



Shire of  
Peppermint Grove

# ORDINARY COUNCIL MEETING

# AGENDA

TO BE HELD ON  
TUESDAY **22<sup>ND</sup> AUGUST 2023**  
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 on the Shire of Peppermint Grove, 1 Leake Street, Peppermint Grove, on 22<sup>th</sup> August 2023, commencing at 5.30pm.

**MEETING AGENDA ATTACHED**

Yours faithfully

A handwritten signature in black ink, appearing to read 'Don Burnett', written in a cursive style.

**Mr Don Burnett**  
**CHIEF EXECUTIVE OFFICER**

**17<sup>th</sup> August 2023**



# Shire of Peppermint Grove

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Shire of  
Peppermint Grove

## AGENDA BRIEFING FORUM 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 ready 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	Cr Rachel Thomas
Deputy Shire President	Cr C Hohnen
Elected Member	Cr P Macintosh
Elected Member	Cr D Horrex
Elected Member	Cr D Jackson
Elected Member	Cr K Farley
Elected Member	Cr P Dawkins
Chief Executive Officer	Mr Don Burnett
Manager Development Services	Mr J Gajic
A/Manager Corporate & Community Services	Mr K Viskovich
Manager Infrastructure Services	Mr D Norgard

**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**

## **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. In the event there are no public members present, the Presiding Member will dispense with Public Question Time.

### **Rules for Council Meeting Public Question Time**

- a) *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.*
- b) *During the Council meeting, after Public Question Time no member of the public may interrupt the meeting's proceedings or enter into conversation.*
- c) *Whenever possible, questions should be submitted in writing at least 48 hours prior to the start of the meeting.*
- d) *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.*
- e) *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**
- 5.0 **DECLARATIONS OF INTEREST**
- 5.1 **FINANCIAL INTEREST**
- 5.2 **PROXIMITY INTEREST**
- 5.3 **IMPARTIALITY INTEREST**
- 5.4 **INTEREST THAT MAY CAUSE A CONFLICT**
- 5.5 **STATEMENT OF GIFTS AND HOSPITALITY**
- 6.0 **ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)**
- 7.0 **CONFIRMATION OF MINUTES**

**OFFICER RECOMMENDATION/COUNCIL DECISION – ITEM NO 7.1**

**Moved:**

**Seconded:**

**That the minutes of the Ordinary Council Meeting, of the Shire of Peppermint Grove held in the Council Chambers on 25<sup>th</sup> July 2023 be confirmed as a true and accurate record.**

## 8.0 OFFICERS REPORTS

### 8.1 MANAGER DEVELOPMENT SERVICES

#### 8.1.1 Draft Local Planning Policy LPP12 - Street and Boundary Fences and Walls

##### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Description</u>
Attachment 1	Draft Local Planning Policy 12 – Residential Fences

Voting Requirement	:	Simple Majority
Disclosure of any Interest	:	Nil.
Previous Items	:	Item 9.1, 24 November 2020
Assessing Officer	:	Mr J Gajic
Authorising Officer	:	Mr J. Gajic

##### PURPOSE OF REPORT

To seek Council support to initiate advertising of Draft Local Planning Policy (LPP) 12 – Residential Fences.

##### SUMMARY AND KEY ISSUES

- LPP12 was adopted by Council on 24 November 2020. This policy is due for review and with LPP8 – Construction Management Plans that is currently in review are the next priorities following the recent adoption of revisions to Local Planning Policy 5 – Plot Ratio.
- The Shire has the ability to amend LPP12 without the need for referral to or the approval of the Western Australian Planning Commission (WAPC).
- The Information Sheet – Residential Development (Information Sheet) that captures the nuances of the local planning policy framework and reflects how planning officers are interpreting the framework will be further updated pending confirmation of any local planning policy amendments.
- The Shire Council have been briefed regarding the key changes to Draft LPP12 and the briefing has informed the preparation of the attached version for community consultation.

##### BACKGROUND

LPP12 policy provisions are currently limited to fencing along primary street frontages. The policy varies the deemed-to-comply requirement 5.2.4 Street walls and fences contained in the R-Codes.

Dividing fences including those fronting a right-of-way and front fences are controlled under the Shire’s Fencing Local Law 2021 (Local Law). The Local Law defines a sufficient fence for a residential lot as an 1800mm high timber, corrugated cement or steel, or brick, stone or concrete structure.



Specific to residential development application of the Local Law by Shire staff is limited to establishing the height and materials of a sufficient dividing fence. The application of the Local Law for residential development beyond this is problematic. The Local Law references the Building Code then prescribes alternative unenforceable standards. Clause 2.1(6) is superfluous and contrary to Schedule 1. Together these controls prescribe that structural certification is required to obtain approval whether or not at the development application stage, and in some circumstances when the fencing does not require a building permit. Structural certification must also have regard to Region D wind loadings found in coastal areas between Carnarvon and Port Hedland that experience extreme cyclonic events. The Local Law additionally at clause 2.2(1)(a) varies LPP12 as to what constitutes open aspect construction.

Notwithstanding a degree of ambiguity, fencing fronting a communal street is controlled under the R-Codes.

There is an opportunity for the scope of LPP12 to be expanded and to confirm its prevalence over the Local Law where they do not align. It is additionally an opportunity to establish standards for fencing abutting a right-of-way and for tennis courts, and to extend the current front fence standards in the policy to communal streets.

## **CONSULTATION**

The draft policies are required under Schedule 2, Part 2, Division 3, Clause 4(2) of the Deemed Provisions to be advertised for a period not less than twenty-one (21) days.

A further officer report will be prepared having regard to any submission(s) received during the advertising period.

## **STRATEGIC IMPLICATIONS**

Clause 67 of the Deemed Provisions outlines the case and procedure for the preparation and adoption of local planning policies.

## **LOCAL PLANNING POLICY IMPLICATIONS**

The proposed revisions to LPP12 do not directly or adversely impact on other local planning policies.

## **FINANCIAL IMPLICATIONS**

There are no financial implications evident at this time.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications evident at this time.

## **SOCIAL IMPLICATIONS**

There are no social implications evident at this time.

## OFFICER COMMENT

Local policies are important because they articulate local values and link these to how the Shire will plan and make decisions for the benefit of Peppermint Grove as a place and community. Local planning policies also serve the function of articulating local planning scheme provisions and guide the application of Council discretion.

In the hierarchy of planning controls the local planning scheme and state planning policies prevail with the exception that a local planning policy may vary a deemed-to-comply requirement contained in the R-Codes (state planning policy 7.3).

Local planning policies are not a law or a statute and are not to be applied inflexibly. For this reason local planning policies cannot allow or disallow. They may encourage and discourage siting and design, and establish expectations in regards to the provision of supporting documentation and site management practices.

Key revisions to LPP12 are summarised as follows:

- To broaden the scope of the current policy that solely addressed street walls and fences to include all residential fencing.
- To address anomalies in the Fencing Local Law by affirming that the policy shall prevail where not in alignment with the local law.
- To enable variations to a 'sufficient fence' as prescribed under the Fencing Local Law 2021.
- To provide design guidelines for dividing fences and fences that abut rights-of-way.
- To provide design guidelines for tennis court fencing.
- To provide design guidelines for vehicular and pedestrian access gates.
- To affirm that communal street fencing is subject to the same provisions for a street wall or fence.
- To encourage non-compliant fencing to be modified in conjunction with applications for replacement houses, significant alterations or additions.
- To affirm that the requirement for pool barrier fencing to comply with AS 1926.1-2012 or privacy considerations do not set aside any policy requirement for open aspect fencing.

Revisions to LPP12 and LPP8 (draft version for advertising currently being prepared), in addition to the recently amended LPP5 – Plot Ratio have been prioritised and will form part of a holistic local planning policy. The holistic review is programmed to be completed by the end of the calendar year.

Following assessment of any submission(s) received during the twenty-one (21) day advertising period the Draft LPP12 may be further revised before being brought back to Council. Council will then be requested to proceed with the revised policy with or without further modifications, or can resolve to not proceed with the policy. Should the Council resolve to proceed with the policy a further public notice will be published confirming adoption.

**OFFICER RECOMMENDATION/COUNCIL DECISION – ITEM NO 8.1.1**

**That Council directs the CEO to initiate advertising of Draft Local Planning Policy 12 – Residential Fences in accordance with the procedures contained in Schedule 2, Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.**

8.1.2 12 The Esplanade – Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing)

## URBAN PLANNING

### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Description</u>
Attachment 1	Development Application Submissions and Drawings
Attachment 2	Summary Table of Design Modifications
Attachment 3	Comparison Drawings of Design Modifications

Voting Requirement	:	Simple Majority
Location / Property Index	:	12 The Esplanade, Peppermint Grove
Application Number	:	DA2022/00029
LPS No 4 Zoning	:	Residential R10
Land Use	:	Single House
Lot Area	:	1597m <sup>2</sup>
Disclosure of any Interest	:	Nil.
Previous Items	:	Item 8.1.1, 28 February 2023 Item 8.1.4, 23 August 2022 Item 7.1, 10 December 2019 Item 8.1.3, 23 July 2019
Applicant	:	Planning Solutions
Owner	:	Theresa Lynn Smith
Assessing Officer	:	Mr J Gajic
Authorising Officer	:	Mr J. Gajic

### PURPOSE OF REPORT

To inform the Council's reconsideration at the direction of the State Administrative Tribunal (SAT) of a development application not supported by Council at the February Ordinary Council Meeting (OCM).

### SUMMARY AND KEY ISSUES

- The place is listed in the Municipal Heritage List (category 1).
- The broad concept for conservation for heritage places in the Burra Charter is to *do as much as necessary to care for the place and to make it usable, but otherwise change as little as possible so that its heritage significance is retained.*
- This report should be read in conjunction with previous items listed above that provide a chronology of previous development application determinations.
- In August 2022 Council approved alterations and additions to the heritage house and, in doing so, annexed the proposed site works and the street wall that were not supported.

- In February 2023 the application for site works and the street wall was assessed to constitute a minor variation to the initial design and refused on the same grounds that warranted their earlier annexation.
- The proponent sought a review of Council's refusal at the SAT and a mediation process ensued.
- SAT Member Rochelle Lavery (Member Lavery) has ordered that the Shire reconsider amended plans with further revisions to terracing to the southeast of the subject site and the provision of a detailed landscaping plan.

## **LOCATION**

12 The Esplanade, Peppermint Grove.

## **BACKGROUND**

There is a three (3) metre crossfall along the 25m frontage of the subject site and significant crossfall for adjoining properties. This section of The Esplanade is significantly elevated above Freshwater Bay.

The Council has considered several applications in recent years pertaining to alterations and additions and restoration on the subject site. An approval was granted in August 2022 for alterations and additions to the heritage house. The site works and street wall component of the proposal was not supported at that time and were annexed from the approval with a conditional requirement to lodge a new standalone application for that component that better respected the natural topography and local planning policy framework.

Application DA2022/00029 was subsequently lodged specific to the annexed siteworks and street wall. Council again did not support this aspect of the development and formally refused DA2022/00029 at the 28<sup>th</sup> February Ordinary Council Meeting (OCM).

An application for review DR 68 of 2023 was lodged to the SAT on 26 April with an initial Directions Hearing held on 30<sup>th</sup> June. Two subsequent Mediation Sessions have been held. In response to the mediation process SAT Member Lavery has ordered that the proponent make further revisions to their proposal and that Council reconsider the application at the 22 August OCM.

At the second Mediation Session held on 6 July Member Lavery it was accepted by the Shire that the street wall was now satisfactory and that matters of vehicular access was not being contested. The focus of the mediation related to the impact of the proposed site works on the southern neighbour with specific regard to the extent of fill and resultant building bulk, solar access and visual privacy concerns.

## **CONSULTATION**

The Directions Hearing was attended by representatives of the Applicant (Theresa Lynn Smith) and Respondent (Shire of Peppermint Grove). It was agreed that mediation was warranted.

The initial mediation session was held on 26<sup>th</sup> May on site and attended by Councillors, and representatives for both the Applicant and the southern neighbours. This session enabled

Member Lavery to attend both the subject site and view the proposed development from the perspective of the neighbour's substantially constructed house. Steve Allarding and Associates presented on behalf of the neighbour and distributed plans for an alternative design response that was not supported by the Applicant. The mediation then continued between the Applicant and their representatives Planning Solutions, and the Shire who were represented by Elected Members and Shire staff. Member Lavery directed that both parties attend a second mediation session.

The second mediation session was held on 6 July at 565 Hay Street. The Shire sought two clear design outcomes. Firstly, a reduction in height of approximately 1250mm to the driveway in the vicinity of the landing to accord with the current ground levels. This reduction would otherwise result in the finished design levels responding to the natural features of the site and requiring less fill as required by the design principles contained in the Residential Design Codes of Western Australia (R-Codes). Secondly, that retaining walls behind the nine (9) metre street setback line to comply with the deemed-to-comply requirements contained in the R-Codes. The deemed-to-comply requires retaining walls to be rounded up to the nearest 500mm and then offset that height from the lot boundary.

The Applicant's representatives rejected a lowering of the driveway and asserted that the deemed-to-comply requirement for the setback of retaining walls from the southern lot boundary would serve no practical planning purpose. The Applicant conceded that fill associated with terracing in the south-eastern corner of the property could be further stepped down from the levels that had been slightly modified following the initial Mediation Session. Member Lavery ordered that the Applicant provide to the Respondent by 28<sup>th</sup> July further revised plans that had regard to the fore-mentioned concession and a detailed landscaping plan for Council reconsideration on or before 6 October.

Revised plans for Council reconsideration were submitted on 21<sup>st</sup> July and a Concept Landscaping Plan on 27<sup>th</sup> July. Planning Solutions were contacted to seek confirmation whether their client was amenable to a notification under the Transfer of Land Act be placed on title to provide greater transparency regarding constraints pertaining to the future erection of dividing fencing along the southern boundary and the requirement to maintain landscaping in accordance with an approved plan.

Selected plans from the amended plan were provided to the southern neighbour on 27<sup>th</sup> July as part of the readvertising process. Advertising closed on 10<sup>th</sup> August 2023. Any submission(s) received after the drafting of this report will be presented to Council at the Agenda Briefing Session. If warranted, this officer report will be amended.

The Shire's contracted building surveyors at the City of Nedlands have confirmed that a barrier along the southern boundary was not required under the Building Code on the grounds that the landscaped area adjacent to the southern property boundary did not constitute an accessway.

## **STRATEGIC IMPLICATIONS**

There are no Strategic Plan implications evident at this time.

## **LOCAL PLANNING POLICY IMPLICATIONS**

The proposal does not comply with relevant Local Planning Policy.

## **STATUTORY IMPLICATIONS**

There are no statutory implications evident at this time.

## **FINANCIAL IMPLICATIONS**

There are no financial implications evident at this time.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications evident at this time.

## **SOCIAL IMPLICATIONS**

There are no social implications evident at this time.

## **OFFICER COMMENT**

The proponent has made several concessions from the largely unchanged proposal refused by Council at the 28 February OCM . These concessions are now suitably captured in the attached plan set, summary table and comparison drawings.

The design changes principally relate to fencing (the street wall and fence, and the dividing fence on the southern boundary), and terracing to the south-east corner of the site and extent of fill in the vicinity of the southern boundary.

The street wall has been reduced in height to not exceed 2.1m above the natural ground level and the 90 per cent open aspect steel railing fencing above reduced to a height of 700mm for that extent to which the sliding access gate will be positioned when open. The resultant combined wall and fence height now varies between 1.9m to 2.7m above the natural ground level. The access gate and open aspect railing fencing is consistent in appearance and materials and will provide a contrast to the street wall stonework. The street wall, access gate and open aspect railing fencing has been assessed to satisfy the applicable design principles contained in the R-Codes, and the planning policy framework.

The previously proposed 1000mm and 1.8m high brushwood dividing fencing along the southern boundary has been deleted to reduce the impact of bulk and scale on the southern neighbour. The landscaping plan has designated *Sweet Viburnum* (2m – 7m flowering evergreen shrub) and *Swamp Lilly* (1.5m – 3m flowering evergreen shrub) along the boundary at spacings that upon maturity will provide a solid screen and restrict access. Concerns raised pertaining to the enforcement of restricting dividing fencing along the southern boundary were dismissed by Member Lavery. Nonetheless, it is paramount that any condition of approval restricting subsequent as-of-right development or imposing ongoing obligations are sufficiently transparent for future owners and Development Services staff. A section 70A notification under the Transfer of Land Act is recommended to be place on title to achieve the necessary transparency and potentially mitigate costly enforcement.

The extent of fill has been reduced generally to the southeast corner of the site. The second terrace at the 22.30m level has been extended along the southern boundary and subsequently widened 500mm following the second Mediation Session. This has resulted in fill along the southern boundary 6m to 12m from The Esplanade being reduced by 1050mm. A fourth terrace has additionally been introduced at the 22.80m level adjacent to the pedestrian path landing. This has resulted in a 550mm reduction of fill and further stepping of the forecourt from the southern boundary.

It remains the officer's assessment that the site works have not adequately considered and responded to the natural features of the site. The site works require extensive fill resulting in the finished levels not respecting the natural ground level at the southern lot boundary.

Notwithstanding the officer's assessment, the clear direction of Member Lavery must be afforded due regard. Regard must also be afforded to the concessions the proponent has made to their original design, and the disruption to service delivery associated with a Full Hearing

Member Lavery was of the clear view that the design principles for site works contained in the Residential Design Codes of WA have been satisfied, and that the southern neighbour will not be adversely impacted to the extent that the application should be refused. It was Member Lavery's view that matters of building bulk were not apparent due to the extent of fill not being visible when viewed at ground level from the southern neighbour's property and that dividing fencing could be conditionally restricted. Member Lavery has made it clear that should the matter progress to a Full Hearing the negotiated lowered terracing in conjunction with landscaping will be assessed to adequately protect visual privacy, as such landscaping will restrict access to the southern boundary. The practicality of enforcing landscaping conditions and reviewing previous approvals in order to provide advice was discussed. Whilst Member Lavery was largely dismissive of these concerns, it is the officer's view that a notification on title is necessary to afford transparency to any such conditions.

As previously reported, the proponent's engineering assessment for works within The Esplanade including the verge has been independently verified by Porter Consulting Engineers (Porter). It is the view of Porter that the proposed design will need to be refined to align with broader traffic works programmed for that section of The Esplanade and better facilitate movements across the adjacent median strip. A condition of any subsequent development approval will need to confirm project management and detailed design acceptance arrangements, and ensure all design, direct project management, and traffic management costs are wholly borne by the proponent/landowner. Relocating the existing crossover will cause a degree of disruption to road users and pedestrians. Indirect project management costs will likely be incurred by the Shire.

It remains the planning assessment that activation of the front garden and improved access to the main front entry of the house is not in itself sufficient grounds to support siteworks requiring such significant fill, or to modify infrastructure within the road reservation where a functional crossover is already in place. Nevertheless, the Shire and the proponent have through mediation enabled a greatly improved design to now come before Council. The street wall and fence and broader relationship of the development with the street is now acceptable. Member Lavery has provided clear direction that it is likely that the Shire's refusal would be set aside at a Full Hearing. Should the matter proceed to a Full Hearing any further



concessions may be limited and not outweigh the cost of resourcing the appeal and disruption to service delivery.

## OPTIONS

Council has the option of again refusing DA2022/00029 substantively on the same grounds as contained in the Council Decision for Item 8.1.1, in the 28 February 2023 OCM and proceeding to a Full Hearing at the SAT. Should the Council decide that the application be refused, due regard should be afforded to the street wall and fence modifications and reduced terrace levels to the southeast corner of the site. These revisions lessen perceptions of bulk and improve visibility of the house when viewed from the street. It has been accepted that the existing non-compliant street wall is out of character with the heritage place and far more imposing on the streetscape.

Should Council seek to refuse DA2022/00029 the following grounds are provided:

1. The Proposal is inconsistent with the R-Codes Objectives of Part 5 Section 5.2 Streetscape which requires consideration of the following:
  - a. *To contribute towards the character of streetscapes including their views and vistas and provides 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.*
2. The Proposal is inconsistent with the R-Codes Objectives of Part 5 Section 5.3 Site Planning and Design which requires consideration of the following:
  - a. *To ensure each development makes a contribution to a streetscape by respecting the natural topography for each site, adjoining properties and the amenity of the locality.*
3. The Proposal is inconsistent with the R-Codes Design Principles of Element 5.3.7 – Site Works.
4. The proposal is inconsistent with the R-Codes Design Principles of Element 5.4.1 – Visual Privacy.
5. The Proposal is inconsistent with the R-Codes Design Principles of Element 5.2.5 – Sight lines.
6. The development is inconsistent with the aims and provisions of the Local Planning Scheme No. 4 pursuant to Clause 67(2)(a) which seeks to preserve the amenity of the Shire and the quality and characteristics of its streetscapes.
7. The siteworks are inconsistent with the policy principles of State Planning Policy 2.10 Swan-Canning River System pertaining to design and development. Specifically, the siteworks are not consistent in the context of its setting and the characteristics of the site.
8. The submissions from the southern neighbour raise relevant planning concerns including headlight spill which is not specifically addressed by local planning policy.

Council has the alternative option of conditionally approving DA2022/00029 in light of the negotiated modifications and clear indication from Member Lavery that at a Full Hearing the SAT would set aside any refusal on the grounds of bulk and visual privacy impacts on the southern neighbour.

#### **OFFICER RECOMMENDATION – ITEM NO 8.1.2**

**That Council approve the amended plans submitted on 21 and 27 July 2023 in response to State Administrative Tribunal mediation associated with DA2022/00029 for Works Ancillary to a Single House (Siteworks, Retaining Walls and Fencing) lodged on subject to the following conditions:**

- 1. The approved building works and layout as identified on the endorsed plans together with any requirements and annotations detailed thereon shall not be altered without the prior written consent of the CEO.**
- 2. Prior to this permit having force or effect, revised construction and engineering drawings and a traffic management plan associated with the relocation of the existing crossover and modifications to The Esplanade median strip must be submitted for the approval of the CEO. The detailed drawings and traffic management plan shall be verified by Porter Consulting Engineers (the Shire’s contracted engineers) and provide for all vehicle manoeuvres and accord with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications. Suitable controls shall be implemented to ensure that at least one lane of The Esplanade always remains open to vehicular traffic.**

**Once approved, the detailed and engineering drawings and a traffic management plan shall form part of this permit.**

- 3. Prior to endorsement of the detailed engineering plans and traffic management plan the proponent must pay the Shire’s costs for Porter Consulting Engineers to review the Pertias plans dated 10/02/2023, and all verification costs associated with the review of revised construction and engineering drawings and the assessment of the traffic management plan.**
- 4. Prior to this permit having force or effect a Section 70A notification under the Transfer of Land Act shall be placed on the land title notifying prospective purchasers of the land of the requirement to adhere with the approved landscaping plan, and restrictions pertaining to dividing fencing along the southern property boundary.**
- 5. 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.**

**Once approved, the CMP shall form part of this development approval.**

- 6. Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) landscaping shall be established in accordance with the approved landscaping**

plan to the satisfaction of the CEO. The landscaping shall thereafter be maintained in a healthy condition. Dead or diseased plants shall be replaced as soon as practical.

7. Within six (6) months of the commencement of works or within three (3) months of the relocated crossover being open to traffic (whichever is the lesser) the redundant vehicular crossover must be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare reinstated in accordance with the Shire of Peppermint Grove Vehicular Crossovers General Requirements and Specifications.
8. Prior to removal of the juvenile verge tree to facilitate construction of the relocated crossover, a replacement *Agonis flexuosa* (WA Weeping Peppermint) shall be established in accordance with the Tree Planting Specification contained in the Shire's Public Tree Management Strategy 2022. Once established, the replacement Peppermint tree shall be maintained in a healthy condition at no cost to the Shire for a period of twelve (12) month to the satisfaction of the CEO.
9. In accordance with the Shire of Peppermint Grove Local Planning Policy 9 – Development Bonds a \$5000 development bond 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 including works within the road reservation.
10. All works identified on the endorsed plans shall be wholly located within the lot boundaries of the subject site.
11. The ongoing use of the site and approved development works shall not cause erosion or degradation to the subject or surrounding land. Should the CEO deem it necessary to undertake mitigation works; plans, specifications and work schedules may be required to be submitted and the works undertaken by the proponent at no cost and to the satisfaction of the CEO.
12. 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.
13. 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, 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:
  - Site works.
  - Street walls and fences.
  - Sightlines.
2. This is a Development Approval only and does not remove the responsibility of the proponent/owner to comply with all relevant building, health, engineering or Local Laws requirements of the Shire, any obligations under the Environment Protection Act 1986, or the requirements of external agencies.
3. In respect to condition 2, Porter Consulting Engineers have recommended that in lieu of *relaying existing pavers to suit proposed levels* as stated in drawing CI-03.50 “Re-grading existing raised slow point” that the surface of the plateau be relayed with red asphalt to reduce maintenance. Prior to preparing revised construction and engineering drawings you are encouraged to make contact with the Shire’s Manager of Infrastructure Services.
4. In respect to condition 2, the traffic management plan is to be prepared by a registered Roadworks Traffic Manager.
5. In respect to condition 3, the Shire will provide tax invoices from Porter Consulting Engineers and may charge an administration fee for project management services.
6. In respect to condition 4, the proponent is encouraged to make contact with the Shire’s Manager of Development Services to confirm wording of the notification prior to preparing your Form N1 for local government attestation.
7. In respect to condition 5, the Attention is drawn to ‘Guideline for managing impacts of dust ([www.wa.gov.au](http://www.wa.gov.au)) (DEC, March 2011)’ and, specifically, Appendix 1 Site risk assessment/classification for activities generating uncontaminated dust. The Shire will accept the provisions and contingencies arrangements for a medium risk activity as outlined on page 38 of the Guideline.
8. In respect to condition 8, a tree protection fence for the replacement Peppermint tree must be installed on the verge at the no cost to the Shire. The type of fencing must be in line with the Australian Standard for Protection of Trees on Development Sites AS4970-2009. At a minimum the tree protection zone fencing will cover 2m x 2m around the trunk.

9. **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 street wall and retaining walls the subject of this Permit.**
10. **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 CEO that any variations are trivial.**
11. **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.**
12. **In respect to Development Bonds, should the situation on the street verge be dangerous in the opinion of the CEO, funds from the bond may be used to make the site safe or to a standard under any approved Construction Management Plan. Project management and/or administrative fees may also apply.**
13. **The Shire does not warrant or exempt the applicant from any civil claim(s) arising from damage to private property and associated with the approved works.**
14. **Unless otherwise varied by a permit under the Activities in Thoroughfares and Public Places and Trading Local Law 2021 or an approved Construction Management Plan, all construction materials associated with the approved works shall be wholly stored within the subject land.**
15. **The prior written approval of CEO is required for the temporary closure of any footpath, road or laneway.**
16. **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.**
17. **It is the responsibility of the proponent 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.**
18. **During the construction stage adjoining lots are not to be entered without the prior written consent of the affected owner(s).**

19. In respect to condition 13, a further two years is added to the decision date by which the development shall be substantially commenced, pursuant to Schedule 4, Clause 4.2 of the Clause 78H Notice of Exemption from Planning Requirements During State of Emergency signed by the Minister for Planning on 8 April 2020 (as amended).
20. Should the proponent and/or owner 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](http://www.sat.justice.wa.gov.au) or by phoning 9219 3111 or 1300 306 017.

## 8.2 MANAGER INFRASTRUCTURE

NIL

### 8.3 MANAGER CORPORATE AND COMMUNITY SERVICES

#### 8.3.1 List of Accounts Paid – July 2023

#### ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Description</u>
Attachment 1	Accounts Paid – July 2023 Credit Cards – June 2023

Voting Requirement : Simple Majority  
 Subject Index : Financial Management  
 Disclosure of Interest : Nil  
 Responsible Officer : Kurt Viskovich, A/Manager Corporate and Community Services

#### PURPOSE OF REPORT

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

#### SUMMARY AND KEY ISSUES

Significant payments in July 2023 included the following:

- ATO Pay as you go Tax
- Superannuation
- Treasury Loan Repayment
- Commercial & Residential Carpenters – Decking Replacement
- Landgate 2023 GRV Revaluation
- John Hughes – Replacement of Works Ute

#### BACKGROUND

The Attachment lists detail all payments made in July 2023. The following summarise credit card payments, electronic fund transfers, direct debits and BPAY included in the list presented for information.

PAYMENT TYPE	NUMBER SERIES	AMOUNT
EFT	EFT00529-532	\$513,647.41
Direct Debits	DD00436-443	\$14,466.18
BPAY	BPAY298-300	\$536.95
Credit Cards – June 2023		\$6,468.06
<b>TOTAL</b>		<b>\$535,118.60</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**

Accounts are paid during the month in accordance with Delegation 2 “Payments from the Municipal 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 2023/24 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, direct debit & BPAY payments for the month of July 2023, totalling \$528,650.54**
- 2. Credit Card payments for June 2023 totalling \$6,468.06**

8.3.2 Financial Statements for the period ending 31<sup>st</sup> July 2023

## CORPORATE

<u>Attachment No</u>	<u>Details</u>
Attachment	Financial Statements for the period ended 31/07/2023

Voting Requirement	Simple Majority
Subject Index	: Financial Statements 2023/24
Disclosure of Interest	: Nil
Author	: Kurt Viskovich, A/Manager Corporate and Community Services
Responsible Officer	: Kurt Viskovich, A/Manager Corporate and Community Services

### PURPOSE OF REPORT

To receive the financial statements for the period ended 31<sup>st</sup> July 2023.

### SUMMARY AND KEY ISSUES

During July there was limited expenditure and income transactions with the exception of the levying of the rates and refuse charge. This has resulted in a large surplus that will be drawn down over the course of the year.

### BACKGROUND

The Monthly Financial Statements are prepared in accordance with the requirements of the Local Government Act 1995 & Financial Management regulations (1996). Monthly financial statements are required to be presented to Council. Circulated are the monthly financial statements for the period ending 31<sup>st</sup> July 2023.

### STRATEGIC IMPLICATIONS

Objectives within the Governance section of the Strategic Community Plan.

### POLICY IMPLICATIONS

Shire of Peppermint Grove Financial Management Policies and Investment Policy.

### STATUTORY IMPLICATIONS

Local Government (Financial Management) Regulations 1996.

### FINANCIAL IMPLICATIONS

There are no detrimental financial implications evident at this time.

## OFFICER COMMENT

The Monthly Financial Statements show a large surplus that can be attributed to the levying of the Rates and Refuse Charges in July 2023

There are no other major differences between the year-to-date budget and actual expenditure for the month of July.

### Investment of Municipal and Reserve Funds - as at 31<sup>st</sup> July 2023.

The Shire has the following funds invested as 'on call' and fixed term deposits with the National Australia Bank:-

Fund and TD Number	Amount Invested	Start Date	Maturity Date	Term (Days)	Interest Rate %	Expected Interest
Reserves Funds	*\$1,723,666	TBA	TBA			TBA
	* Note: amount currently in PFA					
Reserves Interest Receivable						
Municipal PFA Acc	\$2,115,888	ON CALL			4.15%	\$7,895.52
Municipal Interest Received						\$8,113.37

## OFFICER RECOMMENDATION – ITEM NO. 8.3.2

**That Council receives the financial report for the period 1 July 2023 to 31 July 2023.**

## 8.4.1 CEO MANAGEMENT/GOVERNANCE/POLICY

### MANAGEMENT/GOVERNANCE/POLICY

#### 8.4.1 Peppermint Grove Tennis Club – lease renewal

#### ATTACHMENT DETAILS

<u>Attachment</u>	<u>Details</u>
Attachment 1	Draft lease

Voting Requirement	:	Simple
Subject Index	:	PGTC
Disclosure of Interest	:	Nil
Author	:	Don Burnett, Chief Executive Officer
Responsible Officer	:	Don Burnett, Chief Executive Officer

#### **PURPOSE OF REPORT**

The purpose of the report is for Council to consider a new 21-year lease for the Peppermint Grove Tennis Club (Club).

#### **SUMMARY AND KEY ISSUES**

- The Club currently has a lease with the Shire expiring August 2025.
- The Club is considering expansion plans for the number of courts and seeks to utilise the current vacant area at the corner of Bay View Terrace and Keane Street
- This area is not in their current lease.

#### **BACKGROUND**

The Club is currently considering options to expand the number of tennis courts. One possibility is the use of the vacant area at the corner of Bayview terrace and Keane Street. This area is not currently with the Club's leased area and is mainly used for overflow parking. Regardless of the current development plan proposed by the Club, the Club have indicated that they would still like to proceed with a new 21-year lease.

#### **CONSULTATION**

The Shire CEO and designated representative from the Club have been working through the draft lease with the Shire's lawyers. The draft as presented has been agreed to by the parties, however, there still may be minor modifications.

#### **STRATEGIC IMPLICATIONS**

There are no strategic implications identified in this report.

## **POLICY IMPLICATIONS**

There are no policy implications identified in this report.

## **STATUTORY IMPLICATIONS**

A new lease will require approval by the Minister for Lands.

## **FINANCIAL IMPLICATIONS**

Should a new lease be entered into, the additional land incorporated in the lease will be handed over to the Club, however the Shire would need to do some remedial works or contribute to site works if new courts are to be constructed as part of the handover.

## **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications at this time.

## **SOCIAL IMPLICATIONS**

The Club is part of the social fabric of the Shire.

## **OFFICER COMMENT**

The Club is seeking a new lease to ensure security of tenure for the next 21 years. The new lease will incorporate the additional land at the corner of Bayview terrace and Keane Street. The lease will recognise that the Club owns all of the improvements on the land, including the clubhouse, fences, reticulation etc.

There may be some minor changes to the draft lease, however the parties have agreed to it in its current form.

## **OFFICER RECOMMENDATION/COUNCIL DECISION – ITEM NO. 8.4.1**

**That Council,**

- 1. Approved the new lease for the Peppermint Grove Tennis Club for a period of 21 years, subject to appropriate Ministerial Approval**
- 2. Authorises the Shire President and CEO to sign the lease, noting minor modifications may be made, and affix the Shire Seal .**

## MANAGEMENT/GOVERNANCE/POLICY

### 8.4.2 Matters for Information and Noting

#### **ATTACHMENT DETAILS**

<b><u>Attachment</u></b>	<b><u>Description</u></b>
<b>Attachment 1</b>	<b>Building/Planning Statistics</b>
<b>Attachment 2</b>	<b>Infringements Issued</b>
<b>Attachment 3</b>	<b>Library Statistics</b>
<b>Attachment 4</b>	<b>Recycling Statistics</b>

Voting Requirement	:	Simple Majority
Subject Index	:	Matters for Information July 2023
Disclosure of Interest	:	Nil
Author	:	Jennifer Court, Senior Administration Officer
Responsible Officer	:	Mr 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 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.

#### **SUMMARY AND KEY ISSUES**

The following reports are presented to Council:

- Planning Approvals.
- Building Approvals
- Infringements
- Library Statistics
- Recycling

## **OFFICER COMMENT**

### **Scheme Amendment 2**

The Seal of the Shire of Peppermint Grove was applied to Scheme Amendment 2. This Standard Amendment was adopted by resolution of the Council of the Shire at the Ordinary Meeting of the Council held on 28<sup>th</sup> day of March 2023.

## **CONSULTATION**

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

## **OFFICER RECOMMENDATION/S – ITEM NO 8.4.2**

**That Council receives the information in this report.**

**9. COMMITTEE REPORTS**

Nil

**10. NEW BUSINESS INTRODUCED BY DECISION OF COUNCIL**

**11. MOTIONS ON NOTICE**

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

**12. CONFIDENTIAL ITEMS OF BUSINESS**

**13. CLOSURE OF MEETING**

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