

Heritage Council of
Western Australia

and

[REDACTED]

[REDACTED]

[REDACTED]

HERITAGE AGREEMENT

Lot 258 Penshurst View Terrace East Fremantle

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"Significant Fabric" means those parts of the fabric of the Place as are specified in item 2 of the Schedule;

and

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

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

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

Part 2

Commencement, Duration and Scope of this Agreement

2.1 Commencement and Duration of this Agreement

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

2.2 Scope of this Agreement

- (a) This Agreement:
 - (1) applies to the Land and the Place;
 - (2) binds the Land and the Place; and
 - (3) binds the Owner of the Place.
- (b) All of the obligations of the Owner of the Place under this Agreement are covenants made pursuant to section 29(10) of the Act and are intended to run with the Land.
- (c) The rights and obligations of the Owner of the Place under this Agreement are not assignable by the Owner of the Place without the prior written consent of the Council.
- (d) Subject to sub-clause (e), on an Owner of the Place transferring the whole of the interest of that Owner of the Place in the Land to another person, the transferring Owner is released from all personal liability under this Agreement.
- (e) The provisions of sub-clause (d) will not apply in respect of any liability or claim which arose prior to the date of registration of the transfer of the whole of the interest of the transferring Owner of the Place to another person.

Part 3 Development and Conservation

3.1 No Development without the Council's Approval

- (a) The Owner shall not:
- (1) carry out any Development on or of the Place; or
 - (2) without prejudice to the generality of sub-clause (1), do or permit to be done anything on or in relation to the Place which adversely affects the cultural heritage significance or characteristics of the Place.
- in any case except as approved in advance in writing by the Council.
- (b) The Owner must ensure that any Development on or of the Place complies with and gives effect to the Design Guidelines

3.2 Compliance with Statutes

Nothing in this Agreement removes, limits or modifies the obligations on the Owner of the Place to comply with all relevant statutory and other requirements in connection with the Development of the Place, and the Owner of the Place is responsible for obtaining all approvals consents and licences required for Development of the Place, including planning approvals and building licences, from all relevant bodies and authorities including the local authority.

Part 4 Council's Rights of Entry and Powers of Inspection

4.1 Council's rights of entry and powers of inspection

- (a) Subject to sub-clause (b) the Council shall, through its nominated representative or nominated officer from time to time, have the power to enter the Place at reasonable times, and on reasonable prior notice, for any purpose related to the provisions of this Agreement, including without limitation to inspect the Place with a view to ensuring compliance with the provisions of this Agreement.
- (b) Subject to sub-clause (c), the Council will comply with any reasonable requirement imposed by the Owner of the Place for the purpose of exercising the rights of the Council under sub-clause (a).
- (c) The Owner of the Place must do all things necessary to enable the Council to exercise its rights of inspection as set out in sub-clause (a), including without limitation ensuring that reasonable access is provided to all parts of the Place and ensuring access to and use of any facility at the Place which is necessary to facilitate inspection.

Part 5 Default

5.1 Events of default

An Event of Default occurs if:

- (a) the Owner of the Place is in breach of or does not comply with any of its obligations under this Agreement and the breach or non-compliance continues for 30 days, or such longer period as is reasonable for rectification having regard to the nature of the breach or non-compliance, after receipt of written notice from the Council to effect compliance; or

(b) the Owner of the Place repudiates or commits a fundamental breach of this Agreement.

5.2 Rights and remedies of Council

In the event any Event of Default occurs, the Council shall be entitled to exercise any one or more of the following powers:

- (a) through its agents, contractors or employees enter the Place and take such actions as are in the Council's opinion necessary to rectify the Event of Default (including attending to any construction or other works); together with or separately from
- (b) any rights and remedies which may be available to the Council at law or in equity; together with or separately from
- (c) the rights, powers and remedies available to the Council under the Act,

and nothing in this Agreement limits or prejudices or shall hinder the exercise by the Council or the Minister or any other person of any of the rights, powers or remedies available to the Council, the Minister or that person under the Act if an Event of Default occurs, or any other event occurs which is a breach of any provision of the Act.

5.3 Land and Place at risk of Owner of the Place

The Land and the Place shall remain at the risk of the Owner of the Place in all respects, notwithstanding any provisions in this Agreement dealing with the Development of the Land or the Place and without limitation all Development of the Land or the Place shall be conducted entirely at the risk of the Owner of the Place and the Owner of the Place shall indemnify and keep indemnified and save harmless the Council, the Minister and any of their respective servants or agents against all Damage incurred or suffered by any of them arising from or in connection with the Development or occupation of the Land or the Place by the Owner of the Place or any person claiming through or under the Owner of the Place.

5.4 Interest on overdue money

If the Owner of the Place becomes liable to pay any amount of money to the Council pursuant to this Agreement or arising from any matter the subject of this Agreement, the Owner of the Place shall pay to the Council interest on that amount from and including the due date for payment of the amount to but excluding the actual date of payment of that amount. The interest is to be paid on demand by the Council, is to be calculated on daily balances, and is to be at the rate then payable on judgment debts pursuant to the provisions of the Supreme Court Act.

Part 6 General

6.1 Variation to be in writing

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

6.2 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.

6.3 Further assurances

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

6.4 Extension of time by Council

The Council may, at the Council's discretion and by written notice to the Owner of the Place, extend any time period for performance by the Owner of the Place of any of its obligations under this Agreement.

6.5 Costs

- (a) The Owner of the Place shall pay or reimburse the Council on demand for all the Council's costs and expenses in relation to:
 - (1) the exercise or enforcement by the Council of any right, power or remedy under this Agreement; and
 - (2) any act or omission by the Owner of the Place causing Damage to the Council,including the Council's legal costs and expenses.
- (b) Each party shall pay all its own legal costs and expenses in relation to the preparation, execution and stamping of this Agreement.

The Schedule

- Item 1:** **The Place**
Lot 258, Penshurst which is situated at View Terrace, East Fremantle and consists of the Land described in Item 3 and the works and buildings on it.
- Item 2:** **Significant Fabric**
The whole of the Place.
- Item 3:** **Land**
The whole of Lot 258 on Plan 1794 (sheet 1) being the whole of the Land comprised in Certificate of Title Volume 2020 Folio 206.
- Item 4:** **Design Guidelines**
The Design Guidelines prepared by Palassis Architects for Oldfield Knott Architects on behalf of [REDACTED], a copy of which is appended to this Agreement as Annexure A.

EXECUTED AS A DEED.

THE COMMON SEAL of the HERITAGE)
COUNCIL OF WESTERN AUSTRALIA was)
hereunto affixed in the presence of:)



[Signature]

Signature of authorised person

[Signature]

Signature of authorised person

DIRECTOR

Office held

CHAIRMAN

Office held

IAN H. BAXTER

Name of authorised person

MARIE J WALLACE

Name of authorised person

THE COMMON SEAL of the [REDACTED])
[REDACTED] was)
hereunto affixed in the presence of:)

SIGNED

by

In the presence of:

Witness

Name (please print)

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

I, The Hon. Judy Edwards, MLA, Minister for the Environment and Heritage, hereby certify that this Agreement is necessary for the purposes of, and complies with, the Heritage of Western Australia Act 1990.

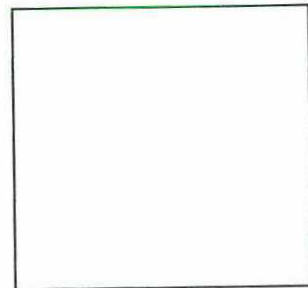
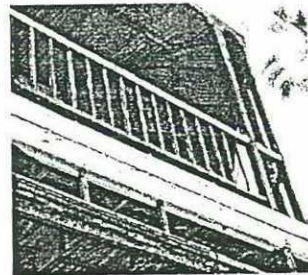
Dated the 28 day of Jan 2002.

Judy Edwards
MINISTER FOR THE ENVIRONMENT AND HERITAGE

PENSHURST

EAST FREMANTLE

DESIGN GUIDELINES

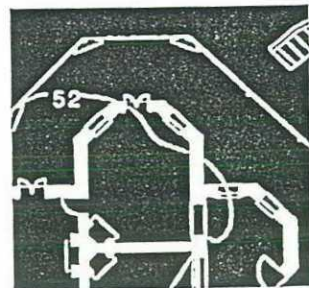


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Planning consent is required to be granted by the Town of East Fremantle for developments upon these sites. The Town has different and in some respects more stringent requirements for development that are contained within its Town Planning Scheme and Policies.

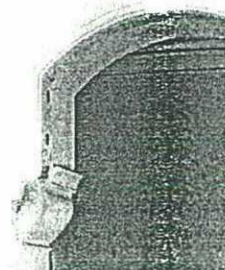
It is strongly recommended that developers discuss their proposa/s with the Town of East Fremantle at an early design stage.



PENSHURST DESIGN GUIDELINES

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PENSHURST

DESIGN GUIDELINES

STATEMENT OF CULTURAL HERITAGE SIGNIFICANCE

Penshurst is entered in the Heritage Council of Western Australia's Register of Heritage Places with the following statement of significance.

Penshurst, a two storey late Victorian residence constructed of limestone masonry with extensive verandahs on the north-east corner, has cultural heritage significance for the following reasons:

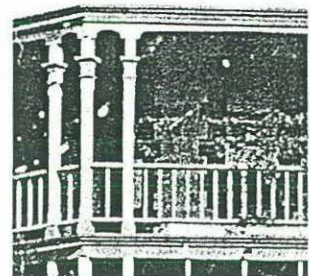
the house on its corner site is a landmark, being prominently sited on Richmond Hill and visible from various vantage points around East Fremantle and along the Swan River;

the house has a particularly striking design with two multi-faceted bays at right angles to one another on the north-east corner, around which is wrapped a two storey verandah;

the place has historic value for its relationship with shipping in Fremantle, particularly its connection with the firm of Symon, Hammond and Hubble;

as a landmark and historic structure, Penshurst contributes to the local community's sense of place; and,

the place is also associated with a number of prominent personalities and families who have at different times owned it, including the Hammond family, Phillip Collier M.L.A. and Oliver Strang.



PENSHURST

DESIGN GUIDELINES

NEW ADDITIONS TO PENSHURST (LOT 57)

GUIDELINE BASIS

Any proposals for additions or other changes to places entered in the Heritage Council of Western Australia's Register of Heritage Places must be referred to the Heritage Council for comment.

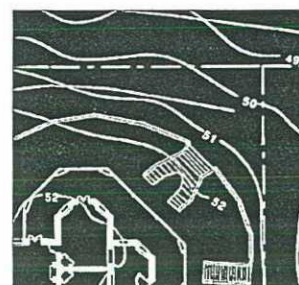
Few places ever survive in a totally unaltered state. Most undergo some form of change in accord with the requirements of different occupiers. Consequently there should be an acceptance of the process of change and that any change be managed so that what is significant about a place is not adversely affected.

A successful addition is one that on completion is complementary to the heritage place. An addition should not damage significant fabric or intrude on nearby historic buildings or the area as a whole. An addition should not distort or obscure the significance of the place and should not detract from the interpretation of the place. Additions should not mimic the place of significance - it is acceptable for additions to look like they have been added on to the building.

The amount of demolition permitted should be constrained to the amount essential to the feasibility of the proposal. Fabric that is identified to be of significance should not be removed or demolished. Consideration should be given to the setting and views from the surrounding streets.

There are two main approaches that can be taken, these are:

1. To create an addition in the same style as the original place but with simplified details so it can be distinguished as new work; or
2. To design new work in a contemporary manner that relates to the old work in terms of location, bulk, form and materials.



PENSHURST

DESIGN GUIDELINES

OBJECTIVES

The objectives of the Design Guidelines are to ensure that new additions to Penshurst do not detract from or overwhelm the significance of the heritage place and to ensure that new additions are in keeping with the context and setting of the place.

The principle objectives are:

1. To ensure that new additions do not obscure significant views to and from Penshurst.
2. To ensure that the landmark and aesthetic quality of the place is retained.

GUIDELINES

Setbacks

Any new structures should be located to the rear (south) of the existing building and within the setbacks as shown on the plan on page 9.

Character

New additions should be compatible in terms of materials, size, proportions, mass, height, setback, texture, colour, plan configuration, surface configuration and other details to the existing building.

New work should maintain the rhythm, orientation and proportions of the existing building.

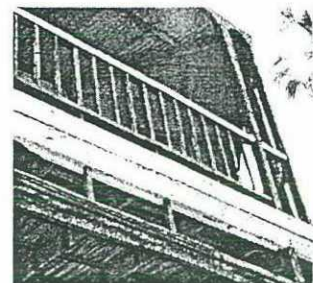
The replication of historic detail in new work should be avoided. Good contemporary design is preferable to copying original design.

New work should be distinguishable from the old. New work should be harmonious and sympathetic with the significant features of the place.

Form

Any new structures should respect the form and scale of the existing building.

New structures should be located and/or detailed to ensure that there is a clear visual separation between the existing building and the new structure. Where any new structure abuts the existing building it should be set in from the façade line so that the juncture is clearly defined. Refer to the plan on page 9.



PENSHURST

DESIGN GUIDELINES

Form

Existing openings should be used where possible to facilitate access between the old and the new to minimise the amount of demolition required.

New building work should be reversible where possible so to avoid permanent damage to the significant fabric. A situation should be established where, if desired, the new building work could be demolished to reveal the original building.

Site line techniques should be used to determine the degree of visibility of the addition or extension to the public eye.

Materials

Materials for new structures should compliment existing structure. Appropriate materials for external walls include limestone, rendered brick, and limited use of red brick and timber weatherboard cladding. Windows may be either timber framed or metal framed. Roof cladding should be corrugated galvanised iron. With great care and attention to design it may be possible construct new structures from contrasting materials such as steel and glass.

Roof form

Hipped, skillion or flat roof forms are acceptable. If the structure has a hipped roof it should be of the same pitch as the existing building.

Height

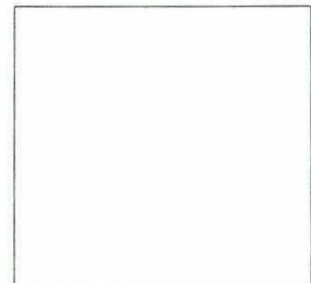
The eaves line of any new structure should be no higher than the eaves line of the existing structure.

Fencing

If a front fence is required it should be of an open timber picket construction. The design of the front fence may be based on the documentary evidence outlined in the conservation plan or it may be of a contemporary design. In order to retain open views to the front of place, any new front fence should have a maximum height of 1500mm and should be at least 70% visually permeable. Solid masonry fences are not acceptable.

Landscape

Existing site levels should be retained. New landscaping schemes are acceptable so long as plantings or other elements do not obscure views to front of place.



PENSHURST

DESIGN GUIDELINES

Outbuildings

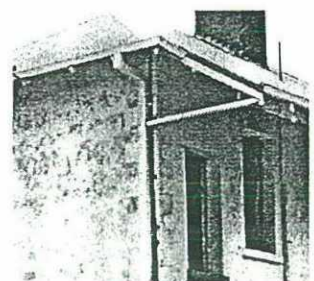
Garages/carports and other outbuildings should not dominate site and should be designed to compliment the existing building. Any outbuildings, including garages and carports must be constructed within the setbacks shown on the plan on page 9.

Parking/Vehicle Access

Vehicle access and parking should be located to rear of the property as shown in the plan on page There should be no vehicular access or on-site carparking to the front of the property.

Services

Piped/wired services should be concealed from public view. Meters should be screened/integrated into landscape. A/C and hot-water units should not be visible from the street.



PENSHURST

DESIGN GUIDELINES

DEVELOPMENT TO ADJACENT LOTS (LOTS 256 & 258)

GUIDELINE BASIS

Any proposals for additions or other changes to places entered in the Heritage Council of Western Australia's Register of Heritage Places must be referred to the Heritage Council for comment. This includes proposals for development on Lots 256 and 258 which are included in the registered curtilage of Penshurst.

Good and sensitive design of new buildings adjacent to heritage buildings is of paramount importance. Good design is essentially about designing in context and having regard to the site and its surroundings. Consideration should be given to the nature of adjoining and surrounding buildings and the overall significance and character of the heritage place.

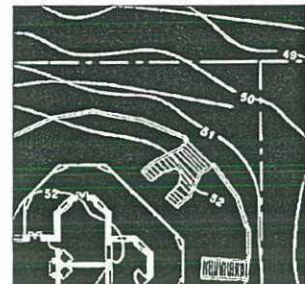
Design that closely imitates, replicates or mimics the surrounding historic styles should normally be discouraged (ie terrace house replicas or reproduction houses). Design of a contemporary nature that interprets the surrounding heritage places should be encouraged.

OBJECTIVES

It is important to ensure that new buildings are compatible with and do not overwhelm the significant heritage places that are visually connected to them. The objectives of the Design Guidelines are encourage consideration of the context of the heritage place when designing a new building.

The principle objectives are:

1. To ensure that new buildings on the adjacent lots do not obscure significant views to and from Penshurst.
2. To ensure that the landmark and aesthetic quality of the Penshurst is retained.
3. To ensure that new buildings adjacent on lots adjacent to Penshurst are sympathetic to the significance and character of Penshurst.



PENSHURST

DESIGN GUIDELINES

GUIDELINES

Setbacks

Setbacks for new structures is to be in accordance with those shown on the plan on page 9.

Character

New development adjacent to Penshurst should respect the scale and form of the existing building. New buildings should be designed in a contemporary manner that is sympathetic to the surrounding area. New building design should relate to and use as reference points, the materials, colour and details of Penshurst.

Form

The size and shape of any new buildings should relate to the surrounding buildings. Structures should not visually dominate or obscure views or sightlines to Penshurst. Refer to the plan on page 9.

New buildings should be generally rectangular in form. Limited use of truncated corners and faceted bays would be acceptable.

There should be no blank walls to street front. Elevations to the street front should be articulated with openings or other elements.

Elevations to any future building located on lot 258 should be designed so as to articulate the north-east corner, which addresses the intersection of View Terrace and Penshurst Street.

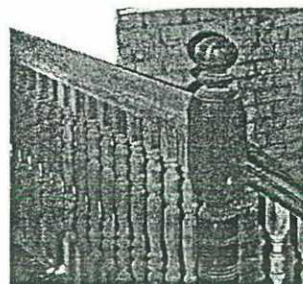
The use of verandahs, balconies, awnings and other such elements on the street front elevations is encouraged.

Materials

Materials for new structures should compliment those of Penshurst. Appropriate materials for external walls include limestone, rendered brick, timber weatherboard cladding and limited use of corrugated galvanised iron and red brick. Windows may be either timber framed or metal framed. Roof cladding is to be corrugated metal.

Roof form

Hipped, skillion or flat roof forms are acceptable. If the structure has a hipped roof it should be of the same pitch as the existing building.



PENSHURST

DESIGN GUIDELINES

Height

The height of any new building located on Lot 256 should be no higher than the ridgeline of Penshurst.

The height of any new building located on Lot 258 should be at least one metre lower in height than the ridgeline of Penshurst.

Orientation

New buildings should be orientated to relate to existing surrounding patterns.

Fencing

New fencing should be simple and of a suitable material and spacing to the building and surrounding fences. The exact reproduction of traditional fence styles should be avoided. Solid masonry fences are acceptable, so long as they do not obstruct views of the base of Penshurst (that is views of the ground floor level verandah flooring).

Outbuildings

Garages, sheds and other outbuildings should not dominate the site and should be detailed so as to reduce their visual impact. Outbuildings should be erected of similar or compatible materials to the main building. Garages/carports should have a maximum width of two car bays. Any outbuildings must be constructed within the setbacks shown on the plan on page 9.

Parking

Vehicular access and parking should be as shown in figure. Undercroft parking to the front of the new building is acceptable on Lot 256 only.

Signage

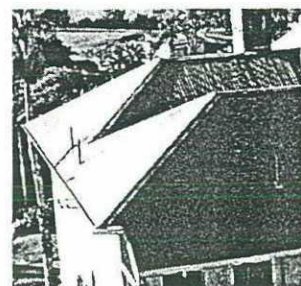
Any signage on new buildings should be contemporary and compliment the character and significance of the area.

Landscape

Existing levels should generally be retained. Changes in levels to minimise the impact of new buildings or to facilitate undercroft parking is acceptable.

Services

Piped/wired services should be concealed from public view. Meters should be screened/integrated into landscape. A/C and hot-water units should not be visible from the street.



D E S

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Site plan of Penshurst and adjacent lots showing appropriate areas for new development and setbacks for new structures