



Shire of
Peppermint Grove

ORDINARY COUNCIL MEETING

DRAFT

AGENDA

The draft agenda submitted to this Forum is subject to change and should not be read as the final Agenda to the next Ordinary Council Meeting. The final Agenda will be placed on the Shire's website on the Friday before the scheduled meeting.

TO BE HELD ON
TUESDAY 20 DECEMBER 2022
AT
5.30 PM



Shire of Peppermint Grove

Dear Councillor

It is advised that the **AGENDA BRIEFING FORUM** will be held in the Council Chamber of the **Shire of Peppermint Grove**, 1 Leake Street, Peppermint Grove, on **13 DECEMBER 2022**, commencing at 5.30 pm.

NOTICE OF MEETING

Yours faithfully

A handwritten signature in black ink, appearing to read 'Don Burnett', is written over a white background.

Mr Don Burnett
CHIEF EXECUTIVE OFFICER

8 December 2022

DRAFT MEETING AGENDA ATTACHED

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Shire of Peppermint Grove

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Shire of
Peppermint Grove

DRAFT ORDINARY COUNCIL MEETING AGENDA

1. DECLARATION OF OFFICIAL OPENING

At _____ pm, the Shire President declared the meeting open and requested that the Affirmation of Civic Duty and Responsibility be read aloud by a Councillor and requested the recording of attendance and apologies.

Council recognises that it is permissible to record the Shire’s Council and Forum Meetings in the written, sound, vision medium (or any combination of the mediums) when open to the public. However, people who intend to record meetings are requested to inform the Presiding Member of their intention to do so.

The Presiding Member will cause the Affirmation of Civic Duty and Responsibility to be read aloud by Councillor _____.

Affirmation of Civic Duty and Responsibility

I make this Affirmation in good faith on behalf of Councillors and Officers of the Shire of Peppermint Grove. We collectively declare that we will duly, faithfully, honestly, and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgment and ability. We will observe the Shire’s Code of Conduct and meeting procedures to ensure efficient, effective and orderly decision making within this forum.

2. RECORDING OF ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE

2.1 ATTENDANCE

Shire President (Presiding Member)
Deputy Shire President
Elected Member
Elected Member
Elected Member

Cr R Thomas
Cr C Hohnen
Cr P Macintosh
Cr K Farley
Cr D Horrex

A/Chief Executive Officer
Manager Corporate & Community Services
Manager Infrastructure Services

Mr J Gajic
Mr M Costarella
Mr D Norgard

Gallery Members of the Public
 Members of the Press

2.2 APOLOGIES

Chief Executive Officer

Mr Don Burnett

2.3 LEAVES OF ABSENCE

Elected Member
Elected Member

Cr D Jackson
Cr P Dawkins

2.4 NEW REQUEST FOR A LEAVE OF ABSENCE

3. DELEGATIONS AND PETITIONS

3.1 DELEGATIONS

3.2 PETITIONS

4.0 PUBLIC QUESTION TIME

The Presiding Member will open the public question time by asking the gallery if there were any questions or deputation for Council.

1. The Agenda;
2. Question to Council; and
3. Deputation Forms.

Have been placed at the end of the Council Meeting table in front of the public gallery, for the public, as well as on the Shire Webpage.

Rules for Council Meeting Public Question Time

1. *Public Question Time provides the public with an opportunity to put questions to the Council. Questions should only relate to the business of the Council and should not be a statement or personal opinion.*
2. *During the Council meeting, after Public Question Time no member of the public may interrupt the meeting's proceedings or enter into conversation.*
3. *Whenever possible, questions should be submitted in writing at least 48 hours prior to the start of the meeting.*
4. *All questions should be directed to the President and only questions relating to matters affecting Council may be answered at an Ordinary meeting, and at a Special meeting only questions that relate to the purpose of the meeting may be answered. Questions may be taken on notice and responded to after the meeting, at the discretion of the President.*
5. *The person presiding will control Public Question Time and ensure that each person wishing to ask a question should state his or her name and address before asking the question. If the question relates to an item on the agenda, the item number should also be stated. In general, persons seeking to ask a question will be given 2 minutes within which to address their question to the Council. The person presiding may shorten or lengthen this time in their discretion.*

4.1 RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE FROM A PREVIOUS MEETING

Nil

4.2 QUESTIONS FROM MEMBERS OF THE PUBLIC

4.3 DEPUTATIONS OF THE PUBLIC

4.4 PRESENTATIONS FROM THE PUBLIC

5.0 DECLARATIONS OF INTEREST

Councillors / Staff are reminded of the requirements of section 5.65 of the Local Government Act 1995, to disclose any interest during the meeting when the matter is discussed, and also of the requirement to disclose an interest affecting impartiality under the Shire's Code of Conduct. Councillors / staff are required to submit declarations of interest in writing on the prescribed form.

5.1 FINANCIAL INTEREST

A declaration under this section 5.60 of the Act requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration.

Other members may allow participation of the declarant if the member further discloses the extent of the interest and the other members decide that the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

5.2 PROXIMITY INTEREST

A declaration under this section 5.60 of the Act requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration.

5.3 IMPARTIALITY INTEREST

Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member / employee is also encouraged to disclose the nature of the interest. The member / employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member / employee declares that their impartiality will not be affected then they may participate in the decision making process.

5.4 INTEREST THAT MAY CAUSE A CONFLICT

Councillors and staff are required (Code of Conduct), in addition to declaring any financial interest, to declare any interest that might cause a conflict. The member / employee is also encouraged to disclose the nature of the interest. The member / employee must consider the nature and extent of the interest and whether it will affect their impartiality. If the member / employee declares that their impartiality will not be affected then they may participate in the decision making process.

5.5 STATEMENT OF GIFTS AND HOSPITALITY

Councillors and staff are required (Code of Conduct), to disclose gifts and acts of hospitality which a reasonable person might claim to be a conflict of interest. Gifts and acts of hospitality which exceed that amount of prescribed by regulation are to be recorded in the Councils Gift Register.

6.0 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

7.0 CONFIRMATION OF MINUTES

7.1 ORDINARY COUNCIL MEETING 22 November 2022

OFFICER RECOMMENDATION – ITEM 7.1
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Moved:

Seconded:

That the Minutes of the Ordinary Council Meeting, of the Shire of Peppermint Grove held in the Council Chambers on 22 November 2022 be confirmed as a true and accurate record.

8.0 OFFICERS REPORTS

8.1 MANAGER DEVELOPMENT SERVICES

8.1.1 15 (Lot 25) Hurstford Close, Peppermint Grove – Alterations and Additions to a Grouped Dwelling (Single Bedroom Dwelling)

URBAN PLANNING

ATTACHMENT DETAILS

Attachment No	Description
Attachment 1	Locality Map
Attachment 2	Development Application Submission and Drawings
Attachment 3	Revised Development Application Late Submission and Drawings

Location / Address	:	15 Hurstford Close, Peppermint Grove
Application Number	:	DA2022/00028
LPS No 4 Zoning	:	Residential R40
Land Use	:	Grouped Dwelling
Lot Area	:	323m ²
Disclosure of Interest	:	Nil.
Previous Items	:	Nil.
Applicant	:	David Weir Architects
Owner	:	K Draper
Assessing Officer	:	Mr M. Stocco/ Mr J. Gajic
Authorising Officer	:	Mr J. Gajic

PURPOSE OF REPORT

To seek Council determination for a development application for alterations and additions to a grouped dwelling (single bedroom dwelling) that relies on the design principles contained in the Residential Design Codes of Western Australia (R-Codes).

SUMMARY AND KEY ISSUES

- The subject land is zoned Residential (R40) a Grouped Dwelling is a 'P' use.
- The grouped dwelling is located within a Road and Rail Noise corridor and is subject to State Planning Policy 5.4.
- The grouped dwelling is located in a complex of four single bedroom dwellings.
- The application was advertised to three affected neighbours within the grouped dwelling complex. Objections were received.

- The proposed works seek variation to the deemed-to-comply requirements of the R-Codes for Street Setback, Street Walls and Fences, Street Surveillance, Sight Lines and Single Bedroom Dwellings (plot ratio).
- The proponent has provided insufficient justification how the design principles of the R-Codes for Street Setback, Street Surveillance, Street Walls and Fences have been satisfied.
- The grouped dwelling currently exceeds the plot ratio area for a single bedroom dwelling and is proposed to be further expanded.
- The common property access does not meet the deemed-to-comply requirements of the R-Codes for Pedestrian Access.
- The fencing within the primary street (Hurstford Close) setback is exempt from planning approval as it is compliant with Local Planning Policy 12 – Front Fences.
- Minor amendments to the design plans were received on 2 December 2022. The changes were limited to recession of the entry/portico wall 240mm from the communal street enabling reinstatement of a portion (approx. 0.9m²) of the current landscaping.

LOCATION

15 Hurstford Close, Peppermint Grove.

BACKGROUND

15 Hurstford Close is a late 1980s strata unit development comprising four grouped dwellings. The complex was developed under alternative planning controls such that a number of design aspects are not compliant with current standards. The lack of lighting, landscaping and delineation between pedestrian and vehicular access within the common property, and the plot ratio for the grouped dwelling exceeding that for a single bedroom dwelling are individual casing points.

The grouped dwelling is the largest lot in the complex and one of two grouped dwellings with frontage to both Hurstford Close and a communal street. It has a low-lying wall fronting Hurstford Close and a front yard open to the communal street. There is a small extent of landscaping between the grouped dwelling and the communal street. Increasing privacy is a principal objective of the proposal.

With the exception of the strata complex, Hurstford Close contains single detached houses.

The proposed alterations and additions are limited to an entry portico and establishment of a secondary outdoor living area (courtyard) adjacent to the communal street, the replacement of two bay windows with a French door and a sliding door (both with awnings), the deletion of a third bay window, alterations to two further window openings, and fencing including a 2229mm high boundary wall to the communal street. The building works fronting the communal street rely on the design principles contained in the R-Codes for Street Setback, Street Walls and Fences, Sight Lines and Single Bedroom Dwellings (plot ratio). Further landscaping works including brick paving has been nominally shown on the submitted site plan.

The proponent has not specifically addressed State Planning Policy 5.4 - Road and Rail Noise. Glazing treatments to address noise attenuation can be conditioned as part of any subsequent approval and will need to be identified as part of a corresponding Building Application.

This report focuses on the building works fronting the communal street and their impact on the other strata units in the complex.

CONSULTATION

The proponent discussed the proposal at the time of lodgement and met with planning officers to clarify the works and better understand the planning framework. Further information was sought to clarify street setbacks, sightlines and street walls and fences.

A more sympathetic alternative design response for the works fronting the communal street was requested. The proponent has challenged the Shire’s assessment that the building works and fencing fronting the communal street is required to comply with figures 2d and 12 (respectively) contained in the R-Codes and has sought determination on the plans as submitted. This matter is further explored in Officer Comment.

Advertising to affected neighbours for a period of 14 days was required in accordance with the Shires Local Planning Policy 6 – Neighbour Consultation. The advertisement period has now concluded. Written objections were received that has been distributed to Councillors. The nature of the grounds of objection is provided in the table below.

Submitters Address	Matters Raised
12 Hurstford Close	<ul style="list-style-type: none"> • Construction of wall on common property driveway. • Proposed height of wall and the lack of sufficient setback. • Difficulty accessing adjoining garages due to western extension. • Width of vehicle access is limited due to western extension. • Significant visual impact. • Over height wall on boundary. • Departure from the intent of a grouped dwelling for over 55's. • Significant impact on amenity. • Significant increase in bulk. • Impact on the streetscape and surrounding properties.
13 Hurstford Close	
14 Hurstford Close	

STRATEGIC IMPLICATIONS

There are no Strategic Plan implications evident at this time.

LOCAL PLANNING POLICY IMPLICATIONS

The proposal complies with relevant Local Planning Policy.

STATUTORY IMPLICATIONS

The statutory timeframe to determine an application that has been advertised is ninety (90) days excluding any period the application is on hold pending the submission of further information. After this date the application is ‘deemed to be refused’ for the purposes of enabling an application for determination to be lodged to the State Administrative Tribunal (SAT). This application is within the statutory timeframe.

The proposal complies with relevant Scheme provisions and local planning policies. The table below identifies the design principles contained in the R-Codes that are relied upon and provides an assessment against the local planning policy framework.

RESIDENTIAL DESIGN CODES	
Design Principles	Assessment/Comment
Site Area 5.1.1, Table 1 of the R-Codes.	N/A no new lots or additional dwelling(s) are proposed. The deemed-to-comply minimum site area requirement for a grouped/multiple dwelling in areas coded R40 is 180m ² .
Street and Lot Boundary Setbacks 5.1.2 & 5.1.3, Tables 1, 2a and 2b of the R-Codes.	<p>Non-compliant. The grouped dwelling complex share a communal street for vehicular and pedestrian access. Communal streets are those in private ownership common to a number of dwellings. As semi-public spaces, they share some of the characteristics and roles of public streetscapes and share the need for design to address issues of visibility and security. Clear demarcation between private space and the communal street is important, as is the need for a transition area, a buffer against noise and glare and privacy for dwellings. However, the reduced scale, communal nature and use, and often informality of layout of communal streets, calls for a less rigid approach to setbacks for dwellings. Nonetheless, the Residential Design Codes Explanatory Guidelines 2021 prescribes that communal streets are treated as a secondary street for the purposes of applying table 1 as illustrated by figure 2d of the R-Codes.</p> <p>The deemed-to-comply setback for the portico entry wall is 1.5m based on the proposed 4.04m wall length (as per R-Codes measurement methodology).</p> <p>The design principles are for buildings to be set back from street boundaries an appropriate distance to ensure they contribute to, and are consistent with, the existing streetscape, provide adequate privacy and open space to dwellings, accommodate site planning requirements including landscaping, and allow safety clearances for essential service corridors. In this respect it is noted that the unit complex does not have a uniform building setback and has limited landscaping to the communal street. This proposal would result in the reduction of landscaping.</p> <p>The design principles are additionally for buildings mass and form that uses design features to affect the size and scale of the building, uses appropriate minor projections that do not detract from the character of the streetscape, minimises the proportion of the façade taken up by blank walls, and positively contributes to the prevailing or future development context and streetscape as outlined in the local planning policy framework. In this respect</p>

	<p>approval would result in a 2229mm high blank wall without articulation with a 270mm gap to the concealed roof above being located 240mm off the boundary. The concealed roof has a 240mm wide minor projection that extends to the boundary. Notwithstanding the revised design proposes a 240mm wide landscaping strip, the entry portico wall in combination with the adjacent street wall would significantly detract from the character of the streetscape and set an undesirable precedent.</p> <p>The design principles are not considered to be met.</p>
<p>Open Space 5.1.4, Table 1 of the R-Codes.</p>	<p>Compliant. The deemed-to-comply requirement is 45%. 55.2% of open space has been provided.</p>
<p>Building Heights 5.1.6, Table 3 Figure Series 7 of the R-Codes.</p>	<p>N/A The grouped dwelling building height is compliant and is not increased as a result of the proposal.</p>
<p>Setback of Garages and Carports 5.2.1, Table 1 Figure 8a and 8b of the R-Codes.</p>	<p>N/A The garage setback is compliant and not subject to this proposal.</p>
<p>Street Surveillance 5.2.3 of the R-Codes.</p>	<p>The deemed-to-comply requirement for sites with internal driveway access is for at least one major opening from a habitable room to face the approach to the dwelling. Deletion of the west-facing primary living area bay window removes the sole major opening with a direct view of the approach to the front entry. Replacement of the south-facing primary living area bay window will further decrease surveillance of this approach. In its current configuration, the portico entry introduces opportunities for concealment and entrapment.</p> <p>It is acknowledged that the proposal does not compromise surveillance of Hurstford Close. A clearly definable and arguably more secure entry point will remain visible and accessible from the street.</p> <p>Nonetheless, the design principles are not considered to be met.</p>
<p>Street Walls and Fences 5.2.4, Figure 12 of the R-Codes.</p>	<p>Hurstford Close fencing compliant and exempt from development approval.</p> <p>Communal street fencing is non-compliant. The deemed-to-comply requirement for street walls and fences are to be visually permeable above 1.2m and solid pillars to not exceed 1.8m as per figure 12 of the R-Codes.</p> <p>The design principles require fencing to be low or restricted in height to permit surveillance and enhance streetscape with appropriate consideration to the attenuation of noise and traffic and for necessary privacy or screening for outdoor living areas where the street is designated as a primary or district distributor.</p> <p>The communal street facilitates limited low-speed traffic movements such that noise attenuation is not a ground for solid fencing. The proposed courtyard area is additional to the existing primary outdoor living area that is fully screened when viewed from Hurstford Close or the communal street. A compelling case has</p>

	<p>not been made that a compliant fence would not provide sufficient privacy to the proposed courtyard.</p> <p>The design principles are not considered to be demonstrated for the wall fronting the communal street.</p>
<p>Sight Lines 5.2.5, Figure 9a of the R-Codes.</p>	<p>The deemed-to-comply requirement is for all walls to be truncated or reduced in height to no more than 750mm within 1.5m of where the driveway intersects with the street/right-of-way. The existing bay window adjacent to the single garage is truncated and achieves the sight line. The proposed curved street wall encroaches into the prescribed sight line.</p> <p>The design principles require the provision of unobstructed sight lines at vehicle access points to ensures safety and visibility along access ways, streets, rights-of-way, communal streets, crossovers, and footpaths. The provision of lighting was requested as part of a more sympathetic alternative design response for the works fronting the communal street.</p> <p>Notwithstanding that the communal street does not provide for a delineated pedestrian path or lighting, the number and frequency of vehicles and pedestrians passing this point will be limited, and that the trafficable width of the communal street exceeds minimum standards. On balance the likelihood of the minor incursion compromising safety is negligible.</p> <p>The design principles are considered to be demonstrated.</p>
<p>Outdoor Living Areas 5.3.1, Table 1 and Figure 13 of the R-Codes.</p>	<p>N/A. The grouped dwelling has an existing compliant primary outdoor living area not subject to this proposal.</p>
<p>Landscaping 5.3.2 of the R-Codes.</p>	<p>Compliant. The deemed-to-comply requirement for landscaping of grouped dwellings one tree occupying a minimum tree planting area of 2m x 2m that is free of impervious surfaces.</p>
<p>Parking 5.3.3 of the R-Codes.</p>	<p>Compliant. The grouped dwelling has a single garage and further informal space for visitor parking that is not subject to this proposal.</p>
<p>Design of Car Parking Spaces 5.3.4 of the R-Codes.</p>	<p>Compliant. There is sufficient space to park and manoeuvre a vehicle a single vehicle utilising the garage. It is acknowledged that the dimensions of the informal visitor bay accords with AS2890.1; however, manoeuvrability to and from the visitor bay has not been demonstrated. It is the officer's assessment that a series of turns to position the vehicle as shown on the site plan and a series of turns to then enter Hurstford Close in forward gear would be required. Notwithstanding, the visitor bay is not required to meet the deemed-to-comply parking requirement, additionally, delineation is not proposed to formalise the parking space.</p>
<p>Pedestrian Access 5.3.6 of the R-Codes.</p>	<p>N/A. The proposal is limited to works within its strata lot. Notwithstanding, it is pertinent to note that the deemed-to-comply requirement is where a communal street serves more than two dwellings and is shared by pedestrians and vehicles, the configuration of the pedestrian and vehicular routes is to provide clear sight lines, adequate lighting and paving surfaces to slow traffic to ensure pedestrian safety.</p>

	As noted above the communal street has inadequate lighting, limited landscaping, and does not provide a delineated pedestrian path.
Site Works 5.3.7, Table 4 of the R-Codes.	Compliant. There are no proposed changes to the existing site levels between the street boundary and the street setback, or in close proximity to the communal street.
Stormwater Management 5.3.9 of the R-Codes.	Compliant. The deemed-to-comply requirement is for all water draining from roofs, driveways, communal streets and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the development site where climatic and soil conditions allow for the effective retention of stormwater on-site. Stormwater management can be conditionally addressed.
Visual Privacy C5.4.1, Figure 10, 10a, 10b and 10c of the R-Codes.	Compliant. The deemed-to-comply requirement is for major openings raised more than 500mm above the natural ground to be adequately set back from a boundary. There are no existing or proposed major openings elevated more than 0.5m above the ground level.
Solar Access for Adjoining Sites 5.4.2 of the R-Codes.	Compliant. There is no residential zoned land located immediately south of the subject site that may otherwise be impacted by the proposed works.
External Fixtures, Utilities and Facilities 5.4.4 of the R-Codes.	N/A. The proposal does not seek to introduce solar collectors, aerials, antennas, satellite dishes or other external fixtures.
Single Bedroom Dwellings 5.5.3, Table 1 of the R-Codes.	The deemed-to-comply requirement for a single bedroom dwelling to have a maximum plot ratio area of 70m ² , open space and landscaping in accordance with the requirements of clause 5.1.4 and 5.3.2, parking provided in accordance with clause 5.3.3 C3.1 and C3.2, an outdoor living area in accordance with the requirements of clause 5.3.1, but reducing the area required by Table 1 by one-third, and comply with all other elements of Table 1 and the R-Codes as relevant. As noted above there are a number of deemed-to-comply requirements for which variation is sought. Notwithstanding that the unit complex was developed under alternative planning controls and the gross floor area relative to the development site is not excessive, it is pertinent to note that the grouped dwelling currently has a plot ratio area (determined using the R-Codes methodology) of 113.9m ² . The plot ratio area is proposed to marginally increase to 116.2m ² by virtue of the entry portico not being an 'open platform' and otherwise being excluded. The design principles are to provide affordable housing options for singles or couples where it can be demonstrated that the development reduces car dependence, does not impinge upon neighbour amenity, responds to demand in the locality. The design principles specific to neighbour amenity are not considered to be demonstrated.

SCHEME/COUNCIL POLICY	
Policy Type	Assessment/Comment
Local Planning Policy 1 – Design and Streetscape	<p>The proposal is not consistent with the policy intent for replacement dwellings or significant additions and outbuildings to be responsive to the existing context and contribute positively to the prevailing streetscape.</p> <p>The manner that the development addresses the communal street has been assessed to be incompatible with the adjacent corner lot (12 Hurstford Close), would compromise views to the abutting unit (14 Hurstford Close), and does not comply with all relevant development standards.</p>
Local Planning Policy 2 – Ecological Urban Design and Sustainability	The proposal is consistent with the policy intent to conserve areas of each site for urban green space and ecological purposes. The policy aligns with the design principles contained in the R-Codes, although does vary the corresponding deemed-to-comply requirements.
Local Planning Policy 3 – Heritage Places	N/A. The place is not included on the Municipal Heritage List or on the State Register.
Local Planning Policy 4 – Residential Building Heights	N/A. The proposal does not seek to establish a new dwelling or alter the established building height of the grouped dwelling.
Local Planning Policy 5 – Plot Ratio For R10, R12.5, R15 and R20 Coded areas the maximum plot ratio shall be 0.5	N/A. The grouped dwelling is zoned R40. As noted above, a 70m ² plot ratio is applicable for single bedroom dwellings and assessed under the R-Codes using an alternative ‘plot ratio area’ methodology.
Local Planning Policy 6 – Neighbourhood Consultation on Development	<p>The policy intent is to advise affected landowners adjoining development sites in residential areas before they proceed, and to ensure neighbours are consulted on applications that rely on variations to the R-Codes and are afforded an opportunity to make written submissions on non-compliant aspects of the development.</p> <p>A 14-day advertising period to all affected parties within the strata complex has concluded. The consultation letters individually identified the respective variations sought that directly impacted the communal street and further advised that submissions will be kept on file and may be included in a planning report to Council.</p> <p>Objections were received from all notified parties that have been distributed to Councillors.</p>
Local Planning Policy 8 – Construction Management Plans	The policy requires owners and their contractors to undertake the effective management of approved development. Proponents are required as a condition of planning approval to submit a construction management plan for assessment and approval prior to the issuance of a demolition or building permit.
Local Planning Policy 9 – Development Bonds	<p>To ensure that any damage to public property caused by building work is fixed properly, the policy allows for the lodgement of a bond based on the value of work being undertaken.</p> <p>The Manager of Infrastructure Services has been notified of the proposed development and will document the condition assets in the road verge. A development bond may be required prior to the commencement of works.</p>

Local Planning Policy 10 – Design Review Panels	N/A. The proposal does not meet the criteria to be considered by a Design Review Panel.
Local Planning Policy 11 – Building on Side and Rear Boundaries	N/A Building on side and rear boundaries is not applicable to communal streets, or for areas coded R20 or higher where the R-Codes prevail.
Local Planning Policy 12 – Front Fences	Compliant. The policy is applied solely to the primary street fencing that front Hurstford Close. As stated above the wall fronting the communal street is assessed under the R-Codes as a front fence and the corresponding deemed-to-comply requirements.
Vehicular Crossover Policy and Technical Specification	N/A. No alterations or additional vehicular crossovers are proposed.

FINANCIAL IMPLICATIONS

There are no financial implications evident at this time.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications at this time.

SOCIAL IMPLICATIONS

There are no social implications at this time.

OFFICER COMMENT

The proposed alterations and additions have been assessed to partially satisfy the design principles, provisions and policy objectives of the state and local planning policy framework. The design response to the communal street has been assessed to inadequately satisfy the corresponding design principles contained in the R-Codes, and the intent of Local Planning Policy 1 – Design and Streetscape.

From a social point of view, a communal street setback area and how it is developed and managed allows for comfortable communication and interaction between residents, neighbours and passers-by or callers who may not be known to the occupants. This creates the opportunity for casual and safe interaction to enhance a sense of community and safety. At the same time, an open setback area provides for mutual surveillance between the street and building, enhancing security for the building (and its occupants) and for people passing by.

From a visual point of view, an open setback area provides a more attractive setting for the building. Although not compromised by the proposal, it is prudent to note that the street setback should also provide, depending on the location of essential services, adequate clearances from, and access to, essential services for reasons of safety and utility. The same principles apply to communal streets and rights-of-way that provide the frontage to dwellings.

The construction of high blank walls in any configuration immediately abutting any street (including a communal street) reduces the ability of built form to contribute positively to the prevailing streetscape, reduces human interaction, and is actively discouraged by

contemporary state planning practice such as the Department of Communities Design Brief for Single and Grouped Dwellings 2019 (Design Brief), and the Designing Out Crime Planning Guidelines 2006 (Guidelines). The Design Brief requires that fencing positively contributes to the amenity and activation of the streetscape, common driveways and suits the surrounding context... *Sections of solid 1800mm high fencing visible to the public realm (including common driveways) are to be reduced wherever possible and shall be screened by planting in adjacent landscaping strips.* The Guidelines provides the following rationale for building design:

The design and use of buildings can contribute significantly to the security of the public realm, by reducing opportunities for entrapment, concealment and vandalism. Defining ownership indicates the purpose of the building or space and makes illegitimate use less likely. Defining ownership is good but must not undermine other safety considerations; for example, high solid fences can inhibit natural surveillance.

The R-Codes provide a comprehensive basis for the control of residential development throughout Western Australia. For the purposes of set back the entry portico is assessed under the Street Setback element and the outdoor living area (courtyard) under the Street Walls and Fences element of the R-Codes.

The R-Codes Explanatory Guidelines further clarifies the design objectives for a Communal Street as it applies to building setback and street walls and fences and references Figure 2d and Figure 12 of the R-Codes Volume 1 (respectively). Figure 2d prescribes that grouped dwellings with a secondary frontage to a communal street be set back 1.5m and grouped dwellings with a primary frontage to a communal street be further recessed. The deemed-to-comply requirement for the portico entry wall is 1.5m. The deemed-to-comply requirement for the courtyard wall is a maximum height of visually impermeable fencing of 1200mm, a maximum pillar height of 1800mm, and maximum pillar dimensions to be 400mm by 400mm. Fencing is to be visually permeable above 1200mm.

The deemed-to-comply requirement for Street Surveillance includes for at least one opening from a habitable room to face the pedestrian or vehicular approach to the dwelling. Proposed deletion of the western-facing bay window from the primary living area removes what was a clear line of sight to the front door. The replacement of the south-facing bay window from the primary living area further restricts surveillance of the approach to the front door. Notwithstanding that CCTV or a peep hole may improve actual surveillance, in its current configuration, the portico entry introduces opportunities for concealment and entrapment. The perception of surveillance must also be considered when assessing this element.

Where a proposal does not meet the deemed-to-comply provisions of the R-Codes and addresses design principles, the decision-maker is required to exercise judgement to determine the merits of the application. It is the officer's assessment that the proponent has not demonstrated that the design principles for Street Setback, Street Walls and Fences, and Surveillance of the Street have been satisfied.

Local planning policies are not a law or statute and are not to be applied inflexibly. Nonetheless, they provide development standards that guide the delivery of positive planning outcomes and a basis for assessment. When considering Local Planning Policy 1 – Design and Streetscape the manner in which the development addresses the communal street has not been assessed to not be compatible with the adjacent corner lot (12 Hurstford Close),

would compromise views to the abutting unit (14 Hurstford Close), and does not comply with all relevant development standards. As such, the corresponding planning objective to maintain, enhance and encourage, as well as to protect the quality and characteristics of streetscapes is not satisfactorily achieved.

In accordance with Clause 67(2)(x) of the Planning and Development (Local Planning Schemes) Regulations 2015 submissions received on an application must be considered. The nature of the submissions from affected neighbours are found to have planning merit. The principal concern raised pertains to the height and setback of the portico entry and courtyard wall and associated adverse amenity impacts. Perceptions of reduced vehicle manoeuvrability was not found to have planning merit given the proposed development is wholly contained within the subject lot.

The proponent has been engaged by Shire officers on several occasions, to seek further justification and an alternative design response to the interaction with the communal street. Notwithstanding the minor changes submitted on 2 December, the proponent has sought determination of the proposal on its merits.

Development Application DA2022/00028 is recommended for Refusal for the reasons articulated above.

OFFICER RECOMMENDATION/S – ITEM NO 8.1.1

That Council refuses DA2022/00028 for Alterations and Additions to a Grouped Dwelling (Single Bedroom Dwelling) at 15 Hurstford Close, Peppermint Grove in accordance with the submitted plans and application lodged on 03 October 2022 on the following grounds:

- 1. The proposal is inconsistent with the following aims of the Shire of Peppermint Grove Local Planning Scheme no. 4:**
 - a) To maintain and encourage a high-quality environment, preserve the amenity of the Shire and protect the quality and characteristics of its streetscapes.**
 - b) To provide for orderly and proper planning.**
- 2. The proposal is inconsistent with the following objectives of the Residential Zone:**
 - To facilitate and encourage high quality design, built form and streetscape throughout residential areas.**
 - To enhance those characteristics which contributes towards residential amenity, and to avoid those forms of development which have the potential to prejudice the preservation of the high amenity value of a safe and attractive residential environment.**
- 3. The proposal is inconsistent with Part 5 Section 5.2 Streetscape of the R-Codes that provides the following relevant objective:**

- (a) To contribute towards the character of streetscapes including their views and vistas and provide security for occupants and passers-by, a landscape to ensure adequate shade, privacy and open space for occupants, and an attractive setting for the collection of buildings.

4. The Proposal is inconsistent with the Design Principles of Element 5.1.2 – Street Setback:

P2.1 Buildings set back from the street boundaries appropriate distance to ensure they:

- Contribute to, and are consistent with an established streetscape.
- Accommodate site planning requirements such as landscaping.

P2.2 Buildings mass and form that:

- Uses design features to affect the size and scale of the building.
- Minimises the proportion of the façade at ground level taken up by blank walls.
- Positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.

5. The Proposal is inconsistent with the Design Principles of Element 5.2.4 – Street Walls and Fences:

P4 Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3) and enhance streetscape (as per clause 5.1.2).

6. The proposal is inconsistent with the Design Principles of Element 5.2.3 - Street Surveillance:

P3 Buildings designed to provide for surveillance (actual or perceived) between individual dwellings and the street and between common areas and the street, which minimises opportunities for concealment and entrapment.

7. The proposal does not satisfy the intent of Local Planning Policy 1 – Design and Streetscape and, specifically, the planning objective to maintain, enhance and encourage, as well as to protect the quality and characteristics of streetscapes.

Advice Note.

1. Should the owner and/or applicant be aggrieved by this decision, or any of the conditions imposed, there is a right of review under the *Planning and Development Act 2005*. An application for review must be submitted in accordance with Part XIV of the *Planning and Development Act 2005* within 28 days of the date of this decision to: the State Administrative Tribunal, GPO Box U1991, Perth, WA 6845. Further information regarding this right of review is

available on the SAT website www.sat.justice.wa.gov.au or by phoning 9219 3111 or 1300 306 017.

8.1.2 45 Irvine Street, Tennis Court and Ancillary Works Associated with a Single House

URBAN PLANNING

ATTACHMENT DETAILS

Attachment No	Description
Attachment 1	Locality Map
Attachment 2	Development Application Submissions and Drawings
Attachment 3	Tennis Court Fencing North Elevation Mark-up

Voting Requirement	:	Simple
Location / Property Index	:	45 Irvine Street, Peppermint Grove
Application Number	:	DA2022/00030
LPS No 4 Zoning	:	Residential R10
Land Use	:	Single House
Lot Area	:	2,470m ² (current) 803m ² (proposed)
Disclosure of any Interest	:	Nil.
Previous Items	:	Nil.
Applicant	:	Philippa Mowbray Architects
Owner	:	Leigh and Jackie Ferguson
Assessing Officer	:	Mr J Gajic
Authorising Officer	:	Mr J Gajic

PURPOSE OF REPORT

To seek Council determination for a development application for a doubles tennis court and ancillary works associated with a Category 1 Heritage Listed Place that seeks variations to a sufficient fence as prescribed by the Shire's Fencing Local Law 2021, seeks Council discretion to the planning provisions contained in Local Planning Policy 2 – Ecological Urban Design and Sustainability, and relies on the design principle for Site Works contained in the Residential Design Codes of Western Australia (R-Codes).

SUMMARY AND KEY ISSUES

- The subject land is zoned Residential (R10) a Single House is a 'P' use.
- The place is included on the Shire's Heritage List (Category 1).
- The subject land has WAPC subdivision approval to create a second lot to the rear of the original house with frontage to two rights-of-way and a pedestrian access leg off Irvine Street (WAPC reference 16054).
- A condition of subdivision approval is to cede land to the Shire for the purposes of widening the abutting right-of-way to the north and creating a passing bay within the right-of-way to the west.
- Boundary fencing approved under DA2022/00016 is proposed to be varied, court fencing is proposed that departs from the height and specified materials for a sufficient fence as prescribed by Schedule 1 Specifications for a Sufficient Fence on a Residential Lot contained within the Shire's Fencing Local Law 2021 (Local Law).

- In the absence of specific local planning controls for tennis courts, the assessment has referenced standards prescribed by the Victorian Code of Practice - Private Tennis Court Development (Victorian Code of Practice), the Town of Mosman Park Local Planning Policy for Tennis Court Lighting and Fences, and the City of Melville Local Planning Policy for Tennis Courts.
- The court fencing where it abuts sections of both rights-of-way incorporates a retaining wall that relies on the design principles for Site Works contained in the R-Codes.
- The tennis court fencing fronting the northern (rear) right-of-way and adjacent truncation rises as it extends eastwards to a maximum height of 4.1m above natural ground level.
- The application was advertised to one affected neighbour for comment. No submissions were received.

LOCATION

45 Irvine Street, Peppermint Grove

BACKGROUND

The category 1 heritage listed house on this property is known as *Altidore*. Conservation works are ongoing. A building application is yet to be lodged for recently approved building additions constituting a large contemporary design on two levels plus basement. Conditions associated with WAPC subdivision 16054 remain outstanding such that the subject land comprises a single title at this time. Whilst the WAPC approval remains active the Shire must have due regard to the future lot configuration including the requirement to cede land for rights-of-way widening.

The proposed tennis court and ancillary works are wholly contained within the future rear allotment that fronts two rights-of-way and abuts tennis court fencing at 45A Irvine Street. The proposed tennis court should not compromise the clearance of any conditions of subdivision. 'Pinelap' fencing will need to be realigned to cede land for a future passing bay. The proposed tennis court and associated light towers and court fencing would need to be decommissioned to facilitate residential development of the WAPC approved future rear lot.

The proposed court fencing consists of a limestone wall to a maximum height of 2.9m above the natural ground level with 1.2m chain mesh above. To justify Council discretion the proponent asserts that the court fencing matches the design and scale to that constructed at 45A Irvine Street, and the limestone wall component is of a similar scale of walls abutting rights-of-way in the vicinity. Light spill and maximum lux levels from the four proposed lighting towers can be conditionally addressed as part of any subsequent development approval.

The proposed site works are limited to excavation and do not result in any change to the mean natural ground level for the approved future rear allotment. The R-Codes deemed-to-comply requirements for a retaining wall to be set back from lot boundaries are proposed to be varied.

In the absence of planning controls for private tennis courts within the state or local planning policy framework, the Victorian Code of Practice and the Town of Mosman Park Local Planning Policy for Tennis Court Lighting and Fences have been referenced.

CONSULTATION

The proposal was advertised to one affected neighbour at 45A Irvine Street. The affected neighbour has viewed the plans and spoken to the proponent. A submission was not subsequently received. The proposal did not warrant further notification as the variations sought were limited to a sufficient fence as defined by the Shire’s Fencing Local Law.

STRATEGIC IMPLICATIONS

There are no Strategic Plan implications evident at this time.

LOCAL PLANNING POLICY IMPLICATIONS

The proposal complies with relevant Local Planning Policy.

STATUTORY IMPLICATIONS

The statutory timeframe to determine an application that has been advertised is ninety (90) days excluding any period the application is on hold pending the submission of further information. After this date the application is ‘deemed to be refused’ for the purposes of enabling an application for determination to be lodged to the State Administrative Tribunal (SAT). This application is within the statutory timeframe.

The proposal complies with relevant Scheme provisions, R-Codes and Planning Policies as outlined in the table below.

LOCAL PLANNING SCHEME NO. 4	
Scheme Provisions/Modification of R-Codes	Assessment/Comment
Building Height The maximum height of dwellings coded R10 , R12.5, R15 and R20 shall be determined in accordance with the R-Codes for category B areas and not exceed two storeys excluding any basement.	N/A. The proposal does not propose any additional buildings.
Street Setbacks For R10 , R12.5 and R15 coded areas the setback from the front street boundary to any building, including a carport or garage, shall be a minimum of 9 metres from the primary street and 4.5 metres from the secondary street.	N/A. The proposal does not propose any additional buildings.
RESIDENTIAL DESIGN CODES	
Design Principles	Assessment/Comment
Site Area 5.1.1, Table 1 of the R-Codes.	N/A. no new lots or additional dwelling(s) are proposed.

<p>Street and Lot Boundary Setbacks 5.1.2 & 5.1.3, Tables 1, 2a and 2b of the R-Codes.</p>	<p>N/A. no building works are proposed for which setbacks are controlled by clause 26(2) of the local planning scheme or this element of the R-Codes.</p>
<p>Open Space 5.1.4, Table 1 of the R-Codes.</p>	<p>N/A. There is not proposed reduction to the size of the approved area of the subject lot not covered by a building deemed to be open space.</p>
<p>Building Heights 5.1.6, Table 3 Figure Series 7 of the R-Codes.</p>	<p>The deemed-to-comply requirements for building height are varied by clause 26(1) of the local planning scheme and addressed in the Scheme/R-Code Modification table above. The proposal does not rely on Council discretion.</p>
<p>Street Surveillance 5.2.3 of the R-Codes.</p>	<p>N/A. The proposal does not compromise visibility between the original house and approved additions and the street.</p>
<p>Street Walls and Fences 5.2.4, Figure 12 of the R-Codes.</p>	<p>N/A. There are no proposed changes to the front fencing / no front fencing is proposed.</p>
<p>Outdoor Living Areas 5.3.1, Table 1 and Figure 13 of the R-Codes.</p>	<p>N/A. There are no changes to the existing outdoor living area.</p>
<p>Landscaping 5.3.2 of the R-Codes.</p>	<p>Compliant. The deemed-to-comply requirement for landscaping of single houses is one tree occupying a minimum tree planting area of 2m x 2m that is free of impervious surfaces. The landscaping deemed-to-comply requirement is varied by Local Planning Policy 2 – Ecological Urban Design and Sustainability and addressed in the Scheme/Council Policy table below.</p>
<p>Parking 5.3.3 of the R-Codes.</p>	<p>N/A. The proposal does not impact on the existing parking arrangements that complies with the deemed-to-comply requirement.</p>
<p>Site Works 5.3.7, Table 4 of the R-Codes.</p>	<p>The deemed-to-comply requirements is for site works and retaining walls between the street boundary and the street to be 500mm or less, except where necessary to provide for pedestrian, universal and/or vehicular access, drainage works or natural light to a dwelling. Site works and retaining walls within 1m of a lot boundary to be 500mm or less. Site works and retaining walls behind the front setback is to comply with Table 4 of the R-Codes. Table 4 prescribes minimum setbacks that are broadly proportional to the height of the retaining wall. Retention greater than 500mm but less than 1m is proposed as part of boundary walls to both rights-of-way.</p> <p>The design principles are for development that responds to the natural features of the site and require minimal excavation/fill, all finished levels to respect the natural ground level at the boundary of the site, and for retaining walls which result in the effective use of the site to the benefit of residents and that do not detrimentally affect adjoining properties.</p> <p>The proposal seeks to establish the tennis court at a relative level of 13.5m which broadly accords with the existing ground level along the eastern boundary. No fill is required. Excavation increases to a maximum of 1.8m as the court apron extends westwards. A series of retaining walls best illustrated by section drawings BB and CC are proposed to bring the finished levels back up to the ground level along the abutting right-of-way. The site works are considered an appropriate response to the natural levels and will not result in detriment to adjoining properties, stormwater discharge to the abutting right-of-way, impact on</p>

	visual privacy, or increase the mean natural ground level for the purposes of future residential development. The design principles are considered to have been demonstrated.
Stormwater Management 5.3.9 of the R-Codes.	Compliant. The deemed-to-comply requirement is for all water draining from roofs, driveways, communal streets and other impermeable surfaces to be directed to garden areas, sumps or rainwater tanks within the development site where climatic and soil conditions allow for the effective retention of stormwater on-site. Stormwater can be directed to garden areas and onsite containment be a conditional requirement of development approval.
Visual Privacy C5.4.1, Figure 10, 10a, 10b and 10c of the R-Codes.	N/A. No major openings are proposed, and retrospective compliance is not sought such that the deemed-to-comply requirement does not apply.
Solar Access for Adjoining Sites 5.4.2 of the R-Codes.	N/A. There residential zoned land located to the south of the subject site that may otherwise be impacted.

<u>SCHEME/COUNCIL POLICY</u>	
Policy Type	Assessment/Comment
Local Planning Policy 1 – Design and Streetscape	Subject to minor amendments to the court fencing the proposal is consistent with the policy intent for replacement dwellings or significant additions and outbuildings to be responsive to the existing context and contribute positively to the prevailing streetscape.
Local Planning Policy 2 – Ecological Urban Design and Sustainability	Although not consistent with the policy intent to conserve areas of each site for urban green space and ecological purposes, the proposal is consistent with the planning objectives contained in the policy. Whilst the policy aligns with the design principles contained in the R-Codes, deemed-to-comply requirements are varied for landscaping. The policy provisions encourage boundary setback areas to be principally used for landscaping or urban green space associated with a garden or private open space. At least 20% of the total site should be available for viable and functioning ecological green space (deep soil planting). Variations should only be approved where a superior design outcome with no detrimental impact on the ecological quality of the green space on the site can be demonstrated. The subject lot will retain approximately 29.7% deep soil planting areas. Approximately 9.1% of the WAPC approved lot is proposed to be available for viable and functioning ecological green space. There is an opportunity to increase the deep soil planting area to 11.1% whilst not compromising the Department of Sport and Recreation recommended court run-off area. Seven medium trees are shown on the site plan and one existing mature gum tree retained. It is further acknowledged that the tennis court would need to be decommissioned to develop the rear lot for a single house. Future residential development will likely result in the proportion of urban green space for ecological purposes increasing. Subject to the reduction of the western side run-off area to the dashed line on the submitted site plan and relocation of the steps to the paved terrace, approximately 11.1% of the WAPC

	approved lot would be available for deep soil planting. The policy intent would then be sufficiently achieved.
Local Planning Policy 3 – Heritage Places	The proposal does not impact the original house or approved additions, nor do they compromise the policy intent.
Local Planning Policy 4 – Residential Building Heights	N/A. The proposal does not seek to establish a new dwelling or alter the established building height of the current house.
Local Planning Policy 5 – Plot Ratio For R10, R12.5, R15 and R20 Coded areas the maximum plot ratio shall be 0.5	N/A. The proposal does not change the current plot ratio or compromise the ability for future development of the rear lot.
Local Planning Policy 6 – Neighbourhood Consultation on Development	The policy intent is to advise affected landowners adjoining development sites in residential areas before they proceed, and to ensure neighbours are consulted on applications that rely on variations to the R-Codes and are afforded an opportunity to make written submissions on non-compliant aspects of the development. A 14-day advertising period to one affected neighbour has concluded. The consultation letter identified the respective variations sought to a sufficient fence.
Local Planning Policy 8 – Construction Management Plans	The policy requires owners and their contractors to undertake the effective management of approved development. The construction management plan will need to have specific regard to site access, right-of-way usage, erosion and dust control, and the parking of construction vehicles. The submission of a construction management plan will be addressed with a condition of development approval.
Local Planning Policy 9 – Development Bonds	To ensure that any damage to public property caused by building work is fixed properly, the policy allows for the lodgement of a bond based on the value and nature of work being undertaken. The Manager of Infrastructure Services was previously notified of the proposed significant building additions to the heritage house and has documented the condition of assets in the road verge. A single development bond can sufficiently capture all approved works within the subject land and will need to be submitted prior to the commencement of works.
Local Planning Policy 10 – Design Review Panels	N/A. The proposal does not meet the criteria to be considered by a Design Review Panel.
Local Planning Policy 11 – Building on Side and Rear Boundaries	N/A. No buildings or building additions are proposed on any boundary.
Local Planning Policy 12 – Front Fences	N/A. No front fencing is proposed. The court fencing will need to be decommissioned to facilitate residential development expected to establish the right-of-way to the north as a primary street frontage.
Vehicular Crossover Policy and Technical Specification	N/A. No alterations or additional vehicular crossovers are proposed.
Shire of Peppermint Grove Fencing Local Law 2021	The proposal seeks to vary the height of a sufficient fence and use cyclone PVC coated mesh. The use of chain mesh for court fencing is appropriate and is supported.

FINANCIAL IMPLICATIONS

There are no financial implications evident at this time.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications at this time.

SOCIAL IMPLICATIONS

There are no social implications at this time.

OFFICER COMMENT

The proposed tennis court and associated works have been assessed to partially satisfy the pertinent policy objectives of the local planning policy framework and generally align with the relevant construction controls associated with tennis court development.

The R-Codes provide a comprehensive basis for the control of residential development throughout Western Australia. Notwithstanding, tennis courts, lighting towers and dividing fences are not specifically referenced such that alternative controls must also be referenced. Where a proposal does not meet the deemed-to-comply provisions of the R-Codes and addresses design principles, the decision-maker is required to exercise judgement to determine the application. Soil will be retained to a maximum approximate height of 850mm as part of the tennis court boundary fencing on and immediately adjacent to the rights-of-way truncation. The deemed-to-comply requirement for the setback of the retaining wall is proposed to be varied by 250mm from the current lot boundary, and 1m from the future rear lot boundary. All other pertinent deemed-to-comply requirements contained in the R-Codes have been met.

The site works are considered an appropriate response to the natural levels and will not result in detriment to adjoining properties, stormwater discharge to the abutting right-of-way, impact on visual privacy, or increase the mean natural ground level for the purposes of future residential development. The design principles for Site Works are assessed to have been demonstrated.

The Local Law prescribes that on a residential lot dividing or boundary fences be constructed and maintained in accordance with the specifications and requirements of Schedule 1. An application must be made to the Shire for a boundary fence abutting a right-of-way to exceed 1.8m in height or for chain mesh materials to be used. The Local Law does not specifically address tennis court fencing or specify the circumstances in which discretion should be applied. It is the assessing officer's view that the site context warrants, in the absence of local planning controls specific to tennis court fencing, concessions to a sufficient fence as defined by the Local Law. Due regard should be given to the construction materials and permeability as well as the function served by proposed fencing. Contemporary planning practice dictates that upper portions of court fencing are visually permeable and additional height is afforded. It is reasonable that *modest* height concessions be afforded for boundary walls and fencing abutting a right-of-way on the grounds of mitigating traffic noise and dust impacts, and the additional separation to neighbouring properties. The proposed 2.1m high 'pinelap' fencing along the western right-of-way is consistent with typical right-of-wall fencing and is supported. The use of cyclone mesh for the upper portions of the court fencing is also supported.

The height and design of the court fencing fronting the northern (rear) right-of-way and the truncation with the western right-of-way is considered excessive and is not supported in its

current configuration. The solid limestone component of the court fencing rises to 2.9m and cyclone mesh height to 4.1m above natural ground level at its easternmost point. At its easternmost point the court fencing elevates 1.03m above the existing court fencing for 45A Irvine Street.

To justify Council discretion for this section of fencing the proponent has acknowledged parallels between the neighbouring tennis court boundary wall. Excluding chain mesh above, the tennis court fencing at 45A Irvine Street was stated as varying in height between 1.7m and 2.9m. Upon inspection, the tennis court fencing at 45A Irvine Street was found to have been constructed contrary to building approval granted in 2009. Fencing abutting the right-of-way was approved to a total height of 3.5m (1.8m solid limestone plus 1.7m chain mesh) although found to not follow the natural ground level and vary between 1.71m – 2.6m solid limestone plus 1.33m chain mesh. Fencing either side of the court was approved to a total height of 3.5m above court level and offset from lot boundaries. The side fencing was found to be located on the lot boundaries. The constructed height was unable to be confirmed.

Tennis court fencing at 60 Leake Street abutting the same right-of-way was found to be 3.3m high (1.8m solid plus 1.5m chain mesh). Tennis court fencing at 43 Irvine Street abutting the right-of-way to the west of the subject site was measured at its southernmost point to be 4.42m high (2.67m solid plus 1.75m chain mesh). A clear policy position is encouraged to be developed drawing upon contemporary standards to promote uniformity in private tennis court design and usage.

The Victorian Code of Practice is a holistic document that sets out considerations, objectives and performance requirements to be applied to the construction, use and illumination of private tennis courts. The Town of Mosman Park Local Planning Policy for Tennis Court Lighting and Fences seeks to ensure that tennis courts and associated lighting do not adversely affect the amenity of neighbouring properties. The City of Melville Local Planning Policy for Tennis Courts seeks to control the impacts of tennis court developments in or adjacent to residential areas.

For ease of comparison, the following table has been prepared.

Design Element	Victorian Code of Practice	Town of Mosman Park Local Planning Policy	City of Melville Local Planning Policy	Current Proposal
Fence Height (max.)	3m above court level	3.6m above natural ground level	3.05m grass courts and 3.66m hard courts above natural ground level	2.8m – 4.1m above natural ground level
Fence Construction	Solid to 2m visually permeable above	Solid to 1.8m visually permeable above, must be of a maintenance-free material and non-intrusive colours	Solid to 1.2m in the front setback and solid to 1.8m elsewhere.	Solid limestone 1.6m – 2.9m above natural ground level, 1.2m cyclone mesh above
Light Tower Height (max.)	8m above court level, location governed by the ability to control light spill	6.7m above court level, located a minimum distance of 2m from property boundaries	Not specified	6.1m above court level, 1m from the nearest (eastern) lot boundary
Lighting	12 lux (max.) and an average illumination of 10	Single luminaire per pole, 10 lux (max.) measured 1m from	To comply with the relevant Australian Standard, timer to	Not specified

	lux measured at the nearest habitable room window of an adjoining dwelling or 3m from the property boundary (whichever is the nearest)	the property boundary, a shall have an 'auto off' feature, to allow lighting to automatically shut off at 10pm	be installed in the lighting circuit to ensure that all floodlights are extinguished between the hours of 9pm and 7am (may be increased to 10pm)	
Certification	After installation by a qualified lighting engineer	Report from a suitably qualified person submitted to support development application	Management plan and report from a suitably qualified person submitted to support development application	Not provided

It is the planning assessment that a compelling case has not been provided as to why contemporary court fencing standards for the solid limestone component along the northern (rear) right-of-way should be varied. Aesthetics aside, no grounds have been provided as to why the northern section of court fencing cannot be stepped down or otherwise response to the change in natural ground levels. It is recommended that the solid limestone component of the court fencing not exceed 2m and the overall height not exceed 3.5m above natural ground level. Attachment 3 of the report illustrates the solid limestone component at 2m above natural ground level, and continuation of the proposed 1.2m cyclone mesh above this height to broadly match the court fencing at 45A Irvine Street.

It is questionable whether the policy intent of Ecological Urban Design and Sustainability, and the policy provisions pertaining to the principal use of boundary setback areas for landscaping are achieved by the proposed development. It is also acknowledged that the pending subdivision would result in the rear lot having significantly less than 20% of its area being immediately available for deep soil planting.

The planning policy objectives to preserve residential amenity and the characteristics of the streetscape will not be adversely impacted, and the tennis court will enhance the residential amenity of the subject site and is consistent with the lifestyle qualities of the Shire. Local planning policies are not deemed to be a law or statute and must not be applied inflexibly. Subject to the run-off at (western) side of court width being reduced to 3.05m in accordance with the Sports Dimensions Guide June 2016 (Department of Sport and Recreation) Council discretion should be applied. It is acknowledged that steps to the paved terrace may need to be relocated as a result. Setting aside the potential relocation of steps to the paved terrace, the deep soil planting area for the rear lot would be increased by approximately 16m² to 11.1%.

The recommended conditions of development approval will ensure that the court fencing fronting the northern (rear) right-of-way will not set an undesirable precedent and is consistent with contemporary standards, that alignment with the policy provisions of Local Planning Policy 2 – Ecological Urban Design and Sustainability is better achieved, that the construction phase can be managed to not adversely impact on the amenity of the area, that stormwater and light spill will be contained on site, and that Shire assets can be protected,

Development Application DA2022/00030 is recommended to be modified and Approval granted for the reasons articulated above.

OFFICER RECOMMENDATION/S – ITEM NO 8.1.2

That Council approves DA2022/00030 for a Tennis Court and Ancillary Works at 45 Irvine Street, Peppermint Grove in accordance with the submitted plans and application lodged on 31 October 2022 subject to the following conditions:

1. The approved building works and layout as identified on the development plans shall not be altered without the prior written consent of the CEO.
2. Prior to this permit having force or effect amended plans generally in accordance with the submitted plans date 31 October 2022 shall be submitted to the satisfaction of the CEO and endorsed. The amended plans shall have further regard to the following:
 - a) The tennis court fencing (inclusive of cyclone mesh) shall not exceed 3.6m at any point above the natural ground level.
 - b) The solid limestone component of the tennis court fencing shall not exceed 2.1m at any point above the natural ground level.
 - c) The reduction of the width of the run-off at (western) side of court being reduced to 3.05m in accordance with the Sports Dimensions Guide June 2016 (Department of Sport and Recreation).

Once approved, the amended plans shall form part of this permit.

3. Prior to this permit having force or effect a lighting report from a suitably qualified person must be submitted to the satisfaction of the CEO. The report shall demonstrate that the lighting levels will not exceed a maximum of 12 lux and an average illumination of 10 lux measured 1m from the property boundaries.

Once approved, the lighting report shall form part of this permit and the lighting levels shall not be varied without the prior written consent of the CEO.

4. Prior to this permit having force or effect the applicant shall submit for approval and to the satisfaction of the CEO a Construction Management Plan (CMP) binding all contractors working on the site. Unless otherwise approved in writing by the Shire, all management and mitigation measures contained within the CMP shall be adhered with at all times.

Once approved, the CMP shall form part of this permit.

5. In accordance with the Shire of Peppermint Grove Local Planning Policy 9 – Development Bonds a development bond to the satisfaction of the CEO must be submitted to the Shire prior to the issuance of a Building Permit to ensure any damage to public property caused by building works is rectified and the satisfactory completion of the development.
6. Prior to operation of the lighting towers evidence must be provided to the satisfaction of the CEO demonstrating installation of a timer in the lighting circuit

ensuring that all floodlights are extinguished between the hours of 10pm and 7am.

The tennis court lighting must not be operated between the hours of 10pm and 7am without the prior written consent of the CEO.

7. The mature 'existing gum tree' nominated to be retained must be tagged and suitably isolated to protect the root zone during the construction period.

In the event that the nominated tree is critically damaged or destroyed it must be replaced to the satisfaction of the CEO.

8. Unless otherwise varied by a permit under the Activities in Thoroughfares and Public Places and Trading Local Law 2021 or an approved CMP, all construction materials associated with the approved works shall be wholly stored within the subject land.
9. The construction works shall only occur between the hours of 7.00am and 7.00pm, Monday to Saturday, and not at all on Sunday or Public Holidays. Any variation to the above hours must be identified in an approved Construction Management Plan or, the prior written consent of the CEO otherwise obtained.
10. The site shall be securely fenced during the construction stage to prevent the entry of unauthorised persons.
11. Stormwater run-off from the approved development shall be retained on site.
12. This approval shall remain current for development to substantially commence within two years of the date of issue of this notice. All works associated with this approval (once commenced) shall be completed before the end of the third year from the date of issue of this notice.

Advice Notes.

1. In approving this application Council has assessed the proposal against Local Planning Scheme No. 4, the Fencing Local Laws 2021, Local Planning Policies and the design principles of the Residential Design Codes of Western Australia and has and has exercised its discretion in relation to the following matters:
 - Boundary fence height and materials varied from that for a sufficient fence;
 - Retaining wall set back to the abutting (western) right-of-way varied; and
 - Percentage of the site available for deep soil planting varied.
2. The development and use shall at all times comply with the provisions of the Shire of Peppermint Grove Town Planning Scheme, the *Building Code of Australia*, the *Environment Protection Act 1986* and any other relevant Acts, Regulations, Local Laws or Council policies.
3. No building works are to be undertaken prior to the issue of a Building Permit. Your Building Application plan set must align with the plans approved as part of

any Development Approval granted by the Shire in relation to the building the subject of this Permit.

4. Building Applications will be placed on hold unless the plan set include duplicates of those endorsed as part of any corresponding Development Approval, or the applicant certifies that the plan set is consistent with those endorsed as part of any corresponding Development Approval or demonstrates to the satisfaction of the Shire that any variations are trivial.
5. In respect to Development Bonds, the Shire requires the applicant to arrange for the inspection of all Shire infrastructure including the street verge adjacent to the property post completion to confirm the satisfactory completion of works and determine any necessary remediation of impacts on public infrastructure and lands. Should any necessary remediation works not be satisfactorily completed by the proponent in a reasonable time frame, funds from the bond may be used to satisfactorily complete the works. Project management and/or administrative fees may also apply.
6. The Shire does not warrant or exempt the applicant from civil claim arising from damage to private property and associated with the approved works.
7. The prior written approval of CEO is required for the temporary closure of any footpath, road or laneway. Infrastructure Services can be contacted on 9286 8600 to discuss traffic management
8. The Australian Standard 4970-2009 outlines the recommended approach for retaining and protecting trees within development sites.
9. The Proponent is responsible for ensuring all contractors adhere to the construction hours. In the event of enforcement action being undertaken, infringement notices will be issued to the Proponent.
10. It is the responsibility of the applicant to search the title of the property to ascertain the presence of any easements that in any case must not be built upon without the prior consent of the affected party.
11. Should the owner and/or applicant be aggrieved by this decision, or any of the conditions imposed, there is a right of review under the *Planning and Development Act 2005*. An application for review must be submitted in accordance with Part XIV of the *Planning and Development Act 2005* within 28 days of the date of this decision to: the State Administrative Tribunal, GPO Box U1991, Perth, WA 6845. Further information regarding this right of review is available on the SAT website www.sat.justice.wa.gov.au or by phoning 9219 3111 or 1300 306 017.

8.1.3 36 (Lot 50) McNeil Street, Peppermint Grove – Local Heritage List Status

URBAN PLANNING

ATTACHMENT DETAILS

Attachment No	Description
Attachment 1	Local Heritage Survey 2021 (Data Sheet)
Attachment 2	Griffiths Architect Heritage Report 2017
Attachment 3	Woburn Heritage Report 2019
Attachment 4	C Fermanis Submission dated 26 April 2018
Attachment 5	C Fermanis Correspondence dated 3 November 2019

Application Number	:	N/A
LPS No 4 Zoning	:	Residential R10
Land Use	:	Single House
Lot Area	:	979m ²
Disclosure of Interest	:	Nil.
Previous Items	:	OCM 18 April 2017 Item 8.1.5 OCM 25 July 2017 Item 8.1.3 OCM 19 December 2017 Item 8.1.3 OCM 23 October 2018 Item 8.1.1 OCM 26 November 2019 Item 8.1.4
Applicant	:	The Shire of Peppermint Grove
Owner	:	C Fermanis
Assessing Officer	:	Mr M. Stocco/ Mr J. Gajic
Authorising Officer	:	Mr J. Gajic

PURPOSE OF REPORT

To seek Council determination whether lot 50, no. 36 McNeil Street (the place) should be retained on the Shire's Heritage List, and to update the Council of ongoing actions to ensure alignment between Shire records and that held by the State Heritage Office.

SUMMARY AND KEY ISSUES

- Clause 8 of Schedule 2 of the Planning and Development (Local Planning Scheme) Regulations 2015 requires the Shire to establish and maintain a Heritage List.
- Places deemed to be of heritage importance must be included on a local government Heritage List or on the State Register of Heritage Places to be afforded heritage protection under the Planning and Development Act 2005 or the Heritage Act 2018 (respectively).
- The Shire's heritage records have been subject to a number of reviews and reconsiderations over the past six years.
- Inconsistencies have been identified between the Heritage List and mapping on the Shire's website and the inHerit database held by the State Heritage Office.

- The place was transferred from the Municipal Heritage Inventory to the Heritage List. Its category 2 heritage status was twice affirmed by Council in 2017 and its status was again reconsidered in 2019 and deferred pending further consideration.
- The place is not recorded on the Heritage List uploaded to the Shire’s website contrary to Council resolutions.
- The place is recorded on the Local Heritage Survey 2021 as a category 2 place.
- The inHerit database held by the State Heritage Office records the place (no. 03982) as being adopted on the Municipal Inventory on 19 July 1999 as a category 2 place and being adopted on the Heritage List on 23 October 2018. The Department of Planning Lands and Heritage PlanWA map viewer reflects the State Heritage Office records.
- 36 McNeil Street is the only place at this time for which heritage listing is being challenged.
- A Building Application (BA2022/00047) has been lodged to re-roof the place with alternative materials. The heritage status of the place will determine whether Development Approval must also be obtained.

LOCATION

36 McNeil Street, Peppermint Grove

BACKGROUND

The Municipal Heritage Inventory review that commenced in 2017 ultimately informed the Local Heritage Survey 2021 (2021 Survey). The Survey was required to satisfy the manner prescribed by the Planning and Development Regulations 2015 (Deemed Provisions) in which the Council needed to consider and address the merits of each property proposed to be placed in the Heritage List. For properties where the consultants have recommended further investigations, Council may form its own view that those properties do meet the criteria for entry in the Heritage List, but if so, it is recommended that the Shire still engage the heritage consultants to undertake the further investigations

There are 169 places on the 2021 Survey that includes records of now demolished buildings. The 2021 Survey classified places with a category identifier, typically 1 or 2. Twenty-two places are listed as category A. Categories dictate the importance of the place and corresponding level of protection.

Category 1 places, which due to their character, create the atmosphere of Peppermint Grove. These places should be retained but may be altered and extended in a manner which is both discrete and sympathetic to the original fabric and character so that a significant proportion of the original building is retained and from the street the additions are seen to be a continuation of the same fabric and character.

Category 2 places, also contribute to the character and atmosphere of Peppermint Grove. These places may be altered or extended in a manner which recognises and retains some original features and retains the heritage contribution of the building to the streetscape.

Category 3 places have some/moderate significance and are very important to the heritage of a locality. Category 3 places may be included in a heritage list. The Shire does not have any places listed as category 3 in the 2021 Survey.

Category 4 places have little significance and, whilst contributing to the heritage of a locality, are below the threshold for the heritage list. The Shire does not have any places listed as category 4 in the 2021 Survey.

Category A places have been significantly altered or demolished and as such, are no longer heritage listed. The record of their existence is to be retained and included in a Local Heritage Survey.

The Heritage List as uploaded to the shire's website contains 146 places. It is noted that 36 McNeil Street is currently not a place on this published list.

Heritage Listing of 36 McNeil Street

The State Heritage Office inHerit database identifies 36 McNeil Street (place 03982) as being adopted on the Municipal Inventory on 19 July 1999 as category 2 and adopted on the Heritage List on 23 October 2018.

In conjunction with the Heritage List, the Municipal Heritage Inventory 1998 was reviewed. Concerns were raised regarding the format and accuracy of the Local Heritage Inventory. Heritage architects were engaged by the Shire at this time to review submissions and to provide recommendations prior to the adoption of the Heritage List. The Municipal Heritage Inventory 1998 was subsequently renamed the Local Heritage Inventory 1999 and the Heritage List known thereafter as the 1999 Heritage List.

Owners of heritage listed properties in Peppermint Grove received a letter in 2017 advising of the preparation of an updated Heritage List and inviting comment, including information which would inform decisions about heritage significance. Subsequent to consideration of submissions received, a Heritage List was prepared.

The owner of 36 McNeil Street objected to inclusion of the place on the Heritage List on the grounds that the heritage value had diminished over time due to deterioration, and newer additions which altered the original built form. Council nonetheless resolved in 2017 and 2018 to retain 36 McNeil Street on the Heritage List.

Woburn was engaged in 2019 by the landowner to support the objection. The Woburn's report found the association with Sir Norman Brearley had been weakened by subsequent significant alterations to the fabric of the place and did not support inclusion on the Heritage List.

Council subsequently resolved at the 26 November 2019 Ordinary Council Meeting to defer determination of 36 McNeil Street pending further consideration. At this time the place remained on the Heritage List.

There have been no additional heritage reports or information provided either in support of retaining the listing or removing the place from the Heritage List.

Due to ambiguity surrounding the status of the listing and the time that has elapsed from the last resolution, Council is requested to determine whether the place should be retained or removed from the Heritage List.

36 McNeil Street was listed as a category 2 place, known for its link to notable Western Australian figure Sir Norman Brearley who also acquired lot 9 No. 6 The Esplanade that was located at the time on the same parent lot. 6 The Esplanade was included on Municipal Heritage Inventory category 2 place but was not included on the 1999 Heritage List or on the updated Heritage List informed by the 2021 Survey. 6 The Esplanade was inadvertently placed on the Shire’s Municipal Inventory due to ambiguity as a result of the subdivision of land.

A chronological order of Council meeting resolutions follows.

Ordinary Council Meeting	Council Consideration and Resolution
18 April 2017	<p>For Council to consider the adoption of a heritage list based on the Municipal Inventory following the completion of the 21-day public consultation period.</p> <ul style="list-style-type: none"> • Adoption of the Heritage List under LPS 4 was advertised for a 21-day period in March 2017 to involved landowners. • Adoption of a Heritage List is recommended. <p>Council authorised the re-evaluation of 36 McNeil Street prior to the adoption of the Heritage List.</p>
25 July 2017	<p>For Council to consider the heritage status of 36 McNeil Street, considering the re-assessment of the heritage report for this property.</p> <ul style="list-style-type: none"> • The place was entered on the Municipal Heritage Inventory 1998 (now known as the Local Heritage Inventory 1999). • Submission made by owners of both 36 McNeil Street and 6 The Esplanade that cast doubt on some of the information contained in the Heritage Inventory data sheets. • Research carried out by Phil Griffiths confirmed inaccuracies in the data sheets. • Shire officers recommended deletion from the Heritage List and Municipal Inventory. <p>Council resolved to retain the heritage property on the Heritage List and Municipal Inventory noting that <i>Council would have no objection to the demolition of the house subject to the replacement house recognises, by its position, the precinct and to ensure an archival record is made prior to demolition in accord with Council Heritage Policy (LPP3).</i></p>
19 December 2017	<p>For Council to re-consider the heritage status of 36 McNeil Street, following a request made by the landowners after the re-assessment in July 2017.</p> <ul style="list-style-type: none"> • Phil Griffiths recommendation to move the place from category 2 to category 3 and remove protection from demolition was considered. • Council supported its retention as category 2 to ensure that any replacement house would recognise by its position the location of the original dwelling and that an archival record could be made prior to demolition.

	<p>Council resolved to retain the heritage property on the Heritage List and Municipal Inventory on the grounds that <i>due to the historical link with Sir Norman Brearley and its eclectic Inter-War Mediterranean style.</i></p>
<p>26 November 2019</p>	<p>For Council to adopt the remainder of places into the Shire’s Heritage list as required by clause 8(1) of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.</p> <ul style="list-style-type: none"> • The Shire wrote to 144 properties (owners and occupiers) in April 2018 regarding the inclusion of the property on the Heritage List. • 23 October 2018, Council adopted 96 properties into the heritage list. • In October of 2018 the Shire listed a further 27 properties where heritage status was supported, however the material facts of the Municipal Inventory description cited in the listing were challenged, but the heritage merits of listing was not. • Council considered the remaining owner objected properties by obtaining an independent assessment of the proposed listings and the merits of any submissions received. The Shire engaged several heritage consultants to independently review the submissions received before making a recommendation to Council. • Legal advice was obtained as to the correct manner with regard to the Planning and Development Regulations 2015 (Deemed Provisions) in which the Council needs to consider and address the merits of each property proposed to be placed in the Heritage List. <p>Council resolved to defer consideration of the current listing of 36 McNeil Street pending further information. There was no stipulation as to what additional information was required to further inform the decision, or the period of deferral.</p>

Currency and Consistency of Heritage Information

It is critical that the Heritage List accurately reflects the heritage status of places and that heritage status and associated information is consistent between state government data bases and the Shire’s website. The number of heritage reviews and reconsiderations over the past six years has resulted in often conflicting and superseded information being referenced.

Heritage status is recorded when issuing Orders and Requisitions and can affect the ability to development land and may inform property valuation. The Shire may also be liable for providing incorrect written advice. 36 McNeil Street is a casing point. Written advice was provided that the place was on the Heritage List and subsequently retracted. It is the current view of Development Services that the Council resolution on 26 November 2019 did not remove the place from the Heritage List and the Heritage List on the Shire’s website should be corrected accordingly.

It is recommended that Development Services continue to review the alignment of information on the Shire’s website with that on the State Heritage Office’s inHerit database.

A request has been made to become a custodian for inHerit to directly administer that database.

CONSULTATION

The owner of the place has been notified that Council will be reviewing the November 2019 resolution for the property’s heritage listing and that determination to retain the place on the Heritage List will require lodgement of a Development Application. The owner has been provided an opportunity to make a deputation at the Council meeting or make a submission prior to Council which will be considered and presented to the Councillors.

The State Heritage Office has been consulted to confirm the most effective pathway forward to ensure consistency between held records. It was acknowledged by the State Heritage Office that their mapping contains anomalies and is being reviewed.

STRATEGIC IMPLICATIONS

There are no Strategic Plan implications evident at this time.

LOCAL PLANNING POLICY IMPLICATIONS

SCHEME/COUNCIL POLICY	
Policy Type	Assessment/Comment
Local Planning Policy 3 – Heritage Places	<p>The policy recognises the Heritage List to be the primary vehicle for the identification and protection of properties with heritage value. Buildings are only to be included on the Heritage List after undergoing a procedure of notification and receipt of submissions from owners and occupiers. To this effect, the Shire has undertaken consultation and received a number of submissions from the owner of the place. A heritage report from Woburn was submitted to validate their submission dated 26 April 2018. The Shire has also commissioned a heritage report from Griffith Architects to assess the data sheet for the place contained in the Municipal Heritage Inventory 1999.</p> <p>Griffiths Architect Heritage Report 2017: the Shire engaged a heritage architect to provide advice about two properties located on the parent lot being 6 The Esplanade and 36 McNeil Street. The report agreed that the association with Sir Norman Brearley was notable, though his days pioneering were at an end. The report found the underlying house has a degree of aesthetic value, but that the alterations at first floor level are intrusive. The report concluded that; <i>given the dubious aesthetic values and low strength of historic values would suggest that retention of this property in category 2 is not warranted and we would suggest that category 3 would be a more suitable management category. An eventual redevelopment of this site might include some sort of commemoration of the associations with these two important West Australian figures.</i></p> <p>Woburn Heritage Report 2019: subsequent to Council notification in April 2018 regarding the intent to retain the place on the Heritage List, the landowner for 36 McNeil Street engaged Woburn to review the claims made by the landowner in their submission dated 26 April 2018 and review the Municipal Heritage inventory data sheet. The report</p>

	recommended the statement of significance in the Local Heritage Survey data sheet be amended to read that <i>Significant alterations to the fabric of the place have subsequently weakened the association of Brearley with the place.</i> The assessment also corroborated claims made by the submission that the aesthetic and historical values had been diminished. The report concluded that the place not be included on the Heritage List.
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STATUTORY IMPLICATIONS

There are no Statutory implications evident at this time as the Council has viewed previous submissions and heritage consultant's report in accordance with legislative requirements.

FINANCIAL IMPLICATIONS

There are no financial implications evident at this time.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications at this time.

SOCIAL IMPLICATIONS

There are no social implications at this time.

OFFICER COMMENT

It is assumed that deferral of the decision to remove the place from the list pending further information for any substantive length of time was not envisaged, or that the resolution was poorly worded and actually sought to remove the place from the list pending further information. Shire records do not identify the subsequent commissioning or sourcing of additional information.

The two heritage reports before Council are both prepared by suitably qualified heritage consultants and should be, prima facie, given equal weight. The reports are in agreeance that the historical significance of the place through its association with Sir Norman Brearley and the Fairbairn family has been diminished through subsequent alterations to the fabric of the original dwelling. It cannot be said that the place has been altered and extended in a manner which is both discrete and sympathetic to the original fabric and character such that the additions are seen to be a continuation of the same fabric and character. As such, it is the officer's view and that heritage consultants that the criteria for a Category 2 place has not been met.

The Phil Griffiths report ultimately concluded that:

Given the values as stated, we find it difficult to assess this place as being any more than a management Category 3, for its historic associations.

Category 3 places may be included on a heritage list; however, it is not mandated. What remains unanswered by Phil Griffiths is whether the place should remain on the Heritage List.

In light of the 25 July 2017 Council resolution that *Council would have no objection to the demolition of the house subject to the replacement house recognises, by its position, the precinct...* it could be reasonably concluded that limiting the redevelopment of the subject site is the primary objective for retaining the place on the Heritage List. This is a point that the landowner raised in their correspondence dated 20 August 2017 as a ground for removing the place from the Heritage List.

It is the officer's view that subsequent redevelopment of the site can be suitably controlled through the planning policy framework. There is no logical argument why the application of local planning scheme provisions, suite of local planning policies, and the deemed-to-comply provisions contained in the Residential Design Codes of Western Australia are inadequate to ensure future development of the place positively contributes to the streetscape.

The Council have a number of options before it, including:

1. Commission a further independent heritage report, or seek the owner to commission a further heritage report, prior to undertaking a fourth review of the heritage listing.
2. Resolve to remove 36 McNeil Street from the Heritage List subject to a Section 70A notification under the Transfer of Land Act 1893 requiring any replacement dwelling to recognise by its position the precinct and to ensure an archival record is made prior to demolition.
3. Resolve to retain 36 McNeil Street on the Heritage List on the grounds previously provided.
4. Resolve to remove 36 McNeil Street from the Heritage Listed.

Given the Council deferred consideration of removing the place from the Heritage List in November 2019 and did not specify what, if any, additional materials were required to inform further consideration further deferral is not recommended. In all likelihood, an additional heritage report commissioned by the owner would reiterate previous findings by Woburn.

A Section 70A notification requiring any replacement dwelling to respect the building position would hold greater weight than a reference in the Council minutes. Nonetheless such a notification would be too subjective to effectively enforce. Any subsequent planning refusal for demolition whilst listed, or development once removed from the Heritage List would remain open to review at the State Administrative Tribunal.

It is the officer's view that the association of the place with Sir Norman Brearley and the Fairbairn family is in itself insufficient grounds for retention on the Heritage List. It is further the officer's view that the heritage reports and data sheet acknowledges the architectural merit has been diminished. The architectural merit is, in itself, insufficient grounds for retention on the Heritage List.

Subject to the owner providing an archival record removal from the Heritage List is recommended.

Development Services will continue to audit the accuracy of the Shire’s heritage information and ensure that heritage status and associated information is consistent between state government data bases and the Shire’s website

OFFICER RECOMMENDATION/S – ITEM NO 8.1.3

That Council:

- 1. Removes Lot 50, No.36 McNeil Street from the Heritage List.**
- 2. Reclassifies the place as Category 3 and updates the data sheet in the Local Heritage Survey 2021 (previously the Local Heritage Inventory) to reflect the findings of the Phil Griffith assessment dated 25 May 2017 and to have regard to the Woburn report dated 24 September 2019, as follows:**

Aesthetic: *The residence is an eclectic rendering of the Inter-War Mediterranean style. The underlying house has a degree of aesthetic value, however the alterations at first floor level are intrusive.*

Technical: *The Inter-War Mediterranean style of the original property is difficult to discern due to the extent of adaptation which has occurred.*

Statement of Significance: *The place has significance for its historic associations with the air mail service provider Sir Norman Brearley and some aesthetic value as an example of an eclectic version of the Inter-War Mediterranean style.*

References: *Heritage advice provided by Phil Griffiths 25/05/17*

8.2 MANAGER INFRASTRUCTURE

INFRASTRUCTURE

NIL

8.3 MANAGER CORPORATE AND COMMUNITY SERVICES

CORPORATE

8.3.1 List of Accounts Paid- November 2022

ATTACHMENT DETAILS

Attachment No	Description
Attachment	Accounts Paid – November 2022

Voting Requirement	:	Simple Majority
Subject Index	:	Financial Management
Disclosure of Interest	:	Nil
Responsible Officer	:	Michael Costarella, Manager Corporate and Community Services

PURPOSE OF REPORT

The purpose of this report is to advise the details of all cheques drawn, credit card and electronic funds payments, BPay and direct debits since the last report.

SUMMARY AND KEY ISSUES

Significant payments in November 2022 included the following:

- LGIS Property Scheme Protection Premium
- ATO Pay as you go Tax
- Superannuation
- WMRC

BACKGROUND

The Attachment lists detail all payments made in November 2022. The following summaries credit card payments, electronic fund transfers and direct debits included in the list presented for information.

PAYMENT TYPE	NUMBER SERIES	AMOUNT
EFT	494-497	\$201,381.37
Direct Debits	0369-0377	\$ 9,037.41
BPay	286-291	\$ 14,480.06
Credit Cards – October 2022		\$ 9,441.65
TOTAL		\$234,340.49

CONSULTATION

There has been no specific consultation undertaken in respect to this matter.

STRATEGIC IMPLICATIONS

There are no Strategic Plan implications evident at this time.

POLICY IMPLICATIONS

There are no significant policy implications evident at this time.

STATUTORY IMPLICATIONS

Accounts are paid during the month in accordance with Delegation 2 “Payments from the Municipal Fund and the Trust Fund.” Power to delegate to the CEO is contained in Section 5.42 of the Local Government Act 1995.

FINANCIAL IMPLICATIONS

The payments processed by the Shire relate to expenditure approved in the 2022/23 Adopted Budget.

COMMENT

The list of Accounts paid are provided to Council for information purposes and in accordance with the delegation to the CEO.

OFFICER RECOMMENDATION/S – ITEM NO. 8.3.1

That Council receive the list of payment of accounts by: -

- 1. Electronic funds transfers, cheque and direct debit payments for the month of November 2022, totalling \$ 224,898.84**
- 2. Credit card payments for October 2022 totalling \$ 9,441.65**

8.3.2 Financial Management Statements for the period ended the 30 November 2022

Due to the early closing of the Agenda, the Financial Management report for the period ended the 30 November 2022 will be presented to the OCM to be held on Tuesday 20th December 2022

8.4 CEO MANAGEMENT/GOVERNANCE/POLICY

8.4.1 Library Management System - Western Suburbs Library Group

ATTACHMENT DETAILS

Attachment No	Description
Attachment 1	Letter from Town of Claremont to CIVICA Pty Ltd
Attachment 2	Contract for The Grove Library

Voting Requirement	:	Absolute Majority
Subject Index	:	Financial Management
Disclosure of Interest	:	Nil
Responsible Officer	:	Michael Costarella, Manager Corporate & Community Service

PURPOSE OF REPORT

The Western Suburbs Library Group (WSLG) recently advertised for Tender for the provision of a Library Management System. The Group consists of the Shire of Peppermint Grove (which also representing Town of Mosman Park and Town of Cottesloe), City of Subiaco, City of Nedlands and Town of Claremont.

Council is requested to consider the awarding of the Tender for the Library Management System for the Grove Library.

SUMMARY AND KEY ISSUES

- The contract for the Library Management System recently expired and tenders were advertised for a new contract.
- At the close of the tender period only one tender was submitted, and this has been accepted in principle by the Group.
- The contract period commences in December 2022 and expires in December 2029-7 year term.

BACKGROUND

The Library Management System has been operating in the Grove Library using software (Spydus) provided by CIVICA since 2016. The contract expired in December 2021 with a further extension for a 1-year period ending in December 2022.

Spydus software is used by all other members of the WSLG and is considered the best option for the libraries.

CONSULTATION

Tender was called by the Town of Claremont on behalf of the WSLG and at the closing of the advertising period, the Town only received one tender from CIVICA, the current software supplier.

STRATEGIC IMPLICATIONS

There are no strategic implications evident at this time.

POLICY IMPLICATIONS

Purchase and Tender Policy 2.8 provides details of the procurement requirements. Currently it does not include the delegation to the CEO to accept Tenders.

STATUTORY IMPLICATIONS

Local Government Act 1995- Clause 3.57
Local Government (Function & General) Regulations

FINANCIAL IMPLICATIONS

The tender amount is included in the 2022/23 Library budget

COMMENT

The Shire is responsible for the procurement of the Library Management system for the Shire of Peppermint Grove and the contract would need to be endorsed by Council on behalf of Town of Cottesloe and Town of Mosman Park (partners).

OFFICER RECOMMENDATION/S – ITEM NO. 8.4.1

That Council

- 1. Endorse the contract for the Library Management System as submitted by CIVICA Pty Ltd on behalf of Shire of Peppermint Grove, Town of Mosman and Town of Cottesloe**
- 2. Authorises the CEO to sign the contract for the provision of the Library Management System for the period ended December 2029.**

8.4.2 WA Local Government Association – Best Practice Review Governance review – further Information

ATTACHMENT DETAILS

Attachment No	Description
Attachment 1	WALGA Model Options

Voting Requirement	:	Simple
Subject Index	:	WALGA
Disclosure of Interest	:	Nil
Responsible Officer	:	Don Burnett, CEO

PURPOSE OF REPORT

At the November Council meeting, a report was presented on the WA Local Government Association (WALGA) Governance review, with Council noting the review that WALGA was undertaking. The report omitted the options presented by WALGA for Council to consider and rank. This report presents the options for Council and makes a recommendation.

SUMMARY AND KEY ISSUES

- Council considered a report to the November meeting regarding the governance review being undertaken by WALGA.
- The officers report did not cover the options being put forward and WALGA have indicated that they would like to be advised of Council's preferred options.

BACKGROUND

The report presented to the November Council meeting did not present to Council the 5 options WALGA had put forward for consideration. The attached paper outlines the 5 options

- 1 Two tier model, existing zones
- 2 Board, regional bodies
- 3 Board, amalgamated zones
- 4 Member elected board
- 5 Current model

CONSULTATION

There has been no specific consultation in respect to this matter.

STRATEGIC IMPLICATIONS

There are no strategic implications evident at this time.

POLICY IMPLICATIONS

There are no significant policy implications at this time.

STATUTORY IMPLICATIONS

There are no significant statutory implications at this time.

FINANCIAL IMPLICATIONS

There are no significant financial implications at this time.

COMMENT

Option 1 retains the current Zone structure as the Policy Council, which then elects the Board. The Board will be made up of 8 members (4 metro and 4 country) elected from the Policy Council and then 3 independent members. The President is elected by the Board.

Option 2 has the same Board Structure as option 1, but has Regional Bodies established in lieu of the current Zones. The restructuring of Zones to Regional bodies could be problematic and may dilute the current input by members.

Option 3 would have a Board of 15, with 12 elected by the Zones (6 from country and 6 from metro). President elected by the Board and 2 independent members. The structure of the Country Zones would require redrawing of the Zone boundaries, but no change to Metro Zones.

Option 4 would have a Board of 11, 8 elected via direct election from each local government. Three independent members and President elected by the Board. No Zone representation with Regional Groups set up for policy input into WALGA Teams.

Option 5 retains the current model.

In considering the options, the requirements of the Shire need to be considered. If Councillors consider that it is important that each local government has at least one representative on a Zone/Regional basis for consideration of the Shire's position on policy issues, then option 1, 3 and 5 will achieve this. Option 1 provides for a streamlining of the decision-making process with creation of a Board, but also retains the existing Zone structure allowing for each local government to have input on policies etc. Option 3 would require a restructuring of the Zones, which could derail the restructuring process and it is seen as having limited advantage in undertaking this restructure.

The Officer recommendation for ranking of the options is

Preferred option 1, then in order 3, 5, 2 and 4

OFFICER RECOMMENDATION/S – ITEM NO. 8.4.2

That Council advises WALGA that the preferred option is Option 1, with the remaining options in (most preferred to least preferred) 3, 5, 2 and 4.

8.4.3 Matters for Information and Noting

ATTACHMENT DETAILS

<u>Attachment</u>	<u>Description</u>
Attachment refers to	Building/Planning Statistics Infringements Issued Library Statistics Recycling Statistics Library Management Committee 29th November 2022 Minutes

Voting Requirement	:	Simple Majority
Subject Index	:	Matters for Information November 2022
Disclosure of Interest	:	Nil
Responsible Officer	:	CEO

PURPOSE OF REPORT

The Shire of Peppermint Grove regularly receives and produces information for receipt by the Elected Members. The purpose of this item is to keep Elected Members informed on items for information received by the Shire.

The Matters of information report will be presented at each Council meeting and will provide an update on a number of areas of the Shire's operations and provide information and correspondence of interest to Elected Members.

It is intended that the following information is provided on a regular basis, either monthly or quarterly, noting some of this data is still to be collected in a presentable format.

- Building Permits Issued
- Demolition permits issued
- Seal register advising of when the Shire seal has been applied
- Infringements for parking and dogs etc
- Recycling Statistics
- Library Statistics
- Minutes of the Library Management Committee

SUMMARY AND KEY ISSUES

The following reports are presented to Council 20th December 2022

- Building/Planning statistics
- Recycling Statistics
- Infringements
- Library Statistics
- Minutes of the Library Management Group of the 29th November 2022.

The seal of the Shire of Peppermint Grove was applied to the following documents:

1. Surrender of Lease and New Lease, 1 Gibney Street, Cottesloe
2. Cottesloe, Peppermint Grove and Mosman Park Library and Community Learning Centre Management Agreement.

Minutes from Library Management Committee

The Library Management Committee minutes from the 29th November meeting are attached and include:

Library Management Agreement

All three member Councils have agreed to the new management agreement being in place from 1 January 2023. There will be no operational changes to the management of the library. The Governance structure will change by replacing the name “Library Management Committee” with “Library Management Group” from the 1st January 2023.

Coffee Grove

The lease for the Coffee Grove will end in June 2023, and the Shire will meet with the current proprietor regarding a new lease.

Digital Parking and Events Sign

The Town of Cottesloe, Town of Mosman Park, and the Shire of Peppermint Grove considered the financial contributions associated with obtaining a Digital Parking and Events Sign. The Committee recommended that the Digital Parking and Events sign contributions by the Towns of Mosman Park and Cottesloe is included in each Council’s midyear budget review for consideration.

CONSULTATION

No community consultation was considered necessary in relation to the recommendation of this report.

OFFICER RECOMMENDATION/S – ITEM NO 8.4.3

That Council receives the information in this report.

8.5 COMMITTEE REPORTS

Reports are subject to consideration at the Audit and Risk Committee meeting on 13th December 2022.

8.5.1 2021/22 Audit Management Letter – Office of the Auditor General & Dry Kirkness

MANAGEMENT/GOVERNANCE/POLICY

CONFIDENTIAL ATTACHMENT

Attachment No	Details
1	2021/22 Audit Management Report- OAG

Voting Requirement	:	Simple Majority
Subject Index	:	Financial management Audit
Disclosure of any Interest	:	Nil
Responsible Officer	:	Michael Costarella, Manager Corporate & Community Services

PURPOSE OF REPORT

The purpose of this report is for the Committee to receive the Annual Audit Report for the 2021/22 Financial year.

SUMMARY AND KEY ISSUES

The Audit was conducted by Dry Kirkness and the Office of the Auditor General. The following matters were identified and included in the Management Report.:-

- IT Policy
- Access Limits to Employees in System
- Supplier Masterfile
- Journals
- Bank Reconciliation
- Excessive Annual Leave Accruals
- Insufficient Quotes
- Primary Returns

BACKGROUND

The report identifies any issues that need to be reported to the Management and it includes Management comments for the information of the Audit Governance & Risk Management Committee.

CONSULTATION

There has been no specific consultation undertaken in respect to this matter.

STRATEGIC IMPLICATIONS

There are no Strategic Implications identified at this time.

POLICY IMPLICATIONS

Financial Management Policies

STATUTORY IMPLICATIONS

Local Government (Financial Management) Regulations 1996

FINANCIAL IMPLICATIONS

There are no Financial Implications identified at this time.

ENVIRONMENTAL IMPLICATIONS

There are no Environmental Implications identified at this time.

SOCIAL IMPLICATIONS

There are no Social Implications identified at this time.

OFFICER COMMENT

Staff have provided comments on the matters raised in the Management Letter and a copy of the questions and management response is included as an attachment.

OFFICER RECOMMENDATION/S – ITEM NO 8.5.1

That Council receives the audit report for the 2021/22 financial year performed by Dry Kirkness and the Office of Auditor General and noting actions to address the matters.

8.5.2 2021/22 Audited Annual Financial Report – Office of the Auditor General & Dry Kirkness

ATTACHMENT DETAILS

Attachment No	Details
Attachment 1	Audited 2021/22 Annual Financial Statements

Voting Requirement : Simple Majority
Subject Index : 2021/22 Financial Statements
Responsible Officer : Michael Costarella, Manager Corporate & Community Services

PURPOSE OF REPORT

The purpose of this report is to receive the Audited Annual Financial Statements for the year ended 30 June 2022.

SUMMARY AND KEY ISSUES

The 2021/22 Audited Annual Financial Statements have been completed and the Council is requested to adopt the document.

BACKGROUND

The financial statements for the year ended the 30 June 2022, were presented to the Auditor for audit purposes and following a number of amendments were presented to the Office of Auditor General (OAG) for final endorsement.

CONSULTATION

There has been no specific consultation undertaken in respect to this matter.

STRATEGIC IMPLICATIONS

Strategic Priority 5- Governance

Item 5.1- Continue to monitor the financial sustainability of the Shire's resources

POLICY IMPLICATIONS

Financial Management Policies

STATUTORY IMPLICATIONS

Section 6.4 of the Local Government Act states:

6.4 Financial report

(1) A local government is to prepare an annual financial report for the preceding financial year and such other financial reports as are prescribed.

(2) The financial report is to —

(a) be prepared and presented in the manner and form prescribed; and

(b) contain the prescribed information.

(3) By 30 September following each financial year or such extended time as the Minister allows, a local government is to submit to its auditor —

(a) the accounts of the local government, balanced up to the last day of the preceding financial year;

and

(b) the annual financial report of the local government for the preceding financial year.

FINANCIAL IMPLICATIONS

Nil.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications at this time

SOCIAL IMPLICATIONS

There are no Social Implications identified at this time.

OFFICER COMMENT

The audit for the 2021/22 financial year has been completed and provides an overview of the financial activities for the 2021/22 year.

2021/22 Closing Surplus

The estimated closing budget surplus as at 30 June 2022 was anticipated to be \$291,287, however following the audit, this was reviewed and adjusted to \$343,554.

The additional surplus of some \$50,000 related to cash funding of the Leave Accruals from the Employee Entitlement Reserve Fund.

OFFICER RECOMMENDATION/S – ITEM NO 8.5.2

That Council receives the audited 2021/22 Annual Financial Statements and Audit Report.

8.5.3 Matters for Information and Noting (Audit Committee)

Attachment No	Details
Attachment refers to	Joint Venture Interpretation- The Grove Library 2020/21 Financial Audit Results for Local Government

Voting Requirement	Simple Majority
Subject Index	Financial management Audit
Disclosure of any Interest	Nil
Responsible Officer	Don Burnett Chief Executive Officer

PURPOSE OF REPORT

The Shire of Peppermint Grove regularly receives and produces information for receipt by the Elected Members. The purpose of this item is to keep Elected Members informed on items for information received by the Shire.

The Matters of information report includes the following matters:-

- Joint Venture Interpretation- The Grove Library
- 2020/21 Financial Audit Results for Local Government

SUMMARY AND KEY ISSUES

- Joint Venture Interpretation- The Grove Library

The CEO has sent an email to the Auditor General's Office seeking clarification on the requirements to report the Grove Library as a Joint Venture following the implementation of a new Library Management Group Agreement effective from the 1 January 2022.

A copy of the email is attached.

- 2020/21 Financial Audit Results for Local Government

The Auditor General's Office has tabled it's Report on the annual financial audits for the 2020/21 financial year. The report identifies significant issues and makes recommendations.

CONSULTATION

The matters were either discussed with the Office of Auditor General and the Library Management Group.

STRATEGIC IMPLICATIONS

Strategic Priority 5- Governance

Item 5.1- Continue to monitor the financial sustainability of the Shire's resources

POLICY IMPLICATIONS

Financial Management Policies

STATUTORY IMPLICATIONS.

Nil.

FINANCIAL IMPLICATIONS

Nil.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications at this time

SOCIAL IMPLICATIONS

There are no Social Implications identified at this time.

OFFICER COMMENT

The reports are provided for discussion and noting by the Committee.

OFFICER RECOMMENDATION/S – ITEM NO 8.5.3

That Council receives the information in this report.

9. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF COUNCIL

10. MOTIONS ON NOTICE

(Automatically sent back to administration for consideration at the next Council meeting)

11 CONFIDENTIAL ITEMS OF BUSINESS

11.1 Australia Day Awards

COMMUNITY DEVELOPMENT

This matter can be considered with members of the public excluded from the Chamber under Clause 5.23 (2) (b) of the Local Government Act 1995 as the Officer report discusses:

(b) the personal affairs of any person

OFFICER RECOMMENDATION/S – ITEM NO. 11.1

That this report is considered behind closed doors in accordance with Clause 5.23 (2) (b) of the Local Government Act 1995.

12. CLOSURE OF MEETING

At ___pm, there being no further business the meeting closed.