



Shire of  
**Peppermint Grove**

# **ORDINARY COUNCIL MEETING**

# **AGENDA**

**TO BE HELD ON**  
**TUESDAY 27 JUNE 2017**  
**AT**  
**5.30 PM**



# Shire of Peppermint Grove

## **NOTICE OF MEETING**

Dear Councillor

It is advised that the **COUNCIL MEETING** will be held in the Council Chamber of the **Shire of Peppermint Grove**, 1 Leake Street, Peppermint Grove, on Tuesday **27 JUNE 2017**, commencing at 5.30 pm.

## **MEETING AGENDA ATTACHED**

Yours faithfully



**Mr John Merrick JP**  
**CHIEF EXECUTIVE OFFICER**

**27 JUNE 2017**

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### **DISCLAIMER**

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*Any statement, comment or decision made at a Council or Forum meetings regarding any application for an approval, consent or licence, including a resolution of approval, is not effective as an approval of any application and must not be relied upon as such.*

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*Any advice provided by an employee of the Shire on the operation of a written law, or the performance of a function by the Shire, is provided in the capacity of an employee, and to the best of that person's knowledge and ability. It does not constitute, and should not be relied upon, as a legal advice or representation by the Shire. Any advice on a matter of law, or anything sought to be relied upon as a representation by the Shire should be sought in writing and should make clear the purpose of the request.*



# Shire of Peppermint Grove

## TABLE OF CONTENTS

ITEM	SUBJECT HEADING	PAGE
<b>1</b>	<b>DECLARATION OF OFFICIAL OPENING</b>	<b>5</b>
<b>2</b>	<b>RECORDING OF ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE</b>	<b>6</b>
2.1	ATTENDANCE	6
2.2	APOLOGIES	6
2.3	LEAVES OF ABSENCE	6
2.4	NEW REQUEST FOR A LEAVE OF ABSENCE	6
<b>3</b>	<b>DELEGATIONS AND PETITIONS</b>	<b>6</b>
3.1	DELEGATIONS	6
3.2	PETITIONS	6
<b>4</b>	<b>PUBLIC QUESTION TIME</b>	<b>7</b>
4.1	RESPONSE TO PREVIOUS QUESTIONS TAKEN ON NOTICE	7
4.2	QUESTIONS FROM MEMBERS OF THE PUBLIC	7
4.3	DEPUTATIONS OF THE PUBLIC	7
<b>5</b>	<b>DECLARATIONS OF INTEREST</b>	<b>8</b>
5.1	FINANCIAL INTEREST	8
5.2	PROXIMITY INTEREST	8
5.3	IMPARTIALITY INTEREST	8
5.4	INTEREST THAT MAY CAUSE A CONFLICT	8
5.5	STATEMENT OF GIFTS AND HOSPITALITY	9
<b>6</b>	<b>ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)</b>	<b>9</b>
<b>7</b>	<b>CONFIRMATION OF MINUTES</b>	<b>9</b>
7.1	ORDINARY COUNCIL MEETING ~ 23 May 2017	9
7.2	AGENDA BRIEFING FORUM ~ 13 June 2017	9

7.3	CONCEPT FORUM ~ 13 June 2017	9
<b>8</b>	<b>CHIEF EXECUTIVE OFFICER REPORTS</b>	<b>10</b>
8.1	URBAN PLANNING	10
8.1.1	Building Permits Issued	10
8.1.2	Retrospective Planning Approval: Alterations and Additions Lot 43 (No.37A) Johnston Street, Peppermint Grove	11
8.1.3	Proposed Loft Addition. Three Town House Development Lot 30 (No.1A) McNeil Street Peppermint Grove.	16
8.1.4	Proposed Amendment No.1 Local Planning Scheme No 4: Lot 90 (No.2) Bay View Terrace, Peppermint Grove	19
8.1.5	WALGA Discussion Paper for Comment; Introduction of Third Party Appeals Rights in Planning Legislation	23
8.1.6	Minor Modifications: Presbyterian Ladies College Wellness Centre Minor Amendment: Roof Terrace Addition.	27
8.2	INFRASTRUCTURE	30
8.3	COMMUNITY DEVELOPMENT	30
8.4	MANAGEMENT / GOVERNANCE / POLICY	30
8.5	CORPORATE	31
8.5.1	FINANCIAL REPORT – MAY 2017	31
8.5.2	Accounts Paid – May 2017	35
8.5.3	DRAFT BUDGET 2017/2018	38
<b>9</b>	<b>NEW BUSINESS OF AN URGENT NATURE</b>	<b>43</b>
9.1	Late Item	43
9.1.1	Request for Change of Heritage List Category, Lot 100 (No.52) The Esplanade, Peppermint Grove	43
9.1.2	Revised Street Elevation Two-Storey Single Dwelling. Lot 54 (No.3) Hurstford Close, Peppermint Grove	47
<b>10</b>	<b>MOTIONS ON NOTICE</b>	<b>51</b>
<b>11</b>	<b>CONFIDENTIAL ITEMS OF BUSINESS</b>	<b>51</b>
<b>12</b>	<b>CLOSURE</b>	<b>51</b>

Shire of  
**Peppermint Grove****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 the efficient, effective and orderly decision making within this forum.***

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## **2 RECORDING OF ATTENDANCE, APOLOGIES AND LEAVES OF ABSENCE**

### 2.1 ATTENDANCE

Shire President	Cr R Thomas
Deputy Shire President	Cr C Hohnen
Elected Member	Cr D Horrex
Elected Member	Cr K Farley
Elected Member	Cr S Fleay
Elected Member	Cr D P Macintosh
Elected Member	Cr G Peters

Chief Executive Officer	Mr John Merrick
Manager Library and Community Services	Ms D Burn
Manager Corporate Services	Mr P Rawlings
Manager Infrastructure Services	Mr D Norgard
Manager Development Services	Mr M Whitbread
Executive Officer	Ms M Tabbakh (Minutes)

**Visitors** \_\_\_\_\_, from \_\_\_\_\_  
**Gallery** \_\_\_\_\_ Members of the Public  
\_\_\_\_\_ Members of the Press

### 2.2 APOLOGIES

### 2.3 LEAVES OF ABSENCE

### 2.4 NEW REQUEST FOR A LEAVE OF ABSENCE

## **3 DELEGATIONS AND PETITIONS**

### 3.1 DELEGATIONS

### 3.2 PETITIONS

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## 4 PUBLIC QUESTION TIME

At \_\_\_\_\_ pm the Presiding Member opened the public question time by asking the gallery if there were any questions or deputation for Council.

- The Agenda
- Question to Council and
- 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**

- 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.*
- During the Council meeting, after Public Question Time no member of the public may interrupt the meeting's proceedings or enter into conversation.*
- Whenever possible, questions should be submitted in writing at least 48 hours prior to the start of the meeting.*
- 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.*
- 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

#### 4.2 QUESTIONS FROM MEMBERS OF THE PUBLIC

#### 4.3 DEPUTATIONS OF THE PUBLIC

At \_\_\_\_\_ pm, there being no further questions the Presiding Member closed the public question time.

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## 5 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.*

*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.*

### 5.3 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 ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

Written announcements by the Presiding Member or important forthcoming functions to be tabled at this point. The Presiding Member may, at their discretion, wish to make verbal announcements.

## 7 CONFIRMATION OF MINUTES

- 7.1 ORDINARY COUNCIL MEETING ~ 23 MAY 2017
- 7.2 AGENDA BRIEFING FORUM ~ 13 JUNE 2017
- 7.3 CONCEPT FORUM ~ 13 JUNE 2017

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## **8 CHIEF EXECUTIVE OFFICER REPORTS**

### **8.1 URBAN PLANNING**

#### **8.1.1 Building Permits Issued**

For works which are excluded from requiring planning consent under the Deemed to Comply provisions of the Planning and Development Regulations 2015 for May 2017;

- 3 Hurstford Close – New cellar
- 14 McNeil Street – Rear lane limestone wall

8.1.2 Retrospective Planning Approval: Alterations and Additions Lot 43 (No.37A)  
Johnston Street, Peppermint Grove

### URBAN PLANNING

#### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
<b>Attachment 1 – Item refers</b>	37A Johnston Street

Voting Requirement	:	Simple Majority
Subject Index	:	Property
Location / Property Index	:	37A Johnston Street
Application Index	:	016-207
LPS 4 Zoning	:	Residential R12.5
Land Use	:	Single Dwelling
Lot Area	:	893m <sup>2</sup>
Disclosure of any Interest	:	Nil
Previous Items	:	Nil
Applicant	:	Madison Design Homes (Phillip Germana)
Owner	:	Jeff & Julie Ecker
Responsible Officer	:	Michael Whitbread. Manager of Development Services

#### COUNCIL ROLE

- Advocacy**      *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive**      *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
- Legislative**      *Includes adopting local laws, town planning schemes & policies.*
- Review**      *When Council reviews decisions made by Officers.*
- Quasi-Judicial**      *When Council determines an application / matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include town planning applications, building licences, applications for other permits / licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.*

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## **PURPOSE OF REPORT**

For Council to consider an application for retrospective planning consent for alterations and additions to a masonry and tile dwelling, which include a side and rear boundary setback variation.

## **SUMMARY AND KEY ISSUES**

- Application has been made for retrospective approval.
- Two aspects of the design do not meet the Deemed-to-comply provisions of the R-Codes.
- Conditional approval has been recommended.

## **LOCATION**

Please refer to the attached location plan.

## **BACKGROUND**

The landowner contacted the Shire in April 2017, to request a copy of the structural drawings for alterations and additions being undertaken in order that an independent assessment of the works could be undertaken prior to the completion of the construction works.

The Shire's record showed that a planning consent or building permit had not been issued for any works to the dwelling on this site.

The Manager of Development Services, visited the site and confirmed that the scope of works undertaken did in fact require both planning and building approval. The works were at a stage of final completion.

The name of the builder, Madison Design Homes was obtained. It was also revealed that the landowner had employed Natalee Bowen of Indah Island Designs, to manage the project.

Subsequently, the Shire was contacted by the builder and his building certifier in regard to lodging a retrospective planning and building application for the works carried out to date.

## **CONSULTATION**

The application was advertised to adjoining landowners and no written submission were received.

## **STRATEGIC IMPLICATIONS**

There are no Strategic Planning implications evident at this time.

## **POLICY IMPLICATIONS**

There are no significant policy implications evident at this time.

## **STATUTORY IMPLICATIONS**

### **Town Planning Scheme No.3**

The proposal complies with relevant Scheme provisions, Residential Design Codes and Scheme Policies with the exception of those outlined in the table below.

<b><u>LOCAL PLANNING SCHEME NO. 4</u></b>		
<b>Scheme Requirement/Clause</b>		<b>Assessment/Comment</b>
<b>1.</b>	55% Open Space	63%
<b>2.</b>	0.5 Plot Ratio	0.49 Complies
<b><u>RESIDENTIAL DESIGN CODES</u></b>		
		<b>Assessment/Comment</b>
<b>1.</b>	1.0-metre eastern boundary setback	Nil setback provided: (refer to officer comment for details).
<b>2.</b>	6-metre rear setback	1.35-metres minimum provided: (refer to officer comment for details).

## **FINANCIAL IMPLICATIONS**

If the application had been made prior to the works commencing, the application fee would have been \$1552.00. However, the planning fee regulations require, by way of penalty for retrospective approval triple the fee. In this instance the fee for a retrospective planning application increased to \$4657.00.

The Shire has also instructed its solicitors to commence legal action for the breach of the Planning and Building Acts. While there is the cost involved in engaging in legal action, if successful, any fines imposed fall to the Shire. It is also the practice of the Shire's solicitors to seek legal costs in prosecution cases, which are able to be awarded at the discretion of the court.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

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## **SOCIAL IMPLICATIONS**

In addition to the obvious breach of the Planning and Building Act, there are two social implications associated with a builder undertaking illegal building works. The first is the avoidance of technical scrutiny of either the planning or building plans for the site. This creates a situation whereby buildings are constructed and the landowner is left with a non-compliant building and is then unable to sell a 'clean' property. It is well known that many buyers will not settle on a property where there are unapproved works. If this delays settlement or sale, it can be very costly for the landowner, not to mention the inconvenience.

Secondly, not only does a builder carrying out works without approval avoid paying the fee to the Shire, but as importantly, avoid having to obtain builder's indemnity insurance. This insurance scheme provides \$100,000 cover in case a builder becomes insolvent, as well as covering the landowner for any structural defects in the building for seven years.

## **OFFICER COMMENT**

In terms of the scope of works, the reduced setback to the eastern boundary can be supported on planning grounds as the adjoining lot is set at a higher level than the subject site. The cabana, where it is located adjoining the boundary, also has a lower roof height than the remainder of the structure and would not be readily seen.

Under the R-Codes the rear setback is set at 6-metres. The cabana has a rear setback of 1.35-metres. As the subject site adjoins a right-of-way, the R-Codes allow up to 2-metres of this land to be used in the setback calculation. In any event, the average rear setback in this instance (excluding the right-of-way allowance), would exceed 8-metres. On this basis the variation can be supported under the Design Principles of the R-Codes.

It is disappointing that the builder and the project manager made the choice to carry out such extensive works without any planning or building approvals in place. This aspect of the development on this site is currently being dealt with by the Shire's solicitors. It should be noted that a retrospective planning approval is for the works only and does not sanction the builder's decision to ignore his legal obligations, or compromise any prosecution action in the matter.

The resulting development from such irresponsible actions have left the landowners with works that now require retrospective approval. The application has been assessed on its merits, and can be conditionally approved in this instance, subject to a condition requiring that stormwater be contained on site in an approved manner. This will need to be demonstrated prior to the issue of a building approval certificate.

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Other aspects of the design in regard to engineering and construction are currently being dealt with by a private certifier, employed by the builder to gain acceptance of the works carried out under the Construction Code of Australia and this will include any remedial works that may be necessary.

**OFFICER RECOMMENDATION/S – ITEM No. 8.1.2**

**That Council grant retrospective planning approval for alterations and additions on Lot 43 (No.37A) Johnston Street Peppermint Grove, in accordance with the plans and specifications submitted on 12 May 2017, subject to the following condition;**

- 1. All stormwater being retained and disposed of on-site, details of which are to be submitted and approved prior to the issue of a building approval certificate (BA 13) by the Shire of Peppermint Grove.**

## 8.1.3 Proposed Loft Addition. Three Town House Development Lot 30 (No.1A) McNeil Street Peppermint Grove.

## URBAN PLANNING

### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
<b>Attachment 2 – Item refers</b>	1A McNeil Street

Voting Requirement	:	Simple Majority
Subject Index	:	Property
Location / Property Index	:	1A McNeil Street
Application Index	:	016-208
LPS 4Zoning	:	Residential R80
Land Use	:	Attached Dwellings
Lot Area	:	753m <sup>2</sup>
Disclosure of any Interest	:	Nil
Previous Items	:	Ordinary Council Meeting 28 July 2017
Applicant	:	Healy Constructions Pty Ltd
Owner	:	Pen Five Pty Ltd
Responsible Officer	:	Michael Whitbread, Manager of Development Services.

### COUNCIL ROLE

- Advocacy**      *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive**      *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
- Legislative**      *Includes adopting local laws, town planning schemes & policies.*
- Review**      *When Council reviews decisions made by Officers.*
- Quasi-Judicial**      *When Council determines an application / matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include town planning applications, building licences, applications for other permits / licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.*



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## **PURPOSE OF REPORT**

For Council to consider an application for a storage loft addition to each of the three two-storey town houses currently under construction at 1A McNeil Street, Peppermint Grove.

## **SUMMARY AND KEY ISSUES**

- The proposed loft is within the approved building envelope.
- The loft area would be non-habitable under both the R-Codes and Construction Codes of Australia.
- A conditional approval has been recommended.

## **LOCATION**

Please refer to the attached location plan.

## **BACKGROUND**

Council at its meeting held on the 28 July 2015, granted planning consent for the development of three two storey town houses, with basement parking on the subject site.

The 1970's single storey dwelling was demolished in December 2016, and works commenced on the three town houses in early 2017.

## **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**

Local Planning Scheme No.4 (LPS 4)

The proposed loft areas for the three town houses would occur within the building envelope approved by Council in 2016, under Town Planning Scheme No.3.

The subject site was zoned Residential R40 when the town house development was applied for and no plot ratio applied. Although the site has now been re zoned under LPS 4

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from Residential R40 to Residential R80 the proposed town houses are classified as a single dwelling development and under construction would still conform to LPS 4.

### **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 loft addition for storage purposes can be supported as the building envelope approved by Council would not be altered and the space created would not be considered as meeting the definition of a habitable room under the Construction Code of Australia.

Although the applicant has labelled the loft area as a studio, this is in effect seeking a de-facto fourth bedroom or study area, both of which are classified as habitable spaces under the R-Codes.

Subject to a planning condition stating that this loft area is not to be used for habitable purposes, the proposal can be supported.

### **OFFICER RECOMMENDATION/S – ITEM No. 8.1.3**

**That Council grant planning approval for a loft addition to three town houses on Lot 30 (No.1A) McNeil Street Peppermint Grove, in accordance with the plans and specifications submitted on 16 March 2016, subject to the following condition;**

- 1. The loft area, the subject of this approval, shall not be used for habitable purposes.**

## 8.1.4 Proposed Amendment No.1 Local Planning Scheme No 4: Lot 90 (No.2) Bay View Terrace, Peppermint Grove

## URBAN PLANNING

### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
<b>Attachment 3 – Item refers</b>	No. 2 Bay View Terrace

Voting Requirement	:	Simple Majority
Subject Index	:	
Location / Property Index	:	Lot 90 (No.2) Bay View Terrace
Application Index	:	LPS 4 Amendment No.1
LPS 4 Zoning	:	Residential R10 & R25
Land Use	:	Vacant
Lot Area	:	6660m <sup>2</sup>
Disclosure of any Interest	:	Nil
Previous Items	:	N/A
Applicant	:	N/A
Owner	:	Mrs. Oswal
Responsible Officer	:	Michael Whitbread, Manager of Development Services

### COUNCIL ROLE

- Advocacy**      *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive**      *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
- Legislative**      *Includes adopting local laws, town planning schemes & policies.*
- Review**      *When Council reviews decisions made by Officers.*
- Quasi-Judicial**      *When Council determines an application / matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include town planning applications, building licences, applications for other permits / licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.*

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## **PURPOSE OF REPORT**

For Council to consider initiating an amendment to Local Planning No. 4 to remove a density code anomaly on the subject site.

## **SUMMARY AND KEY ISSUES**

- The mixed coding on the subject site is contrary to good planning practice.
- Removal of the R25 code will restore a consistent density code across the site.
- A single R10 Coding over the entire site would be in line with the recommendation outlined in the Local Planning Strategy.

## **LOCATION**

Please refer to the location plan and LPS 4 Density Code Plan.

## **BACKGROUND**

In 2008, Lot 90 Bay View Terrace, was created when eight lots were amalgamated. Six of those lots were coded Residential R10, with two smaller lots with access from Bungalow Court, zoned Residential R25. This created a situation where there were two density codes over the subject site.

Following the advertising of Local Planning Scheme No.4 in 2015, the community expressed the desire to have the site remain R10 for streetscape and amenity reasons. Council amended its draft Scheme Map in Local Planning Scheme No.4, so that the coding remained as it was under Town Planning Scheme No.3.

Although the Department of Planning supported the site recoding R10, it came to light in the finalisation of the Local Planning Scheme No.4 that a density code anomaly existed on Lot 90. To recode the entire site R10, in order to remove the R25, would have required that draft LPS 4 undergo readvertising. Rather than hold up the progress of LPS 4 any longer it was decided that this change could best be achieved by a Scheme amendment following gazettal.

After the incomplete building was removed in October 2016, the owners lodged an application for a six lot subdivision of the site which is yet to be finalised.

## **CONSULTATION**

There is a statutory consultation period for 'standard' Local Planning Scheme amendments of 42 days. The process is prescribed under Section 47 of the Planning and Development (Local Planning Scheme) Regulations 2015, which requires a local newspaper advertisement and the amendment being placed on the Shire's website.

## **STRATEGIC IMPLICATIONS**

The re-coding of the portion of the land from R25 to R10 would remove an anomaly under the current Local Planning Scheme and accords with the Shire's Local Planning Strategy adopted by the WAPC

## **POLICY IMPLICATIONS**

There are no significant policy implications evident at this time.

## **STATUTORY IMPLICATIONS**

Part five of the Planning and Development (Local Planning Scheme) Regulations 2015, provide the legislative mechanism for amending Local Planning Schemes.

These regulations under Section 34, offer three classifications of the Scheme amendment; basic, complex and standard, each with its own process and timeframe.

It is assessed that this proposed amendment can be considered a 'standard' amendment, which does not require the approval of the WAPC to commence advertising.

Furthermore, under Section 55 of the Regulations, the WAPC must consider a standard amendment and make a recommendation to the Minister for Planning within 60 days of receiving the documents from the Local Authority.

## **FINANCIAL IMPLICATIONS**

There are minor financial implications associated with the advertising of the proposed amendment.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

## **SOCIAL IMPLICATIONS**

There are no social implications at this time.

## **OFFICER COMMENT**

The current dual coding of the subject site is a minor density code anomaly. In order to correct this situation, the Planning and Development (Local Planning Scheme) Regulations 2015, provide different classifications and as the amendment concerns a change in coding to portion of the site, it is considered a '*standard amendment*' under these regulations.

The proposed re-coding has been recommend by the Department of Planning and the recent six lot subdivision application make it an appropriate time to carry-out what is essentially a housekeeping matter.

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On this basis approval to commence the advertising process for the proposed amendment as outlined in the report can be recommended to Council.

**OFFICER RECOMMENDATION/S – ITEM No. 8.1.4**

**That Council resolves under Regulation 35(1) to amend Local Planning Scheme No. 4 to recode that portion of Lot 90 (No 2) Bay View Terrace from Residential R25 to Residential R10**

## 8.1.5 WALGA Discussion Paper for Comment; Introduction of Third Party Appeals Rights in Planning Legislation

### URBAN PLANNING

#### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
<b>Attachment 4 – Item refers</b>	WALGA Discussion Paper

Voting Requirement	:	Simple Majority
Subject Index	:	Ref: GR097D
Location / Property Index	:	N/A
Application Index	:	N/A
LPS No 4 Zoning	:	N/A
Land Use	:	N/A
Lot Area	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	Nil
Applicant	:	WALGA
Owner	:	N/A
Responsible Officer	:	Michael Whitbread, Manager of Development Services

#### COUNCIL ROLE

- Advocacy**      *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive**      *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
- Legislative**      *Includes adopting local laws, town planning schemes & policies.*
- Review**      *When Council reviews decisions made by Officers.*
- Quasi-Judicial**      *When Council determines an application / matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include town planning applications, building licences, applications for other permits / licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.*

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## **PURPOSE OF REPORT**

WALGA has invited member Council's to provide comment in regard to a review of its 2008 Policy which did not support third party appeal rights. The discussion paper issued by WALGA outlines the varied and many changes to the legislative planning framework over the last nine years.

## **SUMMARY AND KEY ISSUES**

- WA is the only state not to have third party appeal rights in the planning system.
- Previous attempts to introduce third party appeal rights have not been successful.
- The dissatisfaction with DAP's has reignited the debate in this area.
- The arguments' against third party appeal rights cannot be sustained.

## **LOCATION**

N/A

## **BACKGROUND**

The attached discussion paper outlines in detail the

## **CONSULTATION**

WALGA has forwarded the attached discussion paper for member Council to provide comment. The due date for responses to the discussion paper has been extended from the 31 May 2017 to the 14 July 2017, so that all eligible Councils have sufficient time to respond.

The WALGA letter states that it welcomes any submissions in regard to the discussion paper circulated and in particular, on the following points:

- Would you be in favour of the introduction of some form of Third Party Appeal Rights in Western Australia? Why or Why not?
- Do you feel your Council is likely to support some form of Third Party Appeal Rights?
- Any other comments relating to Third Party Appeal Rights?

## **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**

Nil

### **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 Trenhorden paper (2009), referred to in the attached WALGA discussion paper, covers the policy position and the various grounds for and against third party appeal rights. Based on the evidence Trenhorden gathered, he dismisses the arguments against third party appeal rights, and sees their introduction into the WA planning system as inevitable.

However, one missing element from both the discussion paper from WALGA, and Trenhorden's (2009) review, was how, if at all, third party appeal rights affects built form. After all, it is built form outcomes that are controlled by the planning process, and that so often trigger community concerns. Therefore the question, apart from the rights of affected landowners to be able to appeal planning determinations to the State Administrative Tribunal, do third party appeal rights result in improved outcomes?

Looking deeper, the Local Community Plans (TPS's) and the policies for areas such as Fitzroy, St Kilda and Williamstown are no more prescriptive, or onerous, than many inner urban suburbs in the Perth metropolitan area. It is noticeable that many of these Melbourne suburbs contain many fine examples of Victorian period architecture. What is striking in these almost intact suburbs, is the high standard of architecture and the lack of overdeveloped sites.

It would seem that because third party appeal rights sit in the background they create an incentive for developers and landowners to consult early with neighbours before lodging a development application. In terms of built form outcomes at a local level, these are observed as being respectful in terms of bulk, scale, massing and are of a high architectural standard within Melbourne's inner city context. It would also be fair to say that third party appeal rights act as an overseer of planning authority decisions and give the community an avenue at least equal to the development industry to have decisions independently reviewed.

If third party appeal rights were introduced in to WA Planning legislation, the Deemed Provision of the R-Codes should be exempt from a third party appeal process, so as not to remove the degree of certainty the R-Codes provide. There are similar provisions in the Victorian R-Codes.

Nevertheless, what should be subject to third party appeals would be a decision involving the exercise of discretion by a local authority. As pointed out in the Trenhorden's 1996 report, there is nothing essentially wrong if an application is re-assessed and the planning authority decision put under scrutiny in the SAT.

The fact that WA does not have third party appeal rights, even in a restricted sense, means that the planning system lends itself to accusations of serving special interest groups, such as those in the development industry, who are perceived as seeking government support, to get around communities. A perfect example of this would be the advent of the Development Assessment Panels. While Local Councils are accountable to the community through the electoral process, the appointed expert members of Development Assessment Panels are not. Without third party appeal rights, their decisions remain above legal scrutiny, unless a Supreme Court case can be successfully mounted.

One of the criticisms of having a third party appeal rights is it leads to delays of large developments, which has financial implications for landowners due to holding costs and the like. Despite this threat to 'certainty', third party appeal rights represent the property industry always desires a flexibility system with height bonus' and an undue emphasis on speed, rather than the quality of approvals and the preservation or enhancement of the amenity. There is no shortage in Perth of ill-considered developments, done in haste, which the community is left to regret at leisure.

With increasingly sophisticated and large scale redevelopments occurring in established areas, the additional scrutiny afforded by a third party appeals system should be considered appropriate.

#### **OFFICER RECOMMENDATION/S – ITEM No. 8.1.5**

**That Council advises WALGA that it supports the introduction of Third Party Appeal Rights in planning subject to then following;**

- 1. Appeals only being applicable where discretion is exercised under the R-Codes, Local Planning Policies, and Local Planning Schemes.**
- 2. That Development Assessment Panels also be subject to any third party appeals process adopted under the WA planning framework.**

8.1.6 Minor Modifications: Presbyterian Ladies College Wellness Centre Minor  
 Amendment: Roof Terrace Addition.

## URBAN PLANNING

### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
<b>Attachment 5 – Item refers</b>	No. 2 McNeil Street

Voting Requirement	:	Simple Majority
Subject Index	:	Properties
Location / Property Index	:	2 McNeil Street
Application Index	:	016-205
LPS No 4 Zoning	:	Private Clubs and Institutions and Place of Worship
Land Use	:	Educational Establishment
Lot Area	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	JDAP /15/00821
Applicant	:	Allerding and Associates
Owner	:	Presbyterian Ladies College
Responsible Officer	:	Michael Whitbread. Manager of Development Services

### COUNCIL ROLE

- Advocacy**      *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive**      *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
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- Review**      *When Council reviews decisions made by Officers.*
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## **PURPOSE OF REPORT**

For Council to consider an application for a 120m<sup>2</sup> roof terrace on the southern (rear) of the PLC Wellness Centre.

## **SUMMARY AND KEY ISSUES**

- The roof terrace does not change the approved building envelope.
- No privacy issue are created by this proposed addition.
- There are no objections on planning grounds.

## **LOCATION**

Please refer to the attached location plan.

## **BACKGROUND**

The Joint Development Assessment Panel granted planning consent for the development of a three storey Wellness Centre on the site of the former Catholic Presbytery, on 7<sup>th</sup> September 2015. This development, along with the under-croft parking, garden workshops and storage areas has commenced and the second storey slab has been completed.

## **CONSULTATION**

There has been no specific consultation undertaken in respect to this matter as the adjoining landowner would not be affected by the scope of works under consideration.

## **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**

There are no specific statutory requirements in respect to this matter.

## **FINANCIAL IMPLICATIONS**

There are no financial implications evident at this time.

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### **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

### **SOCIAL IMPLICATIONS**

There are no social implications at this time.

### **OFFICER COMMENT**

An open terrace on the southern elevation would prove to be a useful cooling off area from the upstairs component of the gymnasium.

This terrace, proposed terrace area faces south, and would not be seen from McNeil Street and any noise generated would project into the Star of the Sea site. The nearest residential property boundary is located approximately 65 metres away and it is assessed that there would not be any direct or intrusive overlooking.

On this basis the application can be supported on planning grounds.

### **OFFICER RECOMMENDATION/S – ITEM No. 8.1.6**

**That Council grant planning approval for alterations and additions on Lots (Various) (No.2) McNeil Street, Peppermint Grove in accordance with the plans and specifications submitted on 16 March 2017, without conditions.**

- 8.2    **INFRASTRUCTURE**  
      Nil
  
- 8.3    **COMMUNITY DEVELOPMENT**  
      Nil
  
- 8.4    **MANAGEMENT / GOVERNANCE / POLICY**  
      Nil

## 8.5 CORPORATE

## 8.5.1 FINANCIAL REPORT – MAY 2017

## CORPORATE

ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
Attachment 6	Financial Report – May 2017

Voting Requirement	:	Simple Majority
Subject Index	:	FM026A
Location / Property Index	:	N/A
Application Index	:	N/A
TPS No 3 Zoning	:	N/A
Land Use	:	N/A
Lot Area	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	N/A
Applicant	:	N/A
Owner	:	N/A
Responsible Officer	:	Paul Rawlings, Manager, Corporate Services

COUNCIL ROLE

- Advocacy** *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
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## **PURPOSE OF REPORT**

To provide Council with a report of financial activity for the period 1 July 2016 to 31 May 2017.

## **SUMMARY AND KEY ISSUES**

- The financial report for the eleven-month period ended 31 May 2017 indicates a year-to-date surplus of \$1,506,312 some \$367,233 more than forecast;
- Operating revenue is some \$60,072 more than forecast.
- Operating expenditure is some \$318,441 less than forecast;
- Capital expenditure totalling \$433,627 has been incurred.

## **LOCATION**

N/A

## **BACKGROUND**

Nil

## **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**

There are no specific statutory requirements in respect to this matter.

## **FINANCIAL IMPLICATIONS**

The financial reports indicates Council remains firmly on target to achieve its budgeted surplus of \$229,466.

In addition there will be significant unspent operating and capital funds as at 30<sup>th</sup> June 2017 to be carried forward into the 2017/18 budget.

Also the WA Local Government Grants Commission has advised of an advance payment of then 2017/18 general purpose and local road grants (totalling \$28,017 and paid on 8<sup>th</sup> June 2017) which, together with unspent grants relating to the Swan River wall (\$30,440) and the



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Metropolitan Youth Development Scholarship Scheme (\$9,048), will also form part of the surplus, albeit as restricted cash.

As a result the original \$230,000 surplus has been transferred to the building/infrastructure cash reserve in addition to other reserve transfers budgeted to occur prior to 30<sup>th</sup> June 2017 (as discussed at last month's Council meeting).

### **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

### **SOCIAL IMPLICATIONS**

There are no social implications at this time.

### **OFFICER COMMENT**

The following comments relate to variances greater than \$10,000.

#### **(1) Contributions & Reimbursements**

Revenue from contributions and reimbursements is some \$22,591 greater than forecast at the end of March. This is due to the unbudgeted raising of contributions from other local governments for long service leave due to S Farley (\$9,800) and P Rawlings (\$19,200). The remaining \$10,000 of budgeted contributions/reimbursements for the year relates to the Infant Health Clinic reimbursement invoice yet to be raised.

#### **(2) Employee Costs**

Employee costs are some \$14,138 less than expected. This figure mainly represents staff salaries and wages to be accounted for (accrued) as at 30<sup>th</sup> June 2017. In addition the final quarterly fringe benefits tax payment is not included in the above figure.

#### **(3) Materials and Contracts**

Materials and contracted expenses are some \$279,331 less than expected at the end of May though much of this relates to invoices yet to be received (particularly waste collection and recycling services, various consultancies including WESROC projects and building maintenance costs).

Nevertheless some savings in the areas of legal expenses, landscaping and facility cleaning can be expected.

#### **(4) Public Utilities**

Public utility expenses are some \$12,830 less than expected at the end of May though much of this relates to invoices yet to be received.

#### **(5) Insurances**

Council's total insurance premiums for 2016/17 are some \$12,333 less than estimated. The majority of these savings relates to worker's compensation premium savings for the current

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year plus a premium adjustment from 2015/16 rebated in 2016/17. Other minor savings have been achieved under the industrial special risks, liability and vehicle insurance categories.

(6) Transfers from Reserves

Funds to cover the cost of public artworks (\$13,364) and library staff long service leave (\$2,203) will be transferred in June. No further transfers from reserves will be required in 2016/17.

(7) Net Current Assets Year-to-Date

Net current assets as at 31 May 2017 exceed the forecast figure by some \$367,233, due to the actual versus budget variances noted above and other minor variations in other categories included in the financial report.

(8) Rates

Revenue raised from rates exceeds the forecast figure by some \$25,156 as at 31 May 2017. This is due to the raising of interim rates since the annual budget was adopted and largely relates to three properties where the dwelling has been demolished and thus have been valued at 3% of their capital value in lieu of gross rental values.

**OFFICER RECOMMENDATION/S – ITEM No. 8.5.1**

**That the Financial Report for the period 1 July 2016 to 31 May 2017 be received.**

## 8.5.2 Accounts Paid – May 2017

## CORPORATE

**ATTACHMENT DETAILS**

<b><u>Attachment No</u></b>	<b><u>Details</u></b>
<b>Attachment 7</b>	<b>Accounts Paid – May 2017</b>

Voting Requirement	:	Simple Majority
Subject Index	:	FM045A
Location / Property Index	:	N/A
Application Index	:	N/A
TPS No 3 Zoning	:	N/A
Land Use	:	N/A
Lot Area	:	N/A
Disclosure of any Interest	:	N/A
Previous Items	:	N/A
Applicant	:	N/A
Owner	:	N/A
Responsible Officer	:	Paul Rawlings, Manager Corporate Services

**COUNCIL ROLE**

- Advocacy** *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
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## **PURPOSE OF REPORT**

The purpose of this report is to obtain approval for cheques drawn, credit card and electronic funds payments and direct debits since the last report.

## **SUMMARY AND KEY ISSUES**

Significant payments in May 2017 included the following:

- GST & PAYG remittance to ATO;
- Payment for electricity to Synergy;
- Payments for waste disposal to WMRC;
- Staff & Shire superannuation contributions.

## **LOCATION**

N/A

## **BACKGROUND**

Attachment 1 lists details of all cheques drawn since the last report and accounts now presented for payment. The following summarises the cheques, credit card payments, electronic fund transfers, direct debits and accounts included in the list presented for payment.

<b><u>PAYMENT TYPE</u></b>	<b><u>AMOUNT</u></b>
Cheques 263 – 273	\$25,348.28
Electronic Funds Transfers 00085 – 00097	<u>\$279,797.13</u>
<b>TOTAL</b>	<b>\$305,145.41</b>

## **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**

There are no specific statutory requirements in respect to this matter.

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**FINANCIAL IMPLICATIONS**

The payments processed by the Shire relate to expenditure approved in the 2016/2017 annual budget (as amended).

**ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

**SOCIAL IMPLICATIONS**

There are no social implications at this time.

**OFFICER COMMENT**

Nil

**OFFICER RECOMMENDATION/S – ITEM NO. 8.5.2**

**That:**

**The payment of cheques, electronic funds payments and credit card payments for May 2017, totalling \$305,145.41 be approved.**

## 8.5.3 DRAFT BUDGET 2017/2018

## CORPORATE

ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
Attachment 8	Draft Budget 2017-20188

Voting Requirement	:	Absolute Majority
Subject Index	:	FM026A
Location / Property Index	:	N/A
Application Index	:	N/A
TPS No 3 Zoning	:	N/A
Land Use	:	N/A
Lot Area	:	N/A
Disclosure of any Interest	:	Nil
Previous Items	:	Nil
Applicant	:	N/A
Owner	:	N/A
Responsible Officer	:	Paul Rawlings, Manager Corporate Services

COUNCIL ROLE

- Advocacy** *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
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## **PURPOSE OF REPORT**

The purpose of this report is to consider and adopt the draft budget for the 2017/2018 financial year.

## **SUMMARY AND KEY ISSUES**

- The draft 2017/18 budget recommends an increase in revenue from rates totalling \$69,055 or around a 2.24% increase on the estimated 2016/17 total raised.
- The budget has been compiled with reference to the Corporate Business and Long Term Financial Plans.
- The budget foreshadows capital expenditure of around \$458,000, with a large majority of this sum being spent on renewing existing assets.

## **LOCATION**

N/A

## **BACKGROUND**

The Rate Setting Statement shows total revenue required from property rates of \$3,149,311 compared with \$3,080,256 derived in 2016/17, an increase of \$69,055. This equates to a rate increase of 2.24% where 1% of rates delivers \$31,493.

Minimum rates will rise from \$1,322 to \$1,360 and the rate in the dollar is 7.6500 compared with 7.5330 in 2016/17.

A schedule of fees and charges, incorporating GST where required, is included with the draft budget papers.

## **CONSULTATION**

The Long Term Financial Plan was presented to the community in September 2012 and was updated in 2015. This plan has formed the basis of the 2017/2018 draft budget.

Senior staff have had input into the document which has been reviewed by the Senior Management Team.

Extensive consultation was conducted with Elected Members at the June Agenda Briefing Forum to discuss the major features of the budget.

## **STRATEGIC IMPLICATIONS**

The budget will have implications for the Shire's Community Strategic, Corporate and Long Term Financial Plans.

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## **POLICY IMPLICATIONS**

There are no significant policy implications evident at this time.

## **STATUTORY IMPLICATIONS**

There are no specific statutory requirements in respect to this matter.

## **FINANCIAL IMPLICATIONS**

The budget will fund the Shire's capital and operating requirements for financial year 2017/18.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

## **SOCIAL IMPLICATIONS**

There are no social implications at this time.

## **OFFICER COMMENT**

An increase in revenue from rates of 2.24% is recommended in 2017/18.

Total revenue (including non-operating grants) is forecast to decrease by \$123,847 (2.44%). This is due largely to the following factors:

- Removal of a large, one-off revenue item, namely the reimbursement from R Oswal for the cost of demolishing her incomplete residence at 2 Bay View Terrace;
- Receipt of an advance payment for the 2017/18 general purpose grant from the WA Local Government Grants Commission (\$28,017) in 2016/17;
- A reduction in expected income from development application fees from \$60,000 to \$30,000 in 2017/18, based on a similar experience in 2016/17;
- Additional grants from the Dept. of Parks & Wildlife relating to the Swan River wall in 2016/17 (brought forward as restricted cash to be expended in 2017/18).

Total operating expenses are forecast to decrease by \$188,412 (3.98%). This is due largely to the following factors:

- \$92,000 spent on the demolition and clean-up of the Oswal property noted above not being repeated;
- \$101,000 spent on shared library assets and remitting the balance of funds held in the library project reserve to the Towns of Cottesloe and Mosman Park in 2016/17;
- A reduction of \$128,668 in depreciation expenses due to no depreciation of infrastructure assets to be undertaken in 2017/18 ahead of the re-valuation of such assets to their fair values as at 30<sup>th</sup> June 2018.



Notwithstanding the above the 2017/18 budget does include some new or carried forward expenditures including:

- \$20,000 in recruitment expenses for a new Chief Executive Officer due to the incumbent's retirement in mid-2018;
- \$14,500 to cover the cost of the 2017 local government election;
- Allowance for increases in contract expenditures in line with Perth CPI increases;
- Allowance for a 3% increase in employee salaries and wages in accordance with the enterprise bargaining agreement;
- No change in utility expenses with the expected savings from the installation of solar panels at the office and depot expected to negate the impact of probable increases in the State Government's electricity tariff.

Capital expenditure (CAPEX) is expected to total \$458,188, with renewal CAPEX after deduction of grants and asset sales expected to total \$139,089, a figure slightly greater than expected depreciation expenses.

A modest surplus of around \$32,000 as at 30<sup>th</sup> June 2018 is also forecast.

#### **CHANGES FOLLOWING CONCEPT FORUM DISCUSSIONS**

- **Operating expenditure increased by \$4,000 – Donations, Contributions & Subsidies (GL Account 38250);**
- **Increase in transfer to plant cash reserves from \$10,000 to \$20,000 (following confirmation by State Government that stamp duty exemption previously afforded to local government will cease on 30 June 2017 requiring a change to Council's light vehicle changeover arrangements);**
- **Increase in transfer to road cash reserve from \$6,700 (being interest received) to \$106,700 (being interest plus \$100,000 transfer in June 2018) - funded by additional surplus finds discussed below;**
- **Increase in the 30 June 2017 estimated surplus (by \$102,916) due to reductions in expected capital works expenses for 2016/17 (principally the replacement wall at the rear of the office/Grove precinct – re-budgeted in 2017/18 - and the transfer of the cost of replacement /audio/visual equipment in the library, community centre and foyer to operating expenses and funded by the transfer from the library project reserve;**
- **Confirmation of the actual 2016/17 surplus will occur in August following the processing of final invoices for June and the annual audit scheduled for the end of that month.**

**OFFICER RECOMMENDATION/S – ITEM NO. 8.5.3****OFFICER RECOMMENDATION****THAT Council**

- 1. Adopts the 2017/18 Budget including the following:**
  - **Statement of Comprehensive Income (by Nature and Program) for 2017/18 showing a net result of \$407,096;**
  - **Statement of Cash Flows showing a cash balance at 30 June 2018 of \$1,261,169;**
  - **Rate Setting Statement showing amount required to be raised from general rates for 2017/18 totalling \$3,149,310**
  - **Supporting Notes 1 to 18 and other supporting documentation.**
- 2. Adopts the following general and minimum rates for 2017/18:**
  - **General rate of 7.6500 cents in the dollar of gross rental valuation;**
  - **Minimum rate payment of \$1,360 per rates assessment.**
- 3. Adopts the following rates and charges payment options:**
  - **Payment in full by one instalment by 14<sup>th</sup> August 2017;**
  - **Payment in four instalments where the first instalment includes 25% of current year's rates and charges plus all previous year's amounts in arrears by 14<sup>th</sup> August 2017 and three subsequent instalments of 25% each of current year's rates and charges by 16<sup>th</sup> October 2017, 14<sup>th</sup> December 2017 and 14<sup>th</sup> February 2018 respectively.**
- 4. Adopts an instalment administration charge of \$10 for each instalment after the initial instalment is paid.**
- 5. Adopts an interest rate of 5% where ratepayer elects to pay rates and charges by instalments;**
- 6. Adopts an interest rate of 11% where payment of rates and charges is in arrears including overdue instalment payments;**
- 7. Adopts a special arrangements administration fee of \$30 (in addition to interest charges) with respect to outstanding rates and charges and authorises the Chief Executive Officer to enter into such special arrangements.**
- 8. Adopts the Schedule of Fees and Charges for 2017/18.**
- 9. Adopts a level for reporting material variances in monthly financial statements of 10% or \$10,000, whichever is the greater.**

## 9 NEW BUSINESS OF AN URGENT NATURE

### 9.1 LATE ITEM

9.1.1 Request for Change of Heritage List Category, Lot 100 (No.52) The Esplanade, Peppermint Grove

### URBAN PLANNING

#### ATTACHMENT DETAILS

<u>Attachment Nos</u>	<u>Details</u>
Attachment 9	52 The Esplanade

Voting Requirement	:	Simple Majority
Subject Index	:	Property
Location / Property Index	:	52 The Esplanade
Application Index	:	N/A
TPS No 3 Zoning	:	N/A
Land Use	:	Single Dwelling
Lot Area	:	3652m <sup>2</sup>
Disclosure of any Interest	:	Nil
Previous Items	:	Nil
Applicant	:	TPG Place Match
Owner	:	Lyndon Browne
Responsible Officer	:	Michael Whitbread, Manager of Development Services

#### COUNCIL ROLE

- Advocacy** *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive** *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
- Legislative** *Includes adopting local laws, town planning schemes & policies.*
- Review** *When Council reviews decisions made by Officers.*
- Quasi-Judicial** *When Council determines an application / matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include town planning applications, building licences, applications for other permits / licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.*

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## **PURPOSE OF REPORT**

For Council to consider a request from the landowner of No.52 The Esplanade, to modify the heritage listing of the building from Category 1 to Category 2.

## **SUMMARY AND KEY ISSUES**

- The building was initially assessed as a Category 1 place in 1999.
- A 2014 heritage review found the building worthy of retention.
- The definition of a Category 2 place was amended in April 2017.
- The house makes a significant streetscape and townscape contribution.

## **LOCATION**

Please refer to attached location plan.

## **BACKGROUND**

The house on the subject site has an interesting history which is detailed both in the attached data sheet, and received special attention as a 'distinctive' house on page 56 of Pascoe's book on Peppermint Grove (1983). The house was built between 1900 and 1905, and was credited to Talbot Hobbs as either the original designer, or having been responsible for later alterations.

In response to the concerns raised by the landowner in regard to the current heritage listing of the property as a Category 1 place, the Shire's Heritage Consultant undertook a review of the property in 2014, a copy of which is attached.

In essence, the report by Griffiths Architects, confirmed that the original core of the house, plus some selected later additions, should be retained as it was assessed as having significant local cultural heritage significance.

The owner has employed a heritage consultant, who has written to Council seeking a reclassification of the house to a Category 2 place as outlined in Attachment 9. When this request was made in the definition at that time, allowed Category 2 places to be demolished at the land owner's discretion.

However, since the request was made, Council resolved in March 2017, to alter the definition of a Category 2 place where the decision to demolish rests with the Shire as the planning authority.

## **CONSULTATION**

The latest letter from the landowner was in response to the recent round of public consultation undertaken in respect to establishing a Heritage List under Local Planning Scheme No.4 and the revision to the definition of a Category 2 place.

## **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**

### **Local Planning Scheme No.4**

The subject building is on the Shire's Heritage List and is protected under Part 8 of Local Planning Scheme No.4, as a Category 1 place.

## **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 landowner's consultant's report, largely agrees with the heritage assessment, Phil Griffiths Architects carried out in April 2014.

Griffiths' report uses the Heritage WA definitions; Category A & B, rather than the Shire's Category 1 & 2. However, both the Shire's consultant and the landowner's consultant have concluded that the core of the house should be retained, along with some later additions, as outlined in the report such as the crenulated porte-cochere. They also agree that the place would be more appropriately classified as a Category 2 place under the Shire's Heritage List.

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The recent review of the definition of a Category 2 place on the Heritage List, now means the State and local management categories align to some degree, which is important from a comparison and consistency perspective.

At the same time, Griffiths' report provides a clear plan as to which sections of the building should be retained and those elements that may be removed. This report also provides basis for any redevelopment plans for the site, whereby the house and its contribution to the streetscape, and the cultural group it contributes to remain the main focus in any planning assessment of the site.

On this basis the request to reclassify the house at No. 52 the Esplanade, from a Category 1 to Category 2 place, can be supported in this instance. However, at the same time it is recommended to Council that it take the opportunity to adopt the April 2014 Heritage Assessment by Phil Griffith's Architects, for the purposes of any redevelopment of the site. Both the Shire's and the landowner's heritage consultant have agreed that this would be a desirable outcome, as it would provide some certainty to any future landowners as to which aspects of the current building would have to be retained.

Council's recently adopted Local Planning Policy 3 'Heritage Places', would provide further guiding on how the retained portions are treated and the streetscape contribution of the house is continued.

#### **OFFICER RECOMMENDATION/S – ITEM No. 9.1.1**

##### **That Council:**

- 1. Advises the applicant in regard to the heritage management classification for the building at Lot 100 (No.52) The Esplanade, that it resolves to change the management Category from 1 to 2.**
- 2. That Council adopts the Phil Griffith's Heritage Assessment and Advice report (April 2014), as the basis for any future consideration for the preservation of the building and any redevelopment on Lot 100.**

## 9.1.2 Revised Street Elevation Two-Storey Single Dwelling. Lot 54 (No.3) Hurstford Close, Peppermint Grove

## URBAN PLANNING

### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
<b>Attachment 80</b>	3 Hurstford Close

Voting Requirement	:	Simple Majority
Subject Index	:	Property
Location / Property Index	:	3 Hurstford Close
Application Index	:	N/A
LPS No 4 Zoning	:	Residential R12.5
Land Use	:	Single Dwelling
Lot Area	:	751m <sup>2</sup>
Disclosure of any Interest	:	Nil
Previous Items	:	Ordinary Council Meeting 23 August 2016
Applicant	:	Mrs J Dawkins
Owner	:	Mrs J Dawkins
Responsible Officer	:	Michael Whitbread, Manager of Development Services

### COUNCIL ROLE

- Advocacy**      *When Council advocates on its own behalf or on behalf of its community to another level of government / body / agency.*
- Executive**      *The substantial direction setting and oversight role of the Council eg. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.*
- Legislative**      *Includes adopting local laws, town planning schemes & policies.*
- Review**      *When Council reviews decisions made by Officers.*
- Quasi-Judicial**      *When Council determines an application / matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include town planning applications, building licences, applications for other permits / licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.*

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## **PURPOSE OF REPORT**

For Council to determine a request to allow the removal of a ground floor window to the street elevation as indicated in the attachment.

## **SUMMARY AND KEY ISSUES**

- The approved plans were characterised by balanced fenestration to the street elevations.
- The applicant has requested that one of the ground floor windows be removed from the street elevation.
- Approval is recommended.

## **LOCATION**

Please refer location plan.

## **BACKGROUND**

Council at its meeting held on the 23 August 2016, granted planning consent for the development of a two storey single dwelling on the subject site.

The previous house on the site has been demolished and the ground floor slab has been poured.

## **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**

### **Local Planning Scheme No.4**

## **FINANCIAL IMPLICATIONS**

There are no financial implications evident at this time.



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## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

## **SOCIAL IMPLICATIONS**

There are no social implications at this time.

## **OFFICER COMMENT**

The variations requested under the R-Codes in the July 2016, application, were supported on their merits, which certainly included, in part, on the qualities of the replacement house. 'Hampton' style houses, such as this one, are based on ideas of vertical proportions, a limited palette of materials, such as weatherboard cladding bands, and in particular balanced/symmetrical elevation(s), particularly to the street. This new house is a fine example of such qualities, however, the removal of the window, as proposed alters the appearance and therefore the perception of the house from a streetscape perspective.

It is a common argument put by architects and designers that Councils' should not comment, or seek to change the aesthetics of a building. However, Clause 67(M) of the Planning and Development (Local Planning Schemes) Regulations 2015, specifically states that a local government;

'...is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development of the subject application. Subclause (m) includes the phrase...*appearance of the development.*'

If Council is of the opinion that the removal of the window is detrimental to the streetscape, and the appearance of the building, then it is entitled under the Scheme to form an opinion on the matter.

The issue has arisen out of the fact that the interior layout has been designed, but is not compatible with the exterior fenestration of the house. The obvious solution here would be to redesign/relocate the stairwell, however this would also necessitate a redesign of the upper floor layout as well.

The plans have been issued for building permit and works begun, so that any re design at this late stage would not only delay the project by several weeks as the engineering drawings are re done, but in doing so, would add noticeably to the cost.

The range of possible solutions includes blacking out the windows, removing the window entirely or delay the build to resolve the design. While blacking or putting film on the window may deal with streetscape concerns, the interior view would appear as an unresolved aspect of the design if adopted as a solution.

The floor level of the dwelling under construction house is set lower on the site than street level by approximately 660mm and with the approved wall at 900mm, the 'missing'

window' may not be easily discernible. At the same time landscaping is proposed both against the house and the retaining wall to the visitor's bays that would assist here.

On this basis there is no objection to the removal of this window subject to an amended building permit being applied for.

**OFFICER RECOMMENDATION/S – ITEM No. 9.1.2**

**That Council advises the applicant that is has no objection to the removal of the window as indicated in the revised plans dated the 12 June 2017, subject to the submission of a building permit reflecting the alterations.**

**10 MOTIONS ON NOTICE**

*(Automatically sent back to Administration for consideration at the next Council Meeting)*

**11 CONFIDENTIAL ITEMS OF BUSINESS****12 CLOSURE**

At \_\_\_\_ pm, there being no further business the meeting closed.

**DECLARATION OF**  
**FINANCIAL / PROXIMITY / IMPARTIAL INTEREST**  
**THAT MAY CAUSE A CONFLICT**

**TO:** Chief Executive Officer  
SHIRE OF PEPPERMINT GROVE

**NAME:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

**MEETING DATE:** \_\_\_\_\_

**ITEM NO & SUBJECT:** \_\_\_\_\_  
\_\_\_\_\_

**NATURE OF  
INTEREST:**

Financial / Proximity / Impartiality  
Interest that may cause a Conflict\*

\* Please Circle  
*applicable*

**EXTENT OF  
INTEREST:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**Section 5.65(1) of the Local Government Act 1995 states that:**

## **FINANCIAL & PROXIMITY INTERESTS**

*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.*

## **DISCLOSURE OF 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.*

*“A member who has an interest in any matter to be discussed at a Council or Agenda Briefing Forum meeting that will be attended by that member must disclose the nature of the interest”:*

- (a) In a written notice given to the CEO before the meeting; or*
- (b) At the meeting immediately before the matter is discussed.*