



## *Courthouse Design Principles To Dignify Spaces For Indigenous Users: Preliminary Observations*

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### Abstract:

Historically, Australian court architecture layout, design and details are intimately tied to the physical aspects of British imperial institutions. Displaying the visual features of the Empire's institutions has the effect of alienating Indigenous people within courts. This is compounded by design that is oblivious to the needs of Indigenous users and consequently places these users in situations that threaten their privacy, safety and wellbeing. This article contends that architectural design that seeks to accommodate Indigenous cultural and socio-spatial needs brings into sharp relief the barriers and harms otherwise confronting Indigenous people in courts. This article discusses three court complexes designed in collaboration with Indigenous communities to accommodate Indigenous connections to the environment surrounding the courthouse and to enhance access to justice. Indigenous collaborations in the design of the Indigenous-inclusive court complexes at Port Augusta (South Australia), Kalgoorlie and Kununurra (Western Australia) produced spatially distinct courthouses that eschew some historical court design principles and attempt to introduce features relevant to local Indigenous nations. This illustration essay discusses the emergence of Indigenous design principles that may inform courthouse redesign, the application of some of these principles in new courthouse designs and the need for local Indigenous oversight in the design processes. It provides a framework for further research into how Indigenous architectural collaborations in courthouse designs may promote safer and fairer environments for Indigenous court users. It also raises some potential disjuncture between court design and use of court space that may undermine the vision embedded in cultural design principles.

**Keywords:** Court design; Cultural Brief; Humane architectural principles; Indigenous Justice

### 1. Introduction

Around the world, courthouse design has been used to make statements on society and visions for justice in the future. South Africa's Constitutional Court sits on the site of the prison that held activists during apartheid and its design symbolizes South Africa's post-apartheid search for reconciliation. Communicating reconciliation and transparency were paramount in the design and the courtroom contains windows to reinforce its theme of transparency and allows passers-by to observe proceedings. Similarly, the impressive and commanding building housing the European Court of Human Rights in Strasbourg is constructed of towers of glass to make a statement the need for transparency in processes in relation to upholding human rights.<sup>2</sup> Equally, court design can signify an imperial and oppressive past based on the imposition of foreign legal systems on sovereign Indigenous lands.

In Australia, where Indigenous sovereignty has never been ceded, court design is a signifier of the imposed British legal system.<sup>3</sup> Barbara Nicholson, a Wadi Wadi Elder from the south coast of New South Wales, Australia, explains that courts signify the contrast of Western adversarial, retributive justice with Indigenous restorative and conciliatory justice.<sup>4</sup> She describes the impact of Western Law on Indigenous Australians:

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<sup>2</sup> Mulcahy, 2010.

<sup>3</sup> Spaulding, 2012, pp. 323-4.

<sup>4</sup> Nicholson, 1999.

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[T]he dominant imported law ... quickly became the instrument through which Aboriginal people were dispossessed, and, just as quickly, these colonizing powers overrode the rich laws of Indigenous Australia. This immediately set the pattern for the continued ownership and enforcement of law in this country.<sup>5</sup>

The design of Australian courthouses according to English architectural principles symbolizes the Australian legal system's exclusion of Indigenous laws. For instance, the layered courtrooms in Australian courthouses reinforce Western hierarchical systems of law, power and social order.<sup>6</sup> Rowden and Jones describe court spaces as signifying 'sharp distinctions between the space accorded to those who are authorized to invoke the law (such as judges, lawyers, police) and those subject to it (such as defendants, witnesses, the public)'.<sup>7</sup> This has the effect of 'degrading' the participants who are subjected to the legal process.<sup>8</sup>

The Law Reform Commission of Western Australia has observed that the physical court environments and their locations do not necessarily accommodate Indigenous users' privacy and safety, which may have adverse psychological effects on these users.<sup>9</sup> Among the problems include the hierarchy and British symbolism in the courtroom.<sup>10</sup> The Commission raised concerns that courthouses tend to be co-located with police stations, which, especially for Indigenous accused who are 'unfamiliar with British political theories', may make the courts and police appear as 'a single homogeneous entity working harmoniously to process alleged offenders'.<sup>11</sup> It recommended that 'court and police buildings should be visually separate and clearly demarcated architecturally to demonstrate the independence of the courts from the policing function'.<sup>12</sup>

In addition, Indigenous users may have concerns for their safety and privacy due to the enclosure of space<sup>13</sup> in the courthouse and rooms. This enclosure of space can compromise avoidance relationships and practices under Indigenous law by bringing relatives or skin groups that require separation into the same room. The final report of the *Review of the Criminal and Civil Justice System in Western Australia* describes this enclosed court layout:

Spaces are not just separated from the outside world. Each internal space is discrete: foyers, courtrooms, registry areas, galleries, chambers, jury boxes and deliberation rooms and, in the courtroom itself, the bench, the bar tables and the dock.<sup>14</sup>

Enclosed spaces in courts (including in waiting areas, courtrooms, jury rooms and holding cells) tend to prohibit sightlines to the external environment that enable Indigenous users to maintain cultural connections to Country.<sup>15</sup> The notion of 'Country' is central to Indigenous ontology and epistemology, which is distinct to Western notions of land.<sup>16</sup> Country informs Indigenous relationships between the individual and the group, as well as the broader world. Country is associated with knowledge such as Indigenous laws, past events, legends and cultural ideals.<sup>17</sup> Indigenous connection and reconnection with place has important implications for Indigenous self-governance, well-being and healing,<sup>18</sup> and assists Indigenous people to reclaim and assert their relationships to Country.<sup>19</sup> Therefore, maintaining sightlines to Country is more likely to improve Indigenous users' sense of safety and wellbeing.

In order to dignify Indigenous court participants, architecture researchers have collaborated with Indigenous nations to develop design principles that better accommodate Indigenous principles regarding the use of space and connections to physical places. New court complexes in regional and remote areas that have been commissioned by the South Australian and Western Australian governments have relied on this research, and formed community reference groups with representatives from local Indigenous nations, to create spaces that respect relationships among Indigenous users and recognize the need for Indigenous people to be connected to the ground (terra firma) on which the court is located.

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<sup>5</sup> Ibid.  
<sup>6</sup> See Goodsell, 1988.  
<sup>7</sup> Rowden and Jones, 2015, p. 3.  
<sup>8</sup> Ibid  
<sup>9</sup> Law Reform Commission of Western Australia, 1999, pp. 301, 304;  
<sup>10</sup> Law Reform Commission of Western Australia, 2006, p. 132.  
<sup>11</sup> Law Reform Commission of Western Australia, 1999, p. 307.  
<sup>12</sup> Ibid, p. 392 (Recommendation 408).  
<sup>13</sup> The word 'court' comes from an old French word 'cort', meaning 'enclosed space'.  
<sup>14</sup> Law Reform Commission of Western Australia, 1999, p. 302.  
<sup>15</sup> The important of sightlines for Indigenous Australians is discussed in: Grant and Memmot, 2008, p. 644; Rowden and Jones, 2015, p. 15; Reser, 1992, p. 191.  
<sup>16</sup> Watson, 2009; Moreton-Robinson, 2003.  
<sup>17</sup> Memmott and Long, 2002, p. 39.  
<sup>18</sup> Blagg, 2008, p. 6.  
<sup>19</sup> Sherwood, 2013, p. 29.

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This paper argues that the processes used to design the 'Indigenous' court complex designs and the resultant projects provide important insights into how Indigenous users can be dignified in courts and judicial administration. These designs seek to overcome barriers to Indigenous communication and safety in courts, including the lack of private meeting spaces and sightlines to the external environment. However, there are significant limitations in applying these design principles, such as the absence of sightlines in holding cells in all three courthouses discussed below.<sup>20</sup> Our observations suggest that this is due to top-down directives from governments, magistrates and police in relation to risk management. This discourse around the imperative of risk minimization appears to compromise design objectives relating to the dignity, safety and wellbeing of Indigenous users. This has resulted in tacked-on design features at the Port Augusta courthouse (such as a "glass cage" dock in the Magistrates Courtroom) and the Western Australian Government's Aboriginal Brief for architects and designers (see below).

Furthermore, due to the absence of empirical research on the manner in which Indigenous people and other court participants, including the judiciary, use the spaces, it remains unclear whether these new courthouses are furthering justice for Indigenous users of courts. Future research in this area needs to be sensitive to distinct uses by persons from various Indigenous nations; Indigenous women and men, Indigenous people with psychical (eg hearing and sight) and mental health (eg anxiety) issues, criminal and civil defendants and applicants for orders (e.g. restoration of children, apprehension of violence or compensation), the particular processes that he or she experiences (e.g. a community sentencing process and mainstream processes, the length and fairness of the hearing) and the orders imposed by the court.

The first part of this article outlines the impetuses and developments in specialized courts to address the needs of Indigenous peoples. It contributes to the literature on the design of court spaces to enhance access to justice<sup>21</sup> and serve particular groups,<sup>22</sup> by considering how "Indigenous" court designs attempt to redress the inequities Indigenous people face in court buildings. It discusses the emergence of design principles for dignifying Indigenous users of courts and empowering Indigenous people in the design process. The article goes on to examine the design outcomes for the recent courthouse developments at Port Augusta, Kununurra and Kalgoorlie. It concludes that further empirical research is required to analyze Indigenous people's use of courthouses and the spaces within them.

## 2. The Development of Courthouses for Indigenous Users

Historically, courthouses in the British Empire borrowed heavily from English architecture and design with the effect of cementing an adversarial system.<sup>23</sup> Research has identified the alienating effect of courthouses on Indigenous Australians due to *inter alia* their colonial details,<sup>24</sup> their structural layering that denotes power to the judicial officer,<sup>25</sup> and their imposing foreign structure on a local landscape.<sup>26</sup> This can have an adverse effect on Indigenous peoples' confidence in the judicial process,<sup>27</sup> contribute to their discomfort in court settings,<sup>28</sup> and add to their experienced disadvantage of the legal system.<sup>29</sup>

The overrepresentation of Indigenous people in state criminal cases and child protection matters particularly results in Indigenous people disproportionately accessing courts. In some regional and remote areas, Indigenous people constitute the majority of people before courts. Following the National Report of the Royal Commission into Aboriginal Deaths in Custody in 1991 and its Recommendation 104 on introducing Indigenous sentencing courts that enable Indigenous Elders and Respected Persons to have input in sentencing hearings and provide advice to judicial officers, the focus was on changing court processes. This resulted in the introduction of Indigenous sentencing courts (also known by their local Indigenous grouping name, e.g. Koori (from the south-east Australian coast), Nunga (from South Australia) or Murri (from Queensland or north-west New South Wales) courts, or as 'community courts' or 'circle sentencing courts') from the

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<sup>20</sup> By contrast, the new courthouse in Coffs Harbour was designed with windows in the holding cells. These windows allowed for sight to the external environment. However, police raised risk mitigation issues that forced designers to increase the height of the window to above the height of the juvenile offenders. See Rowden and Jones, 2015, p. 16.

<sup>21</sup> Tait, 2013, pp. 17-38; see also Spaulding, 2012.

<sup>22</sup> Rowden, 2013, pp. 161-183.

<sup>23</sup> See Spaulding, 2012.

<sup>24</sup> Mohr, 2003, pp. 180-195.

<sup>25</sup> Marchetti, 2012, p. 111.

<sup>26</sup> Grant, 2009, pp. 86-90.

<sup>27</sup> Marchetti, 2012.

<sup>28</sup> Cunneen and Schwartz, 2009, p. 725.

<sup>29</sup> The discrimination facing Indigenous people in the legal system has been identified in its criminal processes (e.g. Commonwealth of Australia, 1991) and civil processes (e.g. Cunneen and Schwartz, 2009, pp. 726-727).

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1990s in a number of discrete locations around Australia.<sup>30</sup> Incorporating Indigenous concepts of justice and dispute resolution, Indigenous sentencing courts seek to strengthen and empower Indigenous communities through Indigenous members talking to the offender and providing the judicial officers with advice on sentencing orders.<sup>31</sup> Marchetti and Daly's research describes Indigenous sentencing courts as providing 'innovative justice' by incorporating Indigenous knowledge and modes of social control into the sentencing process.<sup>32</sup> Another, and smaller scale, innovation is care circles that have emerged in Nowra (south coast, New South Wales) to provide Indigenous community input in child protection matters involving Indigenous families, including identifying services for families and placements for children.<sup>33</sup>

Indigenous sentencing courts are spatially structured to minimize the hierarchical nature of the courtroom. In the main they require judicial officers to sit at eye-level with the offender, the victim/s, service agency personnel, correctional officers, selected community representatives (Elders or 'Respected Persons') and the offender's family. Participants generally sit around a table or in a circle, often with Indigenous artwork enculturating the space.<sup>34</sup> The design and layout of Indigenous sentencing courts varies between jurisdictions. In South Australia, Indigenous sentencing courts are often held in a purpose built room with a round or oval table and chairs that can be moved around.<sup>35</sup> In New South Wales, such courts are often held in community buildings or in spaces where participants are able sit in a circle.

In Indigenous sentencing courts, communities can approve and cooperate on the Indigenous symbols that are to be put on display.<sup>36</sup> The insignia include 'paintings, conches (shells), message sticks, noticeboards covered with Indigenous community notices, and Aboriginal and Torres Strait Islander flags'.<sup>37</sup> In addition, such artwork has often been 'painted by offenders who have appeared before the Indigenous sentencing courts'.<sup>38</sup> Criminologist, Elena Marchetti notes that the incorporation of Indigenous design and symbols in these respects are important for Indigenous peoples' sense of empowerment in the sentencing process and denotes authority to Indigenous Elders and Community Representatives, and helps to 'equalize the symbols of colonial power'.<sup>39</sup> While Indigenous courts may be located in courtrooms that connect Indigenous people to place and community, they are nonetheless positioned in courthouses that are devoid of Indigenous spatial preferences.

To more broadly respond to Indigenous environmental preferences, the architecture and design of courthouses in three key locations, where Aboriginal people constitute a significant proportion of the population, drew on Indigenous collaborations and empirical research on Indigenous people's use of space. The three court complexes at Port Augusta, Kununurra and Kalgoorlie housed Indigenous sentencing courts, giving rise to a concomitance of Indigenous-led design with Indigenous-led legal processes. This marriage of form and substance sought to enhance Indigenous community engagement in the courts, which would not necessarily be achieved if there was a disconnect between Indigenous control over the design and layout of the space and legal process. Ultimately, the final catalyst for greater incorporation of environmental and cultural needs of Indigenous users in these three locations was the need to replace courthouses. The design of these new courthouses opened up an opportunity to reimagine courthouses in accordance with the local Indigenous communities' vision.

The recently completed courthouse complexes at Port Augusta, Kununurra and Kalgoorlie were designed with reference to a growing body of evidence based on research in the fields of Indigenous architecture and place-making,<sup>40</sup> which critically engages Indigenous communities, ongoing architectural debate<sup>41</sup> and experience gained through Indigenous architectural precedents.<sup>42</sup> Architects have attempted to meet Aboriginal people's environmental needs and accommodate cultural practices, and enculturate court buildings by incorporating Indigenous symbols and artwork in the designs to imbue and reinforce Aboriginal cultures and value systems<sup>43</sup> in attempts to create an Aboriginal 'place' in each location.

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<sup>30</sup> See Bennett, 2016, pp. 111-117.

<sup>31</sup> Harris, 2004, p. 26; Stobbs and Mackenzie, 2013, p. 91.

<sup>32</sup> Marchetti and Daly, 2007, p. 416.

<sup>33</sup> See New South Wales Government, 2016.

<sup>34</sup> Marchetti and Daly, 2007, p. 436.

<sup>35</sup> E.g. the bar table. Tomaino, 2004.

<sup>36</sup> Marchetti, 2012, p. 111.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Grant, 2016.

<sup>41</sup> For example, see: Lochert, 1997; Dovey, 2000; Memmott and Reser, 2000; McGaw and Pieris, 2014.

<sup>42</sup> See Memmott, 2007.

<sup>43</sup> Grant et al. 2015.

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The buildings intend to harmonize the building with the landscape in order to incorporate Indigenous connections to Country.

## 2.1 Case Study 1: The Port Augusta Court Complex

The first courthouse designed predominately for Indigenous users was constructed in Port Augusta in South Australia in 2008.<sup>44</sup> Port Augusta is a major rural hub with approximately 17 percent of the population being of Indigenous descent.<sup>45</sup> There is also a transient Indigenous population with people from remote areas of South Australia and beyond travelling to the town to access a range of services.<sup>46</sup>

The need for a new courthouse had been evident for a considerable period. The former courthouse was located on the main street and had outgrown its functional purpose. Aboriginal people would gather on the street (curbside consultations between lawyers and plaintiffs were accepted as a matter of course) with larger groups congregating in nearby Gladstone Square. Conflict between families was frequent on days when the court was in session and the police were often involved called to disputes. In the planning for a new courthouse, a site was sectioned from the railway yards lying adjacent to the Port Augusta CBD.<sup>47</sup>

Architects engaged for the project decided that the design of a new court complex needed to take into account the way Indigenous people gather and use public space, the complexities and importance of the place and cultural and socio-spatial needs of different user groups and organizations. In order to achieve this, the design team (which included architects, interior designers, landscape architects and artists) endeavored to work closely with Indigenous and non-Indigenous stakeholders.<sup>48</sup>

The design was dictated by its location. The site ‘...commands distant views of the culturally important Flinders Ranges with shorter views to the Minburie Ranges and Spencer Gulf.’<sup>49</sup> The building was oriented to take the views into account. The colors of the ochres used for ceremonial purposes and traditionally sourced from the Flinders Ranges defined the color palette for the building’s exterior. The exterior was colored in ritual ochres and reflecting the adjacent landscapes. The complex was constructed of a combination of lightweight materials to be non-intimidating and large areas of glass were used to allow visual connection with the outdoors.

The axis of the building lies along the street frontage with consideration given to the manner Indigenous people use and perceive space. A series of long low sand dunes were formed around the building to reflect the local landscapes. Between the mounds, mass plantings direct visitors along to pathways, while allowing privacy and views under the canopy zones.

Visitors arriving at the street frontage are led along the main pathway where a depiction of Arkurru, the powerful and feared bearded Spirit Serpent of the Flinders Ranges Dreaming lies. Arkurru’s head sits under the front verandah with his beard protruding as geometric shapes from under the verandah screens. His elliptical eye appears as a pattern in the cement and nearby a high cone shape symbolizes its tail breaking the ground outside the building. The presence of Arkurru acts a symbol and as a guide which leads people to the main entrance.<sup>50</sup>

An open shelter has been erected adjacent to the court waiting area (see figure 1). It is a multi-functional structure intended to be used as an external court area, a consultation and a waiting and reflection area. The need for relief from court processes, by being able to vacate the building and sense sun and wind on the face is crucial to stress reduction among Aboriginal users. Seats in the shelter and around the exterior of the site are three-dimensional translations of the Aboriginal depictions of *yuus* (windbreaks) and *wurlies* (shelters). The seating allows two or three people to sit as a group; however, where people are located in different seats, the layout also permits the practice of some socio-spatial behaviors (i.e. the avoidance of eye contact, necessary in many Indigenous cultures).

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<sup>44</sup> Grant, 2009.

<sup>45</sup> Australian Bureau of Statistics, 2012.

<sup>46</sup> Grant, 2006.

<sup>47</sup> Grant, 2009, p. 86.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., p. 87.

<sup>50</sup> Ibid., p. 89.



**Figure 1: Port Augusta Court Complex:** The courthouse is designed with a covered exterior area. The area was sited to provide sightlines to the approach and entrance of the building, the internal public waiting area and the culturally significant Flinders Ranges in the distance. It has also been positioned taking account of prevailing winds and sun patterns, as feeling the wind and sun on one's face is important to feelings of wellbeing for Aboriginal people from Desert regions. The design of the seats replicate figures used in Western Desert Art to show a person sitting. The seating was located as shown to allow Aboriginal people to sit in small groups and avoid direct eye contact with others as is the customary behavior. The external area has technology fitted to allow it to be used as an external court area. To date, it has not however, been used for this purpose.

At the entrance to the court complex, another path allows users to deviate from the main route, should they sense conflict in the public or entrance areas or wish to collect their thoughts or wait outside. The entrance directs visitors into a double-height circular foyer with extensive glazing offering long-range views and continuing the strong relationship between the interior and exterior of the building. There are numerous wayfinding (orientation) mechanisms employed in the design (e.g. depictions of Akurru's path and other images denoting his path point to the doors of each of the courtrooms) and orientation for users is simplified by the legible organizational system. There is a common registry with separate and discrete reception for the Youth Court with its own foyer, conference area, interview room and amenities.

The complex has three courtrooms opening from the (circular) foyers: a Jury Court, a Magistrates Court and a Multi-Purpose Court. Each court has a visual courtyard developed to provide a strong connection with the external environment and provide visual relief. The Magistrates Court also doubles as an Indigenous sentencing or conferencing court. Parties meet around a central table to discuss the offence, offender and sentence. The design of the Aboriginal courtroom at Port Augusta with a number of windows, retractable screens and a round table departs from the conventional rectangular courtroom layout.<sup>51</sup> Five slump glass panels framing one window depict the story of Seven Sisters Dreaming – an Indigenous parable with a message about adherence to moral and social codes.<sup>52</sup>

The Port Augusta development in the first project designed to incorporate the needs of Indigenous users across a courthouse complex. The connections between the interior and exterior of the building are strong and allow users to stay (in part) connected with the natural world. Views to the external world are possible from most internal spaces. Individuals and groups can choose to wait outside in a space that appeared large enough to avoid others and thus protect avoidance relationships and maintain their safety. People outside can be clearly observed by court staff and can also see into the

<sup>51</sup> Note: the Aboriginal courtroom at Port Augusta contains a dock, despite architects attempting to negotiate its exclusion (Harrison pers. comm).

<sup>52</sup> Grant, 2011, p. 35.

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waiting area. Grant et al. made observations of Aboriginal groups from remote areas attending court.<sup>53</sup> They observed one or two people from larger groups tended to attend the hearing whilst the remainder of the group waited outside as support<sup>54</sup> and the visual connections between the waiting area and the outside shelter allowed people to observe what was occurring (i.e. a family member entering the courtroom etc.) from a distance.

Signs and symbols are used to imbue the courthouse with Indigenous culture. Appropriate symbols were chosen to impart Indigenous meaning to the judicial system. Orienting oneself and navigating through the building has been simplified through the application of wayfinding mechanisms. The same wayfinding and visitor orientation mechanisms operate to enculturate the building with Indigenous meaning.

However, there are a number of impediments to Indigenous peoples' sense of safety and empowerment in the space, especially in the Magistrate's Courtroom. For instance, there has been an obtrusive inclusion of technology on the round table, which would appear to disrupt the openness of the roundtable discussion in Indigenous sentencing courts. There is also a cumbersome pull-down lever for revealing the Indigenous artwork that is unusable by court staff. This was a technological fix that has not been successful. Finally, there is an enclosed "glass cage" for the dock in the courtroom, which was installed contrary to the original design and based on a 'top-down' decision relating to risk management. Some parties have reported that the presence of this dock for prisoners in the courtroom sends the message of disempowerment to Aboriginal participants.

The Port Augusta Courthouse is unique in that its design draws on its location and place within Aboriginal notions of Country. There is however much to be learnt from the project. There are anecdotal reports that the Aboriginal courtroom may not function effectively due to the layout of the room, given the issues with using the moveable screens, the technological obtrusion on the round table, the "glass cage" dock, and the compression of functional areas into one end making circulation around the courtroom difficult. Other issues have emerged in the functional layout of the courthouse design: such as the position of the toilets, the capacity to separate vulnerable people (e.g. children, witnesses and victims) and custodial facilities (including the absence of sightlines). The design of the Port Augusta courthouse and courtrooms are worthy of further investigation in terms of how they are used as well as Indigenous users' perception of whether it meets their socio-spatial needs and responds to their beliefs of the Aboriginal people and how connections to place can be expressed. This may not only inform the ways future courthouse design can respond to and respect the Indigenous users, but also modifications within the existing Port Augusta courthouse.

### **2.1.1 Aboriginal Cultural Design Brief for Western Australian Courts: Recognition of Indigenous connections to Place and the need for Indigenous Collaboration**

It remains unclear the extent to which lessons from Port Augusta were learnt in the cultural design brief for Western Australian courthouses and the design outcomes for the Kalgoorlie and Kununurra courthouses. The lack of participatory research with users indicates that there were few attempts to evaluate this design from an Indigenous user perspective. Such research would have been valuable in informing the Western Australian Aboriginal Cultural Design Brief ('Aboriginal Brief') for courthouses, which is discussed below. Nonetheless, the government proceeded to commission the Aboriginal Brief in the absence of a grounded evaluation. In doing so, it appears to have potentially replicated some of the limitations in the Port Augusta courthouse. In the cultural design brief, these limitations specifically relate to risk management and, again, such assumptions around the threats to risk lack investigation, evidence and consideration of alternatives.

In 2010, the Western Australian Department of the Attorney General issued an Aboriginal Cultural Design Brief, as an addition to the standard brief on court design to provide further information for consultants to '...understand Indigenous concepts of design and landscape.'<sup>55</sup> The brief was developed in collaboration with Indigenous users and has guided the design of the new courthouses in Kalgoorlie and Kununurra, although with local Indigenous adaptations.<sup>56</sup> Central to the Aboriginal Brief is the thesis that designs should recognize Indigenous peoples' connection to place.

The Aboriginal Brief deems consultation with local Indigenous and non-Indigenous stakeholders in the design process critical, emphasizing design outcomes must respond to Indigenous needs. According to the brief, consultation engages local Indigenous people by recognizing their protocols and value systems. This supports the cross-cultural process in which design is adapted to the needs of Indigenous people and ensures that the protocols are effectively translated into court design through the formation of 'a communication link between a place and its visitors'.<sup>57</sup> These links are '...an

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<sup>53</sup> Grant et al., 2011.

<sup>54</sup> Ibid.

<sup>55</sup> Department of the Attorney General, Western Australia, 2010, p. 42.

<sup>56</sup> Ibid., pp. 42-48.

<sup>57</sup> Ibid., p. 42.

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intellectual and emotional *connection or identity to the place, engendering feelings about a place*, [which] prompts ideas and reveals meanings.<sup>58</sup>

The prime objective of the Aboriginal Brief is to facilitate the creation of user-friendly environments less threatening to Aboriginal people. Accordingly, the brief promotes respect for the diverse Indigenous users; equitable participation in the design of court facilities; the inclusion of facilities appropriate to Indigenous users' needs; and the establishment of a space conducive to physical, emotional, social, cultural and psychological comfort. It recommends that design proposals should contemplate integrations of relevant Indigenous cultural needs into new developments and within existing court developments. The range, location and quality of spaces should also accommodate appropriate cultural precepts.<sup>59</sup> The Aboriginal Brief is not a definitive document but espouses ongoing dialogue and development of court facilities and processes to meet the cultural and contextual requirements.

The Aboriginal Brief provides some design guidelines for Indigenous sentencing courts. It suggests Indigenous courtrooms should be placed on the ground floors; the provision of alternatives to lifts given that some Aboriginal people are 'averse' to using such facilities; direct access to the external environment through doors, windows or moveable walls; entry and exit to a separate room that can be utilized by Elders for deliberation; accommodation of design to enable avoidance relationships (including multiple entrances to room); consultation with the Aboriginal community on the use of fixed and non-fixed furniture and technology for Aboriginal people with hearing problems; and reference to cultural themes to communicate the importance of authority and the justice process.

The origins of the brief appear to be based on first hand experiences rather than empirical research.<sup>60</sup> Some guidelines may reflect experiences with certain groups rather than cultural preferences across the myriad of Aboriginal groups who live in Western Australia. For example, the suggestion that Indigenous courtrooms should be on ground floors appears to reflect the environmental preferences from the body of research and evidence on housing for Desert Aboriginal people who generally articulate this preference.<sup>61</sup>

The Aboriginal Brief places emphasis on risk management, particularly as it relates to persons in custody, holding cells and ingress and egress from courtrooms.<sup>62</sup> There are safeguards relating to courtrooms for higher courts and holding cells, which eschew considerations of the *cultural safety* and wellbeing of the defendant in the custodial spaces. While the document may be somewhat unrefined at this point, it was used as a guiding document in the design of Kununurra and Kalgoorlie courthouses, which are worthy of discussion in greater detail.

## 2.2 Case Study 2: The Kalgoorlie Courts Project

Kalgoorlie-Boulder has a population of approximately 30,000 people with Aboriginal and Torres Strait Islander people comprising eight percent of the population. The town is a regional center for people from the 17 Aboriginal communities within the Western Australian Goldfields and further afield seeking access to services or escaping from weather extremes and/or community dysfunction. As a result, Kalgoorlie-Boulder is home to the highest percentage of disadvantaged and transient Indigenous people in Australia.<sup>63</sup> People often live in public spaces making them visible and subject to policing and contact with the criminal justice system.

The Western Australia Government set out to design a major contemporary court complex in Kalgoorlie in 2007. The project encompassed the renovation of the colonial stone fronted Kalgoorlie Government Offices and Post Office as well as the construction of new buildings.<sup>64</sup> Whereas the more traditional and ceremonial higher courts are located in the old building to capitalize on its existing internal spaces and civic architecture, the new building houses the magistrates' courts. One of the major design challenges was reconciling the physical and cultural requirements of a contemporary courthouse, which would be relevant to Indigenous users, with the constraints of nineteenth-century colonial buildings.<sup>65</sup>

From the outset, the design of the courthouse sought to incorporate cultural expressions and accommodate the diverse needs of Aboriginal users into its design ascertained through consultation with the Aboriginal reference group. To respect Aboriginal kinship avoidance practices and to facilitate self-management among conflicting parties, alternative access

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<sup>58</sup> Ibid. (emphasis added)

<sup>59</sup> Ibid., pp. 42-44.

<sup>60</sup> See, for example, Kirke, 2009.

<sup>61</sup> Grant, 1999.

<sup>62</sup> Department of the Attorney General, Western Australia, 2010, pp. 70, 91.

<sup>63</sup> Biddle and Markham, 2013.

<sup>64</sup> Kirke, 2009a, p. 71.

<sup>65</sup> Kirke, 2010, pp. 28-29; see also Figure 2.

routes onto and throughout the site were provided.<sup>66</sup> The forecourt is accessible from two directions and provides a central point from which both wings of the complex may be accessed.



**Figure 2: Kalgoorlie Court Complex: The new and older heritage buildings of the Kalgoorlie Court Complex were integrated through the installation of a series of courtyards which can be enclosed with glass panels. The panels can be drawn back to allowing the internal and external areas to have a seamless connection. Aboriginal people from rural and remote areas (regions serviced by the courthouse) generally have a preference to waiting in outdoor spaces and have sightlines to watch other people. The courtyards can be used as external waiting areas and people can stay in contact with court proceedings while being outside. The areas are installed with sculptures completed by Aboriginal artists from the region to enhance Aboriginal ‘ownership’ of the courthouse and to establish the courthouse as an Aboriginal ‘place’.**

Contemplating the need for Aboriginal users to have close connections to exterior environments, such spaces assumed a critical role in the project. The design affords people to maintain a view of their social and outdoor environment (see figure 2)<sup>67</sup> and is organized around a central linear landscaped courtyard spine. Tilt-up glass doors bordering the entire length of the public gallery visually and physically capture an indoor-outdoor connection. The separation of the old and new buildings allows the greater part of the outdoor area to be a secure zone, defined by and contained by the two parallel wings of the complex. The fully glazed elevated courtyard of the new building is accompanied by large folding wall panels, which enable both the public domain and the courtrooms to dissolve into landscaped outdoor areas (see figure 2). The complex features four courtrooms (with provision to expand to five when required) and mediation, registry and other support facilities.

All three magistrates’ courts are located on ground level and accessible from the secure central courtyard. This allows a large number of people to wait immediately outside their scheduled courtroom, either in the enclosed public waiting area or in the fresh air. The direct proximity of an outdoor waiting area to each court simplifies the process of locating and calling people scheduled to appear. It also obviates the problematic practice of announcing names over public address systems (the direct use of individuals’ names may be avoided in many Aboriginal cultures). Each magistrate’s court is also connected to a private courtyard to allow proceedings to take place with direct access to fresh air, light and visual connection to an Indigenous garden.

Aboriginal art has been incorporated into the design of the complex. The interior color scheme comprises ochre colors to reflect the surrounding landscape. Paintings and designs were sourced from a large area with artworks providing insights on Aboriginal life in the region. In the public waiting area, large sculptures have been installed. In the central courtyard, a

<sup>66</sup> Kirke, 2009a, p. 71.

<sup>67</sup> Ibid; see also Figure 2.

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sculpture depicting the split circular form alludes to the fusion of old and new – a concept embodied by the courthouse itself.

The Kalgoorlie Community Court – an Indigenous sentencing court (as discussed above)<sup>68</sup> – was established to promote ‘a sense of Aboriginal ownership of the justice process’ in certain sentencing contexts.<sup>69</sup> According to one evaluation report, the community court provides a ‘courtroom sentencing experience and environment that is more relevant and less intimidating to Aboriginal people’ through its provision of culturally relevant advice to magistrates and by assisting the ‘accused in understanding court process’.<sup>70</sup> The design also accommodated the role Aboriginal Elders play in the sentencing process in the community court. To facilitate the panelists, an Elders’ meeting room associated with the community court is located off the judicial circulation route.<sup>71</sup> The court space itself has been designed to permit maximum flexibility in its modes of operation. A single elliptical table replaces the usual tables for legal counsel. While the table can still be used for traditional court proceedings, it can also transform into a community court or conferencing table for mediation. The community courtroom has a courtyard sufficiently large to allow proceedings to take place outside. However, the holding cells themselves, as with the other two case studies discussed themselves, do not provide a sightline to the external environment, raising questions in relation to the cultural safety of Indigenous persons in custody.

The design of the Kalgoorlie Court Complex presents a number of critical questions. Does layering Indigenous meanings onto buildings characterized by imperial architecture undo messages of dominance and injustice over Indigenous people? Or does the Indigenous aspect of the design appear to Indigenous people as tokenistic? Can one make colonial architecture meet the cultural and socio-spatial needs of Indigenous users by opening up areas and providing external areas? Do external areas without long-range views provide Indigenous users with a connection to place that can redefine the court complex as an Indigenous place? Without analysis and post occupancy evaluation this questions remain unanswered.

### 2.3 Case Study 3: Kununurra Courthouse

The third of the recent place-based courthouse developments is situated in Kununurra. The town has experienced significant growth for the last five years and it is expected that the population will double in the next ten years.<sup>72</sup> Approximately half the permanent population (4,000 people) identify as Aboriginal and the population increases three fold during the dry season when people move into the town from outlying areas.<sup>73</sup>

A replacement court project was conceived as the original Kununurra courthouse was:

...inadequate to discharge the volume of judicial work undertaken ...during the many weeks of the year in which the Supreme and District Courts [were] using the only court room in the building, the magistrate ...performed court business in other public buildings.<sup>74</sup>

The inadequate accommodation at Kununurra made conducting court and court related activities difficult. There was no office space available for visiting judges and their staff. Vulnerable witnesses were forced to confront the accused person when giving evidence due to poor circulation patterns in the building.<sup>75</sup> The courthouse is also co-located with the police station, where individuals may be remanded prior to appearing in court for their bail application to be heard. The Law Reform Commission of Western Australia has criticized the co-location of courthouses with police stations because it conveys to Indigenous users that the police and courts are part of the same hegemonic apparatus.<sup>76</sup>

An Aboriginal Community Reference Group was established in 2011 to bring the views of the Aboriginal community to the project and design team. Members gave input on various aspects of the building including public areas within the complex, internal design elements and public art. The design, colors and material finishes were chosen to reflect the local cultures and surrounding landscape. The two-story courthouse is framed with steel and concrete is constructed with a mixture of pre-cast concrete panels, stone cladding and metal cladding, covered by a metal roof was opened in 2014.

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<sup>68</sup> In 2015, the Kalgoorlie-Boulder Indigenous Sentencing Community Court lost its government funding, but it continues to operate without a budget.

<sup>69</sup> Aquilina et al., 2009, p. 1.

<sup>70</sup> Ibid.

<sup>71</sup> Kirke, 2009a, p. 71.

<sup>72</sup> Grant and Anthony, 2015.

<sup>73</sup> Ibid.

<sup>74</sup> Martin, 2009, p. 7.

<sup>75</sup> Ibid.

<sup>76</sup> Law Reform Commission of Western Australia, 1999, p. 307.



**Figure 3: Kununurra Court Complex: The form of double storey building echoes the shapes of significant nearby landforms (i.e. Kelly's Knob and Hidden Valley) to provide a physical and figurative connection of the courthouse to 'Country.' An extensive use of glass paneling has been employed to allow Indigenous users to maintain connections with the external environment through short and long range sightlines. Various external waiting areas have been provided for Aboriginal people to allow them to spend time outside in informal gatherings.**

The architects designed the building to encourage strong connections to the external environment, enabling people to remain connected to place and to experience the external environment from inside the building. With the buildings oriented to channel natural light through the windows, there is a reduced reliance on artificial lighting. These windows also permit a visual connection with the horizon and distant ranges from the large courtroom spaces (see figure 3), subverting their traditional insulation from the external world. The design of the roof mirrors the outline of the distant ranges and creates large volumes in the interior spaces (see figure 3). Materials including natural timbers are also used throughout the building to connect with the external stonework, which is interspersed with glass panels.

Some socio-spatial needs of Aboriginal people are reflected in the design of the courthouse. Waiting areas were informally planned to allow people to wait as individuals, as small family groups or to congregate in larger groups. Screens were used to provide a degree of privacy to people waiting with a view to diffusing potential conflict between users. A secure external courtyard was provided to allow people to wait outside before entering a courtroom.

More than 20 Aboriginal artists from Miriwoong country in the East Kimberley region of Western Australia were engaged to create artworks under the theme of 'law and culture'. The artworks take many forms, from sculpture and painting, to designs integrated into the fabric of the building to share knowledge about Country. For example, a carved timber handrail at the base of the stairs depicts two intertwined snakes, suggesting two systems of law, working harmoniously. In the enclosed courtyard, a sculpture alludes to principles of "balance" underpinning the legal system. The artworks also depict the landscape and geological forms characteristic of the region to provide a sense of place. For example, the main entry houses a glass print design of *Nyamooli*, a bush soap that grows near water. Perforated aluminum screening along the western side of the exterior of the building provides both shading and portrays a landscape scene of Lake Argyle. However, the artwork is not displayed in the courtrooms, which mitigates its impact in the legal process.<sup>77</sup>

The new Kununurra Courthouse is a dominant building on the landscape with a commanding presence. The courthouse is constructed of heavy weight materials (concrete, stone cladding, steel, heavy timbers and glass). This indicates that the courthouse may be perceived as an imposition on the natural environment rather than a part of the landscape. Its appearance may make a statement to Indigenous users about the dominance and inflexibility of the western criminal justice system. Adding to the impression of this authoritative structure is the co-location of the police station with the Kununurra courthouse.

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<sup>77</sup> Nield and Nield, 2015.

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### 3. Emerging principles for design of Place-Based Courthouses

Architects engaged in these courthouse designs have relied on principles from wide ranging research studies, particularly in relation to housing and institutional spaces.<sup>78</sup> The body of literature reiterates the importance of acknowledging the diversity of Indigenous users and language groups and that any architectural design needs to be responsiveness to the cultural and socio-spatial requirements of the users and the group/s. In the absence of specific empirical research on the manner in which Indigenous users engage with court spaces, these general principles have emerged and provide a premise for recasting some of the assumptions behind orthodox courthouse design. Nonetheless the use of these principles requires local Indigenous adaptation to ensure the design and construction principles are responsive to their spatial priorities.

*Engaging local Indigenous communities in the design process:* While all of the documentation discusses ‘consultation’ as the basis of good design, methodologies and definitions of consultation are absent. Consultation is a generic term which is constrained in the design process by factors such as budgets, time, expertise and distance. Many court officials and architects will take up the challenge of facilitating or being involved in consultation for projects without understanding this is a specialist field which requires skillsets, including cultural competency.<sup>79</sup>

*Relevance to the pertinent Indigenous nation/s:* It is paramount that the design process is developed in partnership with the appropriate Indigenous stakeholders. The location, orientation, form, layout, scale and the choices of materials and finishes of any courthouse construction or renovation project should be informed by local Indigenous preferences. Should cultural references, identity and ancestral histories be embodied in the building, it is vital that consultation take place to ascertain these are appropriate. Representations of cultural identity, history and spirituality should provide connections between users, the place, Indigenous history and Country.

*Provision for Heterogeneous Indigenous Groups:* Recognizing that different Indigenous groups may wish to gather as distinct social groups, courthouse and court complex designs may accommodate such preferences and avoid mandating one common meeting area for all Indigenous groups. There should be sufficient spaces for physical separation to allow conflicting parties to be away from each other. Additionally, designs should permit visual separation and acoustic privacy.

*Importance of access and vision of external spaces:* The orientation of the building and its outdoor spaces should provide a view of the horizon where possible to maximize users’ access to the external natural environment and allow Indigenous users to feel the sun on their face if they choose.<sup>80</sup> A perspective which encompasses the landscape enables users to see, hear and smell the environment, the weather, other dwellings and the activities of people in their group. The internal areas should have strong connections to external spaces to accommodate users experiencing shame and/or in need of stress relief.

*Accommodating Indigenous needs in internal spaces:* Sightlines should also be drawn to non-private internal spaces to maintain visual contact with others and public space. As courts frequently lack views to the outside world, the design of court areas which have views to open spaces or to courtyards is a significant shift in design. This is in response to Indigenous preferences for adequate sightlines from all spaces in their day-to-day activity pattern.<sup>81</sup> Access around the building should be facilitated through the continuous flow of spaces and a series of wayfinding/orientation mechanisms that are comprehensible to a range of users.

*Responsive to intra-Indigenous relationships:* Related to the previous principle, there is a need for the design to accommodate avoidance relations, gender separation and privacy. This consideration should permeate the organization and placement of amenities, as well as access and egress to public areas. Any rooms, spaces or communal areas that are intended for the joint use of men and women must be planned with separate entry / exit points to allow for sustained avoidance behaviors where applicable. Apertures in doors can afford some transparency to occupants, allowing new entrants to be recognized prior to physical col-location upon entry or exit.

*Security and Comfort for Indigenous Users:* All spaces should allow Indigenous users an acceptable degree of personal control over their immediate environment with regard to natural ventilation, views out, temperature, illumination and privacy. Access to facilities, such as a telephone (to arrange pickup or to contact family) and hearing technology for Indigenous people with hearing problems, serves to enhance Aboriginal peoples’ sense of security.

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<sup>78</sup> E.g. Memmott and Reser, 2000; Memmott, 2003.

<sup>79</sup> Harrison pers. comm

<sup>80</sup> Grant, 2009.

<sup>81</sup> Grant, 2009.

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*Accommodation of Indigenous users living with disability and chronic health conditions:* A large number of court users will be living with pre-existing physical, cognitive and psychosocial conditions and chronic diseases. Buildings should incorporate universal design features and be accessible for all (including those with vision and hearing impairments). People with cognitive and psychosocial conditions have excessive contact with the legal system and private spaces should be available to allow people to relieve stress. In addition, sheltered hubs should be included for public transport and passenger drop-off points next to the entrance of the courthouse are optimal. Designated parking spaces, such as those found outside courthouses for police and law enforcement authorities, should also be available to Indigenous users for easy access and to convey respect of their (often difficult) experience in the court process.<sup>82</sup>

#### **4. Concluding Remarks**

The design of site specific courts for Indigenous Australians has the capacity to embody new conceptions of public space and judicial power, and shine light on the colonial subjectivity of historic courthouse design in Australia. Courthouse design should respond to the needs of the Indigenous users, honor Indigenous Country and Indigenous histories and provide a tangible statement that Indigenous Australians will be treated in a fair and equitable manner within the legal system into the future. Whether these outcomes ensue, however, will be determined by legal and procedural substance rather than space.

This article has provided a descriptive overview of some of the emerging principles to accommodate Indigenous needs in the design of courthouses, in which Indigenous oversight of design processes is crucial. It suggests that court facilities that allow Indigenous users to engage in court processes, protect Indigenous users' privacy and maintain sightlines with Country can help remove the alienation that Indigenous defendants, victims and families experience in mainstream courts. It has provided examples of three courthouses, as well as an overview of the Western Australian cultural design brief for courthouses, to highlight some lessons from these design processes and applications. It has demonstrated how design can be transformed through engaging Indigenous people in the design process and being sensitive to the needs of Indigenous users, especially in terms of enhanced connections to Country. However, the focus of governments and law enforcers on risk-mitigation, particularly when it comes relates to controlling high risk offenders, can undermine cultural design principles without evidence or negotiations with Indigenous people on culturally safe alternatives.

This article contends that ultimately the ability of these new courthouses to dignify Indigenous users will depend on whether judicial processes and outcomes empower and dignify Indigenous users.<sup>83</sup> If they do not achieve this outcome, the culturally-responsive design will merely be a façade of cultural competence that conceals the ongoing alienation of Indigenous people in courtrooms. There needs to be ongoing assessment and responsive configuration and use of the spaces in these courthouses and others of the same genre<sup>84</sup> to ensure that they are meeting this end. The court environment itself cannot guarantee these objectives because court buildings are active, living places<sup>85</sup> that are as much affected by court procedures, language, timing, costs and outcomes<sup>86</sup> as well as judicial uses of spaces to ensure the court experience is 'affirming and respectful of human dignity'.<sup>87</sup> To depict the point that the courthouse will continue to represent the denial of justice to Indigenous people unless there is institutional change, is the recent attack on the Kalgoorlie courthouse. In September 2016, protesters broke windows of the courthouse following the locking out of the Kalgoorlie Indigenous community from court proceedings involving the killing of a local 14-year-old Indigenous boy, Elijah Doughty, by a white man.<sup>88</sup>

We have touched on the surface of research into culturally competent design of courthouses. Further collaborative research with Indigenous users is needed to establish the dynamic needs of Indigenous people in court spaces (both as Elders participating in courts and as plaintiff or (civil and criminal)), including with regard to meeting spaces with legal and support services, safe custodial arrangements, seating for Indigenous sentencing courts and protections for vulnerable witnesses. This research needs to be localized, and is not satisfied by general principles that by their very nature do not focus on cultural specificity. Such research should be responsive to local Indigenous community concerns and seek to determine whether the three courthouses discussed in this article and others are achieving what they set out to do: to

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<sup>82</sup> Grant et al., 2014; Grant, 2009.

<sup>83</sup> Fryer-Smith, 2008, p. 6:20.

<sup>84</sup> For example, the recently completed Fitzroy Crossing Courthouse in the Kimberley region of Western Australia. See Department of Regional Development, Department of Attorney-General, Government of Western Australia, 2015.

<sup>85</sup> See Law Reform Commission of Western Australia, 1999a, pp. 1017, 1032.

<sup>86</sup> Missingham et al., 2002.

<sup>87</sup> See Tait, 1999.

<sup>88</sup> Wahlquist, 2016.

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engage Indigenous users and link court space to Indigenous place in a way that enhances Indigenous use of the space. Beyond this, research needs to consider how Indigenous people can contribute to the incorporation of cultural design in existing court spaces and transform new court spaces for the future.

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