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Final
23 June 2005

Westpac Funds Management Limited

Supplemental Deed Poll

in respect of the Constitution of the Westpac Office
Trust

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Date

Westpac Funds Management Limited ABN 28 085 352 405 of Level 25, 60 Martin Place, Sydney, as responsible entity of the Westpac Office Trust ARSN 103 853 523 (**Responsible Entity**)

Background

- A The Westpac Office Trust is governed by a constitution dated 19 February 2003 (**Constitution**).
- B Westpac Funds Management Limited is the responsible entity of the Westpac Office Trust.
- C Clause 18 of the Constitution permits the Responsible Entity to amend the Constitution by supplemental deed.
- D The Responsible Entity wishes to give effect to amendments to the Constitution as approved by the investors in the Westpac Office Trust, in the manner set out in this document.

Agreed terms

1 Interpretation

1.1 Definitions

Unless the context otherwise requires, capitalised terms in this document have the same meaning as in the Constitution.

1.2 Interpretation

Unless the contrary intention appears, in this document:

- (a) terms defined in the Corporations Act and the Listing Rules are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “including” and “for example” when introducing a list of items does not exclude a reference to other items, whether of the same class or genus or not;

- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority; and
- (g) headings and marginal notes are for convenience only and do not affect interpretation of this Constitution.

1.3 **Supplementary deed poll to the Constitution**

This document is supplementary to the Constitution.

1.4 **Governing law**

This document is governed by the law of New South Wales.

2 **Amendment and continuation**

The Constitution is amended as follows:

- (a) all references to "Entity" are replaced with "Responsible Entity";
- (b) the following new definitions are inserted into clause 1.1:

"**ASTC** means ASX Settlement and Transfer Corporation Pty Limited.";

"**ASTC Settlement Rules** means the rules governing the operation of the clearing and settlement facilities conducted by ASTC.";

"**Base Fee** means the fees payable to the Responsible Entity pursuant to clause 18.1.";

"**Benchmark Index** means the accumulation index created from the ASX listed entities that have a focus on the commercial property sector as calculated by a suitable body selected by the Responsible Entity from time to time and notified to Members, using closing market price series data. The index will commence at 100 on 31 December 2005. This index does not include the Fund. If the Fund's market capitalisation becomes greater than 40% of the aggregate market capitalisation of the members of the Benchmark Index and the Fund, then the Benchmark Index becomes the ASX Property Trust Accumulation Index or its successor.";

"**CHESS System** means a system for the transfer of securities in respect of which approval has been given by the ASTC in accordance with the ASTC Settlement Rules.";

"**Class** means a class of Units.";

"**Date of Delisting** means whichever is the first to occur of the following:

- (a) the date upon which the Responsible Entity receives notification from the ASX of the removal of the Fund from the official list of the ASX; or

- (b) where the Securities are suspended from trading by the ASX for a continuous period of 60 days, the day following the expiration of that 60 day period.”;

“**Distributable Income** means the distributable income of the Fund for each Distributable Period as determined pursuant to **clause 13.1**”;

“**Fund Index** means the accumulation index for the Fund as calculated by the ASX, or other suitable body as determined by the Responsible Entity from time to time and notified to Members, using closing market price series data for all Securities except for the closing price at the end of the Year which shall be replaced by the volume weighted average market price for all Securities from and including the date upon which the Securities trade ex distribution entitlement for the relevant Year. The index will commence at 100 on 31 December 2005 utilising the closing Market Price on that day.”;

“**Instalment Lender** means such entity that provides an Instalment Loan to a holder of Instalment Receipts.”;

“**Instalment Loan** means such amount on a per Unit basis that may be advanced from time to time by an Instalment Lender to a holder of Instalment Receipts.”;

“**Instalment Receipt** means any instalment receipt issued under the terms of a Security Trust Deed which constitutes evidence of a beneficial interest in a Unit. “;

“**Listing Rules** means the listing rules of ASX as amended or replaced from time to time, except to the extent of any written waiver by the ASX.”;

“**Market Price** means:

- (a) while Instalment Receipts are Officially Quoted, the sum of the Price and the Instalment Loan; and
- (b) when Instalment Receipts cease to be Officially Quoted, the Price.”;

“**Officially Quoted** means quotation on the ASX.”;

“**Performance Fees** means the fees (if any) payable to the Responsible Entity pursuant to **clause 18.2**.”;

“**Performance Units** means Units issued to the Responsible Entity pursuant to **clause 18.2**.”;

“**Price** means on a particular day:

- (a) the weighted average price per Security for sales on the ASX (excluding any Dual Entry Demand Transfers (as that term is defined in the ASTC Settlement Rules)) for the period of 15 Business Days immediately prior to the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if Securities:

- (i) have not been Officially Quoted for at least 15 consecutive Business Days before the relevant day; or
- (ii) in the Responsible Entity's opinion a determination under paragraph (a) of this definition would not provide a fair reflection of the current market value of the Security,

the price per Security that an independent valuer determines to be the fair market price of the Security on the relevant day.”;

“Responsible Entity means:

- (a) Westpac Funds Management Limited; and
- (b) (where Westpac Funds Management Limited is not the Responsible Entity) any person appointed in accordance with the Corporations Act as responsible entity or temporary responsible entity for the Fund.”;

“Restricted Securities has the meaning given in the Listing Rules.”

“Security means:

- (a) while Instalment Receipts are Officially Quoted, Instalment Receipts; and
- (b) when Instalment Receipts cease to be Officially Quoted, Units.”;

“Security Trust Deed means any security trust and subscription deed between an underwriter and a security trustee or such other equivalent agreement as amended, assigned or novated from time to time which is entered into for the purpose of an issue of Instalment Receipts.”;

“Trigger Event means any of the following:

- (a) a resolution is passed at a meeting of Members removing or replacing the Responsible Entity without the recommendation of the existing Responsible Entity.
- (b) the Fund terminates;
- (c) a Date of Delisting occurs;
- (d) the Units are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act; or
- (e) the Members approve a formal or informal scheme of arrangement pursuant to which the Fund is to merge with any other managed investment scheme or entity or pursuant to which there is a material change in the ownership or control of the Fund.”; and

“Year means a period of 12 months ending 31 December. The first Year is the period from 1 January 2006 to 31 December 2006.”;

- (c) the definitions of “Entity” is deleted from clause 1.1;

- (d) in clause 1.1 the following words “or the market operated by it as the context requires” are inserted after the word “Limited” in the definition of “ASX”;
- (e) in clause 1.1 the definition of “Business Day” is replaced with:
“Business Day means a trading day as that term is defined in the Listing Rules.”;
- (f) in clause 1.1 the definition of “Liabilities” is replaced with:
“Liabilities means all present liabilities of the Fund including any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Fund but excluding any amount representing Members’ capital, undistributed profits, interest attributable to Members accruing on Members’ capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Fund.”;
- (g) in clause 1.1 “Deed Poll” is replaced with “deed poll” in the definition of “Constitution”;
- (h) in clause 1.2(a) the following words “and the Listing Rules” are inserted after the words “Corporations Act”;
- (i) the heading of clause 5 “Interests of members” is replaced with “Units”;
- (j) in clause 5.1, the following words “Subject to the rights attaching to each Class,” are inserted before the words “Each Unit”;
- (k) The following clause is inserted as new clause 6:

“6 Transfer of Units

6.1 Transfer of Units if Officially Quoted

If the Units are Officially Quoted, Units may be transferred in any manner permitted by the CHES System. This **clause 6.1** prevails over any other provision of this constitution that may be inconsistent with it but it does not permit the Responsible Entity to refuse to register a proper transfer.

6.2 Form of transfer

Subject to this constitution, a Unit may be transferred in any form approved by the Responsible Entity, accompanied by any evidence reasonably required by the Responsible Entity to show the right of the transferor to make the transfer and (if the Responsible Entity requires) be presented for registration duly stamped.

6.3 Registration

A transfer is not effective until registered in the Register of Members.

6.4 Responsible Entity may request holding lock or refuse to register transfer

If Units are Officially Quoted, and if permitted to do so by the Listing Rules, the Responsible Entity may:

- (a) request ASTC to apply a holding lock to prevent a transfer of Units registered on the CHESSE subregister; or
- (b) refuse to register a transfer of other Units in the Fund.

6.5 Responsible Entity must request holding lock or refuse to register transfer

The Responsible Entity must:

- (a) request ASTC to apply a holding lock to prevent a transfer of Units registered on the CHESSE subregister; or
 - (b) refuse to register any transfer of other Units in the Fund;
- if:
- (c) the Listing Rules require the Fund to do so; or
 - (d) the transfer is in breach of the Listing Rules or a Restriction Agreement.

6.6 Notice of holding locks and refusal to register transfer

If in the exercise of its rights under **clauses 6.4** and **6.5** the Responsible Entity requests application of a holding lock to prevent a transfer of Units registered on the CHESSE subregister or refuses to register a transfer of a security, the Responsible Entity must give written notice of the request to the holder of the Units, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Responsible Entity.

6.7 Responsible Entity must retain instruments of transfer

The Fund must retain every instrument of transfer which is registered for such period as the Responsible Entity determines.

6.8 Transfer if Units not Officially Quoted

If Units are not Officially Quoted, the Responsible Entity may refuse to record any transfer in the Register in its sole discretion.

6.9 Return of refused transfers

If the Responsible Entity refuses to register a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

6.10 Restricted Securities

The Responsible Entity must refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any Restricted Securities on issue which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Responsible Entity under the Listing Rules in relation to the Restricted Securities. During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.”;

- (l) the following clause is inserted as new clause 7:

“7 Classes of Units

Subject to the Corporations Act, the Responsible Entity may create and issue Classes with such rights, obligations and restriction attaching to the Units of such Class as it determines. The rights of a Member under this constitution are subject to the rights, obligations and restrictions attaching to any particular Unit or Class of Units which they hold.”;

- (m) in clause 6.7 the following words are deleted “Subject to **clause 19**”;
- (n) in clause 7.3 the words “section 601KB-KF” are replaced with the words “sections 601KB-KE”;
- (o) the following clause is inserted as new clause 9.5:

“9.5 Small parcels

- (a) The Responsible Entity may in its discretion from time to time redeem or sell any Units held by a Member without request by the Member while Units are Officially Quoted and the holding of the Member is less than a marketable parcel as provided in the Listing Rules. The Responsible Entity must give the Member not less than 6 weeks’ written notice of its intention to cause the redemption or sale of the Units and the Responsible Entity may only proceed with the sale or redemption if the Responsible Entity has not been told by the Member that the Member wishes to retain the holding. If a holding of Units is redeemed under this clause, the repurchase price is the aggregate Market Price of the holding on the date of redemption. In determining the aggregate Market Price of a holding for the purposes of this **clause 9.5** the Responsible Entity may round down the Market Price of a Unit to such number of decimal places as the Responsible Entity determines.
- (b) All costs arising from the redemption or sale of Units under this **clause 9.5** are payable out of the Assets or by the purchaser of the Units. Subject to the Listing Rules, the

proceeds of the redemption or sale shall not be remitted until such time as the Responsible Entity is in receipt of the relevant Unit certificate (if issued) or is satisfied that the certificate (if issued) has been lost or destroyed.

- (c) This **clause 9.5** may only be invoked once in any 12 month period. This clause ceases to have effect during the period from the announcement of a takeover offer or takeover announcement but may come into effect again after the close of offers under the takeover offer or takeover announcement.”;

- (p) clause 8.1 is replaced with the following clause:

“10.1 Application price

A Unit must only be issued at an application price calculated as follows:

- (a) in the case of a Unit issued pursuant to the first product disclosure statement under the Corporations Act for the Fund, \$1.00;
- (b) in the case of a proportionate offer while the Units are Officially Quoted (including a rights issue), in accordance with **clause 10.2**;
- (c) in the case of a placement of Units while Units are Officially Quoted, in accordance with **clause 10.3**;
- (d) subject to paragraphs (b) and (c) in all other cases while Units are Officially Quoted, at the Market Price; and
- (e) while Units are not Officially Quoted:

(Net Asset Value of the Fund) – (relevant Transaction Costs Allowance)
(number of Units on issue)”;

- (q) the following clauses are inserted as new clauses 10.2, 10.3 and 10.4:

“10.2 Rights Issues of Units

- (a) While Units are Officially Quoted, the Responsible Entity may determine a different application price in relation to the issue of any Units to the extent permitted by and in accordance with any applicable ASIC relief for offers made at substantially the same time to only and all the then Members of the Fund (whether or not the right to acquire those Units is renounceable) but not including persons whose address on the Register of Members is in a place other than Australia or New Zealand, if:
 - (i) all the Units offered are in the same class;
 - (ii) the application price of all the Units is the same;

- (iii) the application price is not less than 50% of the Market Price; and
 - (iv) the amount of Units offered to each Member is proportionate to the value of that Member's holding of Units.
- (b) If an underwriter has underwritten any offer for subscription of Units under **clause 10.2(a)**, such underwriter may take up any Units not subscribed for by Members.

10.3 Placements

While Units are Officially Quoted, the Responsible Entity may at any time issue Units to a person other than the Responsible Entity or its associates by way of a placement at a price and on terms determined by the Responsible Entity provided that the Responsible Entity complies with any applicable ASIC relief.

10.4 Foreign Holder

In relation to **clause 10.2**, if the Responsible Entity reasonably considers that it would be in the best interests of Members to exclude certain Members that are connected to a jurisdiction outside Australia (**Foreign Holders**) and not unfair to those Foreign Holders, the Responsible Entity may sell the Units, instead of offering or issuing the Units to the Foreign Holders, provided the Responsible Entity takes reasonable steps to maximise the sale price net of expenses of the sale and promptly pays to the Foreign Holders the net sale price.”;

- (r) the formula in clause 8.2 is replaced with the following new formula:
(Net Asset Value of the Fund) – (relevant Transaction Costs Allowance)
 (number of Units on issue)”;
- (s) the following clause is inserted as new clause 10.7:

“10.7 Determination of variables in clauses 10.1(e) and 10.5

Each of the variables in **clauses 10.1(e)** and **10.5** must be determined as at the next Valuation Time after:

- (a) the Responsible Entity receives the application for Units; or
- (b) the Responsible Entity receives the application money, or the property against which Units are to be issued or vested in the Responsible Entity,

whichever happens later, or in the case of a withdrawal, as at the next Valuation Time after the Responsible Entity receives a withdrawal notice.”;

- (t) clause 8.5 is replaced with the following clause:

“10.9 Rounding

“The Responsible Entity may round the application price calculated under **clauses 10.1(a) to 10.1(e)** and the redemption price of a Unit calculated under **clause 10.5** to such number of decimal places as determined by the Responsible Entity.”;

- (u) clause 11.1 is replaced with the following clause:

“13.1 Distributable Income

- (a) The Distributable Income for each Distribution Period is to be determined by the Responsible Entity.
- (b) The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made in the accounts of the Fund.
- (c) Notwithstanding that the Distributable Income is to be determined in accordance with this clause 13.1, the accounts of the Fund will be prepared in accordance with the applicable accounting standards, including international financial reporting standards to the extent required or relevant, and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of Distributable Income.”;

- (v) in clause 11.2 the words “Subject to the rights attaching to each Class” are inserted before the words “Members on the Register of Members”;
- (w) in clauses 11.2, 11.4 and 11.9 the term “distributable income” is replaced with “Distributable Income”;
- (x) clause 11.6 is replaced with the following clause:

“13.6 Distribution classification

The Responsible Entity may transfer capital to Distributable Income to enable a distribution to Members of the minimum amount necessary to avoid the Responsible Entity becoming assessable to pay tax in respect of any amount to which Members may not otherwise be presently entitled.”;

- (y) in clause 11.7 the following words are inserted at the beginning of the clause:

“Subject to the rights attaching to each Class,”;

- (z) in clause 12.2 the word “may” is replaced with the word “must” and the words “and subject to **clause 19.1 to 19.6**” are deleted;
- (aa) clauses 12.6 and 12.7 are deleted;

- (bb) in clause 16.1 the words “This clause is subject to **clause 16.2.**” are deleted and the number “1%” is replaced with “0.75%”;
- (cc) clause 16.2 is replaced with the following clause:

“18.2 Responsible Entity’s Performance Units

The Responsible Entity, in addition to its remuneration under **clause 18.1**, will be entitled to have a certain number of Units issued to it in respect of each Year if the performance of the Fund for the Year exceeds a stated benchmark. The formula for determining the number of Units (if any) to be issued to the Responsible Entity in respect of a Year is set out below. If the Fund Return (as defined below) for the Fund for a Year is negative but is greater than the Benchmark Return (as defined below), the Performance Units (if any) to which the Responsible Entity would have been entitled will not be issued to the Responsible Entity until the end of the first succeeding Year in which the FR is positive:

Number of Performance Units to be issued to the Responsible Entity =

$$\frac{PF}{Pc}$$

where

PF (Performance Fee) = (FR-BM) x MCo x 5% but equals zero if FR-BM is not greater than zero;

$$FR \text{ (Fund Return)} = \frac{(Fc - Fo)}{Fo}$$

where

Fc = Fund Index at the close of the Year; and

Fo = Opening Fund Index being the Fund Index at close of the prior Year;

$$BM \text{ (Benchmark Return)} = \frac{(Bc - Bo)}{Bo}$$

where

Bc = Benchmark Index at the end of the Year; and

Bo = Opening Benchmark Index being the Benchmark Index at close of the prior Year;

$$MCo \text{ (Market capitalisation)} = Po \times Uo$$

where

Po = the Market Price from and including the date upon which the Units first trade ex the distribution entitlement for the period ending on the last day of the Prior Year; and

Uo = Units on issue at the close of the last day of the prior Year; and

Pc = at the end of the relevant Year, the greater of the Market Price from and including the date upon which the Units first trade ex the distribution entitlement for the relevant Year and the Net Asset Value backing per Unit.

If a Trigger Event occurs within a Year, the Responsible Entity is entitled to payment in cash in lieu of Units with the amount of the cash payment to be calculated in accordance with clause 18.3.

If and when Performance Units are issued to the Responsible Entity in respect of a Year where the Fund Index is below its historical Year end high achieved since the commencement of the first Year, the Responsible Entity may not sell or otherwise dispose of the Performance Units until a time after the Fund Index equals or exceeds that prior peak. The restriction on sale or disposal will cease if a Trigger Event occurs.”;

(dd) clause 16.3 is replaced with the following clause:

“18.3 Payment in lieu of Performance Units

If a Trigger Event occurs, the Responsible Entity is entitled to be paid in addition to the Base Fee, a cash payment calculated as follows in lieu of Performance Units which might otherwise have been issued to the Responsible Entity in respect of the Year in which the Trigger Event occurs, such payment to be made to the entity which was the Responsible Entity on the day upon which the Trigger Event occurred notwithstanding that the entity may have ceased to be the Responsible Entity or that the Fund has terminated:

(a) the cash payment is to be equal to the Performance Fees calculated in accordance with **clause 18.2** as if the end of the Year was the date of the occurrence of the Trigger Event but in determining the Fund Index at the close of the period there is to be substituted for the Market Price:

(i) in the case of a takeover bid, the mid-point of the value range for the Units contained in the independent expert’s report (if any) prepared for the Members or for the target’s statement or, if there is no independent expert’s report, the price per Unit which would be payable for compulsory acquisition (including in the case of non consideration the market value of that

non-cash component on the date of the Trigger Event);

- (ii) in the case of a scheme of arrangement, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the Members in relation to the scheme of arrangement or if there is no independent expert's report, the fair value of the consideration per Unit as determined by an independent accountant appointed by the Responsible Entity;
 - (iii) in the case of delisting, the Market Price prior to the Date of Delisting; or
 - (iv) in the case of termination of the Fund, the amount per Unit to be received by the Members after accruing the amount payable to the Responsible Entity for Performance Fees; and
- (b) the cash payment is payable as soon as it can be calculated. If there has been any accrual of the Performance Fee from any prior Year whether due to the Fund Return being negative although exceeding the Benchmark Return or otherwise, the amount accrued shall be paid in cash rather than Units on the date of occurrence of the Trigger Event.”; and
- (ee) in clause 22 the word “Deed” is replaced with the word “Constitution”.

3 Conformed Constitution

A conformed copy of the Constitution, containing all of the amendments referred to in this document, is annexed as “Annexure A” to this document.

4 No declaration

The Responsible Entity declares that it is not, by this document:

- (a) redeclaring the Fund; or
- (b) causing the transfer, vesting or accruing of property in any person.

5 Costs

All taxes, stamp duty, registration costs and other charges payable in relation to this document or otherwise arising in connection with this document are to be an expense of the Responsible Entity.

6 Miscellaneous

6.1 Operative Time

This document will take effect on and from the date on which it is signed by the Responsible Entity.

6.2 Force and effect of Constitution

The Responsible Entity by this document confirms that the Constitution remains in full force and effect.

Executed as a deed.

The common seal of Westpac Funds Management Limited is affixed in the presence of:)
)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Annexure A

Conformed Constitution