGREEMENT

**140 William Street,
Perth**

TABLE OF CONTENTS

Part 1	Definitions & Interpretation	
1.1	Definitions	Page 4
1.2	Interpretation	Page 6
Part 2	Commencement, Duration and Scope of this Agreement	
2.1	Commencement and duration of this Agreement	Page 6
2.2	Scope of this Agreement	Page 6
Part 3	Development and Conservation	
3.1	Conservation Plan	Page 7
3.1A	Revised Conservation Plan	Page 7
3.2	Conservation Works	Page 8
3.3	Development	Page 8
3.4	Maintenance	Page 8
3.5	Conservation Consultant	Page 8
3.6	Reporting	Page 8
3.7	Insurance	Page 9
3.8	Compliance with Statutes	Page 10
Part 4	Council's Rights of Entry and Powers of Inspection	
4.1	Council's rights of entry and powers of inspection	Page 10
Part 5	Default	
5.1	Events of default	Page 10
5.2	Rights and remedies of Council	Page 11
5.3	Land and Place at risk of Owner	Page 11
5.4	Interest on overdue money	Page 11
Part 6	Notices	
6.1	Form of notices	Page 12
6.2	Address for notices	Page 12
Part 7	General	
7.1	Variation to be in writing	Page 13
7.2	Governing Law	Page 13
7.3	Further assurances	Page 13
7.4	Extension of time by Council	Page 13
7.5	Costs	Page 13
The Schedule		Page 14

HERITAGE AGREEMENT

**140 William St,
Perth**

THE HERITAGE COUNCIL OF WESTERN AUSTRALIA
108 ADELAIDE TERRACE
EAST PERTH, WESTERN AUSTRALIA 6004
TELEPHONE (08) 9442 4200
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THIS AGREEMENT is made on the 25th day of June 2007 between the following parties:

1. **HERITAGE COUNCIL OF WESTERN AUSTRALIA** a corporate body established pursuant to the *Heritage of Western Australia Act (WA) 1990*, of 108 Adelaide Terrace, East Perth, Western Australia 6004 (the "Council"); and
2. [REDACTED]
[REDACTED]
[REDACTED] (the "Owner").

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; to facilitate development that is in harmony with cultural heritage values; and to promote public awareness and knowledge of Western Australia's cultural heritage.
- B. The State of Western Australia, through the Western Australian Planning Commission ('WAPC') is the registered proprietor of the Land. At the time and in the manner specified in the Development Agreement, the WAPC as landlord and the Owner as tenant will enter the Development Lease for the purposes of developing the Land.
- C. At the time and in the manner specified in the Development Agreement, the WAPC as seller and the Owner as buyer, will enter the Sale of Freehold Agreement and the Owner will become the registered proprietor of the Land in accordance with that agreement.
- D. The Place forms part of the *William and Wellington Street Precinct* which has been identified as being of cultural significance and is entered in the Register of Heritage Places on a permanent basis pursuant to the Act.
- E. The Council and the Owner wish to enter this Agreement to provide for the conservation of the Place so as to retain its cultural 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*;

"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 5 of the Schedule, as varied in accordance with clause 3.1A and otherwise as may from time to time be varied with the prior written approval of the Council;

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

"Conservation Works" means the works specified in Item 6 of the Schedule;

"Construction Completion Date" means:

- (a) in the case of "Urgent Action" as described in the Conservation Works, the date within 6-12 months after the Effective Date of this Agreement; and
- (b) in the case of "Immediate Action" as described in the Conservation Works, the date within 2 years after the Effective Date of this Agreement; and
- (c) in the case of "Intermediate Action" as described in the Conservation Works, the date within 5 years after the Effective Date of this Agreement; and
- (d) in the case of "Long Term Action" as described in the Conservation Works, the date within 5-10 years after the Effective Date of this Agreement;

"Construction Period" means:

- (a) the period commencing on the Effective Date and expiring on the relevant Construction Completion Date; or
- (b) any longer period agreed between the Council and the Owner in writing;

"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;

“Development Agreement” means the agreement entitled “Development Agreement 140 William Street, Perth” entered into between The State of Western Australia and the Owner on 1 December 2006;

“Development Lease” means the development lease between WAPC as landlord and the Owner as tenant substantially in the form of Schedule 11 of the Development Agreement, and includes any assignment or novation of the lease from time to time.

“Effective Date” means the latter of the date on which this Agreement is sealed by the Council or Financial Close as defined in the Development Agreement;

“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;
- (b) natural material such as the landform, vegetation, streams, soil and rock;
- (c) building interiors, sub-surface remains and excavated material; and
- (d) components, fixtures, contents and objects that are temporarily removed for purposes such as repair, safekeeping or exhibition.

“Land” means the land described in Item 3 of the Schedule;

“Maintenance” means the continuous protective care of the Significant Fabric as specified in Item 7 of the Schedule;

“Minister” means the Minister responsible for the administration of the Act;

“Owner” means:

- (a) subject to clause 2.2(d), [REDACTED]
[REDACTED] is the lessee under the Development Lease or the registered proprietor of the Land under the Sale of Freehold Agreement; and
- (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 and has the same meaning as in the Act;

“Sale of Freehold Agreement” means the agreement entered into between the WAPC as seller and the Owner as buyer, substantially in the form of Schedule 10 of the Development Agreement;

“Significant Fabric” means those parts of the Fabric specified in Item 2 of the Schedule;

“Use” means the functions of the Place as well as the activities and practices that may occur at the Place;

and

words and expressions having defined meanings in the Act, unless otherwise defined in this clause, have the meanings so defined in the Act.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (b) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (c) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Agreement or any part of it;
- (d) a reference to 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); and
- (f) a reference to any thing is a reference to the whole and each part of it.

PART 2 COMMENCEMENT, DURATION AND SCOPE OF THIS AGREEMENT

2.1 Commencement and Duration of this Agreement

Subject to the provisions of this Agreement, this Agreement commences on the Effective Date and shall be of permanent effect unless terminated with the prior written consent of the Council.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (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 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.
- (f) [REDACTED] agrees and confirms that:
 - (i) it enters into, and is bound by, this Agreement as the lessee under the Development Lease; and
 - (ii) this Agreement will bind it as the Owner; and
 - (iii) all undertakings, covenants and agreements of the Owner in this Agreement will be deemed to be repeated immediately after it becomes the registered proprietor of the Land under the Sale of Freehold Agreement.

PART 3 DEVELOPMENT AND CONSERVATION

3.1 Conservation Plan

The parties acknowledge that the Conservation Plan 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 Plan are described in the Annexures.

3.1A Revised Conservation Plan

- (a) The parties agree that the Conservation Plan will be revised in accordance with this clause 3.1A not later than the Effective Date.
- (b) The Owner must ensure that those parts of the Conservation Plan which form the Annexures to this Agreement are revised by a consultant approved in advance by the Council.
- (c) The Owner shall submit a draft of the revisions to the Council for approval.
- (d) The Council may approve the draft revisions with or without amendments and any amendments required by the Council shall be incorporated by the Owner into the final approved revisions.

- (e) Both parties agree to update this Agreement by attaching the revised Annexures as approved in writing by the Council.

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.

3.3 Development

The Owner shall not:

- (a) carry out any Development; or
- (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;

except as permitted by clause 3.2 or as otherwise approved in advance in writing by the Council.

3.4 Maintenance

- (a) 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.
- (b) Without limitation to clause 3.4(a), the Owner shall undertake the Maintenance.

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) Reports to be Prepared by Consultant

All reports required in this clause 3.6 shall be in writing and prepared on behalf of the Owner by the consultant appointed pursuant to clause 3.5, or such other person with the necessary skills and experience that is approved in writing by the Council.

(b) Reports to be Acceptable to Council

- (i) The Council shall consider all reports provided to it under this clause 3.6 and provide written notice to the Owner within 21 days of receipt of the report, indicating whether the report is acceptable or whether the report requires further information, detail, explanation or such other clarification as is reasonably required by the Council.

- (ii) In the event that the Council requires further information, detail, explanation or other clarification, the Owner shall ensure that a revised report is provided within 21 days of receipt of written notice from the Council, or within such other reasonable period nominated in writing by the Council.

(c) Annual Reports

The Owner must ensure that a proper, detailed and comprehensive written report is provided to the Council on a date which is 12 months after the Effective Date, and thereafter on every anniversary of the Effective Date during the currency of the Agreement. The report must set out the following information:

- (i) the Maintenance and other activities which the Owner has undertaken pursuant to clause 3.4 since the Effective Date, or the date of the previous report, as the case may be;
- (ii) the Conservation Works which the Owner has undertaken since the Effective Date or the date of the previous report, as the case may be;
- (iii) the Development and other activities which the Owner has undertaken, if any, pursuant to clause 3.3 since the Effective Date, or the date of the previous report, as the case may be; and
- (iv) the condition and state of the Significant Fabric at the time of writing the report.

(d) Reports on Conservation Works

The Owner must ensure that a proper, detailed and comprehensive written report which sets out the Conservation Works that have been undertaken since the date of any report provided pursuant to clause 3.6(c) is provided on the following dates:

- (i) not later than 30 days after the "Urgent Action" Conservation Works are completed;
- (ii) not later than 30 days after the "Immediate Action" Conservation Works are completed;
- (iii) not later than 30 days after the "Intermediate Action" Conservation Works are completed; and
- (iv) not later than 30 days after the "Long Term Action or Desirable Action" Conservation Works are completed.

3.7 Insurance

The Owner will maintain or procure an insurance policy with a reputable insurance company approved in advance in writing by the Council (acting reasonably), 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.

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

- (a) An Event of Default occurs if:
 - (i) the Owner is in breach of, or does not comply with, any of its obligations under this Agreement and the breach or non-compliance continues for 30 days, or such longer period as is reasonable for rectification having regard to the nature of the breach or non-compliance, after receipt of written notice from the Council to effect compliance; or
 - (ii) 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 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 on its behalf by any attorney, director or secretary, or solicitor of such Party;
- (c) is sufficient, in the case of the Owner's obligations under clause 3.5, if executed by the relevant consultant appointed pursuant to clause 3.4;
- (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 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) in the case of prepaid post on the second day after the date of posting;
 - (ii) in the case of facsimile on receipt of a transmission report confirming successful transmission;
 - (iii) in the case of email on receipt of a delivery confirmation confirming successful delivery; and
 - (iv) (in the case of delivery by hand) on 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 6201
East Perth WA 6892

Attention: Manager, Conservation & Assessment

Phone: (08) 9221 4177
Fax: (08) 9221 4151

(b) the **Owner**:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]
[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 the Council's costs and expenses 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

140 William Street, which is situated over the new William Street Station with a frontage to the Murray Street Mall and bounded by Wellington, William and Murray Streets, Perth and consists of:

- (a) the Land described in Item 4;
- (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 is described in Annexure A.

Item 3:

Conservation Policy

The Conservation Policy is described in Annexure B.

Item 4:

Land

Lot 698 on (unlodged) Deposited Plan 50636.

Item 5:

Conservation Plan

Part A - *William Street Station Precinct – Conservation Management Plan* prepared by Palassis Architects for LandCorp, 28 September 2005; attached as Annexure E.

Part B - *William Street Station Precinct Conservation Management Plan: Conservation Policy and Management Plan Review* prepared by Lovell Chen Architects and Heritage Consultants for [REDACTED] / [REDACTED] March 2007; attached as Annexure F.

Item 6:

Conservation Works

The schedule of works described in Annexure C.

Item 7:

Maintenance

The schedule of maintenance activities described in Annexure D.

EXECUTED AS A DEED



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

[Handwritten Signature]

Signature of authorised person

[Handwritten Signature]

Signature of authorised person

CHAIRPERSON

Office held

DIRECTOR

Office held

GERALD IAN GAUNTLETT

Name of authorised person

IAN BAXTER

Name of authorised person

Signed for

[Redacted Name] S

[Redacted Address Block]

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

I, The Hon. Michelle Roberts, MLA, Minister for Employment Protection; Housing & Works; Indigenous Affairs; Heritage; Land Information, hereby certify that this Agreement is necessary for the purposes of, and complies with, the *Heritage of Western Australia Act (WA) 1990*.

Dated the 12th day of July 2007.



Minister for Employment Protection; Housing & Works;
Indigenous Affairs; Heritage; Land Information

Annexure A

Significant Fabric

Taken from *Parts B, C, F and H* in the Conservation Plan and the Heritage Council of Western Australia's *Register Entry and Assessment Documentation* for Data Base numbers 1627, 14888, 2140 and 1784.

Annexure B

Conservation Policy

The Conservation Policy is identified in the "Conservation Policy" section of *William Street Station Precinct Conservation Management Plan: Conservation Policy and Management Plan Review* prepared by Lovell Chen Architects and Heritage Consultants for [REDACTED]; [REDACTED], at pages 4-20.

Annexure C

Conservation Works

The complete list of Conservation Works is identified in the "Policy Implementation" section of *William Street Station Precinct Conservation Management Plan: Conservation Policy and Management Plan Review* prepared by Lovell Chen Architects and Heritage Consultants for [REDACTED] March 2007, at pages 20-23.

Annexure D

Maintenance

The following statement on maintenance policy is copied from the "Conservation Policies: Management" section of *William Street Station Precinct Conservation Management Plan: Conservation Policy and Management Plan Review* prepared by Lovell Chen Architects and Heritage Consultants for [REDACTED], March 2007 at page 7:

Maintenance

- Policy 20 Maintenance of the fabric of the buildings and the integrity of the William Street Station Precinct should be the single most important part of the conservation program.
- Policy 21 Maintenance of the place includes informed supervision of minor and major works and vigilant attention to security in order to reduce the deterioration and protect the place from the risk of fire, vandalism and theft.

The following list of required maintenance activity is copied from the "Policy Implementation" section of *William Street Station Precinct Conservation Management Plan: Conservation Policy and Management Plan Review* prepared by Lovell Chen Architects and Heritage Consultants for [REDACTED], March 2007, at page 24:

Annual Maintenance Program

The following maintenance program is to be carried out by the owners of the place. Any rectification should be undertaken in accordance with the conservation policies and with appropriate specialist advice from professionals skilled in conservation work.

- Inspect for termites and other vermin and treat as necessary
- Inspect roof cladding, flashings and rainwater goods, repair as necessary. Ensure that all gutters are free of debris and check every six months that downpipes flow freely
- Check all fire fighting equipment and detection devices are in operational order and ensure all points of egress remain clear in accordance with relevant regulations
- Ensure that ground levels adjacent to walls have not been built up higher than vents or damp proof courses
- Inspect masonry for cracks and failure of mortar and signs of movement
- Check all electrical fittings, switchboards etc. for safety reasons
- Check all plumbing services for leaks
- Clean all light fittings
- Check joinery and paint finishes for deterioration and repair damaged elements
- Rod all rainwater and soil drainage systems
- Check door/window hardware. Oil locks and hinges

Annexure E

Conservation Plan (Part A)

William Street Station Precinct – Conservation Management Plan prepared by Palassis Architects for LandCorp, 28 September 2005. Note that "Long Term or Desirable Action" where it appears in the Conservation Plan (Part A) means the same as "Long Term Action" as defined in this Agreement.