

HERITAGE AGREEMENT

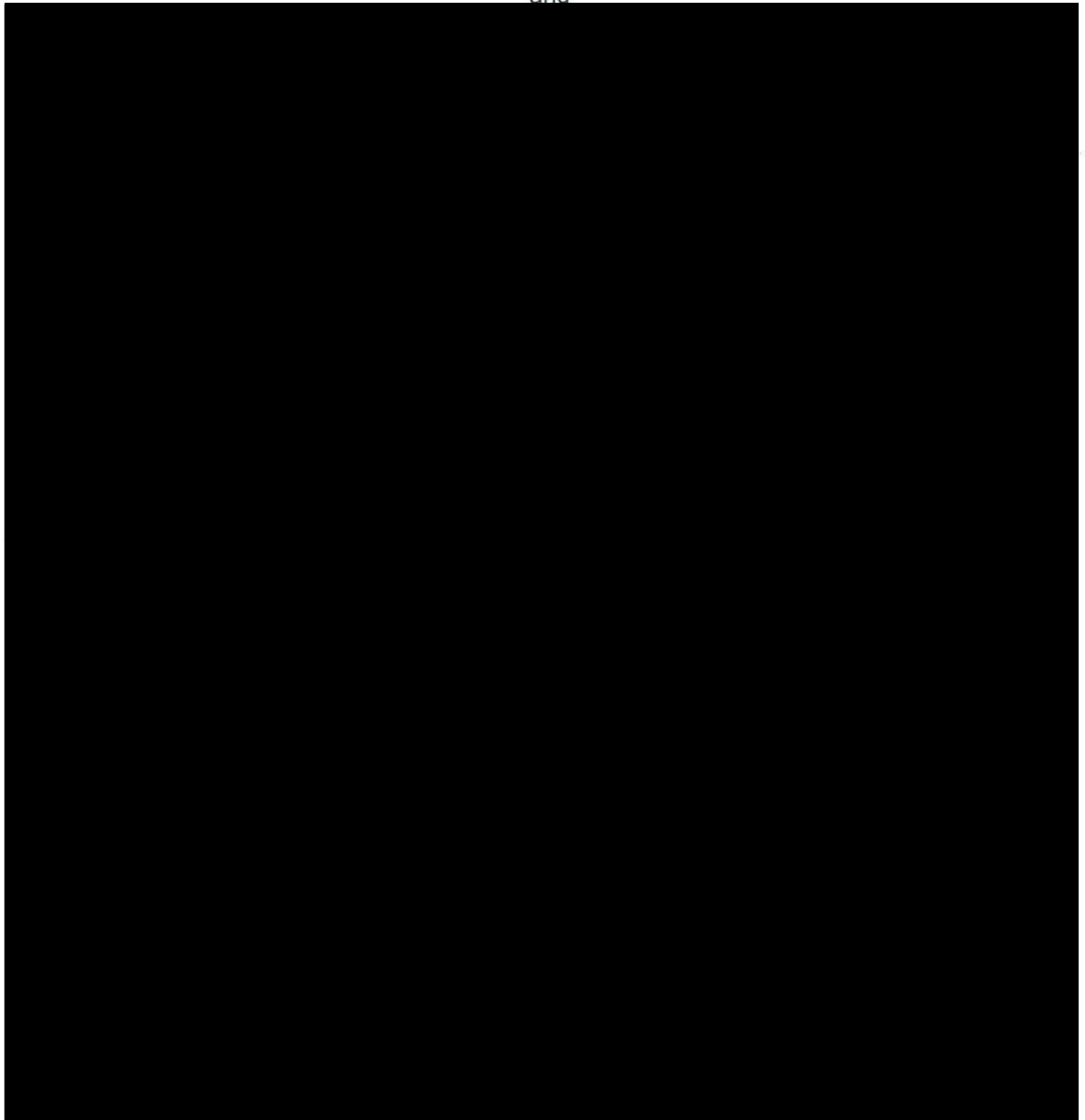
between

THE CITY OF PERTH

and

THE HERITAGE COUNCIL OF WESTERN AUSTRALIA

and



in respect of

The former W.D. and H.O. Wills Warehouse Building, Cnr Milligan and Murray Streets,
Perth

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Perth, Western Australia

("the Investor-Owners")

RECITALS:

- A. The City's functions include the management of planning and development within Perth. The City seeks to preserve and protect the unique character of Perth while balancing the need for growth and development. It also regulates the identification and transfer of surplus plot ratio arising out of unused plot ratio floor areas located on heritage listed buildings.
- B. The Council aims 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.
- C. The Place has been identified by the City and the Council as being of cultural heritage significance. It has been entered in the Register of Places of Cultural Heritage Significance attached to City Planning Scheme No. 2 and the State Register of Heritage Places on a permanent basis pursuant to the Act.
- D. The Council requires the Owners to enter into this Agreement in order to ensure the maintenance and conservation of the Significant Fabric located within the parts of the Land under their ownership or control. This includes, but is not limited to, certain elements and areas in the Place that are appropriate to be preserved and maintained so as to preserve their heritage importance, namely:
 - (i) the pillars with decorative capitals located in Lot 40 and Lot 75 on Strata Plan 54078 – owned by [REDACTED]
[REDACTED]



- (ii) the pillars with decorative capitals located in Lot 41 and Lot 73 on Strata Plan 54078- owned by [REDACTED]
 - (iii) the pillar with decorative capitals located in Lot 42 and Lot 74 on Strata Plan 54078- owned by [REDACTED]
 - (iv) The façade, the main staircase from the ground floor to the first floor of the Place, the stairwell around the lift cavity and the pillars with decorative capitals located on the ground and second floors all of which are located in the areas denoted as common areas on Strata Plan 54078 – under the control of the Strata Company
- E. The Investor-Owners comprise the 12 original owners of the Place prior to the Strata Plan 54078 registered on 12 March 2008 who are the beneficial owners of the Unused Plot Ratio and who enter into this Agreement both in that capacity and as the attorney of the individual Strata Unit Holders pursuant to Schedule 1, by-law no. 18 of the By-laws of the Strata Company.
- F. The Strata Company is responsible for maintenance of that part of the Significant Fabric located in areas identified as common property on Strata Plan 54078.
- G. The Owners comprise the owners of those parts of the Land on which part of the Significant Fabric is located, namely lots 40, 41, 42, 73, 74, 75 on Strata Plan 54078 and are responsible for compliance with all obligations under the Agreement relating to Significant Fabric located in those areas which for the avoidance of doubt, are not identified as common property.
- H. The City and the Investor-Owners, with the support of the Council, wish to enter into this Agreement to provide for the conservation of the Place so as to retain its cultural significance for present and future generations and to agree the identification of the Unused Plot Ratio for the Land and to provide for the transfer of the Unused Plot Ratio as identified in the Planning Approval and pursuant to the Planning Scheme.

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;

"By-laws" means the by-laws of the Strata Company from time to time, an extract of which (current as at the date of this Agreement) is attached at Annexure G;

"Conservation Plan" means the Conservation Plan in respect of the Place described in Item 5 of the Schedule, as may from time to time be varied by the Owners with the prior written approval of the City and 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;

"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;

"Donee Site Owner" means the recipient of the Unused Plot Ratio pursuant to a transfer under clause 34 of the Planning Scheme;

"Effective Date" means the date on which this Agreement is certified by the Minister in accordance with section 32(1) of the Act;

"Event of Default" is defined in clause 6.1;

"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.

"Investor-Owners" mean the 12 original proprietors of the Land formerly being the whole of the land comprised in Certificate of Title Volume 2658 Folio 567;

"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 7 of the Schedule;

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

“**Owners**” means the Strata Company and the individual Strata Unit Holders responsible for those elements of the Significant Fabric located on that part of the Land within their ownership and control, and includes the owner or owners of those parts of the Land or part thereof on which Significant Fabric is located from time to time;

“**Parties**” means the parties to this Agreement including the Investor-Owners, the Owners, the City and the Council;

“**Place**” means the place described in Item 1 of the Schedule;

“**Planning Approval**” means the planning approval described in Item 8 of the Schedule

“**Planning Scheme**” means the City of Perth City Planning Scheme No.2 (and any later re-enactment thereof);

“**Plot Ratio Floor Area**” means the ratio of the floor area of a building to the area of land within the boundaries of the lots on which the building is located

“**Register**” means the State Register of Heritage Places and has the same meaning as in the Act;

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

“**Strata Plan**” means strata plan 54078 a copy of which is attached at Annexure H as may be amended from time to time;

“**Strata Unit Holder**” means each of the registered proprietors from time to time of the individual strata units identified on Strata Plan 54078;

“**Unused Plot Ratio**” means the Plot Ratio Floor Area identified in clause 5.1(b);

“**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 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 other document any part of it;
- (d) a reference to this Agreement 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 Owners or Investor-Owners doing or refraining from doing anything includes a reference to the Owners or Investor-Owners 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 by the Investor-Owners and/or the Owners with the prior written consent of the City and the Minister.

2.2 Scope of this Agreement

- (a) This Agreement:
 - (i) applies to the Land and the Place; and
 - (iii) binds the Parties.
- (b) All of the obligations of the Owners under this Agreement are covenants made pursuant to section 29(10) of the Act and are intended to run with the Land and for the avoidance of doubt, will bind the Owners' successors in title.
- (c) The rights and obligations of the Owners under this Agreement are not assignable by them without the prior written consent of the City, which consent shall not be unreasonably withheld.
- (d) Any Owner transferring the whole of his or her interest in the Land to another person will be released from all obligations under this Agreement, subject to any liability or claim which arose prior to the date of registration of the transfer. For the avoidance of doubt, this clause 2.2(d) does not release, vary or otherwise affect the obligations of the under, or in connection with, this Agreement.

- (e) The Unused Plot Ratio identified in 5.1(b) cannot be transferred with the Land or part thereof as a right attaching to it, pursuant to clause 2.2(d) and remains in the ownership of the Investor-Owners until transferred or sold by them under private contract, subject to planning approval and the conditions attached thereto as set out in the Planning Scheme. For the avoidance of doubt, ownership of the Unused Plot Ratio identified in clause 5.1(b) hereof is a right which is separate to ownership of the Land or part thereof.

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.

3.2 Conservation Works

Each of the Owners must undertake the conservation of that part of the Place under their individual ownership or control in accordance with the Conservation Policy and is required to carry out the Conservation Works.

3.3 Development

Any Development of the Place is to be in accordance with the requirements of the Conservation Plan.

3.4 Maintenance

- (a) Each of the Owners shall ensure that the Significant Fabric located on that part of the Land under their individual ownership and control, as restored and adapted with the approval of the City, 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), each of the Owners shall be separately responsible for the Maintenance of the Significant Fabric located on that part of the Land under their individual ownership and control.

3.5 Conservation Consultant

Each of the Owners must appoint a consultant listed in the Council's 'Directory of Heritage Consultants' to supervise the carrying out of work required to the Significant Fabric located on that part of the Land under their individual ownership or control and any Development of the Place or other action which requires the approval of the City 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 Owners 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 City after consultation with the Council.

(b) Reports to be Acceptable to City

(i) The City shall consider all reports provided to it under this clause 3.6 and provide written notice to the Owners within 30 business 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 City.

(ii) In the event that the City requires further information, detail, explanation or other clarification, the relevant Owner shall ensure that a revised report is provided within 30 business days of receipt of written notice from the City, or within such other reasonable period nominated in writing by the City.

(c) Annual Reports

Each of the Owners must ensure that a proper, detailed and comprehensive written report in relation to Significant Fabric located on that part of the Land under their individual ownership or control is provided to the City 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 each Owner has undertaken on the Significant Fabric located on that part of the Land under their individual ownership or control 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 each Owner has undertaken on the Significant Fabric located on that part of the Land under their individual ownership or control since the Effective Date or the date of the previous report, as the case may be;

(iii) the Development and other activities which each Owner has undertaken on the Significant Fabric located on that part of the Land under their individual ownership or control, if any, pursuant to clause 3.3A 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 on that part of the Land under their individual ownership or control at the time of writing the report.

(d) Reports on Conservation Works

Each of the Owners must ensure that a proper, detailed and comprehensive written report which sets out the works required to the Significant Fabric on that part of the Land under their individual ownership or control 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 business days after the "Immediate Action" as described in the Conservation Works are completed;
- (ii) not later than 30 business days after the "Intermediate Action" as described in the Conservation Works are completed; and
- (iii) not later than 30 business days after the "Long Term and Desirable Actions" as described in the Conservation Works are completed.

3.7 Insurance

The Strata Company will maintain an insurance policy with a reputable insurance company 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 City. In the event of damage or destruction the Strata Company 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 Owners to comply with the Act and all relevant statutory and other requirements in connection with the Development of the Land. The Owners are 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

CITY'S RIGHTS OF ENTRY AND POWERS OF INSPECTION

4.1 City's rights of entry and powers of inspection

- (a) Subject to clause 4.1(b) the City 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 to each relevant Owner, 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 City will comply with any reasonable requirement imposed by any the affected Owners for the purpose of exercising the rights of the City under clause 4.1(a).

- (c) Each of the affected Owners must do all things necessary to enable the City 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

TRANSFER OF PLOT RATIO

5.1 Transfer of Plot Ratio

- (a) The development potential of the Land is permanently limited to a floor area of 7,144 m² in accordance with the Planning Approval (Annexure E) and the definition of floor area set out in the Planning Scheme (reproduced in Annexure F) ;
- (b) In consideration of entering into this Agreement and, in particular, the development and conservation obligations set out in Part 3, 6,244m² of Unused Plot Ratio from the Land will be available for transfer under clause 34 of the Planning Scheme.
- (c) The Unused Plot Ratio noted in 5.1(b) may be used, sold or retained by the Investor Owners in accordance with the Planning Scheme and subject to the approval of the City.
- (d) The City shall do all things necessary and within its power to effect the transfer of the Unused Plot Ratio as provided in clause 5.1(c), and the Investor Owner's shall cooperate and execute all necessary consents, permits or authorisations as may be required to give effect to the provisions of clause 5.1(a).

5.2 Variation of Transfer of Plot Ratio

Any further variation to the Plot Ratio Floor Area of the Land available for development will require approval by the City and the Council and an amendment to the Agreement.

PART 6

DEFAULT

6.1 Events of default

- (a) An Event of Default occurs if:
 - (i) any of the Owners are in breach of, or do not comply with, any of their respective 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 to effect compliance; or

- (ii) any of the Owners repudiate or commit a fundamental breach of this Agreement.

6.2 Rights and remedies of City

In the event any Event of Default occurs, the City shall be entitled to exercise any one or more of the following powers in relation to the Owners in default (including attending to any construction or other works):

- (a) through its agents, contractors or employees enter the Place and take such actions as are in the City's opinion necessary to rectify the Event;
- (b) any rights and remedies which may be available to the City at law or in equity;
- (c) the rights, powers and remedies available to the City under the Act as the party which has entered this Agreement on behalf of the Crown, and nothing in this Agreement limits or prejudices or shall hinder the exercise by the City or the Minister or any other person of any of the rights, powers or remedies available to the City, 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.

6.3 Land and Place at risk of Owners

- (a) The relevant parts of the Significant Fabric contained within the Land and the Place shall remain at the risk of each of the Owners, according to ownership or control, in all respects, notwithstanding any provisions in this Agreement dealing with the Development or maintenance of that part of the Land or the Place. Without limitation, all Development and maintenance of that part of the Land or the Place containing Significant Fabric shall be conducted entirely at the risk of the Owner with ownership or control of that part of the Land and that Owner shall, subject to clause 6.3(b), indemnify and keep indemnified and save harmless the Council, the City, 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 that part of the Land or the Place by that Owner or any person acting through, on behalf of, or under that Owner .
- (b) The indemnity provided by the each of the Owners in clause 6.3(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.

6.4 Interest on overdue money

If any of the Owners becomes liable to pay any amount of money to the City pursuant to this Agreement or arising from any matter the subject of this Agreement, that Owner shall pay to the City 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 City, 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 7

NOTICES

7.1 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 Owners' 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 in clause 7.2 (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.

7.2 The details of each party for the purposes of giving notice are as follows:

(a) the City:

City of Perth
Council House
27 St George's Terrace
Perth WA 6000

Attention: Chief Executive Officer

Phone: (08) 9461 3333
Fax: (08) 9461 3083

(b) the Council:

Legal Officer
Heritage Council.
GPO Box 6201,
East Perth WA 6892

Attention: Joel Gilman

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

(c) the Owners:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

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[REDACTED]
[REDACTED]

[REDACTED]

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**PART 8
GENERAL**

8.1 Variation to be in writing

- (a) The Parties may jointly, with the approval of the Minister, vary this Agreement.
- (b) Any variation of this Agreement shall be in writing and executed by the Parties.

8.2 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.

8.3 Further assurances

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

8.4 Extension of time by City or the Council

The City or the Council may at the Owners' or Investor-Owners' request by written notice to the Owners and the Investor-Owners, extend any time period for performance by the Owners and the Investor-Owners of any of their obligations under this Agreement.

8.5 Costs

- (a) The Owners responsible for the incursion of such costs and expenses shall pay or reimburse the City on demand for all the City's reasonable costs and expenses in relation to:
 - (i) the exercise or enforcement by the City of any right, power or remedy under this Agreement, at law, in equity or otherwise; and
 - (ii) any act or omission by the Owners causing Damage to the City,
- (b) The Investor Owners shall pay all reasonable legal costs and expenses in relation to the preparation, execution and stamping of this Agreement.

THE SCHEDULE

Item 1: Place

"The Place" which is known as the former W.D. and H.O. Wills Building is situated at 464 Murray Street, Perth. 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: The Significant Fabric

The Significant Fabric means the significant fabric described in the Conservation Plan, as reproduced in Annexure A

Item 3: Conservation Policy

The Conservation Policy means the conservation policy described in the Conservation Plan, as reproduced in Annexure B.

Item 4: Land

The land known as No. 464 Murray Street, cnr Milligan Street Perth, including the former W.D and H.O. Wills Building, being more particularly:

- (a) Lot 1-75 being the whole of the land on Strata Plan 54078, formerly being the whole of the land comprised in Certificate of Title Volume 2658 Folio 567; and
- (b) the ROW delineated on Lot 66 on Deposited Plan 7847 being that part of the land coloured Brown in Certificate of Title Volume 2658 Folio 200

Item 5: Conservation Plan

"The Conservation Plan" -Conservation Plan prepared by Hocking Planning and Architecture on behalf of The Match Group and dated March 2008 or a revision of this document approved in writing by the Council and the City.

Item 6: Conservation Works

The schedule of works described in the Conservation Plan, as reproduced in Annexure C.

Item 7: Maintenance

The schedule of maintenance activities described in the Conservation Plan, as reproduced in Annexure D.

Item 8: Planning Approval

The planning approval granted by the City to transfer part of the Unused Plot Ratio from the Land to 18 (Lot 1-10) Bellevue Terrace, West Perth dated 12 May 2009 and documented in the Council Minutes of the City dated 12 May 2009, an extract of which is attached at Annexure E.

EXECUTED AS A DEED


Executed by the City

THE COMMON SEAL of the CITY OF PERTH is affixed in the presence of:

Signature of authorised person Signature of authorised person 

Office held *CHIEF EXECUTIVE OFFICER*

Name of authorised person *FRANK EDWARDS*

Signature of authorised person 

Office held *LORD MAYOR*

Name of authorised person *LISA SCAFFIDI*

Office held

Name of authorised person

Executed by the Owners

78

Member of Council

Name of members of Council
(BLOCK LETTERS)

Member of Council

Name of member of Council
(BLOCK LETTERS)



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Director/secretary

Name of secretary
(BLOCK LETTERS)

[REDACTED]
[REDACTED]

Director

director
(BLOCK LETTERS)

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A [REDACTED]

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


Stephen Carrick
A/DIRECTOR


Marion Fulker
CHAIR



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

I, The Hon. G M (John) Castrilli, MLA, Minister for Local Government; Heritage; Citizenship and Multicultural Interests, hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act (WA) 1990.

Dated the 27 day of July 2009.


Minister for Local Government; Heritage; Citizenship and Multicultural Interests

Annexure A

Significant Fabric

Extract taken from Assessment of Significance and Statement of Cultural Heritage Significance and Levels of Significance in the Conservation Plan.



5.0 ASSESSMENT OF SIGNIFICANCE

5.1 Introduction

The criteria adopted by the Heritage Council in November 1996 have been used to determine the cultural heritage significance of the place.

The following statements have been adapted from the Permanent Entry in the Western Australian Register of Heritage Places prepared in 2000, prior to the extensive additions and alterations in 2007.

5.2 Aesthetic Significance

W.D. and H.O. Wills warehouse (fmr) is significant for the fine articulation of the Interwar Chicagoesque facades facing Murray Street and Milligan Street. The aesthetic impact of the original façade has been enhanced by the recent redevelopment and the additions have complemented the original building. (Criterion 1.1)

The place is significant for its contribution to the streetscape in its prominent place at the intersection of Murray and Milligan Streets, with the rounded façade above the main entrance hinging the two facades and complementing the intersection of the streets. (Criterion 1.4)

5.3 Historic Significance

The place is associated with the W.D. and H.O. Wills cigarette company and with the tobacco industry in Western Australia from 1927 to the 1960s. (Criterion 2.2 and 2.3)

W.D. and H.O. Wills warehouse (fmr) is a significant example of the work of prominent Western Australian architectural firms Oldham, Boas and Ednie-Brown in 1927. (Criterion 2.3)

5.4 Scientific Significance

W.D. and H.O. Wills warehouse (fmr) was one of the first buildings in Perth to utilise suspended concrete floor slabs and 'mushroom column' designs which eliminated the need for beams. (Criterion 3.3)

5.5 Social Significance

W.D. and H.O. Wills warehouse (fmr) illustrates a period of prosperity in Perth and Western Australia when new companies were expanding into the Western Australian economy. (Criterion 4.1)

The original plans of the former W.D and H.O. Wills warehouse demonstrate a shift in the practices of employers when facilities and services for employees were increasingly becoming more sophisticated, for example the provision of tennis courts for employees. (Criterion 4.1)

Since its construction in 1927, W.D. and H.O. Wills warehouse (fmr) has been a prominent, familiar landmark in the Perth streetscape and as such contributes to the wider community's sense of place. (Criterion 4.2)

5.6 Rarity

W.D. and H.O. Wills warehouse (fmr) is rare as an example of the early use of reinforced concrete and 'mushroom column' design which eliminated the need for beams. (Criterion 5.2)

W.D. and H.O. Wills warehouse (fmr) is rare as one of the few extant buildings displaying the full inventory of the interwar chicagoesque style in Perth. (Criterion 5.2)

The place is an unusual example of adaptive reuse that celebrates the original design whilst creating a bold contemporary addition that is complimentary to the original. (Criterion 5.2)

5.7 Representativeness

W.D. and H.O. Wills warehouse (fmr) is an excellent representative example of the interwar chicagoesque style as applied to a warehouse. It is also a good example of the practice of 'adaptive re-use' of older buildings.

5.8 Condition

The condition of W.D. and H.O. Wills warehouse (fmr) is excellent following its recent reconstruction and additions. The extensive repairs to the original fabric have been of a high quality matched by the quality of the finishes in the additions.

5.9 Integrity

Overall the place has a low to moderate degree of integrity because much of the interior has been significantly altered and it would be difficult to return it to its original use. The Murray and Milligan Street facades of the original building have a high degree of integrity as much of the original fabric is intact and reconstruction of these facades has respected the original intent. The removal of the glass on the second floor windows is not consistent with the original form but it is possible to be restored.

5.10 Authenticity

The façades of the original (1927) building is considered to have a high degree of authenticity as the original material is largely in evidence and reconstruction and additions have maintained the original fabric where possible.

Internally the authenticity is low because there have been extensive remodelling of the interiors to accommodate the new functions. It is acknowledged that maintaining the pillars and portion of the stairs and stairwell has contributed significantly to an understanding of the place in its original form.

6.0 CULTURAL HERITAGE SIGNIFICANCE

6.1 Statement of Significance

The statement has been adapted from the Permanent Entry in the Western Australian Register of Heritage Places prepared in 2000, prior to the extensive additions and alterations in 2007.

The WD and HO Wills Warehouse (fmr) is a six storey reinforced concrete, brick and steel structure which was originally in the Interwar Chicagoesque style and has been added to in the post modern style. It has cultural heritage significance for the following reasons:

- the place is one of the very few extant examples illustrating the external features of the Interwar Chicagoesque style in Perth expressed in the balance between the projecting vertical members and the horizontal bands and the further refinement of the window glazing squares and circles;
- the place contributes to the streetscape in its prominent position at the intersection Murray and Milligan Streets, with the rounded façade above the main entrance hinging the two facades and complementing the intersection of the streets;
- the place was one of two buildings in Perth to be configured with suspended concrete floor slabs and has rarity value in its innovative use of reinforced concrete and 'mushroom' columns to save building height by the elimination of beams;
- the place is important as an illustration of adaptive reuse from warehouse to residential and office use. It also demonstrates how two architectural styles from different periods can be complimentary and successfully coexist in the same building whilst maintaining their individual elements; and
- the place is associated with the prominent architectural firms Oldham Boas Ednie-Brown who were influential in the architectural profession in Western Australia during the 20th century.

6.2 Levels Of Significance

Relative degrees of significance within the place determine the appropriateness of conservation actions. Gradings of significance are based on a five-tier system as follows:

- Exceptional Significance¹

The fabric of such spaces or elements should be preserved or restored in such a way as to demonstrate their significance. Furnishings and decoration should respect the historic character of the place and activities controlled so as not to prejudice the association of the spaces with their significant use(s). Intrusive elements should be removed (after photographic recording) and new finishes that are detrimental to the significant fabric should not be applied. Building elements that are damaged are to be restored.

Adaptation is acceptable to the extent of introducing new services, provided this does not adversely affect the significant fabric of the space or element. Structural adaptation is generally unacceptable. However, minor structural adaptation may be considered if it is in keeping with the overall aims of the conservation policy and has minimal impact on the significant fabric. Any alterations to the building fabric should be documented.

For archaeological sites, the area should not be disturbed except in the event of an archaeological dig. Landscape elements should not be removed without due consideration of their heritage values. Where removal of significant trees is necessary due to their condition, replacement plantings of the same species should be made.

There should be no new works in open space areas which will adversely affect the setting of the place or obscure important views to and from the site.

- Considerable Significance

The significant fabric of such spaces or elements should be preserved, restored or reconstructed as appropriate. Reconstruction is desirable provided sufficient detailed information is available. Adaptation is acceptable to the extent of installing reversible small fixtures, services and partitions, provided this does not affect any external or internal fabric which is of exceptional or considerable significance. No significant fabric should be removed or action taken to confuse the sense of the space. Structural adaptation is generally unacceptable. However, minor structural adaptation may be considered if it is in keeping with the overall aims of the conservation policy and has minimal impact on the significant fabric. Any alterations to the building fabric should be documented.

For archaeological sites, disturbance of the area should be avoided where possible. Where disturbance cannot be avoided, an archaeological examination should be undertaken prior to other works taking place. Landscape elements should not be removed without due consideration of their heritage values. Where removal of significant trees is necessary due to their condition, replacement plantings of the same species should be made.

There should be no new works in open space areas which will adversely affect the setting of the building or obscure important views to and from the site.

- Some Significance

The significant fabric of such spaces or elements should be preserved, restored or reconstructed as appropriate. Adaptation is acceptable to the extent of installing fixtures, services and reversible partitions provided this does not affect the significant external and internal appearance of the building. Discrete structural additions and openings can be made. New or different finishes are acceptable, provided these do not obscure or damage important evidence of significant materials and finishes. Any alterations to the building fabric should be documented.

For archaeological sites, disturbance of the area should be avoided where possible. Where disturbance cannot be avoided, an archaeologist should be present when works are undertaken in order to identify and/or collect material of archaeological significance.

Landscape elements should not be removed without due consideration of their heritage values. Where removal of significant trees is necessary due to their condition, appropriate replacement plantings should be made. There should be no new building work in open space areas which will adversely affect the setting of the building or obscure important views to and from the site.

- Little Significance

¹ There is no aspect of the place that is of exceptional significance.

The fabric of such spaces or elements may be retained or removed depending on the future use requirements. However, care should be taken to ensure that any such works do not detract from the significance of adjoining spaces or elements. Before removal ensure that comprehensive photographic and graphic recording is completed.

- Intrusive

Intrusive spaces or elements have been identified as detracting from the significance of the place and their removal, and/or replacement with more appropriate detailing, should be encouraged. Their removal needs to be assessed against other considerations, such as function and economics, before implementation. Before removal/demolition. ensure that comprehensive photographic and graphic recording is completed.

Exceptional Significance

- There are no places considered to be of exceptional significance.

Considerable Significance

- The original Murray and Milligan Street facades including the parapet wall on the third floor.
- Original pillars on ground floor, first floor and second floor
- Stairwell and stairs from ground floor to the first floor.

Some Significance

- Walls on the western perimeter of the building from the original structure
- The parapet wall on Milligan Street which obscures the vehicle and pedestrian access which is consistent with the original plan.
- The location of the liftwell and the stairwell around it are consistent with the original plan. The wall layout around the lift on the ground floor and second floor are consistent with the original and are possibly original.

Little Significance

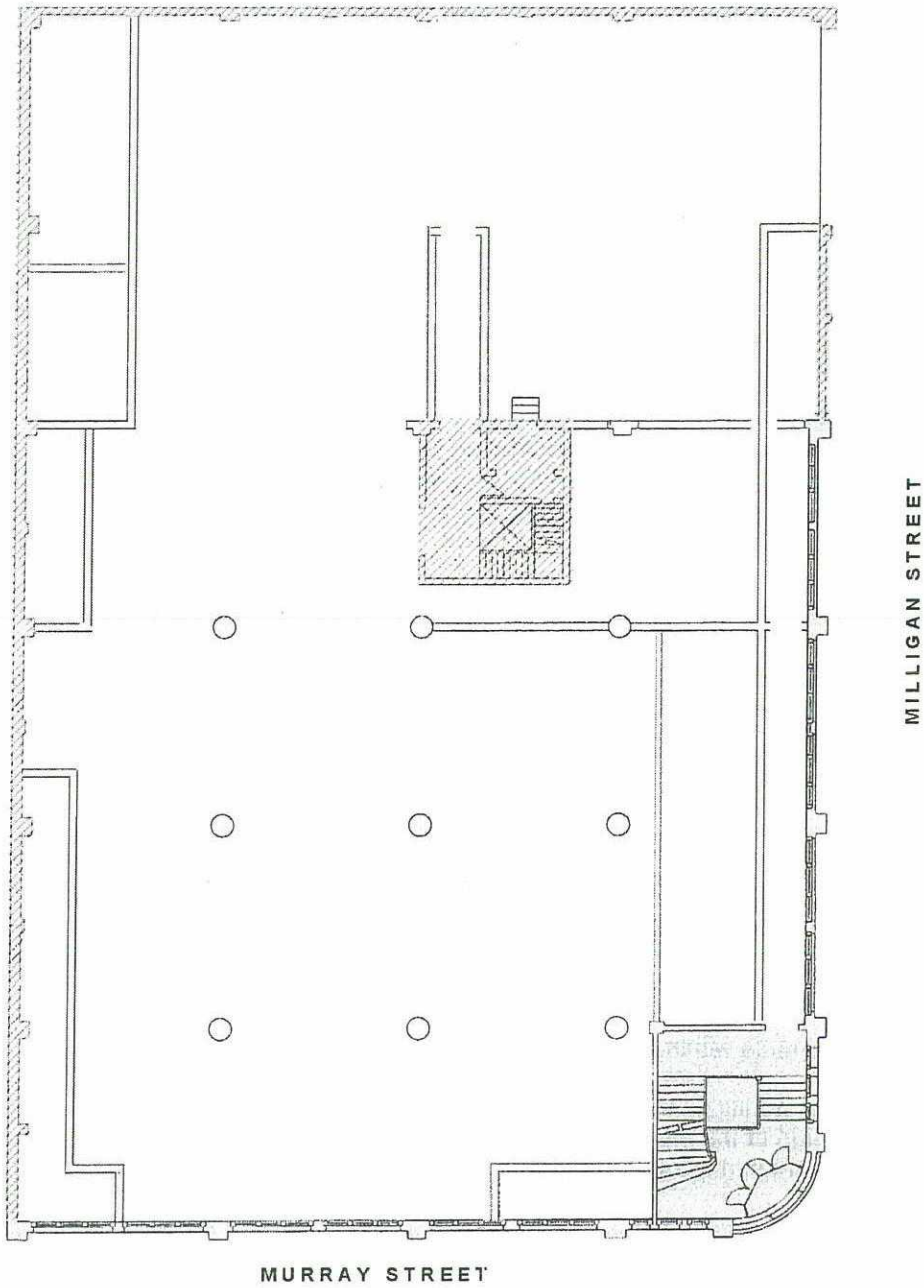
- The internal fitout of all the levels of the building are of little significance except where they compliment the original (1927) elements.
- The north of the lot which has the access to the garage and services has little significance.
- The additions to the original structure which have complimented the original design style.

Intrusive




- There are no elements within the site that are intrusive

It should be noted that the additions to the original building have little significance on their own but support and contribute to the design of the original building. It is recognised therefore that changes to these additions could be detrimental to the significance of the original structure.

Generally, all of the Significant Fabric of the Place is contained in common areas under the control of the Strata Company, who will remain responsible for the conservation and maintenance of those items of Fabric. However, lots 40, 41, 42, 73, 74 and 75 on Strata Plan 54078 also contain Significant Fabric in the form of pillars, or parts of pillars, with decorative capitals. The Owners of these lots will each be responsible for the ongoing conservation and maintenance of the Significant Fabric contained in their respective lots.



LEGEND

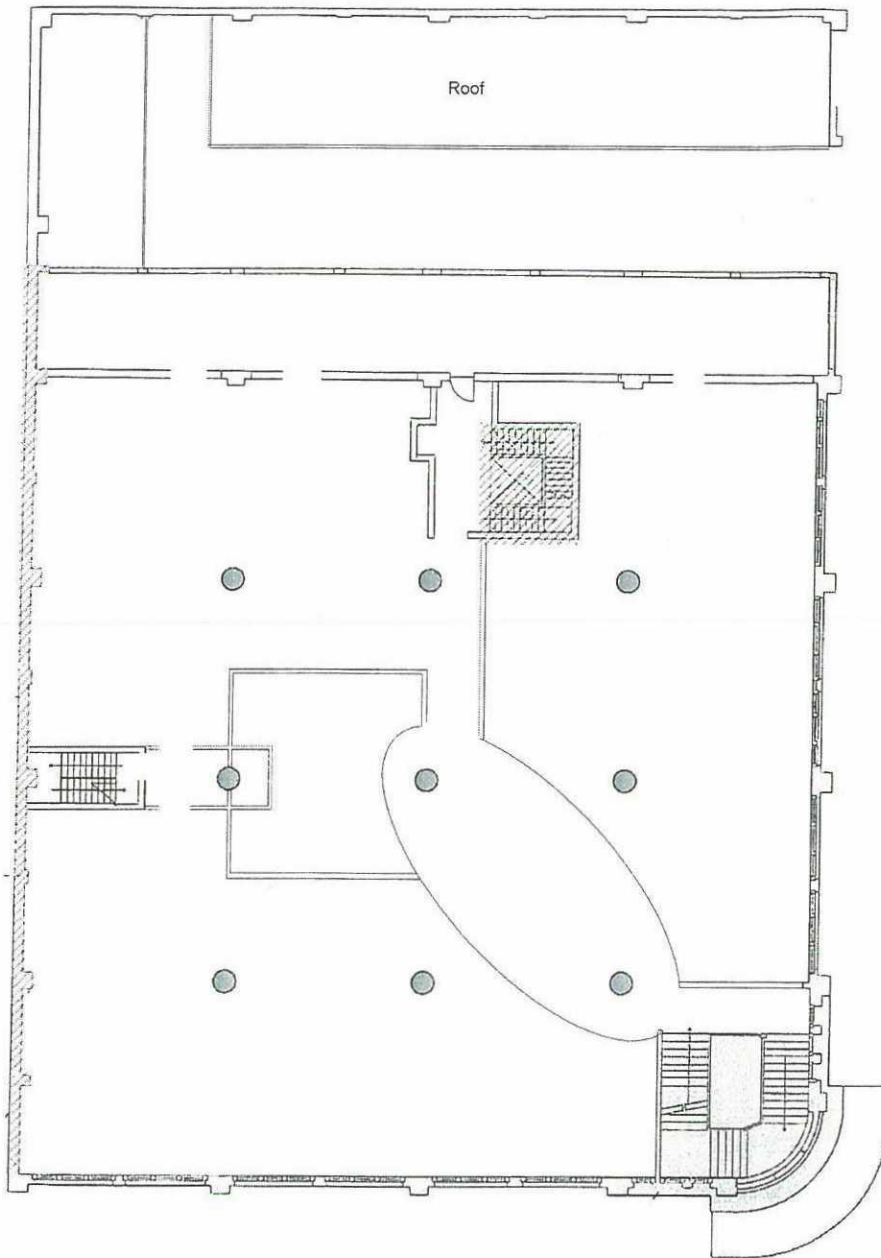
-  Zones of Considerable Significance
-  Zones of Some Significance
-  Zones of Little Significance

GROUND FLOOR PLAN






Note: Internal partitions and fitouts not shown.
For detailed floor plans, refer to appended drawings.

Figure 1. Zones of Significance Ground Floor.



LEGEND

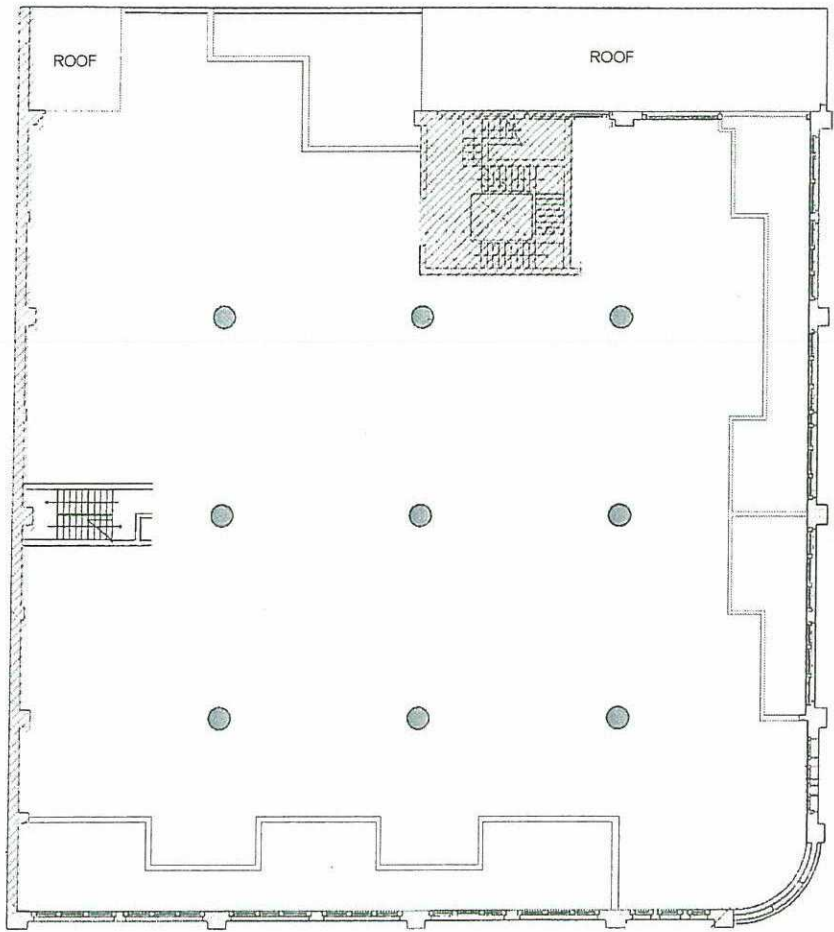
-  Zones of Considerable Significance
-  Zones of Some Significance
-  Zones of Little Significance

FIRST FLOOR PLAN






Note: Internal partitions and fitouts not shown.
For detailed floor plans, refer to appended drawings.


Figure 2. Zones of Significance First Floor.



LEGEND

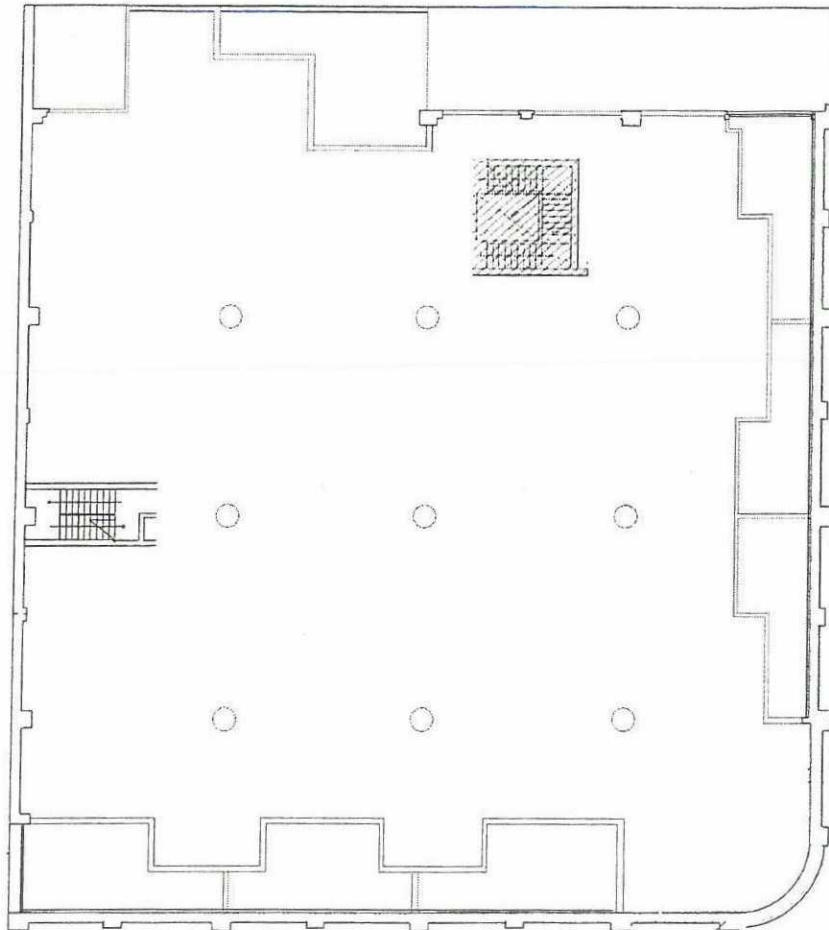
-  Zones of Considerable Significance
-  Zones of Some Significance
-  Zones of Little Significance

SECOND FLOOR PLAN




0 1 2 3 4 5 10 metres 

Note: Internal partitions and fitouts not shown.
For detailed floor plans, refer to appended drawings.

Figure 3. Zones of Significance Second Floor.



LEGEND

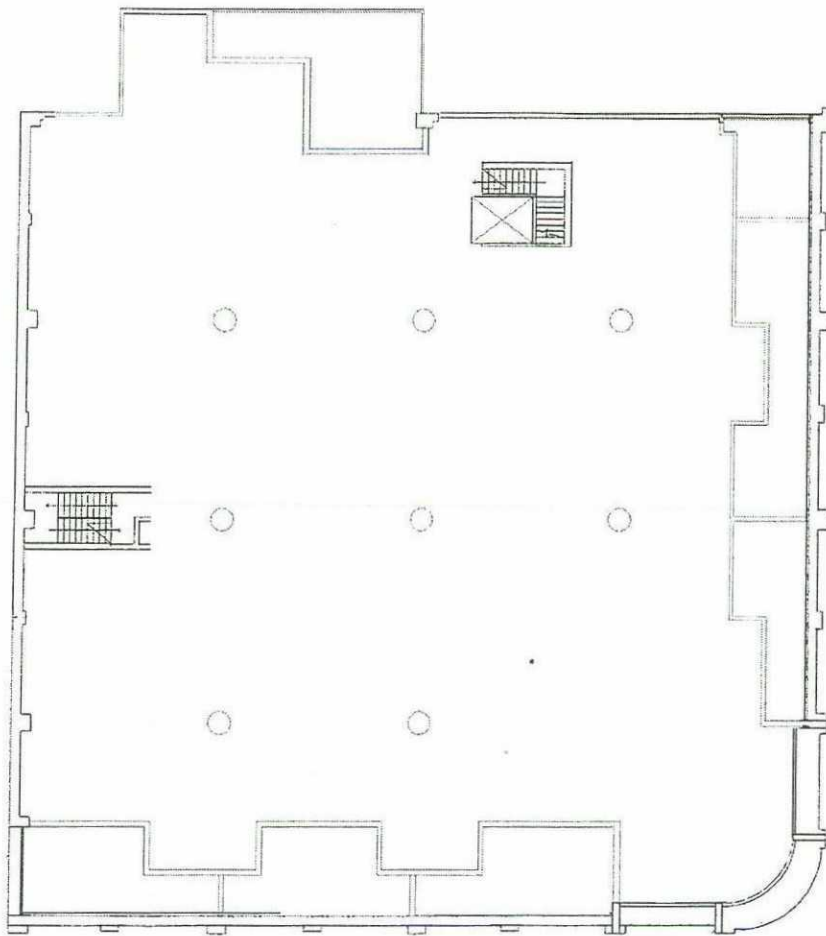
-  Zones of Considerable Significance
-  Zones of Some Significance
-  Zones of Little Significance

FOURTH FLOOR PLAN






Note: Internal partitions and fitouts not shown.
For detailed floor plans, refer to appended drawings.

Figure 4. Zones of Significance Third Floor.



LEGEND

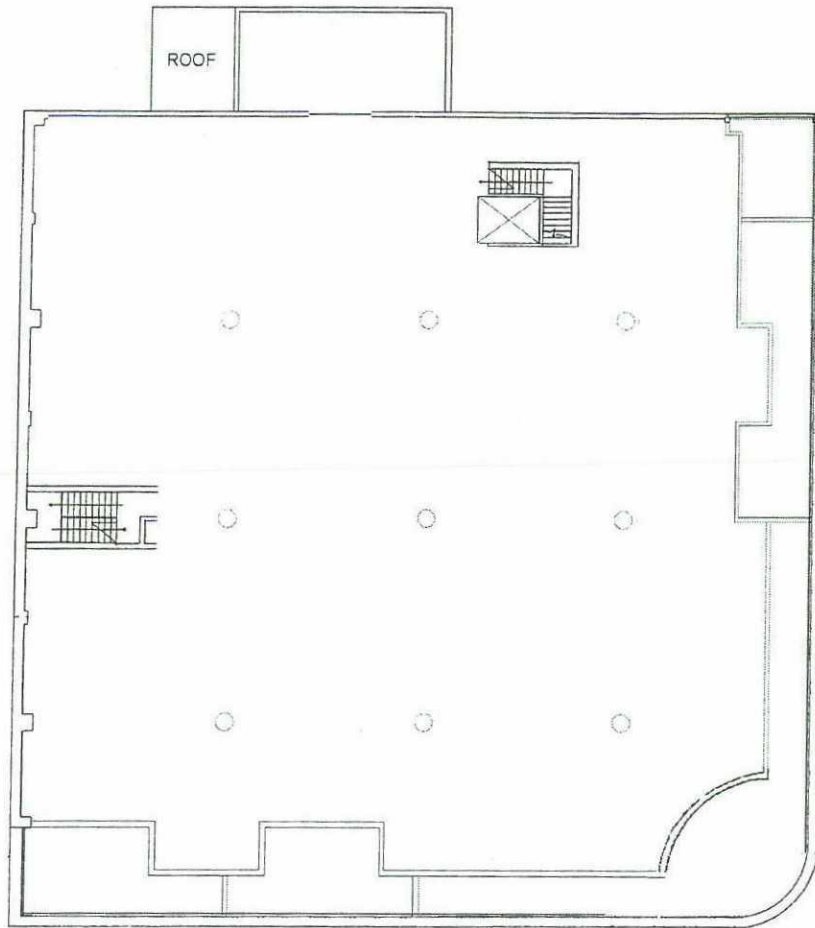
-  Zones of Considerable Significance
-  Zones of Some Significance
-  Zones of Little Significance

FOURTH FLOOR PLAN






Note: Internal partitions and fitouts not shown.
For detailed floor plans, refer to appended drawings.

Figure 5. Zones of Significance Fourth Floor.



LEGEND

-  Zones of Considerable Significance
-  Zones of Some Significance
-  Zones of Little Significance

PENTHOUSE LEVEL



Note: Internal partitions and fitouts not shown.
For detailed floor plans, refer to appended drawings.

Figure 6. Zones of Significance Penthouse/Fifth Floor.

Annexure B

Conservation Policy

Extract taken from Conservation Policy in the Conservation Plan.

7.0 CONSERVATION RECOMMENDATIONS

7.1 Introduction

The following conservation policy has been developed on the basis of the preceding assessment of the cultural significance of W.D. and H.O. Wills warehouse (fmr). The policy is intended to provide guidance and direction in the future use, development, conservation, refurbishment and restoration.

The conservation policy includes general policies to define the procedural constraints in which the conservation of the place will take place and then more specific policies relating to the maintenance of the significance of the place, its physical condition and external and user requirements.

The policies have been drafted so that their application to W.D. and H.O. Wills warehouse (fmr), and to the associated people and agencies, are readily apparent.

7.2 Policies Arising from Cultural Significance of the Place

7.2.1 Procedural Constraints Arising from the Burra Charter

The following general policies have been developed from the principles and guidelines contained in the Burra Charter and are intended to provide an overall framework within which the specific policies have been formulated.

Recommendation 1

All future development, conservation and maintenance works on the site should be carried out having regard for the principles of the Australia ICOMOS Charter for the Conservation of Places of Cultural Heritage Significance (The Burra Charter)

The principles should be used in determining the acceptability of any proposed works. Decisions should be based on, but not limited to, the following conservation objectives:

- the retention and enhancement of existing cultural heritage values;
- the retention of identity and its contribution to a sense of place;
- the retention of significant fabric and as many attributes as possible;
- the restoration of significant fabric or elements;
- the removal of intrusive accretions.

Recommendation 2

The aim of conservation is to retain or recover the cultural significance of a place and must include provision for its secure future and its maintenance. (Article 2)

The approach should first be to maintain the building to ensure that the fabric does not deteriorate further and secondly to conserve significant existing fabric.

To achieve the first objective, the current inspection and maintenance program should be reviewed to ensure that the buildings are kept in good physical condition so that the fabric of the buildings is not jeopardised. Such a program should concentrate on key areas of the site, and particularly the roof and roof drainage, site drainage, sub-floor conditions, external windows, significant internal spaces and electrical, fire and other services.

Conservation also includes preservation, restoration and reconstruction. Where existing fabric needs to be reconstructed during maintenance, the replacement generally should match the original in design, materials and construction unless there are strong overriding functional reasons for altering the original design. Restoration and reconstruction should only occur when the design, materials, construction or earlier state of the fabric is known. These processes should only occur if returning the fabric to that known state will recover the cultural significance, or is necessary for the survival of the place.

Conservation works should not occur unless there are sufficient funds to ensure proper completion.

Recommendation 3

Conservation of a place should take into account all aspects of its cultural significance without unwarranted emphasis on any one at the expenses of others. (Article 5)

Conservation work should not try to recreate the fabric as it existed in one period of time to the detriment or complete removal of earlier or later additions, alterations or treatments on the fabric as these are evidence of its history and uses. In undertaking any maintenance or conservation works or works to adapt the building to new uses, consideration should be given to the assessed significance of the place or element and the impact of the works on that significance.

Recommendation 4

Conservation requires the maintenance of an appropriate visual setting, eg. form, scale, colour, texture, and materials. No new construction, demolition or modification which would adversely affect the setting should be allowed. Environmental intrusions which adversely affect appreciation or enjoyment of the place should be excluded. (Article 8)

New construction work is acceptable provided it does not reduce or obscure the cultural significance of the place. This policy should form the basis for consideration of all future uses, new works and any adaptation or alteration works that may be proposed.

Adaptation of spaces or elements identified as being of significance should not detract from the overall significance of the place and should have minimal impact on culturally significant fabric and should be reversible. New works or adaptation should first concentrate in areas of little significance or on intrusive elements where possible.

Recommendation 5

The organisation and individuals responsible for policy decisions must be named and specific responsibility taken for such decision. (Article 26)

The Conservation Plan should be adopted by the owners and strata managers of W.D. and H.O. Wills warehouse (fmr), and be recognised by the City of Perth, the Heritage Council of WA (HCWA), and any future owner or manager of the place for example strata managers.

The owners and strata managers have the primary responsibility for the implementation of the Conservation Policy and should provide budgets for repair and maintenance works recognising the overall priorities for conservation works detailed in section 8. The owners should seek approval or comment from HCWA and the City of Perth where appropriate.

The conservation policy should be subject to review, normally at not more than five yearly intervals. However, should the circumstances affecting the site alter in any significant way, for example a change of ownership or use, then the policy should be reviewed at that time.

Recommendation 6

Physical disturbance or invasive investigation should only occur where it adds to the body of knowledge about the significance of the site especially where necessary to provide data essential for decisions on the conservation of the place and/or to secure evidence about to be lost or made inaccessible through necessary conservation or other unavoidable action. (Article 28)

Physical investigation may be necessary to determine the composition of material or method of construction where elements require conservation. Investigation is also necessary to confirm levels of archaeological significance where, because of the nature of the evidence, its detail and extent are not readily apparent.

Recommendation 7

Appropriate professional direction and supervision must be maintained at all stages of the work. (Article 27)

To ensure that works are completed correctly, overall responsibility for these works should be placed under the control of persons with considerable professional expertise and experience in the conservation, maintenance and repair of heritage buildings.

Generally, day-to-day maintenance work can be carried out in accordance with the conservation policies without particular reference to a conservation specialist. However, major maintenance works, such as render and stone repair, roof works and redecoration works in significant external and internal areas, should be undertaken under the direction of an appropriately qualified conservation practitioner.

Recommendation 8

Existing fabric should be recorded before any disturbance of the place and the records should be placed in a permanent archive and be made publicly available. (Article 23 and Article 28)

Before removal, adaptation or conservation works are carried out to any elements whether or not deemed significant, the elements or place should be fully recorded through the use of photography and measured drawing. The records must be of archival quality and be appropriately stored at HCWA, with copies maintained by the owners and the City of Perth

7.2.2 General Actions and Controls

The following general actions and controls should be applied to the future planning of, and works to, the owners and strata managers if the various aspects of significance, as set out in the Statement of Significance, are to be maintained.

Recommendation 9

Those graded zones which demonstrate the significance of the place should be conserved. (ref: Section 6.2)

Consideration of the levels of significance of the zones and elements of the place, as detailed in section 6.2, has been undertaken to guide the appropriateness of future adaptation and changes of use for W.D. and H.O. Wills warehouse (fmr) and its setting.

Recommendation 10

Those elements which are critical to an understanding of the significance of the place should be conserved.

Conservation of these elements will enhance the significance of W.D. and H.O. Wills warehouse (fmr) so that its value is readily recognised and its integrity is maintained for future generations.

Those elements include the original facades on Murray and Milligan streets, the original pillars, and the original staircase from ground floor to first floor.

It is recognised also that the additions in 2006/07 are a response to the original design. Therefore the new façade and the pillars on the third to fifth floors should be considered as contributing to the significance of the original elements.

Recommendation 11

The identified building elements which contribute to the townscape value of the locality should be conserved. (ref. Section 5)

W.D. and H.O. Wills warehouse (fmr) is located on a prominent site within the City of Perth. With other heritage places in the immediate vicinity it is an important and integral part of the streetscape. The properties at 472 and 474 Murray Street should be considered as an important part of the streetscape.

7.2.3 Opportunities arising from the Statement of Significance

Recommendation 12

W.D. and H.O. Wills warehouse (fmr) is a rare example of the Interwar Chicagoesque style and for its early use of reinforced concrete and mushroom pillars.

The significance of the function of the *W.D. and H.O. Wills warehouse (fmr)* has been little documented and is worthy of greater recognition for its input into the design of the building. The relationship between the form of the building and its original use should be further researched.

Recommendation 13

W.D. and H.O. Wills warehouse (fmr) is a rare example of the Interwar Chicagoesque style and for its early use of reinforced concrete and mushroom pillars

W.D. and H.O. Wills warehouse (fmr) is a rare, attractive and instructive example of interwar Chicagoesque style. There are few examples of the Interwar Chicagoesque style in Perth or Western Australia which have most of the original external features intact.

Recommendation 14

W.D. and H.O. Wills warehouse (fmr) is a fine example of the Interwar Chicagoesque style in excellent condition.

Following the recent additions and renovations the original building is in excellent condition. The additions have been undertaken with considerable research into the structural integrity of the original structure. All repairs to the original fabric have maintained the original design features and have respected the original design intent where possible.

7.2.4 Policies arising from the Levels of Significance

The following policies relate to levels of significance allocated in section 6 and provide specific direction of priorities in relation to development and conservation of the site through indicating where there is greater or lesser scope for adaptation and alteration without diminishing the overall significance of the place.

Recommendation 15

Zones and elements of considerable significance should be preserved, restored or reconstructed as appropriate. Reconstruction is desirable providing sufficient detailed information is available. Adaptation is acceptable providing all adaptations are reversible and do not affect significant fabric. No original material should be removed or action taken which confuses the sense of the space or original finishes. Structural adaptation is generally unacceptable, although minor structural adaptation may be considered. In open spaces there should be no new works which will adversely affect the setting of the place or obscure important views to or from these zones.

The zones and elements of considerable significance are identified in section 6.2. They are the original facades facing Murray and Milligan Streets; all the remaining pillars on the ground, first and second floors; and the stairs and stairwell of the main entrance to the first floor. The works which have been recently undertaken for the redevelopment of the site have respected the elements of considerable significance.

7.2.5 Policies Relating to the Physical Setting of the Place

Recommendation 16

W.D. and H.O. Wills warehouse (fmr) is on a prominent site at the corner of Murray and Milligan Street and it should be conserved and maintained to retain its heritage significance in an appropriate setting.

Whilst conservation and maintenance of the place is the responsibility of the property owner, the setting of the place is the responsibility of the City of Perth. The streetscape has been enhanced through the recent redevelopment of the site and the adjacent properties at 472 and 474 Murray Streets. Adjacent properties also contribute to the streetscape and all contribute to the identity of this area of the City of Perth.

7.2.6 Policies Relating to Historical Associations

Recommendation 17

The early contributions of the W.D. and H.O Wills who instigated the construction of the building and were influential in the establishment of the tobacco retail industry in Western Australia should be recognised.

Further interpretation of the role and function of W.D. and H.O Wills Company should be encouraged to further understand the site. It is apparent that the construction of the building was a result of the specific needs of the company. For example, the heavy loads of their products and the need for open floor space were key points in the decision to use the new technique of reinforced concrete teamed with the mushroom pillars. Further interpretation of these design decisions would be of value.

Recommendation 18

The contributions of Oldham Boas Ednie-Brown and CMP architects should be acknowledged and demonstrated.

The role of the original architects Oldham Boas Ednie-Brown and the architects who designed the addition in 2006/07, CMP architects have made a significant impact on the architecture profession and streetscape in Perth. Opportunities to demonstrate this contribution should be taken up where possible.

Recommendation 19

Interpretation of the significance of place should be implemented.

The social and historical significance of place is deserving of wider recognition. The most feasible form of interpretation is a plaque on the building, information in heritage trail booklets and other associated material, and interpretative material integrated into a wider interpretation program by the City of Perth or other cultural tourism agencies.

Recommendation 20

Interpretation of the site should be coordinated within a wider interpretation of this location in the City of Perth and its other significant buildings or sites.

The W.D. and H.O. Wills Warehouse (fmr) reflects the development of the City of Perth in the interwar period. It is desirable that any general or focused interpretation of the place be coordinated with other interpretive efforts to gain maximum exposure and to provide an appropriate historical, social and physical context for the interpretation of the locality.

7.3 Policies Arising from the Physical Condition of the Place

The following section sets out policies which apply to maintenance and repair required to maintain or enhance the cultural significance of the place. They are divided into exterior and interior works. These works have been prioritised in the implementation section of this report.

7.3.1 Maintenance and Repair of Culturally Significant Fabric

GENERALLY

Recommendation 21

A maintenance programme should be established to maintain the excellent current condition of the place.